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March 8, 2017

VIA EMAIL ONLY
Mayor Carlos Rendo and Members of the Council
Borough of Woodcliff Lake
188 Pascack Road
Woodcliff Lake, NJ 07677

Re: Woodcliff Lake Investors I, LLC v. Planning Board of the Borough of Woodcliff Lake, et al., BER-L-9515-15

Dear Mayor Rendo and Members of the Council:

We are pleased to inform you that the Honorable William Meehan, J.S.C. has upheld the imposition of affordable housing fees against Woodcliff Lake Investors with respect to the above-referenced matter. A copy of the decision is enclosed. Woodcliff Lake Investors I, LLC has thirty-five (35) days to appeal.

If you have any questions, feel free to contact us.

Very truly yours,

MARC E. LEIBMAN

MEL:jlv
enc.
cc: Ronald Dario, Esq. (via fax only 201 968-5801)

SUPERIOR COURT OF NEW JERSEY

WILLIAM C. MEEHAN, J.S.C.
Retired on Recall

BERGEN COUNTY JUSTICE CENTER
HACKENSACK, N.J. 07601
(201) 527-2700, ext. 2150

March 2, 2017

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Re: WOODCLIFF LAKE INVESTORS I, LLC, v.
PLANNING BOARD OF THE BOROUGH OF WOODCLIFF LAKE, BOROUGH OF WOODCLIFF LAKE, AND BOROUGH OF WOODCLIFF LAKE MAYOR AND COUNCIL
Docket No. BER-L-9515-15

Dear Counsel:

Enclosed herewith is my decision in the above captioned matter. Mr. Justin D. Santagata, Esq. shall draft and submit an Order, under the five day rule, in conformance with the decision.

Very truly yours,

William C. Meehan, J.S.C.
Retired on Recall

WCM:cb
Enclosure

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

WOODCLIFF LAKE INVESTORS I, LLC, Plaintiff, v. PLANNING BOARD OF THE BOROUGH OF WOODCLIFF LAKE, BOROUGH OF WOODCLIFF LAKE, AND BOROUGH OF WOODCLIFF LAKE MAYOR AND COUNCIL Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET No. BER-L-9515-15

Honorable William C. Meehan, J.S.C.

This matter comes before the Court upon, Plaintiff, Woodcliff Lake Investors I, LLC's complaint in lieu of prerogative writ challenging the Planning Board of the Borough of Woodcliff Lake's (the "Planning Board") decision to impose a residential development fee under the Borough of Woodcliff Lake's "Affordable Housing Development Fee" Ordinance, Chapter 380, Article 10, subsection 70 (§ 380-70). The Court hearing the matter via bench trial has decided the matter.

I. BACKGROUND

Plaintiff was the contract purchaser of seven single family homes (the "Property") located in the Borough of Woodcliff Lake's ("Woodcliff Lake") R-30 Zone. The R-30 Zone is classified as a Residential One-Family District. Commencing around December 2012, Plaintiff engaged in numerous discussions and meetings with the Borough of Woodcliff Lake Mayor and Council (the "Governing Body") and the Planning Board with respect to a potential overlay zoning of the R-30 Zone to permit multi-family townhomes. These discussions and meetings included significant substantive zoning and planning reviews by Plaintiff, Defendants, and by Defendants' professionals continuing over the course of several years. These Discussions resulted in the development of a proposed Townhome Overlay District ("THO District").

On June 16, 2014, the Governing Body undertook a first reading of Ordinance No. 14-04 to supplement and amend Chapter 380, entitled "Zoning to Establish a Townhome Overlay District" (hereinafter "THO District Ordinance"). The THO District Ordinance sets forth the permitted uses, bulk requirements and landscaping, design and pedestrian accessibility standards of the THO District. On July 14, 2014, the Governing Body adopted the THO District Ordinance. Thus, the Property is now located in a R-30 zone with a THO District overlay.

The Woodcliff Lake Zoning Ordinance, Chapter 380, provides regulation of the nature and extent of uses of lands, buildings and structures within Woodcliff Lake, pursuant to the authority set forth in Chapter 291 of the Laws of 1975, and the amendments and supplements thereto, known as the "Municipal Land Use Law" (hereinafter, "Woodcliff Lake Zoning Ordinance"). The Woodcliff Lake Zoning Ordinance includes certain provisions relative to the development of properties located within multiple districts established throughout Woodcliff Lake.

One provision within the Woodcliff Lake Zoning Ordinance was Chapter 262, Article VIIA, entitled, Affordable Housing Development Fees. The purpose of the article was to establish standards for the collection, maintenance and expenditure of affordable housing development fees (hereinafter "the Original Fee Ordinance"). On April 6, 2015, the Governing Body adopted an ordinance to supplement and Article X, Chapter 380, entitled, § 380-70: Residential development fees (hereinafter "Amended Fee Ordinance"). The Amended Fee Ordinance updated the Original Fee Ordinance, listing each Woodcliff Lake zone for which residential affordable housing development fees would apply. The Original Fee Ordinance stated:

> Within all residential zoning districts, including but not limited to the R-30, R22.5, R-15, R-8.15 and R-1511 Zoning Districts, developers shall pay a development fee of 1% of the equalized value of any eligible residential activity pursuant to § 262.32.8 of this article, provided that no increased density is permitted.

Whereas, the Amended Fee Ordinance states:

> Within the R-30, R-22.5, R-15, R-8.15 and R-1511 Zoning Districts and for age-restricted multiunit housing within the ARHO Zoning District, developers shall pay a development fee of 1% of the equalized assessed value of any new one family residential dwelling, less the equalized assessed value of any dwelling being replaced, pursuant to § 380-73 of this article, provided that no increased density is permitted.

On May 15, 2015, Plaintiff submitted an application for preliminary and final site plan approval with related variance relief (the "Application") to the Planning Board to demolish the existing seven single-family dwellings on the Property and construct forty residential townhouse units along with associated access roads and storm water management facilities (hereinafter "Subject Development"). The Subject Development conformed to the THO District requirements and met all of the controlling New Jersey State Residential Site Improvement Standards. Accordingly, the Planning Board approved the Application on August 18, 2015.

Prior to memorialization of a resolution, Plaintiff received a draft of a resolution regarding the Application that included the following condition of approval:

> (g) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Woodcliff Lake, which shall also include residential development fees required under Ordinance 15-06 and Section 380-70 of the Borough Code as the Board finds as a fact that the subject Property is within the R-30 District, and the posting of a deposit to reimburse the Municipality for monies paid to its professionals for the review of the within Application. (Hereinafter "Fee Condition").

However, at no time throughout the course of proceedings for adoption of the THO District Ordinance was there ever any discussions or agreement concerning imposition of affordable housing development fees within said district. Therefore, upon review of the draft resolution, Plaintiff made a formal objection to the Fee Condition with a request that it be excised from the resolution. Despite Plaintiff's objection, the Planning Board adopted the resolution with the Fee Condition on September 28, 2015.

II. DISCUSSION

After reading the parties' respective briefs and hearing oral argument by the counsel, the Court holds that Plaintiff must pay the Fee Condition pursuant to the Amended Fee Ordinance.

A. The Plain Meaning and Intention of the Amended Fee Ordinance is for Developers that Develop in the Townhome Overlay District to Pay Affordable Housing Fees

The main issue in this case is whether the Amended Fee Ordinance that applies to the R-30 Zone also applies to the THO District, which is an overlay zone in the R-30 Zone.

Planning boards are presumed to act fairly and with proper intentions and for valid reasons. Macedonian Orthodox Church v. Planning Bd. of Randolph, 269 N.J. Super. 562, 572 (App. Div. 1994). Therefore, deference is given to a planning board's decision and "the exercise of its discretionary authority based on such determinations will not be overturned unless arbitrary, capricious, or unreasonable." Klug v. Bridgewater Twp. Planning Bd., 407 N.J. Super. 1, 12 (App. Div. 2009) (citing Burbridge v. Mine Hill Twp., 117 N.J. 376, 385 (1990)). However, in instances where a planning board is interpreting a statute, "the court applies a de novo standard of review on such legal issues." Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 325 (App. Div. 2009); see Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)); Cherney v. Matawan Borough Zoning Bd. of Adj., 221 N.J. Super. 141, 144-45 (App.Div.1987) (invoking the "traditional rule that the interpretation of legislative enactments is a judicial function, and not a matter of administrative expertise").

"In construing the language of an ordinance, it is well established that courts apply the same rules of judicial construction as they apply when construing statutes." AMN, Inc. of N.J. v. S. Brunswick Rent Leveling Bd., 93 N.J. 518, 524-25 (1983). "[An ordinance] should be interpreted in accordance with its plain meaning if it is 'clear and unambiguous on its face and admits of only one interpretation.'" State v. Butler, 89 N.J. 220, 226 (1982) (quoting Bd. of Educ.

v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)). Nevertheless, the ultimate, judicial goal in interpreting a statute is to effect legislative intent. State v. Carlos, 187 N.J. Super. 406 (App.Div.1982). Therefore, "[w]here the drafters of a statute or ordinance did not consider or contemplate a specific situation, a court should interpret the enactment 'consonant with the probable intent of the draftsman had he anticipated the situation at hand.'" Matlack v. Burlington Cty. Bd. of Chosen Freeholders, 194 N.J. Super. 359, 361 (App. Div. 1984) (quoting AMN, Inc. of N.J., 93 N.J. at 525). "Such an interpretation will not 'turn on literalisms, technisms or the so-called rules of interpretation; [rather] it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation.'" AMN, Inc. of N.J., 93 N.J. at 525 (quoting J.C. Chap. Prop. Owner's etc. Assoc. v. City Council, 55 N.J. 86, 100 (1969)). In other words, "[w]here a literal reading will lead to a result not in accord with the essential purpose and design of the act, the spirit of the act will control the letter." Cox & Koenig, New Jersey Zoning and Land Use Administration § 26-2.3, p.560 (Gann 2015) (citing Twp. of Pennsauken v. Schad, 160 N.J. 156 (1999); N.J. Builders, Owners & Managers Asso. v. Blair, 60 N.J. 330, 336 (1972)).

Additionally, "[w]hen rezoning for redevelopment, a public entity has the option to enact legislation that supersedes the prior zoning, or it may enact a redevelopment zone that serves as an overlay zone, where prior uses retain legal vitality as permitted uses." E. Newark Town Ctr., LLC v. E. Newark Borough, 29 N.J. Tax 164, 190 (2016). Thus, the THO District, "as with any overlay zone, [is] subject to the requirements of the underlying zoning district in which it is located." Elizabeth A. Garvin, Making Use of Overlay Zones, 43 Planning Commissioners Journal 1 (2001).

Here, the plain meaning of the Amended Ordinance and its intention is to have developers in the THO District pay the affordable housing development fees. The THO District does not alter the rules, regulations and limitations of the R-30 Zone. Plaintiff argues that because the Governing

Body specifically stated in the Amended Ordinance that development fees apply to "age-restricted multiunit housing within the ARHO Zoning District," which is an overlay zone in the B-2 Zone, and did not specifically designate the THO District, which is an overlay zone in the R-30 zone, then the Governing Body's intention was to omit the THO District from the Amended Ordinance. Plaintiff cites the maxim *expression unius exclusion alterius*, which "stands for the proposition that explicitly naming one or more things implies the exclusion of all other things." Wolverine Flagship Fund Trading Ltd. V. Am. Oriental Bioengineering, Inc., 444 N.J. Super. 530, 535 (App. Div. 2016). Therefore, according to Plaintiff, the Governing Body specifically stating that fees applied to one overlay district means that the Governing Body intended to exclude the frees from applying to the other overlay district.

Additionally, Plaintiff argues that the Amended Ordinance only applies to the districts cited therein because the Governing Body removed from the Amended Ordinance the expansive language of "all residential zoning districts including but not limited to" in favor of the specific enumeration of the affected districts. Thus, Plaintiff argues, again, that since the THO District is excluded, whereas the ARHO zone is included in the Amended Ordinance, then the Governing Body did not intend to have the affordable housing development fees apply to the THO District. The Court does not agree with Plaintiff's arguments.

Plain meaning dictates that the Governing Body specifically carved out the "age-restricted multiunit housing within the ARHO Zoning District" for the purpose of requiring a specific group of developers in the ARHO District to pay the affordable housing development fees. In other words, the plain meaning of the Amended Ordinance and intent of the Amended Ordinance can only lead to the conclusion that the Governing Body did not want the fee to apply to the rest of the

underlying zone, which is a business zone, but only to the age-restricted multiunit housing within the ARHO District.

In contrast, the Governing Body did not need to specifically carve out the THO District in the Amended Ordinance because the R-30 Zone being the underlying zone still applies to the THO District. The Amended Ordinance states: "**Within** the R-30 [Zone] . . . developers shall pay a development fee of 1% . . . ." (emphasis added). The THO District is within the R-30 Zone. Accordingly, the Governing Body's intent is for any developer building in the R-30 Zone to pay the affordable housing fees. Therefore, since Plaintiff's development is located in the R-30 Zone, it must pay the affordable housing fee.

B. The Judiciary for the Time Being Has Effectively Taken on COAH's Responsibilities

Plaintiff also argues that Woodcliff Lake's development fee ordinance expired and it does not have the authority to collect development fees because Woodcliff Lake does not have an approved Housing Element Fair Share and Compliance Plan. The Supreme Court in, In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 8 (2015) (known as "Mt. Laurel IV"), transferred COAH's responsibilities to the Superior Courts. N.J.A.C. 5:94-6.3 states that "no municipality, except . . . municipalities seeking to achieve . . . a judgment of compliance, shall impose or collect development fees. . . ."

Here, based on this Court's responsibility to enforce municipal compliance with the Mount Laurel obligations, in a sense effectively stepping into the shoes of COAH, and based on the Supreme Court's Mount Laurel decisions regarding municipalities' responsibility to provide affordable housing, this Court holds that Woodcliff Lake has the duty to collect affordable housing fees. It would go against the spirit of the affordable housing policy in this State, to prevent Woodcliff Lake or other municipalities from collecting affordable housing fees. Those fees are an important element and part of providing low and moderate families affordable housing. It was not

the intent of the Supreme Court in Mt. Laurel IV to foreclose a municipality from collecting development fees on new construction projects.

CONCLUSION

Therefore, for the reasons discussed above, the Court holds that Plaintiff must pay the Fee Condition pursuant to the Amended Fee Ordinance.

William C. Meehan, J.S.C.
Retired on Recall

Dated: March 2, 2017