

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1829-05T2

LBK ASSOCIATES, LLC and
ROBERT D. BONANNO,

Plaintiffs-Respondents,

and

SAVE OUR HOMES, an unincorporated
association,

Intervening Plaintiff-Respondent,

v.

BOROUGH OF LODI, MAYOR AND COUNCIL OF THE
BOROUGH OF LODI and PLANNING BOARD OF THE
BOROUGH OF LODI,

Defendants-Appellants.

COSTA REALTY CO., INC.,

Plaintiff-Respondent,

and

SAVE OUR HOMES, an unincorporated
association,

Intervening Plaintiff-Respondent,

v.

MAYOR AND COUNCIL OF THE BOROUGH OF LODI,
PLANNING BOARD OF THE BOROUGH OF LODI
and BOROUGH OF LODI,

Defendants-Appellants.

Argued: January 30, 2007 - Decided: July 24, 2007

Before Judges Kestin, Payne and Lihotz.

On appeal from the Superior Court of New Jersey, Law Division, Civil Part, Bergen County, L-8766-03 and L-8768-03.

John J. Baldino argued the cause for appellants Borough of Lodi and Mayor and Council of the Borough of Lodi (Gerald R. Salerno and Mr. Baldino, on the joint brief).

Gerald R. Salerno argued the cause for appellant Lodi Planning Board (Aronsohn Weiner & Salerno, attorneys; Messrs. Salerno and Baldino on the joint brief).

Jan Alan Brody argued the cause for respondents LBK Associates and Robert Bonanno (Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, attorneys; Mr. Brody, of counsel and, with Michael P. Pasquale, on the brief).

David B. Bole argued the cause for respondent Costa Realty Co., Inc. (Winne, Dooley & Bole, attorneys; Mr. Bole, on the brief).

Michael B. Kates argued the cause for respondent Save Our Homes (Nashel Kates Nussman Rapone & Ellis, attorneys; Mr. Kates, of counsel and on the brief).

Gregory G. Diebold argued the cause for amicus curiae Northeast New Jersey Legal Services (Mr. Diebold, Evangeline Gomez, and Mark W. Welsh, on the brief).

Catherine Weiss argued the cause for amicus curiae Public Advocate of New Jersey (Ronald K. Chen, Public Advocate; Cole, Schotz,

Meisel, Forman & Leonard, attorneys; Edward Sun Kiel and Wendy F. Klein, on the brief).

PER CURIAM

Defendants, the Borough of Lodi, its Mayor and Council, and its Planning Board, appeal from a judgment entered on October 27, 2005, that "set aside and deemed null and void" two resolutions adopted, respectively, by the Planning Board and by the Mayor and Council in 2003. The Planning Board resolution had recommended to the Mayor and Council that certain properties belonging to plaintiffs, LBK Associates, L.L.C., Robert D. Bonanno, and Costa Realty Co., be designated areas in need of redevelopment. The resolution of the Mayor and Council adopted the recommendation.

The properties at issue, totaling approximately twenty acres, consist of two trailer parks and several businesses. Judge Richard J. Donohue stated his reasons for invalidating the resolutions in a written opinion handed down on October 6, 2005, following a trial on the consolidated complaints in lieu of prerogative writs. He found the redevelopment designation, i.e., the determination that the standards of N.J.S.A. 40A:12A-5 had been satisfied, to be unsupported by substantial evidence in the record before the Planning Board and, therefore, to have been arbitrary, capricious, and unreasonable.

On appeal, defendants argue that plaintiffs had not met their "substantial burden of overcoming the presumption of validity of the redevelopment determination"; that "substantial evidence exists to support a finding of obsolescence and underutilization"; that "the redevelopment area as a whole qualifies for designation"; and that the trial court "erred in failing to remand the matter to the Planning Board." Our review of the record, in the light of the written and oral arguments of the parties and prevailing legal standards, discloses no error or discretionary lapse in Judge Donohue's determinations. We are substantially in agreement with his evaluations and the reasons for decision he articulated in his comprehensive written opinion.

We reject defendants' argument that plaintiffs failed to overcome the presumption of validity attending municipal actions generally. See Concerned Citizens of Princeton, Inc. v. Mayor and Council of the Borough of Princeton, 370 N.J. Super. 429, 452-53 (App. Div.), certif. denied, 182 N.J. 139 (2004). Once plaintiffs demonstrated the redevelopment designation was not supported by substantial evidence, that municipal action was no longer entitled to the deference normatively afforded. See, e.g., Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, _____

N.J. ___, ___ (2007)(slip op. at 40-41); ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 281 (App. Div. 2005).

We also reject defendants' argument that the matter should have been remanded for further proceedings. The shortcomings in the determinations under review were too basic and too far at variance with current principles governing the redevelopment process to be amenable to repair through further hearings. Defendants are not precluded from beginning the process anew and evaluating the properties by the light of the holdings and underlying policies in cases cited by Judge Donohue and more recent judicial reflections in the subject matter area and cognate fields, especially those dealing with the concepts of obsolescence and underutilization stressed by defendants. See, e.g., Gallenthin Realty, supra, ___ N.J. ___. See also Kelo v. City of New London, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005); Vineland Const. Co. v. Township of Pennsauken, ___ N.J. Super. ___ (App. Div. 2007).

Given the result we have reached, we discern no need to address the issues framed by intervenor and amici regarding the relationship between this municipality's constitutional obligation to make provisions for affordable housing and the effect of the resolutions here to the extent the contemplated exercise of eminent domain would result in a net loss of

affordable housing in the municipality, as well as the level of scrutiny to be accorded such exercises. Such considerations, however, should inform any further attention the municipality may give to the matter. See, e.g., S. Burlington Cty. N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975).

The judgment determining the resolutions at issue to be invalid is affirmed.

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


CLERK OF THE APPELLATE DIVISION