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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1099-05T3

CITIZENS IN ACTION, ELMIRA NIXON, LUZ VALENTINE, KATHY HOWARD, JOYCE STARLING, JESUS RODRIGUEZ, SHEILA WORTHEN, LEONA WRIGHT, NICOLAS BALBUENA, BLANCA PEREZ, BERTHA WILLIAMS, YVONNE MAJOR, ALANDRIA WORTHEN, MERCEDEZ FIGUEROA, MATTIE HOWELL, JAMES WISE, VALERIE WISE, CRYSTAL TUCKER, DAGMAR VICENTE, ANTONIO DELGADO, CERVANTE AMPARO, MANUEL CANAS, EDWIN GOMEZ, TERRY MUSE, CARL RICH, RADAMES TORRES-MORENO, ANNELISE WESTED, ILSE CARTER, CHARLIE MAE WILSON, ANGELO NIEVES and YOLANDA AROCHO,

Plaintiffs-Appellants,

vs.

TOWNSHIP OF MT. HOLLY, a municipal corporation of the State of New Jersey, DONALD SCATTERGOOD, as Mayor of the Township of Mt. Holly, and TOWNSHIP COUNCIL OF MT. HOLLY, as governing body of the Township of Mt. Holly,

Defendants-Respondents.

Argued: October 18, 2006 - Decided: July 5, 2007

Before Judges Cuff, Fuentes and Baxter.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-3027-03.

Kenneth M. Goldman argued the cause for appellants (South Jersey Legal Services, Inc., and AARP Foundation Litigation, attorneys; Mr. Goldman, of counsel and on the brief; Susan Ann Silverstein, of counsel).

M. James Maley, Jr. argued the cause for respondents (Maley & Associates, attorneys; Mr. Maley, and Elizabeth L. Bancroft, on the brief).

PER CURIAM

In 2002, the Mt. Holly Township Council determined that a section of Mt. Holly known as Mt. Holly Gardens (the Gardens) was an area in need of redevelopment under New Jersey's Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 to -73 (LHRL). It based its decision on the recommendation of the Mt. Holly Planning Board, which had reviewed a redevelopment plan known as the Gardens Area Redevelopment Plan (GARP). Later, the Township Council amended the GARP to include an adjacent parcel of land that was subsequently purchased by Mt. Holly. The amended redevelopment plan was renamed the West Rancocas Redevelopment Plan (WRRP).

Plaintiffs, a group of homeowners who live in the Gardens and other concerned citizens, claim that the determination that the Gardens is an area in need of redevelopment was not supported by the evidence and was arbitrary and capricious.

They also claim that defendants' actions are unconstitutional because they constitute intentional discrimination and the redevelopment designation will have a disparate impact on minorities who live in Mt. Holly. Finally, they claim several procedural errors. We affirm the order that determined the Gardens an area in need of redevelopment. We also affirm the order dismissing the remaining statutory and constitutional claims without prejudice.

The Gardens development "is a residential area comprised of 327 attached housing units built in the early 1950s." The residential units in the Gardens are low-rise, garden apartment-style housing, grouped into blocks of attached units with eight or ten units per block, and are owned in fee. The dwelling units are served by a system of roadways and alleys.

There is no homeowners' association. Presently, most of the units are owned by absentee landlords and the occupants rent individual units. About 18% of the units are vacant and either completely or partially boarded up. According to the 2000 Census, 1,605 persons live in the Gardens, of whom 44% are African-American, 22% are Hispanic and 28% are non-Hispanic White.

The residences contain approximately 600 square feet for a one-bedroom unit and 1,300 square feet for a three-bedroom unit.

They are constructed on lots of approximately 2,500 square feet. Many rear yards have been paved over to provide additional parking spaces for residents.

The Township of Mt. Holly (the Township) acquired twenty-three lots in the Gardens through foreclosure sales. Two of those units have been demolished for health reasons. The Township also owns a 14,100 square foot parcel that once contained a playground, and it has adapted a dwelling unit to function as a community center.

In 1999, the Gardens accounted for 28% of the Township's Uniform Crime Reporting Part 1 crimes,[1] even though it accounts for only 1.5% of the Township's total land area. It accounted for over half of the burglaries in the entire Township and nearly one-third of the motor vehicle thefts.

The Gardens is zoned R-3 Residential, which permits single family dwellings. The majority of the Gardens is located within the Township's urban enterprise zone. Most of the residences are attached on both sides, and some have only one side yard. A

[1]The Uniform Crime Reporting (UCR) Program was conceived in 1929 to meet the need for reliable uniform crime statistics. In 1930, the FBI began collecting and publishing this data. Today, several annual statistical publications, such as Crime in the United States are produced and published. www.fbi.gov/ucr/ucr.htm.

majority of the units do not meet the R-3 district's fifty-foot minimum frontage requirement.

The average household size in the Gardens is 3.2 people. The average unit size is 2.1 bedrooms. Forty-seven percent of the households earn less than $20,000 per year. Forty-three percent earn between $20,000 and $40,000. Nine percent earn more than $40,000 and .7% earn more than $60,000. The median rental in the Gardens is $705 per month. The median cost of homeownership is $969 per month. Township and county homeownership costs are 58% and 44% more expensive, respectively. The Gardens has high African-American and Hispanic homeownership rates, which is unusual in Burlington County.

In 2000, the Township Council commissioned THP, Inc. (THP), a private planning firm, to investigate whether the Gardens met the criteria of an "area in need of redevelopment." The Township Council did not authorize this action by resolution. It also had not passed a resolution instructing the Planning Board to determine if the Gardens qualified as an area in need of redevelopment. In November 2000, THP issued a report called "Redevelopment Area Determination Report.".

On July 30, 2002, the Township Council passed Resolution No. 2002-166. This resolution authorized the Planning Board to

undertake a preliminary investigation to determine if the Gardens was an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-1 to -73. The Planning Board held a public hearing on August 19, 2002. In addition, a special meeting was held at the Rancocas Valley High School on September 16, 2002. Most portions of the transcript from that meeting are inaudible. The testimony of the Planning Board's planner, Janice Talley, was summarized in the minutes of the meeting as follows:

> Ms. Talley went over the map and reviewed the area that is identified in the resolution. Ms. Talley reviewed that the criteria for redevelopment includes that the buildings are substandard, unsafe, unsanitary dilapidated or obsolescent, in any municipality which has been declared an urban enterprise zone, the land is owned by the municipality, the county, the local housing authority, redevelopment agency or redevelopment entity. Also the criteria includes a growing lack or total lack of proper utilization of areas caused by the condition of title, diverse ownership of real property therein or other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare. Ms. Talley reviewed that the area is 31.03-acres, the residential area is characterized by blocks of attached brick housing units of one or two stories, with alleys behind all housing blocks. The majority of homes are not owner occupied and are overcrowded. There is no common area or design and abandoned units. Ms. Talley discussed that

> the Master Plan discuss the goals to improve the quality of life in the area and to use redevelopment as one of the tools.

No person or group presented expert testimony or cross-examined Talley at this meeting.

Talley prepared a Redevelopment Area Determination Report for the Planning Board dated September 3, 2002. The report contained a block-by-block analysis of the Gardens. It also contained an appendix with a detailed parcel-by-parcel analysis that includes information on "ownership, occupancy, land use, assessed value, lot dimensions, zoning, a brief description and the number of code enforcement actions taken (since October 1996)." The block-by-block analysis and the parcel-by-parcel analysis was confined to an exterior investigation and public records search.

In her report, Talley explained that she undertook a "careful analysis" of the Gardens' land use, physical characteristics and accessibility using tax records, public information and visual inspection. The Gardens was comprised of blocks of housing that contain between three and fourteen, but generally between eight and ten, single family units per block. There were thirty-nine housing blocks with 327 housing units and a density of 11.8 units per acre. Because the lots were each owned in fee simple, there was no common space for the residents

to use for recreation. Additionally, "there is no established organization to deal with the neighborhood's physical and social problems."

She noted reported overcrowding within the individual units. Furthermore, she opined that the narrow lots contributed to the "substantial" density of the area and the density created a corollary parking problem. These conditions led residents to pave their rear yards, which created a "haphazard pattern of paved, gravel and compacted dirt spaces," which in turn contributed to a drainage problem. In general, the area had excessive land coverage.

Talley also reported an 18% vacancy rate in the Gardens. The prevalence of absentee landlords had created a decline in housing unit repair and maintenance and yard upkeep. This had led to "significant signs of blight including boarded up residences, exterior building code violations, and poor home and yard maintenance." Talley also noted that the Mt. Holly Master Plan recommended that the Gardens be redeveloped.

Talley concluded that:

> Overall, the area meets the redevelopment criteria "a", "d", "e", and "g" as established by Section 5 of the [LHRL] as a Redevelopment Area. The obsolete design and layout of this development creates an environment such that light, air, and open space are lacking. This design and the property ownership structure, in today's

> world, also contribute to excess lot coverage, criminal activity, and a general lack of proper utilization of land. Finally, Mt. Holly is an Urban Enterprise Zone community which by statute is considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (C.40A:12A-5 and 40A:12A-6).

Based on Talley's report, the Planning Board adopted Resolution No. 2002-10 finding the Gardens an area in need of redevelopment. The Township Council accepted this recommendation in Resolution No. 2002-217.

The GARP originally proposed that one-third of the new dwellings be two-family dwellings, one-third be townhouses, and one-third be senior citizen flat/townhouse combinations. No multi-family apartments were proposed. The Township Council adopted the GARP by ordinance on September 8, 2003.

In due course, the Township Council requested an amendment to the GARP due to the acquisition of a large parcel adjacent to the Gardens. On February 21, 2005, the Planning Board held a hearing to adopt amendments to the GARP. Talley presented testimony regarding the additional piece of land. She explained that the GARP was now known as the WRRP. The total number of affected housing units in the Gardens was 307 rather than 379, and the new redevelopment plan contemplated a rehabilitation element of existing units component. Finally, residents of

units designated for rehabilitation would be relocated in phases to accommodate those who wished to remain in their units.

Talley confirmed that the revised redevelopment plan increased the number of units to be constructed from 180 to 228. In addition, some multi-family housing limited to senior citizens had been included.

Opponents to the plan presented testimony before the Planning Board from a planner, Alan Mallach. He testified that he had reviewed the WRRP and thought the actions proposed by the plan were unnecessary in order to achieve its projected goals, were inconsistent with the requirements of the LHRL, and would impose significant harm on "large numbers" of people. Furthermore, the same goals could be achieved without harm by different devices. According to Mallach, under the amended plan, only townhouses could be rehabilitated, so only one-third of the units under the plan could be rehabilitated. Moreover, rehabilitation was only an option and substantial incentives would be required for developers to choose redevelopment, but no such incentives were included in the plan.

Mallach also testified that, aside from the twenty-three houses that would be deed-restricted affordable units, ninety percent of the existing residents of the Gardens would not be able to afford the newly constructed units. He projected the

current sale value of homes in the Gardens as $50,000, while the cost of a newly constructed home under the WRRP would be between $200,000 and $250,000. He opined that "It is inconceivable that the 205 truly market rate units that would be constructed under this plan would be affordable to these families."

Mallach stated that the LHRL requires that a redevelopment plan contain an estimate of affordable units that are available in the existing market for displaced residents. The WRRP failed to contain such an estimate. He also expressed serious reservations whether the current residents would be able to find equivalent housing in Mt. Holly. Mallach emphasized that the WRRP provides between nineteen and thirty-eight rental units, all of which were designated for senior citizens. He explained that between a half and two-thirds of the residents in the Gardens were tenants and that the WRRP would therefore displace between 130 and 180 families.

Mallach also questioned why the WRRP provided only the Council on Affordable Housing (COAH) standards for low income housing. He remembered that in some developments, up to fifty percent of the new housing was affordable. The COAH standards fail to account for a situation where between 200 and 300 affordable housing units were eliminated and only ten percent of the new units were affordable. He testified that "[t]he

overwhelming majority of the present residents of the Gardens would not be able to live in the new development that would be planned to be constructed in its place."

The Planning Board adopted Ordinance No. 2005-10 with certain amendments, specifically, that the townhouses could comprise seventy-five percent of the units, which would increase the number of potential rehabilitated units. The Planning Board also mandated that any new commercial development be required to contribute to the Township Affordable Housing Program in order to mitigate displacement of residents. On March 14, 2005, the Township Council held a public meeting regarding the WRRP. After receiving comments from residents of the Gardens and interested citizens, the Council adopted the WRRP pursuant to Ordinance No. 2005-07 on second and final reading.

On October 23, 2003, plaintiffs Citizens in Action, and several individuals filed a nine-count compliant in lieu of prerogative writs and for declaratory and injunctive relief. They amended their complaint on October 31, 2003, to add a tenth count, and a second time on November 19, 2003, to add an eleventh count. Additional individual plaintiffs were named when the complaint was amended.

The first count of the second amended complaint alleged that defendants had violated the statutory procedures mandated

by the LHRL. Plaintiffs claimed that defendants had failed to pass a resolution authorizing the Planning Board to undertake a preliminary investigation to determine whether the Gardens was an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-6a. The Township Council had impermissibly commissioned a redevelopment report in November 2000 instead of assigning the preliminary investigation to the Planning Board. Subsequently, the Planning Board adopted a redevelopment report in 2002, i.e., the GARP, but that "was the same study, with only minor changes, as the 2000 Redevelopment Report," prepared two years earlier. Therefore, the Township Council's Resolution No. 2002-217, which designated the Gardens as an area in need of development, was "fundamentally flawed" and "ultra vires."

The second count alleged that the designation of the Gardens as an area in need of redevelopment was arbitrary and capricious. The complaint alleged that the neighborhood does not meet any of the statutory criteria for an area in need of redevelopment as set forth in N.J.S.A. 40A:12A-5. Accordingly, the designation was not supported by substantial credible evidence.

The third count alleged that adopting the GARP violated the provisions of the LHRL. The GARP failed to: (1) include an outline for "the planning, development, redevelopment, or

rehabilitation of the project area sufficient to determine its relationship to definite local objectives;" (2) provide for the relocation of residents; and (3) include the redevelopment plan's relationship to the master plans of contiguous municipalities and the county, and the State Development and Redevelopment Plan.

Plaintiffs claimed in their fourth count that defendants impermissibly enacted Ordinance No. 2003-37, which gave defendants the right to authorize the purchase of properties by resolution instead of by ordinance in violation of N.J.S.A. 40A:12-5. They claimed that defendants acted arbitrarily, capriciously and unreasonably when they adopted the ordinance.

In the fifth count, plaintiffs claimed that the GARP violated Title VIII of the Fair Housing Act of 1968, 42 U.S.C.A. § 3604(a),(b), because it unlawfully discriminated against African-Americans and Hispanics living in the Gardens. By demolishing 379 homes and subsequently constructing only 180 more expensive homes, unaffordable to most African-Americans and Hispanics in the Gardens, these groups will be disproportionately displaced. The complaint alleged the plan would have a discriminatory impact on the basis of race, color and national origin in violation of the Fair Housing Act. They also claimed that the GARP would reduce the number of African-

American and Hispanics in the community and perpetuate segregation in violation of the Fair Housing Act.

Count six alleged that implementing the GARP will reduce the overall number of African-Americans and Hispanics in the community in violation of New Jersey's Law Against Discrimination, specifically, N.J.S.A. 10:5-12.5.

The seventh count alleged that the GARP violated Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.A., § 2000(d)-(1) because defendants are recipients of federal financial assistance, which plaintiffs claimed is being used to support the implementation of the GARP. The complaint alleged that Mt. Holly is subject to Title VI of the Civil Rights Act and may not deprive any person of benefits or discriminate against any person on the grounds of race, color or national origin, which will occur if the township implements the GARP.

In the eighth count, plaintiffs alleged that defendants violated the Civil Rights Act of 1866, 42 U.S.C.A. § 1982. By intentionally demolishing 379 homes and constructing 180 more expensive units, defendants are intentionally depriving African-Americans and Hispanics of the right to "inherit, purchase, lease, sell, hold, and convey real and personal property as is enjoyed by white citizens."

The ninth count alleged that defendants, under color of state law, violated 42 U.S.C.A. § 1983 when they intentionally deprived plaintiffs of their right to equal protection under the 14th Amendment to the United States Constitution.

The tenth count alleged that defendants intentionally discriminated against plaintiffs and deprived them of their right to equal protection of the law in violation of N.J. Const. art. 1, ¶ 1.

The eleventh count alleged that the GARP violated substantive due process under N.J. Const. art. 1, ¶ 1 because it does not have a "real and substantial relation to Township's redevelopment goals of providing decent and affordable housing for the residents."[2]

Plaintiffs moved for summary judgment on the first and fourth counts, and also moved for a preliminary injunction to enjoin the Township from implementing the GARP. Defendants cross-moved for summary judgment to dismiss plaintiffs' complaint in its entirety because the determination that the

[2] On June 29, 2005, plaintiffs amended their second amended complaint to add a twelfth count. This corrected their original complaint to substitute the WRRP for the GARP and to account for certain amendments to the GARP that were incorporated into the WRRP. It alleged a violation of the general welfare clause of N.J. Const. art. 1, ¶ 1. The twelfth count was added by consent.

Gardens was an area in need of redevelopment was supported by substantial credible evidence.

Following oral argument, Judge Sweeney denied plaintiffs' motion on count one (failure of planning board to conduct a preliminary investigation), holding that the Township had complied, albeit belatedly, in 2002 with the statutory procedure and that its actions were cloaked with the presumption of validity. He also denied plaintiffs' motion for summary judgment on count four (absence of an ordinance). He granted preliminary injunctive relief, however, to maintain the status quo while he decided the remaining issues, including defendants' cross-motion for summary judgment that sought dismissal of plaintiffs' entire complaint.

On June 21, 2004, Judge Sweeney issued a written opinion. He determined that "CIA [Citizens in Action] is entitled to a hearing on the issues of whether the Gardens is an area in need of redevelopment as well as the validity of the Redevelopment Plan." He denied, without prejudice, defendants' cross-motion for summary judgment and continued the preliminary injunction. He determined that plaintiffs were entitled to a hearing in order to supplement the "meager" record. He also bifurcated for trial plaintiffs' action in lieu of prerogative writs from plaintiffs' civil rights and constitutional claims.

On April 27, 2005, trial on the redevelopment designation was held before Judge Sweeney. At the trial, Talley testified that the Gardens was an area of concern for the municipality and that she had been directed to prepare a report to determine whether the Gardens met the statutory criteria for an area in need of redevelopment. She had examined the high rate of housing code violations to determine how the Township had attempted to address the various problems in the Gardens. She had also met with Township building inspectors and the housing inspector.

Talley testified that she had performed a block-by-block analysis of the area and reviewed existing land uses. She determined which parcels were vacant, which were renter-occupied and which were owner-occupied. She also took photographs of the various blocks and included them in her report.

She related that there was no homeowners' association, which contributed to maintenance issues in what would be common areas of the Gardens. For example, the alleyways were held in fee simple ownership with the lots. The alleys were in very poor condition and there was no way to force the owners to maintain them due to individual ownership of the alleys. She also opined that crime was prevalent in these alleyways because it was difficult to monitor them.

Talley concluded that the Gardens met the statutory criteria for an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5a, -5d and -5e.

Talley also addressed the relocation component of the redevelopment designation. Because the redevelopment plan could take up to thirty years to complete, it was inappropriate to conduct an in-depth relocation analysis at the time the redevelopment plan is initially adopted. Over time, the needs of residents change, as well as market forces. She explained:

> The purpose of the relocation plan is to create a procedure by which relocation will be addressed, and that's what's done — that's what is provided in the relocation section of this plan, as in many redevelopment plans, that when a plan is put in place, a site plan is approved, a developer is selected, that developer will work with the Township and the residents to come up with a relocation program for the residents. (emphasis added.)

Mallach, on the other hand, disagreed that the majority of the buildings were dilapidated, unsafe or obsolete, i.e., that the buildings met criterion 5a of the LHRL. He stated that code enforcement violations were not a mechanism to determine whether the properties met criterion 5a. He further opined that the buildings in the Gardens do not represent a threat to the people that live there. Inconsistent fencing and landscaping do not meet any of the criteria of the LHRL. According to Mallach,

facts supporting Talley's criterion 5a were "overwhelmingly" maintenance or cosmetic matters, and do not make the buildings dilapidated, obsolescent or unsafe.

With respect to criterion 5d, Mallach testified that the layout of the development could not be characterized as inherently deleterious, obsolete or excessive. He stated there was no scientific basis to support Talley's assertion that there was a link between the alleys and crime. In fact, he testified that alleys are a positive planning design. "[T]he fact that this development was inconsistent with the zoning that was in place prior to the adoption of the Rancocas Redevelopment Plan is totally irrelevant to any determination of suitability for redevelopment."

With respect to criterion 5e, Mallach stated that the form of fee simple ownership was typical of many townhouse developments in the United States. Eighteen percent of the units in the Gardens were vacant, including the twenty-three units owned by the Township. Without those units, the vacancy rate would be 10-11%. This rate of vacancy would not be sufficient to determine that the area was stagnant or underutilized.

Finally, with respect to the relocation component, Mallach stated that the WRRP did not meet the standards of the LHRL. He testified as follows:

> The plan should, at least, provide some ballpark idea of the economic conditions of the families who live in the properties that are going to be acquired, that's number one. And number two, then look at the area housing market in general to determine whether it's likely that households in these economic conditions would be able to find decent housing that's affordable to them in this area. And then three, if there's any -- -- if one and two show that there's a significant disparity between the conditions of the people who are going to be displaced and the availability of housing, then the plan should provide some indication or some representations of the Township's willingness or ability to do what is necessary to insure that the families will, in fact, have decent and affordable housing for them.

Accordingly, he concluded that the WRRP was inadequate because it did not meet the LHRL's relocation requirement.

In his June 21, 2005 opinion, Judge Sweeney found the testimony of Talley to be "extremely credible." The photographs in evidence supported her opinions. He concluded that:

> Although some of the findings may be debatable and arguments for either side may be determined to be credible, in the totality of the circumstances, I determine that the Township's conclusions that the Gardens is an area in need of supervision [sic] has substantial, credible support in the record. The general condition of the structures in the Gardens is, from an

> external observation, substandard, dilapidated, obsolescent and in some cases unsafe and unsanitary. As such, they are detrimental to the safety, health and morals of the residents. The diversity of ownership creates a myriad of problems. Homes possessing connecting walls and a common roof are susceptible to deterioration if one or more of the units is dilapidated. That is certainly the case here. Moreover, a substantial number (18%) of the buildings are vacant and boarded up.

With respect to the relocation component, Judge Sweeney was satisfied that the plan included an "outline" for future relocation provisions, which provided "the flexibility and fluidity required of a relocation plan."

Judge Sweeney concluded that plaintiffs' argument that the Township Committee should have proceeded by adoption of an ordinance rather than resolution is without merit. He also concluded that the redevelopment designation and relocation component met statutory criteria and dismissed counts one, two and three of plaintiffs' complaint with prejudice.

On July 5, 2005, defendants moved for summary judgment on the remaining counts, i.e., counts five through twelve, of plaintiffs' second amended complaint which include the constitutional and discrimination claims. Judge Sweeney dismissed count seven because the Township manager certified that no federal funds had been used to support the planning and

implementation of the GARP or the WRRP. In his August 30, 2005 opinion, he granted summary judgment to defendants and dismissed the remaining counts of the second amended complaint, holding "[i]t is obvious that there has been no discrimination, and it is improper for a court to speculate that discrimination might occur if a redevelopment plan is implemented in such a way that discrimination results. It is simply a premature action instituted by plaintiffs."

In this opinion, we address first the redevelopment designation. Then we address plaintiffs' various allegations that the redevelopment plan violates State and federal constitutional and statutory rights.

I

Plaintiffs argue that the judge erred in upholding defendants' designation of the Gardens as an area in need of redevelopment under the LHRL because the designation was "premised entirely upon unsupported findings and unsubstantiated conclusions." We disagree.

Redevelopment designations, like all municipal actions, are vested with a presumption of validity. Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, ___ N.J. ___, ___ (2007) (slip op. at 41); Levin v. Twp. Comm. of Bridgewater, 57 N.J. 506, 537-39, app. dismissed, 404 U.S. 803, 92 S. Ct. 58, 30 L. Ed. 2d 35

(1971); Hirth v. City of Hoboken, 337 N.J. Super. 149, 154, 161 (App. Div. 2001). Judicial review of a redevelopment designation is limited to whether the designation is supported by substantial credible evidence. Gallenthin, supra, ___ N.J. at ___ (slip op. at 41). This heightened deference is codified in the LHRL, which provides that an "area in need of redevelopment" designation "if supported by substantial evidence . . . , shall be binding and conclusive upon all persons affected by the determination." N.J.S.A. 40A:12A-6b(5). Accordingly, it is not for the courts to "second guess" a municipal redevelopment action, "which bears with it a presumption of regularity." Forbes v. Bd. of Trs. of S. Orange Vill., 312 N.J. Super. 519, 532 (App. Div.) certif. denied, 156 N.J. 411 (1998).

The substantial evidence standard is not met "if a municipality's decision is supported by only the net opinion of an expert." Gallenthin, supra, ___ N.J. at ___ (slip op. at 41) (citing ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 277-81 (App. Div. 2005)). A record that "contains [no] more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met" is not sufficient. Ibid. On the other hand, the absence of an interior inspection of existing structures is not a fatal defect

in the investigation that undergirds a redevelopment determination. Forbes, supra, 312 N.J. Super. at 531.

The burden is on the objector to overcome the presumption of validity by demonstrating that the redevelopment designation is not supported by substantial evidence and is the result of arbitrary or capricious conduct on the part of the municipal authorities. Levin, supra, 57 N.J. at 537; Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998). Absent such a demonstration sufficient to raise a material factual dispute, summary judgment must be granted in favor of defendants. R. 4:46; see, e.g., Jersey City Chapter of Prop. Owner's Protective Ass'n v. City Council of Jersey City, 55 N.J. 86, 101-02 (1969) (where objectors did not tender any evidence before either the planning board or the Law Division that rebutted substantial evidence in support of redevelopment designation, summary judgment should have been granted without any need for a plenary trial).

A municipality does not exercise its quasi-legislative authority arbitrarily or capriciously if its choice between two actions is "exercised honestly and upon due consideration, even if an erroneous conclusion is reached," Bryant, supra, 309 N.J. Super. at 610 (citing Worthington v. Fauver, 88 N.J. 183, 204-05 (1982)). A challenge to the merits of the choice "really goes

to the question of the wisdom of the [choice] when balanced against conflicting planning considerations," which this court said was "a judgment we may not make." Downtown Residents for Sane Dev. v. City of Hoboken, 242 N.J. Super. 329, 340 (App. Div. 1990). "[T]he fact that the question is debatable does not justify substitution of the judicial judgment for that of the local legislators." Lyons v. City of Camden, 52 N.J. 89, 98 (1968).

The LHRL criteria for redevelopment demonstrates that the Legislature intended the LHRL to encompass a broad range of circumstances that a municipality could take into account in deciding whether an area is in need of redevelopment. In particular, N.J.S.A. 40A:12A-5 authorizes that designation if "any" of seven "conditions" are found. To the extent relevant here, those conditions include:

> a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.
>
> . . . .
>
> d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these

> or other factors, are detrimental to the safety, health, morals, or welfare of the community.
>
> e. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.
>
> [N.J.S.A. 40A:12A-5a, d and e.]

Under the LHRL, a redevelopment designation must be supported by substantial evidence. N.J.S.A. 40A:12A-6b(5). As this court noted in ERETC, supra, 381 N.J. Super. at 280-81, case law "more than adequately articulates" what information meets the substantial evidence requirement. See Lyons, supra, 52 N.J. at 95 (noting thorough study included structure-by-structure inspections of exteriors and interiors of each building within area declared blighted); Wilson v. City of Long Branch, 27 N.J. 360, 389-90 (noting city presented "the elaborate report of the planning consultant who made a study of the conditions in the area with respect to blight," including photographs and maps showing land use, topography, housing conditions, undeveloped and underutilized land, extent of blighting factors, and tax delinquencies in project area), cert. denied, 358 U.S. 873, 79 S. Ct. 113, 3 L. Ed. 2d 104 (1958);

Concerned Citizens of Princeton, Inc. v. Mayor & Council of Princeton, 370 N.J. Super. 429, 459 (App. Div.) (finding substantial evidence to support redevelopment designation of surface parking lot where testimony explained that lot's limitations negatively affected its economic vitality and that "lack of investment leading to construction of new ratable improvements" caused lot to remain in "stagnant and unproductive condition"), certif. denied, 182 N.J. 139 (2004); Hirth, supra, 337 N.J. Super. at 162-63 (noting planning board's consultant "made detailed block-by-block findings concerning the condition of buildings in the proposed redevelopment area and the nature and level of the economic activity being conducted there"); cf. Forbes, supra, 312 N.J. Super. at 531 (holding failure to inspect interiors of each building to determine conditions pursuant to N.J.S.A. 40A:12A-5d and e was not necessary given that those conditions were largely externally observable and that planner had long familiarity, in her professional capacity, with all facets of community).

Plaintiffs contend that the recent holding in ERETC, supra, 381 N.J. Super. at 280-81, mandates substantial evidence of serious substandard conditions based on interior and exterior inspections of units to support a blight determination under N.J.S.A. 40A:12A-5a of the LHRL. They claim that the 2002

Redevelopment Area Report produced by Talley contained only a "superficial investigation of the dwellings in the Gardens," and that the conditions set forth in the report were largely cosmetic and did not meet the 5a criteria. They further argue that Talley made only external observations of the Gardens, and failed to determine whether any of the dwellings were uninhabitable or structurally deficient and that her cursory inspection is inadequate to support the substantial evidence requirement.

The declaration that the Gardens was an area in need of redevelopment was founded on three statutory factors: Sections 5a, d and e. N.J.S.A. 40A:12A-5a provides that a delineated area may be found an area in need of redevelopment if "[t]he generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions." With respect to criterion 5a, Talley testified that:

> The impact of one person's — one unit's, I should say, lack of maintaining their property creates unwholesome conditions for the area as a whole. . . . [S]ome of the rear yards are just filled with trash, they have broken fences, broken windows, broken steps, holes in the roof, those don't effect solely that one unit, but the area as a whole and contributes to Criteria A, which is unwholesome living or working conditions.

Additionally, Talley presented photographic evidence of the exteriors of many of the homes. She performed a block-by-block analysis wherein she graded each group of houses as poor, fair or good.

N.J.S.A. 40A:12A-5d provides that a delineated area may be found an area in need of redevelopment if

> [a]reas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

N.J.S.A. 40A:12A-5e provides that a delineated area may be designated an area in need of redevelopment, if

> [a] growing lack of total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

This section applies "only to property that has become stagnant because of issues of title, diversity of ownership, or other similar conditions." Gallenthin, supra, ___ N.J. at ___ (slip op. at 37). It applies "where the orderly development of a

particular area is frustrated by its peculiar configuration." Id. at ___ (slip op. at 34). It does not serve as a "universal catch-all that refers to any eventuality." Id. at ___ (slip op. at 33). Furthermore, the terms "stagnant or not fully productive" do not create "two alternative criteria for designating property as in need of redevelopment." Ibid.

In her testimony, Talley addressed criterion 5d and criterion 5e. She testified that:

> The other properties all met A, D and E. And the reason that they meet those criteria, as I touched on before, is the diversity of ownership, the blighted condition of the structures and the streetscape and the landscaping, the faulty design of the development, excessive land coverage. . . . [A] lot of the rear yard areas were paved or graveled over to provide parking for those units creating drainage problems within this area. Poor land utilization and the concentration of crime. They are all detriment [sic] to the safety, health, morals and welfare of the community. And that's presented in the block by block analysis. Those conditions meet the criteria -- or set out for Criteria A, C, -- A, D, and E in the Local Redevelopment and Housing Law.

Talley also reported that there was evidence of overcrowding, which manifested itself in "self-help" gravel and cement parking areas where rear yards once existed, as well as a corresponding drainage problem due to the increase of impervious surface coverage. Talley reported that this information was

reported to her by Mt. Holly's building inspector and there is no reason to believe the information is not credible.

Our analysis of the record reveals substantial evidence in the record to support a finding of statutory criterion 5(d). Photographic evidence reveals areas within the Gardens that are dilapidated. Additionally, there was testimony that there was overcrowding and excessive land coverage because of the way the units were arranged in blocks in fee simple ownership. Accordingly, a dilapidated home on one lot had a serious effect on homes on either side of it. Excessive land coverage was also evident where a majority of the rear yards were paved or covered with gravel to accommodate additional parking spaces. Finally, the alleyways created a faulty arrangement or design for the Gardens because it increased the amount of crime in the area. The dilapidated, overcrowded, poorly designed community, in addition to the high level of crime in the area, is clearly detrimental to the safety, health, morals and welfare of the community.

Talley's testimony and the 2002 report support the Planning Board's redevelopment designation. Additionally, Judge Sweeney found Talley to be "extremely credible." Accordingly, her testimony and report establish that there was substantial

credible evidence in the record to support a redevelopment designation pursuant to criterion 5d.

Talley also addressed the diverse ownership pattern extant in the Gardens and its impact on the area. She stated:

> And the problems created by that diverse ownership pattern is that there was an inability to address portions of this development that have common — that function in common with each other. One was the driveway, one other is roof systems, building facades. One unit is effected [sic] by the lack of maintenance to the exterior, including the sides and the rooftop and the landscaping of the property next door. And its just exacerbated because you have all of these lots in diverse ownership without any type of mechanism for ensuring that they are maintained and adequately kept up, so that the area as a whole can improve. So that was the problem created by that diverse ownership in the situation here in the Gardens.

In short, Talley established the growing lack of proper utilization of the area because of diverse ownership. She testified that there was an excessive use of land, namely, the absence of yards where there once were yards in order to accommodate a large number of cars. She also explained how diverse ownership led to maintenance issues between homes because one home's deleterious state affected those houses in the block surrounding that house. She provided photographic evidence to establish her point.

She also explained how the diverse ownership in the form of absentee landlords contributed to maintenance issues. Because many of the residents in the Gardens are renters, there is less incentive to invest in the property and improve it. This creates a distinction between the properties that are inhabited by owners and those that are inhabited by renters. Moreover, there is no homeowner's association, and no incentive for one to maintain common areas. Accordingly, the area is littered with trash and the exteriors of the home are marred by different fencing, some of which is broken and in a state of disrepair. Again, Talley supported her conclusions in this regard with photographic evidence.

Contrary to plaintiffs' argument, the redevelopment designation is based on a record that provides substantial evidence in support of the determination. This record compares favorably with the records in Wilson, supra, 27 N.J. at 389-90; Concerned Citizens of Princeton, supra, 370 N.J. Super. at 459-60 (App. Div.), certif. denied, 182 N.J. 139 (2004); and Hirth v. City of Hoboken, 337 N.J. Super. 149, 162-63 (App. Div. 2001), all of which were found sufficient to support a redevelopment determination. The Gardens redevelopment record also stands in stark contrast to the record in ERETC, supra, 381 N.J. Super. at 280-81 that this court found wholly insufficient.

Contrary to the WRRP record, the Perth Amboy redevelopment determination depended solely on a conclusory final statement unaccompanied by an analysis of the raw data contained in the final report or the physical features of the area. Id. at 279-80.

II

Plaintiffs argue that the procedural missteps in the early stages of the redevelopment effort that produced the GARP demonstrate that any subsequent record-building and analysis was mere window-dressing. In other words, the subsequent adoption of the WRRP that complied with all statutory procedural requirements was pre-ordained. They claim the Township Council "flouted" the statutory procedures mandated by the LHRL. We disagree.

N.J.S.A. 40A:12A-4a(1) authorizes a municipal governing body to direct a planning board, to "[c]ause a preliminary investigation to be made . . . as to whether an area is in need of redevelopment" and to make a redevelopment determination premised on the results of that investigation if it reveals that the area is in need of redevelopment. A municipal governing body, however, retains the sole authority to determine that an area is in need of redevelopment. N.J.S.A. 40A:12A-4a(2); N.J.S.A. 40A:12A-6b(5).

Here, it is undisputed that the Township Council originally requested the redevelopment investigation in 2000. However, it is equally clear that the Township Council never sought to declare the area in need of redevelopment until they corrected their procedural error in 2002 and requested the Planning Board to undertake the investigation and recommend whether the Gardens met the statutory criteria for redevelopment set forth at N.J.S.A. 40A:12A-5a-g.

Once the Township Council began the process anew, it met the statutory requirements of N.J.S.A. 40A:12A-4 and N.J.S.A. 40A:12A-6a. Furthermore, N.J.S.A. 40A:12A-6b(5) specifically authorizes the governing body to adopt a resolution rather than an ordinance to effectuate its designation. Forbes, supra, 312 N.J. Super. at 530. Accordingly, the trial court did not err when it refused to invalidate the designation for this procedural error.

III

Plaintiffs' final argument regarding the substantive and procedural defects of the WRRP concern the relocation element of the plan. They contend that the Township Council failed to set forth a relocation provision as part of the redevelopment designation. This, they claim, is required by N.J.S.A. 40A:12A-7a(3). They contend that a statement that the local housing

market is capable of absorbing the fifty market rate houses that will be lost through redevelopment is insufficient as a matter of law. They claim there is nothing in the WRRP that explains this conclusion and that Talley did not conduct any analysis of the availability of affordable housing for the Gardens residents.

N.J.S.A. 40A:12A-7a provides that the redevelopment plan must include

> an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate: . . .
>
> . . . .
>
> (3) Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.

Talley addressed the relocation component of the redevelopment designation during the trial.

> [DEFENDANT'S COUNSEL] In your experience in conducting the . . . outline of the redevelopment plan, is it appropriate to conduct a detailed analysis of the income levels and ability of residents to pay rent in preparing the relocation section for a redevelopment plan?
>
> [TALLEY] No, it is not, and the reason is, the redevelopment plan is a 30-year plan, or is a long term plan, it could be up to 30,

> 40 years, whatever the term is. Redevelopment itself takes time, and to conduct that analysis at the time that the plan is prepared does not make sense because it may be ten years before you actually get there. And at that point, the need for the residents will have changed, and the market will have changed.
>
> The purpose of the relocation plan is to create a procedure by which relocation will be addressed, and that's what's done — that's what is provided in the relocation section of this plan, as in many redevelopment plans, that when a plan is put in place, a site plan is approved, a developer is selected, that developer will work with the Township and the residents to come up with a relocation program for the residents.
>
> [Emphasis added.]

Talley had also explained to the Planning Board that she had addressed relocation. She explained:

> In areas where rehabilitation occurs, relocation will be accomplished in phases to best accommodate the needs of those residents who will remain in their units. In other words, to assist with the relocation efforts, the Township will be conducting a survey of the redevelopment area to identify the housing needs of existing residents.

According to the express language of the statute, the WRRP, at this point in its implementation, need only provide "an outline" for the redevelopment of an area that is sufficient to indicate that adequate relocation will occur. N.J.S.A. 40A:12A-

7a. The WRRP contained the following description of the required relocation component:

> **Relocation**
>
> It is anticipated that the residents within the Redevelopment Area will have to be relocated either permanently or while the area is under construction. The Township of Mount Holly will provide all displaced tenants and property owners with the appropriate relocation assistance, pursuant to applicable State and Federal law. Such assistance will be provided through an appropriately designated office that will assist in any relocation of persons, businesses or entities.
>
> Currently, there exist ten (10) units of deed restricted affordable housing units in the redevelopment area. If the area is built out to the full 228 units in this plan, the number of deed-restricted affordable housing units will more than double. The remainder of the units currently in the redevelopment area are market-rate units. The plan, at its maximum of 228 units, calls for a loss of approximately 50 market-rate units. The local housing market is fully capable of absorbing an additional 50 market-rate units.
>
> In areas where rehabilitation occurs, relocation will be accomplished in phases to best accommodate the needs of those residents who will remain in their own units in the Gardens Area. The objective for these residents is to minimize disruptions as their units are renovated.

At this point in the redevelopment process, it is uncertain how many families will be relocated because of the

rehabilitation option and also the fact that a developer may propose to construct a large number of affordable units. It is simply too early in the process to have a more detailed relocation plan in place. Thus, Judge Sweeney properly held that the outline for future relocation provisions was sufficient at this point in the redevelopment process.

IV

The balance of plaintiffs' amended complaint presented a variety of State and federal law claims that generally attacked the discriminatory impact of the WRRP on the Gardens residents. Judge Sweeney dismissed all of these claims on the basis that the details and impact of the WRRP are unknown; therefore, these claims are not ripe for adjudication. We agree.

A ripe case involves a real and substantial controversy for which specific relief may be provided through a decree of conclusive character, as distinguished from an opinion advising what the law would be on a hypothetical set of facts. Presbytery of N.J. of Orthodox Presbyterian Church v. Florio, 902 F. Supp. 492, 503 (D.N.J. 1995), aff'd sub nom. Presbytery of N.J. of Orthodox Presbyterian Church v. Whitman, 99 F.3d 101 (3d Cir. 1996), cert. denied, 520 U.S. 1155, 117 S. Ct. 1334, 137 L. Ed. 2d 494 (1997). Claims are ripe for decision when the issues are "fully developed, clearly defined and not merely

speculative, conjectural or premature." Trombetta v. Mayor & Comm'rs of Atl. City, 181 N.J. Super. 203, 223 (Law Div. 1981), aff'd o.b., 187 N.J. Super. 351 (App. Div. 1982). See also, In re Twp. of Warren, 132 N.J. 1, 21 (1993) (resolution of federal and state discrimination claims requires a full record).

In the face of an argument that a claim is not ripe for adjudication, a court should consider whether further delay will assist the court in material manner to understand the issues. In addition, the court must consider whether the interpretation of the ordinance or municipal program, or the manner in which the ordinance or program is applied, is uncertain because enforcement or implementation has not commenced. Trombetta, supra, 181 N.J. Super. at 223.

Here, the Township Committee has adopted the WRRP and that action includes a designation of the Gardens as an area in need of redevelopment. Implementation of that plan will have some impact on the residents of the Gardens. The precise terms of the WRRP are not known. N.J.S.A. 40A:12A-7f contemplates that a redevelopment plan may be amended from time-to-time. As evidenced by this appeal, the redevelopment plan has already been amended once. Notably, the amendment that produced the WRRP enlarged the area included in the area in need of redevelopment and also altered the style and mix of housing to

be provided in the area. We also have no idea of the timing of the proposal and whether any relocation will be temporary or permanent.[3]

To be sure, claims asserted under Title VIII of the Fair Housing Act of 1968, 42 U.S.C.A. § 3604(a) and (b), a facially neutral policy that results in a discriminatory effect on the sale or rental of housing may be established even if unaccompanied by evidence of discriminatory intent. Resident Advisory Bd. v. Rizzo, 564 F.2d. 126, 146-48 (3d Cir. 1977), cert. denied, sub nom. Whitman Area Improvement Council v. Resident Advisory Bd., 435 U.S. 908, 98 S. Ct. 1457, 55 L. Ed. 2d 499 (1978); Twp. of Warren, supra, 132 N.J. at 22. Similarly, in a claim under the Law against Discrimination, N.J.S.A. 10:5-1 to -49, a plaintiff may prevail on a racial discrimination housing claim on evidence of discriminatory impact alone. Twp. of Warren, supra, 132 N.J. at 25; Countiss v. Trenton State College, 77 N.J. 590, 595 (1978). In contrast, plaintiffs' claims that the WRRP violated their guarantee of

[3] In motions filed with this court, we have been informed that in May 2007, the Township notified plaintiffs' attorney that it planned to demolish six units in the Gardens. In February 2007, plaintiffs also moved for a stay based on reports that residents of the Gardens had been pressured to relocate. By orders dated April 27 and May 25, 2007, we remanded the matter to the trial court "for the sole purpose of developing a record regarding the stage or progress of the redevelopment project and a need for a stay."

equal protection under the federal constitution require a showing of discriminatory intent. Vill. of Arlington Heights v. Metro Hous. Dev. Co., 429 U.S. 252, 265, 97 S. Ct. 555, 563, 50 L. Ed. 2d 450, 464 (1977). Circumstantial evidence may be utilized to establish that intent and evidence of disparate impact is relevant to that issue. Id. at 266, 97 S. Ct. at 564, 50 L. Ed. 2d at 465. In each of these instances, however, the court ruled based on a fully developed record.

That is not this case. The record is simply bereft of any evidence of the impact of the WRRP on the residents of the Gardens. Plaintiffs' contentions of permanent displacement of the majority of the residents, loss of racial diversity in the population of the Township, and diminution of affordable housing in the Township is mere speculation. We agree with Judge Sweeney that claims of this magnitude that turn in whole or in part on the impact of the government action cannot be adjudicated in a vacuum.

We, therefore, affirm the September 19, 2005 order dismissing counts five through twelve of the second amended complaint on the basis that the federal and State constitutional and statutory claims were not ripe for adjudication.

Affirmed.