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Hoboken May Not Require Developer 'Givebacks' as a Condition to Ordinance Approval

The Hudson County New Jersey Superior Court has determined that the City of Hoboken (Hoboken) cannot require that a developer make certain community benefit payments or "givebacks" as a condition to approval of an ordinance.

By ordinance adopted on April 19, 2017, the Hoboken City Council (Council) approved the Hoboken Post Office Redevelopment Plan (Redevelopment Plan) for the Hoboken Post Office Rehabilitation Area (Rehabilitation Area). Hoboken conditionally designated KMS Development Partners, L.P. (KMS), as redeveloper of a portion of the Rehabilitation Area (the KMS Property). Subsequently, KMS sought certain substantive changes to the Redevelopment Plan including increasing the maximum gross floor area, increasing the maximum number of rooms for hotel use, reducing the off-street parking requirements and reducing the required "step back" from Newark Street.

The Council and Mayor Ravi S. Bhalla (Mayor) conditioned approval of the KMS changes upon KMS's agreement to make certain payments to Hoboken, including $2 million toward community recreation facilities, to be disbursed at Hoboken's sole discretion, $1 million toward the Hoboken Public Education Foundation and $485,000 to charter schools in Hoboken. The Mayor negotiated a redevelopment agreement between Hoboken and KMS (Redevelopment Agreement), which included the required payments to Hoboken and, by its terms, was conditioned upon Hoboken's adoption of a proposed ordinance amending the Redevelopment Plan for the KMS Property. On October 17, 2018, the Council adopted a resolution authorizing the Mayor to execute the Redevelopment Agreement, which was subsequently fully executed. Hoboken Land Building, L.P., and Hoboken Holdings, L.P., each owning property in proximity to the KMS Property, brought suit (*Hoboken Land Building LP v. City of Hoboken*, No. HUD-L-4580-18) against Hoboken, the Council, the Mayor and KMS (Defendants), claiming that the required payments constitute an impermissible exaction and a blatant *quid pro quo* for Hoboken's approval of the Redevelopment Agreement and amount to a sale of the redeveloper designation, the Redevelopment Agreement and the Redevelopment Plan, as amended, by Hoboken. Defendants moved to dismiss the suit.

The court denied Defendants' motion to dismiss, concluding that Hoboken does not have the authority under New Jersey's Local Redevelopment and Housing Law, N.J.S.A. §§ 40A:12A-1 *et seq.* (LRHL), to condition or require givebacks for ordinance approval. Although other statutes allow a municipality to condition improvements upon payments relating to off-tract expenses, the LRHL does not contain such language, a fact that the court said "could not be understated." Thus, the court ruled that exactions having no relationship whatsoever to a redevelopment area or redevelopment plan, except for the fact that a municipality is requiring such contributions, do not further the purposes of the LRHL. The court further found the givebacks to be contrary to public policy by creating unacceptable possibilities for abuse and fraud.

Although this ruling is specifically responsive to Defendants' motion to dismiss such that the conclusions therein are not precedential, this case is a caution to all New Jersey developers and municipalities negotiating redeveloper designations, redevelopment areas and/or redevelopment plans. It also reinforces the broader proscription against the exchange of consideration not authorized by statute in all land use approval contexts.

Should you have any questions concerning this decision or land use issues in general, please contact any of the authors or other attorneys listed in the sidebar.

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