AT ARM'S LENGTH: MUNICIPALITIES ARE GIVEN GREATER LEEWAY TO NEGOTIATE THE PAYMENT OF FEES UNDER THE LRHL

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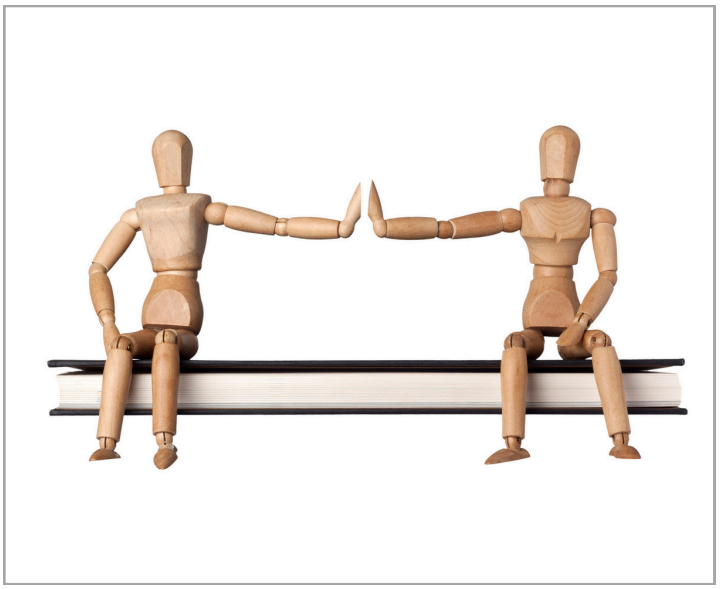
On March 6, 2025, the New Jersey Superior Court, Appellate Division issued a decision in Blackridge Realty, Inc. v. City of Long Branch. Significantly for developers to note, the Opinion analyzes the interplay between the Municipal Land Use Law ("MLUL") and the Local Redevelopment and Housing Law ("LRHL") within the context of a developer's payment of costs to the municipality associated with a redevelopment project. More specifically, the Court found, among other things, that the "LRHL does not impose any restrictions limiting payments to the recovery of costs the municipality will incur as a direct result of the redevelopment project, as long as the fee is negotiated at arm's length and collected to effectuate the purpose of the LRHL and the [municipality]'s Master Plan."[1]

In 1996, Long Branch adopted a Redevelopment Plan to rehabilitate an area within the City known as Beachfront South.[2] The requirements for new construction along the Redevelopment Area included a maximum density of thirty units per acre, a forty-foot maximum distance between buildings, a thirty-five percent maximum building coverage, and an eighty-foot maximum building height.[3]

Redeveloper 290 Ocean, LLC ("290 Ocean") proposed a redevelopment project to the City, necessitating an amendment to the Redevelopment Plan because it altered several restrictions.[4] In response, the City Council adopted an Ordinance that amended the Redevelopment Plan only as to 290 Ocean's project.[5] The Amendment provided that there would be no density restriction, the maximum distance between buildings was increased to sixty feet, maximum building coverage was set at fifty percent, and the maximum permitted building height was one hundred feet.[6] In passing the Amendment, the Ordinance provided that the proposal was consistent with the City's Master Plan and in the City's best interest.[7]

The Council also adopted a separate resolution which designated 290 Ocean as the redeveloper and authorized its redevelopment agreement, which required 290 Ocean to pay a $2 million fee to the City "to 'benefit the City's redevelopment areas' and serve as 'an additional community benefit' to address any impacts borne by the City relating to the redevelopment."[8] A final ordinance provision was adopted which authorized the appropriation of the $2 million payment to the "Developer Contributions Trust Fund" for the purpose of expanding and renovating the City's senior center.[9] Plaintiff Blackridge, another redeveloper, filed a complaint in lieu of prerogative writs, challenging the amendments and the $2 million payment.[10]



Specifically, Blackridge argued, among other things, that "the [$2 million] payment the City received from 290 Ocean was improper because it lacked a rational nexus to 290 Ocean's redevelopment project, it was obtained through negotiation, and it was a 'pay[ment] for approvals under an unreviewable assessment regime.'"[11]

In assessing the legality of the $2 million fee paid to the City, the Court noted that the MLUL imposes a far more stringent criteria on municipalities for the fees they can charge a developer.[12] Namely, pursuant to the MLUL, a municipality can only charge developers their pro-rata share of the cost of providing off-tract water, sewer, drainage, and street improvements.[13] Based on this language, the MLUL requires there to be a "strict nexus" between the developer's project and the amount the municipality can charge the developer, and the payment must be connected to "reasonable and necessary" improvements.[14]

In contrast, the LRHL does not have a nexus requirement.[15] Rather, the municipality is provided the ability to "negotiate and collect revenue from a redeveloper to defray the costs of the redevelopment entity" "to carry out and effectuate the purposes of [the LRHL] and the terms of the [municipality's] redevelopment plan."[16] Thus, as long as the payment will defray the costs of redevelopment, any amount can be negotiated.[17]

The Court reasoned that the use of the word "negotiate" in the LRHL and the absence of a pro-rata formula supports the conclusion that municipalities enjoy discretion in determining the amount of the payment and in deciding how those monies will be used.[18] Thus, the Court held that the $2 million payment was lawful because its proffered use to renovate the senior center conformed to the Redevelopment Plan's "overall goal [of] bring[ing] about a compact and integrated ensemble of public and private places that support year-round uses related to living, working[,] and recreation[,] and visitation."[19] The payment was also congruent with the LRHL's purpose to address "deterioration in . . . public services and facilities."[20] Thus, because the City was transparent in its enactment of the Plan Amendment, the payment was found to be lawful.[21]

This decision clarifies the principle that municipalities are given greater leeway in negotiating payments for the recovery of costs they may incur through a redevelopment project than they otherwise would have under the MLUL. It is therefore prudent to seek the advice of legal counsel prior to the commencement of a redevelopment proposal to ensure that all financial aspects of a project are thoroughly explored.

References:

[1] Blackridge Realty, Inc. v. City of Long Branch, __ N.J. Super. __ (slip op. at 3-4) (App. Div. 2025); [2] Id. (slip op. at 4); [3] Id. (slip op. at 4-5); [4] Id. (slip op. at 3); [5] Id. (slip op. at 5); [6] Id. (slip op. at 5-6); [7] Id. (slip op. at 6.); [8] Ibid.; [9] Ibid.; [10] Ibid.; [11] Id. (slip op. at 8) (second alteration in original); [12] Id. (slip op. at 11-12); [13] Id. (slip op. at 11) (quoting N.J.S.A. 40:55D-42); [14] Id. (slip op. at 11-12); [15] Id. (slip op. at 12); [16] Ibid. (alterations in original); [17] Ibid.; [18] Id. (slip op. at 13); [19] Id. (slip op. at 17) (quoting N.J.S.A. 40A:12A-2(a)); [20] Ibid.; [21] Id. (slip op. at 17-20).

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