HOBOKEN LAND BUILDING, L.P. and HOBOKEN HOLDINGS, L.P., *Plaintiffs*, v. CITY OF HOBOKEN, CITY COUNCIL OF THE CITY OF HOBOKEN, RAVI S. BHALLA, in has capacity as the Mayor of the City of Hoboken, and KMS DEVELOPMENT PARTNERS, L.P., *Defendants*.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO.: HUD-L-3036-19 ***Civil Action*** **OPINION**

BEFORE: HON. JOSEPH V. ISABELLA, J.S.C.

DECIDED: MARCH 19, 2020

I. BACKGROUND

Plaintiff Hoboken Land Building, L.P. owns real property in the City of Hoboken (the "City") located at One Newark Street. The property is designated as Block 230, Lot 10, and known as the Hoboken Land Building. Plaintiff Hoboken Holdings, L.P. owns real property in the City located at Two Hudson Place, which is designated as Block 230, Lot 6.01 and known as the Baker Waterfront Plaza.

On October 17, 2012, the City, by way of resolution of the City Council, designated certain properties within the City as "areas in need of rehabilitation" pursuant to the Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1 et seq. The Council designated land located at 89 River Street, identified as Block 231.01, Lot 1, as an area "in need of rehabilitation" (the "Subject Property").

On April 19, 2017, the Council adopted by way of ordinance the Hoboken Post Office Redevelopment Plan for land within the Hoboken Post Office Rehabilitation Area, which included the subject property. On April 4, 2018, by way of resolution, the Council designated KMS

Development Partners, L.P. ("KMS") as the redeveloper for the subject property on which a hotel would be built. The Redevelopment Plan was then amended to include payments by KMS which are referred to as "community benefit payments" including a payment to the City of $2,000,000; a payment of $1,000,000 to the Hoboken Public Education Foundation, a private, non-profit organization; and an additional $485,000 to charter schools within Hoboken (the "Amended Redevelopment Plan"). On November 7, 2018, the City Council passed an ordinance adopting the Amended Redevelopment Plan.

On November 18, 2018, Plaintiffs filed a Complaint in lieu or prerogative writ challenging the Amended Redevelopment Plan, the Resolution authorizing the Mayor to sign the Redevelopment Plan, and the ordinance adopting the Redevelopment Plan. See Hoboken Land Building, L.P., et al. v. City of Hoboken, et al., HUD-L-4580-18 (N.J. Super. Ct. Law Div. 2018).

On March 26, 2019, the Honorable Anthony V. D'Elia entered an Order and Opinion holding that the payments lacked statutory authority under the LRHL, and the payments violated public policy as there was no "rational nexus" between the Amended Redevelopment Plan and the payments. Consequently, the City and KMS (collectively, "Defendants") terminated the Amended Redevelopment Plan and repealed the Amendment. On June 28, 2019, the previous litigation was dismissed by way of stipulation.

On June 19, 2019, after further negotiations between KMS and the City, the City Council adopted a resolution authorizing Mayor Bhalla to execute a new redevelopment agreement for the subject property. The agreement retained the structural aspects of the previous agreement; however, after "extensive negotiations" between the City and KMS, the agreement (the "New RDA") required KMS to deposit $3,200,000 into an escrow account to be utilized by KMS "as directed by the City, . . . for/towards one or more projects with specific public purposes within or

about the Post Office Rehabilitations Area . . . as determined by the City in its sole discretion, to be undertaken by [KMS]" (the "Escrow"). The New RDA provides for no payments to the City, the Hoboken Education Foundation, Hoboken's charter schools, or any other entity. The projects specified were to be undertaken "to the extent they are supported by findings by the City linking the purpose . . . to the impact of the Hotel."

II. PROCEDURAL HISTORY

Plaintiffs instituted the present action on August 2, 2019 by way of Complaint in lieu of Prerogative Writ, challenging the New RDA as arbitrary, capricious, and reasonable and for lacking a "rational nexus" between the payments and underlying project at the subject property.

On September 12, 2019, Defendant KMS moved for summary judgment in lieu of filing an answer to the Complaint. The City of Hoboken City Council, and Mayor Bhalla joined the motion.

The Court conducted a case management conference and denied the motion without prejudice. A case management order dated October 30, 2019 memorialized the conference and (1) deferred the summary judgment motions pending a plenary hearing; (2) denied Plaintiffs' request for discovery; (3) directed Defendants to file an Answer; (4) scheduled the plenary hearing for February 18, 2020; and (5) set deadlines for supplemental briefings.

The case management order also ordered Plaintiffs submit an Open Public Records Act ("OPRA") request to the City by November 1, 2019. The parties were ordered to meet and confer after receipt of the documents to address the scope of the record in this matter. It was further ordered that the plenary hearing was limited to the record before the parties as agreed upon following receipt and discussion of the OPRA documents. No dispute came before the Court as

to the OPRA request or the scope of documents available to Plaintiffs. Thus, Plaintiffs were in possession of all documents relevant to this action.

On February 18, 2020, after full briefing in this matter, the Court held a plenary hearing. This Opinion follows.

III. STANDARD

It is well-settled that where a municipal board has acted, the action of the board may only be reversed if the board's action was arbitrary, capricious, or unreasonable. See Booth v. Board of Adjustment of Rockaway Twp., 50 N.J. 302, 306 (1967); Kramer v. Board of Adjustment of Sea Girt, 45 N.J. 268, 296-97 (1965):

> Courts cannot substitute an independent judgment for that of the boards in areas of factual disputes; neither will they exercise anew the original jurisdiction of such boards or trespass on their administrative work. So long as the power exists to do the act complained of and there is substantial evidence to support it, the judicial branch of the government cannot interfere. A local zoning determination will be set aside only when it is arbitrary, capricious or unreasonable. Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved. (internal citations omitted).

Judicial review is intended to be a determination of the validity of the agency's actions, not a substitution of the court's judgment. See Burbridge v. Mine Hill Twp., 117 N.J. 376 (1990); Randolph Town Center v. Twp. of Randolph, 324 N.J. Super. 412, 418 (App. Div. 1999). It is not the Court's function to disapprove a Board's determination, even when a contrary result might also have been reached. Kramer v. Sea Girt, 45 N.J. 268, 296 (1965). Judicial review of redevelopment designation is limited to whether it is supported by substantial evidence. ERETC v. City of Perth Amboy, 381 N.J. 268, 277 (App. Div. 2005).

IV. LEGAL ANALYSIS

A municipality does not have inherent authority to regulate the use of land. Riggs v. Twp. of Long Beach, 109 N.J. 601, 610 (1988). The authority to regulate land use is vested in the legislative branch of the Government by Article III of the New Jersey Constitution. Ibid. The Constitution authorizes the Legislature to delegate some of its powers to subordinate levels of Government. In turn, the Legislature has delegated and defined the authority to regulate land use by enacting, amongst other statutes, the Municipal Land Use Law ("MLUL"). See Rumson Estate v. Fairhaven, 177 N.J. 338, 349 (2003). Similarly, a separate legislative grant of authority to municipalities to regulate land use is found within the Local Redevelopment and Housing Law ("LRHL").

The Local Redevelopment and Housing Law was enacted in 1992 in an effort "to coordinate and consolidate the various legislation that had been enacted over the prior forty years" concerning land redevelopment.[1] The LRHL, N.J.S.A. 40A:12A-1 et seq, establishes a process whereby a municipality can designate an area as one in need of redevelopment or rehabilitation. Upon designation, the municipality may adopt a plan to guide the redevelopment or rehabilitation of the designated area. N.J.S.A 40A:12A-7. The LRHL further authorizes a municipality to enter into a Redeveloper's Agreement with an entity that is selected for redeveloping an area that is in need of rehabilitation. N.J.S.A. 40A:12A-9. Through these means, the legislative scheme is designed to "promot[e] the physical development that will be most conducive to the social and economic improvement of the State and its several municipalities." Times of Trenton v. Lafayette Yard, 183 N.J. 519 (2005) (citing N.J.S.A. 40A:12A-2(c)).

[1] Robert S. Goldsmith & Robert Beckelman, *What Will Happen to Redevelopment in New Jersey When the Economy Recovers?. 36 RUTGERS L. REC. 314, 315 (2009).*

Judge D'Elia's Opinion in the prior action set forth that "none of the detailed provisions of the LRHL authorize a municipality to contract to receive payments or contributions from a Redeveloper for any expenses or public improvements that have no relationship to the area in need of rehabilitation or the project of redevelopment in that Area." Opinion at 6-7. The Court noted the lack of language in the LRHL similar to that of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-42, which "specifically contemplated local public entities conditioning government approvals upon payments relating to **off-tract** expense under certain conditions." Id. at 6-7 (emphasis added). See also Divan Builder, Inc. v. Planning Bd. of Wayne Twp., 66 N.J. 582, 600 (1975) ("assuming off-site improvements could be required of a subdivider, the subdivider could be compelled only to bear that portion of the cost which bears a rational nexus to the needs created by and benefits conferred upon, the subdivision").

In Genon Rema, LLC v. South Amboy Redevelopment Agency, 2015 WL 10986475 (Law Div. May 18, 2015), the trial court addressed "[w]hether the 'rational nexus' requirement of § 42 of the MLUL is applicable to a redeveloper's agreement authorized by the LRHL. The Court found it "clear" that the rational nexus requirement of § 42 of the MLUL was inapplicable to a Redevelopment Agreement. Id. at *12. The Court noted the Legislature's intent to provide municipalities with "the broadest possible powers" in accomplishing their redevelopment goals. Ibid.

Neither party disputes that the LRHL does not contain a provision explicitly requiring a "rational nexus" for developer contributions, as the MLUL contains in § 42. KMS submits that the inquiry thus ends there, and the payments are within the City's statutory ability to "[d]o all things necessary or convenient to carry out its powers [to undertake redevelopment projects.]" N.J.S.A. 40A:12A-8(n); see N.J.S.A. 40A:12-8(a). However, the Appellate Division has held that the LRHL

does not supersede the MLUL. E.G. Britwood Urban Renewal LLC v. Asbury Park, 376 N.J. Super. 552, 567 (App. Div. 2005). Thus, Plaintiffs submit that the New RDA must satisfy the "rational nexus" requirement of § 42 of the MLUL.

This Court finds that there is a "rational nexus" between the Escrow and the underlying project at the subject property. Therefore, the City's decision to enter the New RDA was not arbitrary, unreasonable, or capricious. See Booth at 306.

In the prior action, Plaintiffs challenged the Redevelopment Plan's "community benefit payments" requiring KMS to pay $2 million to the City for community recreation facilities for the City's discretionary use, $1 million for the Hoboken Public Education Foundation, and $485,000 for charter schools located within the City. Judge D'Elia held that the contributions did not further the purposes of the LRHL, stating that "Off-tract contributions that have no relationship whatsoever to the redevelopment area or redevelopment plan, except for the fact that the municipality may require same, do not further the purposes of the LRHL."

The New RDA does not include the payments which Plaintiffs previously challenged and which Judge D'Elia found violative of public policy. Rather, the New RDA provides for a $3.2 million deposit into an Escrow account to be utilized by KMS "as directed by the City . . . for/towards one or more projects with **specific public purposes within or about the Post Office Rehabilitations Area** . . . as determined by the City in its sole discretion, to be undertaken by [KMS]." (emphasis added). Although Plaintiffs argue that there is no rational nexus, the foregoing language in the New RDA plainly creates a "nexus" between the payments and the underlying project at the subject property.

The "nexus" is demonstrated by the New RDA's list of expenditures for which the Escrow may be utilized. This list includes, in part: infrastructure improvements and maintenance; flood

control; improved bicycle and pedestrian access and safety; transit/ parking improvements; and municipal services which are utilized by hotel visitors, guests, and employees. While Plaintiffs argue that the Escrow has "no link" to the project, the Escrow contemplates funds arising out of the subject property, such as future impacts on the City and costs which are not presently confirmed, but are anticipated. See New Jersey Builders Ass'n v. Mayor & Tp. Comm., 108 N.J. 223, 237 (1987) (applying the MLUL, holding that a municipality's authority to charge developers is limited to "improvements the need for which arose as a direct consequence of the particular subdivision or development under review").

Plaintiffs cannot require that the City predict with absolute certainty where the necessity for future costs will arise; however, the Escrow attempts to remedy this issue to the extent that costs may be predicted. A similar issue of precision was addressed in the MLUL context in F&W Associates v. County of Somerset, wherein the Court stated that:

> It cannot be seriously argued that a municipality must compute with precision to what extent improvements to an off-tract road network are a "direct consequence" of a residential or office development. What must be demonstrated is a "rational" nexus, not mathematical certainty.
>
> [F&W Associates v. County of Somerset, 276 N.J. Super. 519, 528-29 (App. Div. 1994).]

Furthermore, the Escrow allows for legal challenges regarding its use and time periods within which the City must identify qualifying projects. The projects for which the funds may be used must also address an impact of the Hotel on infrastructure, the community, and community services. Nor is the Escrow a "payment" but rather a deposit, as the unspent funds will be returned to KMS after a specified period. These restrictions demonstrate that the Escrow will not serve as a "rainy day fund for the City to use whenever it ultimately decides" as Plaintiffs contend.

Thus, unlike the previous "community benefit payments," there is a "rational nexus" between the Escrow and the redevelopment project at the subject property and the New RDA is statutorily authorized by the LRHL.

As the Court finds that the Escrow is not "off-tract" from the underlying project, this Court cannot find that the City actions were arbitrary, capricious, or unreasonable. Although the City's actions enjoy a presumption of validity, evidence nevertheless demonstrates that the City's actions in researching, negotiating, and executing the New RDA and Escrow were reasonable. See Concerned Citizens of Princeton, Inc. v. Mayor and Council of Borough of Princeton, 370 N.J. Super. 429 (App. Div. 2004).

On October 17, 2012, the City Council designated certain properties within the City as "areas in need of rehabilitation" pursuant to the LRHL. The Council designated the subject property as an area in need of rehabilitation. In 2018, the City designated KMS as the redeveloper for the property. The New RDA at issue before the Court at this time is one of multiple agreements arising out of negotiations between the parties, including the Amended Redevelopment Agreement which was the subject of Judge D'Elia's Opinion. The resolution authorizing the New RDA specifically reflects that the New RDA is a product of "extensive negotiations" between the City and KMS.

The New RDA is also a product of extensive research and preparation. In comparison to the Amended Redevelopment Plan, the New RDA provides additional exhibits including an updated Traffic and Parking Study. It also includes a new set of Plans for Riverfront Hotel and Post Office Renovations. These reports are additional to the data, research, and reports collected in the original attempt in 2018 to proceed with the project. The Amended Redevelopment Plan

included a number of its own exhibits, including View Corridor Simulations, a Shadow Study, and a Labor Peace Agreement.

As set forth previously within this Opinion, the Escrow is rationally related to the underlying project. The Escrow also demonstrates that the City's actions are reasonable. Although Plaintiffs insist that the Escrow constitutes an unlawful payment, Plaintiffs do not dispute that the issues regarding the "community benefit payments" addressed in Judge D'Elia's Opinion were rectified. There are no payments to the City or any other entity which Judge D'Elia's Opinion found lacked statutory authorization. The City's attempts to remedy the issues within the Amended Redevelopment Plan by re-negotiating with KMS and then adopting the New RDA demonstrate that the terms of the New RDA are not arbitrary, capricious, or unreasonable. Rather, the New RDA demonstrate a good faith effort to comply with Judge D'Elia's Opinion.

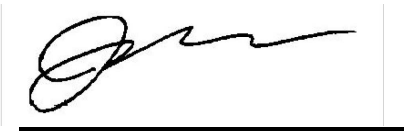
Furthermore, the City has demonstrated that the project will be – or is intended to be – in the public interest. The primary goal of the Post Office Redevelopment Plan is to improve the "Gateway experience" to the waterfront and into Hoboken by creating hotel space close to the Hoboken Terminal and transforming the area's streets to safely accommodate all users. Economic data provided to the City indicates that 165,000 people will visit the hotel annually, which the Amended Redevelopment Plan noted "will undoubtedly take advantage of the adjacent City parks, City parking facilities and City Streets for both access and enjoyment."

Consequently, this Court dismisses the Complaint in the absence of a showing that the City's actions or Escrow were arbitrary, capricious, or unreasonable.

V. CONCLUSION

A municipality or redevelopment agency has the power to "[d]o all things necessary or convenient to carry out its powers [to undertake redevelopment projects.]" N.J.S.A. 40A:12A-

8(n); see N.J.S.A. 40A:12-8(a). Where the New RDA and Escrow rectify the issues set forth in Judge D'Elia's Opinion, the Escrow is rationally related to the underlying project and thus statutorily authorized by the LHRL, and the New RDA is the result of "extensive negotiations" and research, the Court cannot find that the City's actions were arbitrary, capricious, or unreasonable. Plaintiff's Complaint is hereby **DISMISSED** with prejudice.



Hon. Joseph V. Isabella, J.S.C.