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Attorneys for Plaintiffs

ONE GREENWOOD, LLC, A BETTER
LACKAWANNA, LLC, PRISCILLA
ESHELMAN, CAROLINE KANE LEVY,
ADAM BAKER, LINDA CRANSTON,
CELESTE WALDEN-KELLEY, CHERIE
ELFENBEIN, SUSAN BAGGS, KATHY
ROSENBERG, JOSE GERMAN, FRANK
LOUVIS, MERLE WISE,

Plaintiffs,

v.

MONTCLAIR TOWNSHIP PLANNING
BOARD, TOWNSHIP OF MONTCLAIR,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ESSEX COUNTY
DOCKET NO.:

Civil Action

COMPLAINT
(in lieu of Prerogative Writs)

Plaintiffs, by way of Complaint in lieu of Prerogative Writ against Defendants, Montclair Township Planning Board and Township of Montclair, whose offices are located at 205 Claremont Avenue, Montclair, New Jersey, hereby states as follows:

FIRST COUNT

1. One Greenwood, LLC is the owner of property located at 1 Greenwood Avenue and being designated at Block 3213, Lot 1 on the Tax Map of the Township of Montclair, New Jersey.

2. A Better Lackawanna, LLC with an office located at 5 Greentree Centre, Suite 104, 525 Route 73 North, Marlton, New Jersey 08053, is an entity consisting of concerned residents of

Montclair, Montclair tax payers, and historic preservationists, many of whom are individual named Plaintiffs, including managing member Caroline Kane Levy.

3. Priscilla Eshelman is an individual who resides at 50 Label Street, Montclair, New Jersey 07042.

4. Caroline Kane Levy is an individual who resides at 37 Ardsley Road, Montclair, New Jersey 07042.

5. Adam Baker is an individual who resides at 38 Christopher Street, Unit 1, Montclair, New Jersey 07042.

6. Linda Cranston is an individual who resides at 47 Alexander Avenue, Montclair, New Jersey 07043.

7. Celeste Walden-Kelley is an individual who resides at 54 Label Street, Apartment 2, Montclair, New Jersey 07042.

8. Cherie Elfenbein is an individual who resides at 203 North Fullerton Avenue, Montclair, New Jersey 07042.

9. Susan Baggs is an individual who resides at 51 Cambridge Road, Montclair, New Jersey 07042.

10. Kathy Rosenberg is an individual who resides at 11 Argyle Road, Montclair, New Jersey 07043.

11. Jose German is an individual who resides at 69 Grove Street, Montclair, New Jersey 07042.

12. Frank Louvis is an individual who resides at 615 Valley Road, Montclair, New Jersey 07043.

13. Merle Wise is an individual who resides at 188 Summit Avenue, Montclair, New Jersey 07043.

14. HP Lackawanna Office, LLC & Lackawanna SPE, LLC (collectively “Lackawanna Office, LLC”) submitted an application for development to Defendants for approval for a mixed-use project in the former Lackawanna Station in Montclair, New Jersey.

15. Specifically, Lackawanna Office, LLC submitted application #2543 for approval of the project on the East and West Parcel of the property, Blocks 3212 & 3213, Lots 2, 4.01 & 4.02.

16. On the East Parcel, Lackawanna Office, LLC proposed to construct a 4 story residential apartment building containing 154 residential apartments above a 1 floor parking garage containing 130 parking spaces with an additional 100 surface parking spots.

17. On the West Parcel, Lackawanna Office, LLC proposed to renovate the existing supermarket, demolish existing retail spaces (train sheds) directly across from the supermarket, as well as add retail, fast food, and medical office space on the second and third floors, with a total of 257 surface parking spaces.

18. The subject property is located within the Town Center Historic District. The District is a local landmark district, designated under Ordinance No. 03-47 and codified in Montclair Code § 347-148.1. The subject property includes the Lackawanna Plaza Rail Station, a “key” building in the district. A “Key” building defines a building that possesses district architectural and historical significance, and which acts as a landmark within the architectural matrix of the district. In addition, the subject property is listed on both the National Register of Historic Places and the New Jersey Register of Historic Places.

19. Public hearings on the application were held on March 12, 2018, April 9, 2018, May 14, 2018, July 23, 2018, August 6, 2018, August 27, 2018, September 24, 2018, October 22, 2018, November 26, 2018, December 3, 2018, December 17, 2018, January 14, 2019, January 28, 2019 and February 11, 2019. Additional meetings took place after the February 11, 2019 meeting without the benefit of public comment.

20. At said hearings, Defendants heard testimony from applicant's architect, Bruce Stieve, engineer Kevin Webb, landscape architect Steven Laudati, traffic engineers Karl Pehnke and Dan Disaro, architectural historian Dr. Steven Bedford, professional planner Sean Moronski, CEO of Pinnacle Companies, Brian Stolar, partners with Supermarket Consulting Group, Robert Schmitt, Hampshire Real Estate and Robert Volosin, owner of Mehmert Store Services Bradley Knab, Vice President of Pro Park America, Kristen Sokich, chair of the Montclair Preservation Commission Kathleen Bennett, historic consultant, Thomas Connelly, architect John Reimnitz, and real estate manager for Lidl Nick Buckner.

21. On February 11, 2019, the Defendants voted to approve the application. On or about May 9, 2019, the approval was memorialized by written Resolution, a copy of which is attached hereto as Exhibit A.

22. Defendants' approval was without factual basis, was arbitrary, capricious, unreasonable and an abuse of discretion.

23. In approving Lackawanna Office, LLC's application, Defendants failed to exercise due diligence on multiple issues relating to neighboring properties and easements that are affected by the proposed application and approval.

24. Defendants' lack of due diligence includes a failure to consider, among other things, a berm located on the east lot, an easement of Montclair Mews, a pedestrian underpass, and

possible stream encroachment, all of which were not properly documented in the applicants' submissions or considered before approval was granted.

25. Specifically, Lackawanna Office, LLC failed to include the removal of the grassy berm and the need to replace the new retaining wall to the sidewalk line and failed to calculate and present for comment, how much pervious coverage was being lost and impervious coverage was being added in its grass removal.

26. These plans for the berm, retaining wall, and loss of grass were not provided to the public for comment prior to the vote or approval of the application.

27. In addition, Defendants arbitrarily and unreasonably stifled opposition to the application process.

28. Specifically, Defendants limited the time for public comment on the application, by limiting comment to some to an arbitrary time limit and imposing an arbitrary ban on those who were permitted to speak publically.

29. In addition, the site plan was verbally changed during the February 11, 2019, at which no testimony or questioning was permitted by the public.

30. These actions by Defendants evidence an abuse of their discretion and Defendants unfairly suppressed public comment on the application and approval process.

WHEREFORE, Plaintiffs, demand Judgment against Defendants, Montclair Township Planning Board and Township of Montclair, as follows:

- A. Reversing the determination of Defendant, Montclair Township Planning Board;
- B. Denying Lackawanna Office, LLC's application for site plan approval;
- C. For counsel fees, interest and costs of suit; and

D. For such other relief that the Court may find to be just and equitable under the circumstances.

SECOND COUNT

1. Plaintiffs repeat and reallege all of the allegations of the First Count as if herein set forth at length.

2. Defendants' approval constituted a conflict of interest and came about as a result of undue influence which tainted the proceedings.

3. In approving Lackawanna Office, LLC's application, Defendants, amongst other actions, Township Councilwoman and mayoral appointment to the Planning Board, Robin Schlager, fully participated in the public hearings for the application, hearing all of the testimony, providing comments on the application, and deliberating with other Board Members from the dais. It was only immediately prior to the Defendants' vote that, Robin Schlager recused herself from the proceeding.

4. The reason for the recusal was not disclosed nor was there any justification provided on the record, for the loss of the voting member.

5. Well before the presentation of testimony and evidence on the application was completed, the Township Council enacted a resolution instructing the Planning Board to expedite and approve the subject application.

6. Robin Schlager voted in favor of that resolution, even though substantial evidence and testimony had yet to be presented.

7. Robin Schlager could not have, and did not exercise her independent discretion as a member of the planning board.

8. Robin Schlager's participation in the hearing after the apparent conflict arose irrevocably tainted the application.

WHEREFORE, Plaintiffs demand Judgment against Defendants, Montclair Township Planning Board and Township of Montclair, as follows:

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- B. Denying Lackawanna Office, LLC's application for site plan approval;
- C. For counsel fees, interest and costs of suit; and
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THIRD COUNT

1. Plaintiffs repeat and reallege all of the allegations of the First and Second Counts as if herein set forth

2. Defendants' approval failed to consider and violates the master plan, historic preservation ordinances, and parking ordinances of the Township of Montclair.

3. The purpose of the historic preservation ordinances is to safeguard the heritage of Montclair by preserving resources within the Township which reflect elements of its cultural, social, economic and architectural history.

4. In addition, the purpose is to discourage the unnecessary demolition or other destruction of historic resources.

5. In the original application, the proposed supermarket was to be 47,000 square feet to include loading docks, and plans for parking.

6. During public hearings before the Planning Board and the Montclair Historic Preservation Commission, witnesses for the applicant refused to provide details on the potential supermarket tenant and specifics for the interior layout that would properly inform whether the historic train sheds could be incorporated into the site plan.

7. However, at the meeting in February 2019, representatives from Lidl, the proposed supermarket tenant, advised that the supermarket would only be 29,000 square feet, in contradiction and violation of the original plan.

8. In addition, there was no explanation as to what the remaining 18,000 square feet would entail.

9. At no time was any member of the public permitted to question any representative from Lidl about the changes, including at the meeting in February, 2019.

10. Specifically, Defendants not only ignored recommendations of the Historic Preservation Commission, but ignored the evidence presented and its own factual findings by failing to fully maintain this locally protected historic site from demolition, when alternative site plans were presented to both maintain the site and accomplish the applicant's goal for obtaining a supermarket tenant in this location.

11. In approving Lackawanna Office, LLC's application, Defendants ignored, amongst other restrictions, the parking restrictions and setback requirements in place pursuant to the master plan.

12. In addition, the variances approved by Defendants are based on a self-created hardship as a result of the developers' specific proposed use for which the developers are solely responsible.

13. Defendants failed to consider competent evidence on the historical preservation of the proposed project and the surrounding areas.

14. Defendants failed to review competent evidence on the necessity of the proposed structures and their effect on the parking and traffic conditions in the surrounding areas and the need for further variances.

15. Defendants failed to conduct, consider and allow public input on a traffic and parking analysis with regard to the flow of traffic, including by way of example, following the planning board approval, prior to planning board resolution, a township committee ordinance was enacted to ban left turns both onto and from Grove Street.

16. The approval in February, 2019 was based on prior traffic studies which assumed that left turns were permitted to be made on Grove Street.

17. Between the vote in February and the May resolution, the Township passed an ordinance which prohibited left turns onto Grove Street.

18. Following the enactment of the ordinance, Defendants should have re-opened the hearings, heard testimony and comment on the ordinance and invalidated the prior planning board approval.

WHEREFORE, Plaintiffs demand Judgment against Defendants, Montclair Township Planning Board and Township of Montclair, as follows:

- A. Reversing the determination of Defendant, Montclair Township Planning Board;
- B. Denying Lackawanna Office, LLC's application for site plan approval;
- C. For counsel fees, interest and costs of suit; and
- D. For such other relief that the Court may find to be just and equitable under the circumstances.

NAGEL RICE, LLP
Attorneys for Plaintiffs

By: JAY J. RICE
Jay J. Rice

Dated: June 21, 2019

DESIGNATION OF TRIAL COUNSEL

Jay J. Rice, Esq. is hereby designated as trial counsel in the above captioned matter.

RULE 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge the matter in controversy is not the subject of any action pending in any court or of a pending arbitration proceeding nor is there any other action or arbitration proceeding contemplated. Plaintiff knows of no other parties, other than the parties set forth in the pleading, which should be joined in the above action.

I hereby certify that the foregoing statements made by me are true. I am aware that if the statements made by me are willfully false, I am subject to punishment.

NAGEL RICE, LLP
Attorney for Plaintiffs

By: JAY J. RICE
Jay J. Rice

Dated: June 21, 2019

RULE 4:69-4 CERTIFICATION

I hereby certify pursuant to R. 4:69-4 that I have ordered the transcripts of the Planning Board proceedings.

NAGEL RICE, LLP
Attorney for Plaintiffs

By: JAY J. RICE
Jay J. Rice

Dated: June 21, 2019

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-004595-19

Case Caption: ONE GREENWOOD, LLC VS MONTCLAIR TWP. PLANN ING

Case Initiation Date: 06/21/2019

Attorney Name: JAY J RICE

Firm Name: NAGEL RICE LLP

Address: 103 EISENHOWER PKWY
ROSELAND NJ 07068

Phone:

Name of Party: PLAINTIFF : One Greenwood, LLC

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

06/21/2019
Dated

/s/ JAY J RICE
Signed