

# BLURRED LINES: AN EXAMINATION OF THE INTERPLAY BETWEEN THE MLUL AND THE LRHL

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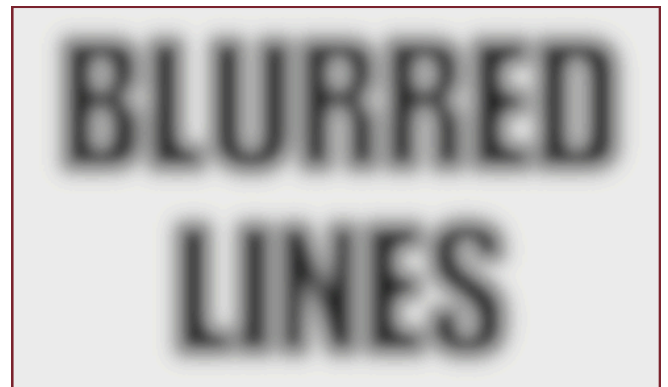
By Donna M. Jennings, Esq. and Anthony J. Zarillo III, Esq.

On March 2, 2026, the New Jersey Superior Court Appellate Division in *Route 440 Developers, LLC v. Planning Board of the City of Jersey City* analyzed whether a phased application that is fully conforming with the underlying bulk standards in a redevelopment area but noncompliant with a major purpose of the redevelopment plan is nonetheless entitled to an as-of-right approval under the Municipal Land Use Law (“MLUL”).

The case involved a multi-phase, mixed-use development application that was before the Jersey City Planning Board. There, the multi-lot property at issue was subject to a Redevelopment Plan “which was adopted primarily to encourage new retail and commercial development, improve pedestrian circulation, provide enhanced connections to light rail transit and foster overall urban design.”[1] As part of the Redevelopment Plan, several of the stated objectives revolved around the extension of the Hudson Bergen Light Rail (“HBLR”).[2] The Redevelopment Plan also provided that any subdivision would be in accordance with the Redevelopment Plan’s requirements, which included “the reservation of land within [existing] Lot 14/83 for additional right-of-way for the extension of the [HBLR] . . .”[3] Specifically, the Redevelopment Plan discussed the reservation of land on a specific lot and contemplated improvements that would allow for the HBLR to extend from Route 440 to a housing development. Any land development application had to include the reservation of land for the extension of the HBLR right-of-way and open space. As an incentive, any developer would receive bonuses which would allow them to “exceed certain floor area ratios and other zoning requirements without a variance.”[4]

Plaintiff *Route 440 Developers, LLC*, submitted an application to develop a mixed use project comprised of three phases with new residential, retail, and public space uses.[5] Phase I contemplated the development of a 30-story, mixed-use residential and retail building with 473 units, 11,600 square feet of commercial space, 344 parking spaces, amenities, and a plaza.[6] Phase II involved a two-tower mixed-use building comprised of 39 and 55 stories with 1,567 residential units, 131,712 square feet of retail space, automated parking, new streets, and the dedication of a portion of the HBLR extension right-of-way.[7] Phase III contemplated the construction of a 55-story building, a new right-of-way, new open space connecting a nearby street to the area, and a dedication for the HBLR extension right-of-way.[8] Importantly, Phases II and III both called for improvements that involved the HBLR extension, while Phase I did not.[9]

In January 2021, Plaintiff filed an application to the Board seeking preliminary and final subdivision and site plan approval for Phase I, preliminary subdivision and site plan approval for Phases II and III but not final subdivision or site plan approval.[10] Initially, the application was deemed incomplete by the Board.[11] Plaintiff submitted a revised application on June 2, 2021, and did not receive a response from the Board until June of 2022, when it met with officials from Jersey City who advised, for the first time, that Plaintiff would be required to be designated a “redeveloper” and enter into a redevelopment agreement with Jersey City.[12] Plaintiff agreed to comply with those conditions prior to seeking any final approval.[13]



After several delays, on January 24, 2023, the Board heard Plaintiff’s bifurcated application for preliminary and final subdivision and site plan approval for Phase I and preliminary subdivision and site plan approval for Phases II and III.[14] The Plaintiff’s professional planner asserted that because no variances were required for the Phase I subdivision, it was an “as-of-right” application, mandating that the Board grant an approval.[15] He also explained that Plaintiff had been engaging in discussions with New Jersey Transit (“NJT”) about the HBLR but advised that it had not received confirmation from NJT that they approved the HBLR extension or whether there was a dedicated piece of property for the HBLR.[16] Despite not having approval from NJT for the dedication of the separate lot for the HBLR, Plaintiff contended that it should be granted preliminary and final subdivision approval for Phase I, conditioned subsequently on future agreements with NJT for the extension of the rail line in Phases II and III.[17]

The Board denied the application because the Redevelopment Plan required that the HBLR improvements be made as part of Phase I and should not have been left to Phases II and III.[18]

Plaintiff subsequently filed an appeal of the Board's denial asserting that under the MLUL it was entitled to an approval of Phase I because it was fully conforming with the bulk standards set forth in the Redevelopment Plan.[19] Additionally, Plaintiff sought an automatic approval because the Board unreasonably delayed hearing its application.[20] The Law Division upheld the denial. Plaintiff then filed an appeal to the Appellate Division.[21]

After first finding that Plaintiff was not entitled to an automatic approval, the Court addressed Plaintiff's argument that the Law Division erred in finding that the Board's denial was not arbitrary, capricious, and unreasonable because the Phase I subdivision was fully conforming with all of the standards in the ordinances and the redevelopment zone.[22] In essence, Phase I only involved Lot 1 in the northern portion of the property but did not otherwise include the dedication of the HBLR extension right-of-way, which was required by the Redevelopment Plan.[23] Rather, the HBLR extension was only contemplated by Phases II and III.[24]

The Court, in rejecting Plaintiff's argument, expanded upon N.J.S.A. 40:55D-48(b), which states that "[t]he planning board shall, if the proposed subdivision complies with the ordinance and this act, grant preliminary approval to the subdivision." [25] The Court found that Phase I was required to include the HBLR under the Redevelopment Plan because a planning board is to review the layout of the entire design with the framework of the standards prescribed by the subdivision and zoning ordinances.[26] In addition, the MLUL states that "provisions ensuring that when a municipal zoning ordinance is in effect, a subdivision or site plan shall conform to the applicable provisions of the zoning ordinance, and where there is no zoning ordinance, appropriate standards shall be specified in an ordinance pursuant to this article. . . ." [27]

The Court rejected Plaintiff's argument that Phase I need not include the extension of HBLR because same would be addressed in Phases II and III, holding that one of the Redevelopment Plan's major purposes was the extension and dedication of the HBLR.[28] Despite the fact that the Phase I subdivision may have been compliant with all bulk standards and no variances were required, the Phase I application failed to comply with the Redevelopment Plan's requirements that certain areas be dedicated for the rail line right-of-way.[29] While the rail line right-of-way dedication was left to Phases II and III, the Board's concerns as to the uncertainty of the rail line's inclusion in the project were valid because Plaintiff failed to provide proof from NJT that it had obtained approval for same.[30]

Plaintiff's application for Phase I was therefore not suitable pursuant to the purposes of the Redevelopment Plan because it did not include the required right-of-way for the rail line.[31] In the end, the Court concluded that "the granting of preliminary and final subdivision and site plan approval for only Phase I would permit plaintiff to develop proposed Lot 1 without any assurances that the rail line right-of-way would be approved by NJT." [32] Thus, because the railway was a major purpose of the Redevelopment Plan, its exclusion from the Phase I application rendered it noncompliant with the Redevelopment Plan, and the Board was right to deny the application.[33] The Court concluded, "the Board's denial was not arbitrary, capricious, or unreasonable because [P]laintiff's development application at Phase I, when viewed independently, failed to meet a major purpose of the [Redevelopment] Plan related to the requirement for rail line [right-of-way]." [34] The Court also rejected the argument that the Board was required to grant the Phase I application subject to NJT's approval of the rail line right-of-way pursuant to N.J.S.A. 40:5D-22(b).[35] Under these circumstances, the Court found that "final subdivision and site plan approval for Phase I would permit the development of Lot 1 without any assurance that the rail line [right-of-way] would be approved by NJT[.]" as that condition would attach to Phases II and III and would not prevent development for Phase I.[36]

In light of this decision, where a project is in a redevelopment area, it is prudent for developers and their professionals to take a hard look at the redevelopment plan to ensure that all aspects of the application are compliant with the plan. Even in phased developments, this is especially true as every phase could be subject to a denial, even if it is fully conforming with all bulk standards.

#### References:

[1] Route 440 Devs., LLC v. Plan. Bd. of the City of Jersey City, \_\_ N.J. Super. \_\_ (slip op. at 3) (App. Div. 2026). [2] Id. at 3. [3] Id. at 4. [4] Id. at 5. [5] Ibid. [6] Ibid. [7] Ibid. [8] Ibid. [9] Ibid. [10] Id. at 5-6. [11] Id. at 6. [12] Ibid. [13] Ibid. [14] Id. at 6-7. [15] Id. at 8. [16] Ibid. [17] Id. at 8-9; see also N.J.S.A. 40:55D-22(b). [18] Route 440 Devs., LLC, (slip op. at 9-10). [19] Id. at 10-11. [20] Id. at 11. [21] Id. at 11-12. [22] Id. at 16-18. [23] Id. at 18-19. [24] Id. at 19. [25] Ibid. (alteration in original) (quoting N.J.S.A. 40:55D-48(b)). [26] Ibid. (quoting Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 216, 229 (1994)). [27] Route 440 Devs., LLC, (slip op. at 20) (emphasis omitted). [28] Id. at 20-21. [29] Ibid. [30] Id. at 21. [31] Ibid. [32] Id. at 23. [33] Ibid. [34] Id. at 24. [35] Ibid. [36] Id. at 25.

## About the Authors



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