Fund for a Better Waterfront, Plaintiff, v. Township of Weehawken; Mayor and Council of the Township of Weehawken, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO.: HUD-L-354-20 CIVIL ACTION **MEMORANDUM OF DECISION**
Fund for a Better Waterfront, Plaintiff, v. Weehawken Township Planning Board and Hartz Mountain Industries, Inc. (as Intervenor, Defendants.	**FILED** JUL 09 2025 **KIMBERLY ESPINALES-MALONEY, J.S.C.**

DATE OF DECISION: 07/09/25

Discovery End Date: 07/24/21
Arbitration Date: NONE
Trial Date: NONE

PRELIMINARY STATEMENT

This matter comes before the Court as two motions to dismiss for failure to state a claim. The first motion to dismiss was filed by Defendant Township of Weehawken ("Defendant Weehawken" or "Weehawken"). The second motion to dismiss was filed by Defendant Hartz Mountain Industries, Inc. ("Defendant Hartz" or "Hartz"). This matter involves a challenge to amendments of a zoning ordinance and redevelopment plan adopted by the Township Council of the Township of Weehawken ("Township Council").

In support of its motion, Defendant Weehawken argues that the Complaint challenging Ordinance #32-2019 ("Ordinance 1") should be dismissed because that Ordinance was readopted and amended by Ordinance #2-2020 ("Ordinance 2"), thereby rendering the Complaint moot.

In support of Defendant Hartz's motion, it similarly asserts that Plaintiff's Complaint as to Ordinance 1 should be dismissed with prejudice as Ordinance 2 superseded Ordinance 1 making Plaintiff's Complaint moot.

In opposition to both motions, Plaintiff argues that Ordinance 2's adoption did not repeal or render Ordinance 1 moot, thus Defendants cannot meet the standard for dismissal. Moreover, Plaintiff asserts that the non-severability provisions in both Ordinances establish mutual dependency of their terms and, as such, Ordinance 2 did not supersede or repeal Ordinance 1. Plaintiff further purports that invalidation of Ordinance 1 would also invalidate the terms of Ordinance 1 reiterated in Ordinance 2.

STANDARD OF REVIEW

MOTION TO DISMISS STANDARD

R. 4:6-2(e) permits dismissal of a complaint for failure to state a claim. The New Jersey Supreme Court has said that "the test for determining the adequacy of a pleading is whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The reviewing court does not consider whether the plaintiff can prove the allegation in the complaint; it simply "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244 (App. Div. 1957)). The plaintiff is afforded "every reasonable inference of fact." Ibid.

(citations omitted). Motions to dismiss are granted only in rare instances and ordinarily without prejudice. See Wild v. Carriage Funeral, Inc., 241 N.J. 285, 287 (2020).

But if "matters outside the pleading are presented to and not excluded by the court" in support of a motion under R. 4:6-2(e), "the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46." R. 4:6-2(e); see also Lederman v. Prudential Life Ins. Co. of America, 385 N.J. Super. 324, 337 (App. Div. 2006). However, a motion to dismiss the pleadings is not converted into a summary judgment motion by filing documents with the court which are referred to in the pleading. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) ("In evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim. It is the existence of the fundament of a cause of action in those documents that is pivotal; the ability of the plaintiff to prove its allegations is not at issue.'") (internal citation omitted). When allegations in a complaint are contradicted by the records to which it refers, the records control. Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015).

ANALYSIS

The established rules of statutory construction govern the interpretation of a municipal ordinance. State v. Williams, 467 N.J. Super. 1, 4 (App. Div. 2021) (citing Twp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999)). The principles underpinning statutory construction and thus of the interpretation of a municipal ordinance require that an ordinance be understood to "effectuate the legislative intent in light of the language used and the objects sought to be achieved." Merin v. Maglaki, 126 N.J. 430, 435 (1992). Statutory construction "requires an examination of the language of the ordinance," and the meaning derived from that language "controls if it is clear and unambiguous." Williams, 467 N.J. Super. at 4. Thus, the words of an ordinance must be read and

construed within their context and, unless another or different meaning is specified, same must be given their generally accepted meaning, according to the approved usage of the language. Ibid. (citing N.J.S.A. 1:1-1).

In *Campell v. Borough of North Plainfield*, the Borough of North Plainfield ("the Borough") adopted an ordinance that created a new zoning district and subsequently adopted another ordinance, similar to the first one, but with modifications. 404 N.J. Super. 337, 340-41 (App. Div. 2008). The Borough argued that the subsequent ordinance superseded and rendered moot any procedural deficiency in the adoption of the first ordinance. Id. at 341. The Court disagreed and held that the protest provision included in both the first and second ordinance were independent of each other, and that the subsequent ordinance was an amendatory ordinance, the validity of which depended on the validity of the first ordinance. Id. at 341. On appeal, the Appellate Division held that if the adoption of the second ordinance constituted a complete reenactment anew of the first ordinance (with some changes) it would supersede and replace the first ordinance. Id. at 348-49. However, if the second ordinance was an ordinance merely amending the first ordinance, the time of decision rule could not serve to "cure" any procedural deficiency in the adoption of the first ordinance. Id. at 349.

Ultimately, the Appellate Division in *Campbell* looked to the language of the second ordinance which repeatedly used different variations of "amend" (i.e. "amending," "amend," and "amends"). Ibid. Moreover, the Court distinguished that case from *Board of Commissioners v. Grodecki*, 21 N.J. Misc. 241, 243 (C.P. 1943), where the amending ordinance repeated the entire substance of the earlier prohibition with the exception of a new penal clause and thus the Court found that the second ordinance was complete and perfect in itself. Id. at 350. The *Campbell* Court emphasized how in *Grodecki* the substantial difference between the amendment which was

complete in itself and one which changes but a few words in a previous ordinance that is incomplete in itself is that the latter does not itself express the clear will of the legislative body. Id. at 350-51. Thus, the *Campbell* Court found that there was no statement in the text, title, notice or public comments by the council members that the purpose of the second ordinance was to superseded and replace the first ordinance to remedy a defect. Id. at 351.

Here, both movants argue that Ordinance 2 readopted and amended Ordinance 1 and thus Ordinance 2 supersedes Ordinance 1. In opposition, Plaintiff argues that like the ordinances in *Campbell*, Ordinance 2's adoption did not repeal or render Ordinance 1 moot and thus Defendants cannot meet the standard for dismissal. The Court agrees. Namely, in looking at the language of Ordinance 2, the Court does not find that same reflects intent to replace Ordinance 1 entirely. This is evidenced by various provisions and language in both Ordinance 1 and 2. Notably, Section 5—the "non-severability" provision—of Ordinance 2 states, in pertinent part,

> "[t]his Ordinance and [Ordinance 1] have been enacted as a comprehensive response to changing conditions that have affected the SW District and its terms and conditions are **interdependent**, and therefore in order to make an application for a revised Planned Development approval, the developer/redeveloper of the Planned Development must agree to comply with all of the terms and conditions, requirements and limitations **set forth in this Ordinance and [Ordinance 1]**" (emphasis added). See Pl. Exhibit C at p. 3.

In analyzing the plain language of Section 5 of Ordinance 2, the Court finds that same demonstrates the interdependency of both provisions that must be read in conjunction with one another. Thus, Ordinance 2 does not supersede Ordinance 1 but rather is meant to be read in tandem with Ordinance 1. Moreover, the Court finds that the parking provision that already existed in Ordinance 1, was only slightly modified in Ordinance 2, and thus does not express the clear will of Township Council to supersede Ordinance 1 with Ordinance 2. See id. at p. 1. The Court further finds that Ordinance 2 uses language regarding amendments like the second ordinance in *Campbell* which does not constitute a replacement of Ordinance 1 but rather mere amendment to certain

provisions thereto. See id. at p. 2. Thus, unlike the amending ordinance in *Grodecki*, which repeated the entire substance of the earlier ordinance, Ordinance 2 is not complete and perfect in itself to otherwise supersede Ordinance 1. Accordingly, the Court hereby denies movants' motions to dismiss Plaintiff's Complaint at this time.

CONCLUSION

For the foregoing reasons, Defendant Township of Weehawken's motion for judgment on the pleadings dismissing Plaintiff's Complaint is hereby denied. Moreover, and for the aforesaid reasons, the motion filed on behalf of Defendant Hartz Mountain Industries, Inc. is hereby denied. Accordingly, Plaintiff's Complaint is not dismissed at this time.

SO ORDERED.

Kimberly Espinales-Maloney

HON. KIMBERLY ESPINALES-MALONEY, J.S.C.

R. 1:6-2(a): The within matter was__X___opposed ____unopposed.