

**Reply to:**

25 INDEPENDENCE BOULEVARD  
WARREN, NEW JERSEY 07059-6747  
(908) 647-1022  
(908) 647-7721 FAX  
www.heroldlaw.com

570 LEXINGTON AVENUE, SUITE 1600  
NEW YORK, NEW YORK 10022  
(646) 227-0180  
BY APPOINTMENT ONLY

**HEROLD LAW**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

70 NE 5<sup>th</sup> AVE  
DELRAY BEACH, FLORIDA 33483  
(561) 501-6073  
FAX: (561) 501-6069

150 N. RADNOR-CHESTER ROAD, SUITE F-200  
RADNOR, PENNSYLVANIA 19087  
OFFICE: (610) 977-2023  
CELL: (215) 680-1860

Email: [rsimon@heroldlaw.com](mailto:rsimon@heroldlaw.com)  
Extension: 113

January 13, 2023

**VIA eCOURTS**

Honorable Peter G. Geiger, J.S.C.  
Superior Court of New Jersey  
Chambers 335  
10 Main Street  
Hackensack, New Jersey 07601

**Re: Akerman, et al. v. Township of Teaneck, et al.  
Docket Nos. BER-L-2234-22 and BER-L-4361-22**

Dear Judge Geiger:

This firm represents plaintiffs in two closely-related actions before the Court. On April 21, 2022, plaintiffs filed an action in lieu of prerogative writs bearing Docket No. BER-L-2234-22 (the “2234 Action”), challenging the actions of defendants Township of Teaneck (the “Township”) and the Township of Teaneck Planning Board (the “Board”). Four months later, on August 10, 2022, plaintiffs filed a new action in lieu of prerogative writs bearing Docket No. BER-L-4361-22 (the “4361 Action”), which challenged closely-related actions by the Township and the Board, as discussed below.

In the 2234 Action, we represent Plaintiffs Michael Akerman, Georgina B. Asante, Yaw Asante, Daniel Bellin, Rena Donin Schlusser, Yaron Hirschhorn, Rachel Kaye, Ashira Loike, Alan Rubinstein, David Schlusser, Marc Schlusser, and Shorana Schlusser. We represent the same

Honorable Peter G. Geiger, J.S.C.

Page 2

January 13, 2023

twelve individual plaintiffs in the 4361 Action, as well as plaintiffs Meryl Mark and Joseph Mark, who are not participating in the first action (collectively, the “Plaintiffs”).

In accordance with R. 4:69-4, Plaintiffs respectfully submit the following statement of facts and issues in dispute in advance of the scheduled January 20, 2023 Case Management Conference.

### **STATEMENT OF RELEVANT FACTS**

#### **The 2234 Action**

The 2234 Action primarily concerns the Township’s adoption of Ordinance No. 9-2022 (“Ord. 9-2022”), which occurred at the March 15, 2022 Meeting of the Teaneck Township Council (the “Council”). Ord. 9-2022 sought to amend the Township’s Development Regulations and Zoning Ordinance (the “Code”) for the express purpose of benefitting Holy Name Medical Center, Inc. (“HNH”) and HNH’s plans for expansion of the Township’s Hospital “H” Zoning District (the “H-Zone”). Plaintiffs also challenge the Board’s March 10, 2022 determination that Ord. 9-2022 is consistent with the Township’s Master Plan. Plaintiffs challenge to Ord. 9-2022 and the Master Plan Amendment is based in large part because impermissible conflicts of interest required its invalidation.

#### **The 4361 Action**

Acknowledging the conflicts of interest presented in the 2234 Action, the Township adopted Ordinance No. 22-2022 (“Ord. 22-2022”) at the June 28, 2022 Council meeting, which repealed Ord. 9-2022 and replaced it with nearly identical language. This was done for the express purpose of rehabilitating the conflicts of interest which tainted Ord. 9-2022. At the same meeting, the Council adopted Ordinance No. 23-2022 (“Ord. 23-2022”), which is also challenged here. As

Honorable Peter G. Geiger, J.S.C.

Page 3

January 13, 2023

part of the 4361 Action, Plaintiffs also challenge the Board's purported adoption of an Amendment to the Township's Master Plan (the "Master Plan Amendment") on December 16, 2021, which was irreparably tainted by conflicts of interest by the Board's members and the attorney advising the Board, and was void *ab initio*.

Plaintiffs seek, *inter alia*, judgments declaring Ord. 9-2022, Ord. 22-2022, Ord. 23-2022 and the purported Master Plan Amendment invalid, void, and contrary to law.

### **The Purpose and Effect of the Ordinances**

Ord. 9-2022 and Ord. 22-2022 zoned and then re-zoned certain parcels located in the H-Zone, all of which are owned and/or controlled by Holy Name Medical Center, Inc. These parcels are identified on the Tax Maps of the Township as Block 3003, Lots 2, 3, 4, 8, 9, 10, 11, 12, 13, and 14, and Block 3002, Lots 2, 3, 4, 5, 6, 7 and 8 (jointly and severally, the "HNH Property").

HNH has for many years sought to redevelop and expand its buildings, structures, and facilities, including the purchase of various properties that currently comprise the HNH Property. At various times between 2019 and the present, HNH, including its agents, employees, and professionals, discussed and negotiated with the Township terms to expand HNH's buildings, structures and facilities within the HNH Property, to permit the vacation of a certain Township right of way in favor of HNH, and for an amendment of the Township Master Plan and amendment of the Township's Ordinances to permit the development, redevelopment and expansion of HNH's buildings, structures and facilities within the HNH Property.

Honorable Peter G. Geiger, J.S.C.

Page 4

January 13, 2023

**Special Emergency Directive No. 03-2020**

On November 17, 2020, the Township issued Special Emergency Directive No. 03-2020 (the “2020 Special Emergency Directive”), which used the COVID-19 pandemic as a pretext for circumventing the Township Code’s development ordinances, in order to facilitate HNH’s expansion. This included permitting HNH to construct a “temporary” parking lot on Block 3002, Lots 1-6 (the “Temporary Parking Lot”) “to accommodate the anticipated parking needs for the second round of COVID-19 cases.”

In fact, there was no shortage of parking at HNH. At the March 10, 2022 Board meeting, the Board’s traffic engineer, John Corak of Stonefield Engineering, testified regarding the parking requirements in Ord. 9-2022 and stated that HNH’s parking needs during COVID-19 were less than its parking needs pre-COVID-19. At that same March 10, 2022 Board meeting, Deputy Mayor Schwartz (“Schwartz”) admitted there is no a parking problem at HNH, and that there is plenty of parking, maybe due to COVID-19.

The stated purpose of the 2020 Special Emergency Directive was to circumvent the Township’s development ordinances, which allegedly “present a potential impediment to protect and maintain the health, safety, and welfare of New Jersey residents and visitors against the effects of COVID-19 with respect to the provision of emergency medical care.” The 2020 Special Emergency Directive asserted that the “process to approve...proposed temporary emergency medical facilities has experienced extensive delays” given the COVID-19 health emergency”. Yet, the Township’s offices remained open at the time, and its land use boards were meeting regularly via the Zoom virtual platform.

Honorable Peter G. Geiger, J.S.C.

Page 5

January 13, 2023

The 2020 Special Emergency Directive suspended “the procedural requirements for obtaining site plan, subdivision, and zoning approvals for the construction of temporary emergency medical facilities, including parking areas.” Although it required that “all plans shall comply with the setback, coverage, height, floor area ratio, landscaping and other substantive criteria applicable for site plans, subdivisions and zoning”, the Township allowed the Temporary Parking Lot to be built—and it was in fact built—without first complying with all applicable site plan and zoning criteria, including but not limited to lot coverage limitations, landscaping, storm water or other substantive criteria, which are required for the development and use of other properties within the Township. The Township also allowed HNH to construct the Temporary Parking Lot prior to HNH filing applications for temporary emergency medical facilities under the 2020 Special Emergency Directive.

The Township also went to lengths to prevent the 2020 Special Emergency Directive from expiring. The Directive requires in subparagraph f. that “Any permits issued by the Construction Official under these temporary rules and regulations promulgated hereunder shall expire upon the termination of the health emergency or the termination of the Special Emergency Directive, whichever first occurs.” Four (4) zoning permits were issued by the Township’s Construction Official on or about May 14, 2021, each of which was “Approved with Conditions” and “shall expire upon termination of the Health Emergency or Special Emergency Directive.” Less than one month later, on June 4, 2021, Governor Murphy signed Assembly Bill No. 5820 into law as P.L.2021, c.103 and issued Executive Order No. 244, which terminated the public health emergency declared in Executive Order No. 103 (March 9, 2020), effective immediately. This resulted in the expiration of the zoning permits issued to HNH.

Honorable Peter G. Geiger, J.S.C.

Page 6

January 13, 2023

On November 27, 2021, the Township of Teaneck improperly issued Special Emergency Directive No. 01-2021 (the “2021 Special Emergency Directive”), which sought to retroactively extend the emergency zoning permits issued to HNH, by ordering and directing that the procedural requirements necessary for obtaining site plan, subdivision, and zoning approvals would not apply to HNH for the construction of commercial parking areas primarily in a Residential Zone on five properties on Chadwick Road and Cedar Lane. The 2021 Special Emergency Directive notes that procedural requirements are “temporarily suspended, *nunc pro tunc* [sic] from the date of the termination of the Public Health Emergency on June 4, 2021 and until the termination of the State of Emergency initially declared in Executive Order No. 103 (2020).” The 2021 Special Emergency Directive improperly abrogated the MLUL and the rules and regulations of the New Jersey Department of Environmental Protection to the benefit of HNH.

### **Impermissible Conflicts of Interest**

The Council also formed a Holy Name Medical Center three-person subcommittee (the “Holy Name Medical Center Subcommittee”) to engage in discussions and negotiations with HNH to enact a Master Plan Amendment and an amendment of the Ordinances for the development, redevelopment and expansion of HNH’s buildings, structures and facilities within the HNH Property, all to benefit HNH.

Elie Y. Katz (“Katz”) and Mark J. Schwartz (“Schwartz”) were members of, and controlled, the Holy Name Medical Center Subcommittee.

Katz is the First Deputy Mayor of the Township, a Member of the Council, a Member of the Holy Name Medical Center Subcommittee, and a Life Member of the Teaneck Volunteer

Honorable Peter G. Geiger, J.S.C.

Page 7

January 13, 2023

Ambulance Corp (the “TVAC”). The adoptions of Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 directly benefit TVAC.

Schwartz is the Second Deputy Mayor of the Township, a Member of the Council, a Member of the Holy Name Medical Center Subcommittee, a Class III Member of the Planning Board, a Life Member and a 19-year active Member of TVAC and the Vice President of Operations, a Member of the Executive Committee, a Member of the Board of Directors of Yavneh Academy & Talmud Torah of Paterson (“Yavneh”), and Publisher of The Jewish Link Newspaper (the “Jewish Link”). HNH is a frequent paid advertiser in the Jewish Link. The Jewish Link has published articles publicly supporting the zoning changes implemented in Ord. 9-2022 and re-adopted in Ord. 22-2022.

James Dunleavy (“Dunleavy”) is the Mayor of the Township, and, upon information and belief, was an employee of HNH from approximately 1999 to 2003.

In addition, Karen Orgen (“Orgen”) is a Member of the Township Council and a Life Member and former President of TVAC. Orgen’s husband, Eric Orgen, is a Life Member and the current President of TVAC. Upon information and belief, a family member of Orgen was recently hired by HNH.

Payments to TVAC  
(Katz, Schwartz, and Orgen Conflicts)

In connection with HNH’s development plans, the Township and HNH negotiated for HNH to provide funding to TVAC, a private entity in which three (3) Council Members are Life Members, active Members, or former President. Since at least 2018, the Township made contributions to TVAC in the amount of approximately \$70,000.00 annually—the statutory limit

Honorable Peter G. Geiger, J.S.C.

Page 8

January 13, 2023

under N.J.S.A. 40:5-2. This statutory limit does not apply to payments made by HNH, however, and the Township negotiated with HNH to provide a financial benefit to TVAC.

On or about July 8, 2020, HNH and the Township issued a joint press release that disclosed a plan agreed to by HNH and the Township to expand the hospital and for HNH to donate monies to TVAC for TVAC equipment and supplies (the “Joint Press Release”). Through this agreement, the Township and HNH created a direct nexus between the Township’s annual obligation to fund TVAC and HNH’s expansion plans. The Joint Press Release disclosed, among things, that:

As part of the plan, the hospital [HNH] will pay \$10 million over 10 years in property, sewage and water taxes and fees for property it owns in Teaneck. The hospital [HNH] will also cover the Township’s annual contribution to the Teaneck Volunteer Ambulance Corps (TVAC) for the same number of years.

Based on the contents of the Joint Press Release, HNH agreed to pay TVAC \$700,000.00 over a 10-year period, or \$70,000.00 annually. Notably, these payments do not preclude the Township from continuing to make its own (additional) \$70,000.00 annual contributions to TVAC.

Purchase of Yavneh Property  
(Schwartz Conflict)

As noted above, Schwartz is the Vice President of Operations of Yavneh. On December 29, 2017, Yavneh purchased real property located at Block 3002, Lot 6 in Teaneck, New Jersey, commonly known as 75 Chadwick Road, Teaneck, New Jersey 07666 (the “Yavneh Property”), for a purchase price of \$600,000.00. On or about July 20, 2020 (less than two weeks after the press release), HNH purchased the Yavneh Property for \$750,000.00. Schwartz was actively involved in the sale of the Yavneh Property by Yavneh to HNH.



Honorable Peter G. Geiger, J.S.C.

Page 9

January 13, 2023

Honorable Peter G. Geiger, J.S.C.

Page 10

January 13, 2023

Master Plan Reexamination Authorization  
(Katz, Orgen, Schwartz, and Dunleavy Conflicts)

On August 11, 2020, the Township Council authorized a master plan reexamination and preparation of a report, including recommendations of proposed development regulations, regarding the Township's H-Zone, including the expansion of the Hospital Zone. This was accomplished through Resolutions 159-2020 and 160-2020. Orgen's husband spoke in favor of Resolution 159-2020 and Resolution 160-2020 at that meeting, and had introduced himself to the Council as the President and as a trustee of TVAC. Katz and Orgen also made statements emphasizing their connections to TVAC and the importance of the organization. Despite their connections to TVAC, Orgen, Dunleavy and Schwartz all voted in favor of both Resolutions. Katz abstained from voting on Resolution 159-2020 but voted in favor of Resolution 160-2020.

Planning Board Vote to Amend the Master Plan  
(Schwartz, Croonquist, and Eyeran Conflicts)

The December 2021 purported Master Plan Amendment for development, redevelopment, and expansion of HNH's buildings, structures, and facilities, should be rendered null and void and of no force or effect, due to disqualifying conflicts by Schwartz, Board Member Kenneth Croonquist, and Board Attorney Brian Eyeran.

On or about June 29, 2021, a subsidiary of HNH purchased real property located at 115 Chadwick Road (Block 3002, Lot 12). Kenneth Croonquist was the real estate agent representing HNH for that transaction. Mr. Croonquist is also a Class II Member of the Planning Board, as well as the Captain of Operations for the Teaneck Police Department ("Croonquist"). On December 16, 2021, Croonquist and Schwartz both voted in favor of the Master Plan Amendment,

Honorable Peter G. Geiger, J.S.C.

Page 11

January 13, 2023

only one month after the closing on the property (November 17, 2021) for which Croonquist acted as real estate agent for HNH.

Board attorney Brian Eyerman, Esq. advised the Board in connection with the Master Plan Amendment (“Eyerman”). Yet, Attorney Eyerman has a conflict of interest preventing his representation of the Board regarding matters concerning HNH, due to the employment of his brother, Luke E. Eyerman, M.D., by HNH. Upon information and belief, Dr. Eyerman also held a leadership position at HNH at points during the last few years.

Not only did Attorney Eyerman fail to recuse himself from consideration of the Master Plan Amendment in December 2021, he also drafted the consistency review report concerning Ordinance 9-2022 and the Master Plan Amendment by letter dated March 14, 2022.

Protest Petition / Adoption of Ord. 9-2022  
(Katz and Schwartz Conflicts)

On the morning of March 15, 2022, certain Plaintiffs filed with the Township Clerk forty-two (42) Protest Petitions, along with a Professional Planner Certification by T. Andrew Thomas in opposition to proposed Ord. 9-2022, in accordance with N.J.S.A. 40:55D-63. Yet, at the public hearing on Ord. 9-2022 later that night, no discussion was held concerning the conflicts of Katz, Schwartz and Orgen, except for a statement made by Orgen, just prior to a vote on the ordinance, that she was recusing herself because an unnamed family member was recently employed by HNH. No other members of the Council recused themselves from voting on Ord. 9-2022, despite some having disqualifying conflicts of interest. The motion to adopt Ord. 9-2022 was made by conflicted Council Member Deputy Mayor Schwartz and seconded by conflicted Council Member Deputy Mayor Katz. Ord. 9-2022 was approved and adopted on March 15, 2022 by the Council by a vote of 6-0-1, with Orgen being the only recusal.

Honorable Peter G. Geiger, J.S.C.

Page 12

January 13, 2023

The 2234 Action and the Council's Acknowledgement of the Conflicts of Interest

On April 21, 2022, the Plaintiffs filed the 2234 Action, challenging the Board's invalid purported consistency review of Ord. 9-2022, based in part upon Schwartz's, Croonquist's, and Eyerman's refusals to recuse themselves despite knowing they had disqualifying conflicts of interest. It also challenges the Council's invalid purported adoption of Ord. 9-2022, based in part upon Katz's, Schwartz's, and Dunleavy's refusals to recuse themselves despite knowing they had disqualifying conflicts of interest.

In acknowledgement of their conflicts of interest, the Council introduced Ord. 22-2022 on May 17, 2022, seeking to repeal Ord. 9-2022 and replace it with identical language in an attempt to "cure" the conflicts of interest which tainted its purported adoption. The Council admitted the existence of the conflicts in the penultimate introductory "Whereas" clauses of Ord. 22-2022, which stated "it is in the best interest of the citizens of the Township of Teaneck to repeal Ordinance No. 9-2022 and to introduce a new ordinance respecting the expansion of the Hospital H Zoning District." Nevertheless, only Orgen announced she would recuse herself, as she previously had done at the February 22, 2022 and March 15, 2022 Council meetings. Schwartz did not recuse himself, but he left the meeting without explanation prior to the Council's vote on the ordinance. Despite their conflicts of interest, both Katz and Dunleavy remained at the hearing, and both voted in favor of adopting Ord. 22-2022.

**The Council Failed to Provide the Required Notice of the Hearing on Ordinance 22-2022**

The text of Ord. 22-2022 appeared with inconsistent language for the date of the public hearing. This inconsistent language appeared on the Agenda Outline and Agenda Packet tabs on

Honorable Peter G. Geiger, J.S.C.

Page 13

January 13, 2023

the Township website, as well as on hard copies of the draft ordinance which were distributed to members of the public at the May 17, 2022 Council meeting. Despite these inconsistent public hearing dates, Ord. 22-2022 passed on first reading, with the inconsistent dates included. Instead of invalidating this improperly noticed ordinance, as required under the MLUL, on May 18, 2022, the Township instead **backdated its records** by correcting the incorrect dates shown on the “official” Agenda Outline and Agenda Packet for the May 17 meeting.

Because the time and place of the public hearing that passed at the first reading differs from the time and place identified in the newspaper notice published on May 22, 2022, the purported adoption of Ord. 22-2022 was in violation of N.J.S.A. 40:49-2, and therefore invalid.

#### **The Board Refused to Conduct a Consistency Review**

As required by N.J.S.A. 40:55D-64, the Council referred Ord. 22-2022 and Ord. 23-2022 to the Planning Board for a consistency review, identifying the second reading as scheduled for June 28, 2022. N.J.S.A. 40:55D-26(a) required the Board to conduct the consistency review of both proposed ordinances and transmit its report to the Council within 35 days (by June 23, 2022). Yet, to avoid performing the consistency review for Ord. 22-2022 and Ord. 23-2022, the Board instead intentionally permitted the 35-day consistency review period to lapse.

The Board had ample opportunity to conduct consistency reviews of Ord. 22-2022 and Ord. 23-2022. The 35 day consistency review period overlapped with three previously-scheduled Board meetings—May 26, 2022, June 9, 2022, and June 23, 2022. Yet, the Board failed to schedule or hold any hearings for the consistency review, in violation of N.J.S.A. 40:55D-26. Even worse, the Board cancelled the regularly scheduled meeting on May 26, 2022, based on the demonstrably false claim of “a lack of agenda items”.

Honorable Peter G. Geiger, J.S.C.

Page 14

January 13, 2023

### **Violations of OPMA during the June 28, 2022 Council Meeting**

Members of the Township Council committed numerous violations of the OPMA at the June 28, 2022 Council Meeting by holding private conversations and secret unannounced closed-door sessions during the public portion of the meeting. Plaintiff's attorney was participating in the meeting from a remote location, and had no knowledge of these secret meetings.

On June 24, 2022, certain Plaintiffs filed with the Township Clerk forty-six (46) Protest Petitions along with a certification by Professional Planner Andrew Thomas in opposition to proposed Ordinance 22-2022, in accordance with N.J.S.A. 40:55D-63. On June 28, 2022 (the backdated hearing date), the Township Council conducted a hearing on Ord. 22-2022 and Ord. 23-2022, notwithstanding the absence of any Planning Board consistency review report pursuant to N.J.S.A. 40:55D-26. At the June 28, 2022 public hearing on Ord. 22-2022 and Ord. 23-2022, no discussion was held concerning the previously identified conflicts of Katz and Dunleavy.

### **Katz-Rice Conversation**

During the comments by the Council, Councilwoman Gervonn Romney Rice ("Rice") indicated she would abstain from voting on the Ordinances. During the meeting and after Rice's statement, Katz approached Rice and whispered to her for approximately one-half minute, in violation of the OPMA.

### **Surreptitious Closed Session Meeting**

Prior to voting on the Ordinances, Katz appeared to be reading and sending text messages, then whispered to Dunleavy. Dunleavy requested a point of personal privilege and a five-minute recess. At no time was the public meeting adjourned or a motion made to enter a closed session. The Council recessed for approximately ten minutes, during which time four (4) of the five (5)

Honorable Peter G. Geiger, J.S.C.

Page 15

January 13, 2023

non-recused members of the Council (Dunleavy, Katz, Rice, and Michael Pagan (“Pagan”)) exited the Council Chambers and entered the Municipal Court Office, which was only open to the Council Members. Upon information and belief, an effective majority of Council members proceeded to discuss the pending Ordinances in the Municipal Court Office. Pagan returned to the dais of the Council Chambers approximately four and a half minutes after entering the Municipal Court Office. Upon information and belief, a conversation continued in the Municipal Court Office between Dunleavy, Katz, and Rice, an effective majority of eligible Council members, behind closed doors.

**Katz’s Private Negotiations with Township Attorney and HNH Parties during the Meeting**

Katz exited the Municipal Court Office and had conversations in the Building’s Lobby Area with Township attorney John Shahdanian (“Shahdanian”) and then with HNH’s Executive Vice President Steven Mosser, its consultant Stan Steinreich, and attorney Wendy Berger. At no point were the public, any of the objectors, nor their attorney advised of the ongoing negotiations or that a non-public closed-session meeting was being held by an effective majority of Council members.

When the official Council Meeting resumed, Dunleavy announced,

We’re just going to be telling you something now. Here’s what we want. What we want from the hospital and from the good neighbors is a commitment, a strong commitment that you will continue to talk to each other and try to come to some agreement on some of these issues as we move forward. I want that commitment from both of you.

HNH Attorney Wendy Berger agreed to the condition. Plaintiffs’ attorney Robert F. Simon was attending the meeting via Zoom and was unaware of the surreptitious and secret closed session meeting that had transpired behind closed doors in the Municipal Court Office, the meeting

Honorable Peter G. Geiger, J.S.C.

Page 16

January 13, 2023

between Katz and HNH in the Building's lobby, or any decision made by the Council concerning the vote. Attorney Simon inquired what would happen with the vote on the pending Ordinances. In response, Dunleavy stated no information would be provided, but emphasized the hospital has given its commitment. Attorney Simon agreed to continue negotiations in good faith.

### **Voting Improprieties to Achieve the Required Supermajority Vote**

Given a protest petition had been filed, adoption of Ord. 22-2022 required a supermajority of five (5) votes to pass, in accordance with N.J.S.A. 40:55D-63. When Shahdanian was asked if the votes for Ord. 22-2022 and 23-2022 should be held separately, Shahdanian said to vote on them together. Orgen had announced her recusal, Schwartz had announced his recusal, and Rice had previously announced she would abstain from voting, leaving only four (4) votes available for voting—not enough votes for Ord. 22-2022 to pass. The Board nevertheless put both Ordinances up for a vote, even though there was a different voting requirement to pass each of the Ordinances.

Instead of abstaining as she previously had announced before the secret closed-session meeting, Rice changed her mind and voted in favor of adopting the Ordinances, providing the fifth vote necessary for adoption. Upon information and belief, Rice changed her mind based on the secret closed session meeting held by an effective majority of the non-recused members of the Council during a ten-minute recess, in violation of OPMA.

### **The Ordinances Improperly Grant Real Property to HNH for No Consideration**

Ord. 22-2022 contemplates vacating portions of a public right of way, Chadwick Road, to HNH, whereby HNH would receive almost an acre of real property from the Township for its use without HNH having to pay appropriate consideration for same, to be implemented through Ord.



Honorable Peter G. Geiger, J.S.C.

Page 17

January 13, 2023

23-2022. No traffic study has ever been commissioned to analyze the implications of vacating the portions of Chadwick Road contemplated by Ord. 23-2022.

**The Township failed to provide all required notices, in violation of N.J.S.A. 40:55D-62.1**

N.J.S.A. 40:55D-62.1 requires municipalities holding a “hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district” to provide ten (10) days advance written notice to all owners of real property within 200 feet. Although the Township did provide notices to some properties, it neglected to provide the required notice to six (6) properties, located at: 80-140 Cedar Lane (Block 3002, Lot 1); 105 Chadwick Road (Block 3002, Lot 10); 109 Chadwick Road (Block 3002, Lot 11); 118 Chadwick Road (Block 3003, Lot 1); 55-63 Cedar Lane (Block 2914, Lot 1); and 70 Sterling Place (Block 2914, Lot 2).

Ord. 23-2022 was adopted without any discussion or hearing on the merits.

**STATEMENT OF LEGAL ISSUES IN DISPUTE**

1. Whether the Board’s actions in adopting the December 16, 2021 purported Master Plan Amendment violate applicable law.
2. Whether the December 16, 2021 purported Master Plan Amendment failed to comply with N.J.S.A. 40:55D-28.
3. Whether members of the Board and the Board Attorney had disqualifying conflicts of interest preventing them from participating in the public hearing on the proposed Master Plan Amendment.

Honorable Peter G. Geiger, J.S.C.

Page 18

January 13, 2023

4. Whether the disqualifying conflicts of interest of Schwartz, Croonquist, and Eyerman were unlawful and a violation of the LGEL, the MLUL, and the Code of Ethics, making the purported adoption of the Master Plan Amendment arbitrary, capricious, unreasonable, and/or void *ab initio*.

5. Whether the Board's failure to address the disqualifying conflicts of interest was arbitrary, capricious, unreasonable, and unlawful, rendering the Master Plan Amendment void *ab initio*.

6. Whether members of the Board and/or the Council (including the Mayor, both Deputy Mayors and other members of the Township Council) participated in substantive discussions, meetings and negotiations with HNH and its employees, agents and representatives concerning development of the HNH Property, all prior to the introduction of Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022, in violation of the OPMA.

7. Whether members of the Council had disqualifying conflicts of interest preventing them from participating in the public hearings on Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022.

8. Whether the Township's refusal to address the multiple disqualifying conflicts of interest of Council members at the public hearings on Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 was arbitrary, capricious, unreasonable, and a violation of law including the LGEL, the Code of Ethics, and the OPMA.

9. Whether the Board's refusal to schedule or hold any hearings to review either Ord. 22-2022 or 23-2022 for consistency with the Master Plan within the mandatory 35-day time window, despite having ample opportunity to do so at three separate scheduled meetings (May 26,

Honorable Peter G. Geiger, J.S.C.

Page 19

January 13, 2023

2022, June 9, 2022, and June 23, 2022) was arbitrary, capricious, unreasonable, and in violation of the LGEL and/or the MLUL, including N.J.S.A. 40:55D-26.

10. Whether the Board's cancellation of the regularly scheduled meeting on May 26, 2022 based on the demonstrably false claim of a lack of agenda items (despite having been advised of the requirement to conduct consistency reviews for Ord. 22-2022 and Ord. 23-2022) was a violation of applicable law.

11. Whether the Board intentionally permitted the 35-day period for consistency review under N.J.S.A. 40:55D-26 to lapse, to dispense with the legal requirement for the Council to consider the Board's report and address the Board's recommendations.

12. Whether the Board's manipulation of the required legal process was a violation of the LGEL, including but not limited to N.J.S.A. 40A:9-22.5.c, which states, "No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others".

13. Whether Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 were drawn with reasonable consideration to the character of each district in the Township of Teaneck and their particular suitability for particular uses and to encourage the most appropriate use of land, as required under N.J.S.A. 40:55D-62.

14. Whether the Township's actions in adopting Ord. 22-2022 and Ord. 23-2022 were in violation of the OPMA.

15. Whether an effective majority of members of the Council violated the OPMA by holding a surreptitious, secret, closed-session meeting to discuss Ord. 22-2022 and Ord. 23-2022 during a recess at the June 28, 2022 Council meeting, without notice.

Honorable Peter G. Geiger, J.S.C.

Page 20

January 13, 2023

16. Whether the Township bestowed illegal favoritism on HNH by improperly manipulating the public process that led to the adoption of Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022.

17. Whether the adoptions of Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 were intended to improperly bestow a private benefit upon HNH, and were arbitrary, capricious, unreasonable, unconstitutional, and contrary to law.

18. Whether Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022 maintain a relationship of mutual benefit among different land uses, serve the common good or the general welfare, are compatible with and further a legitimate comprehensive land use scheme or plan for the zoning of the Township of Teaneck.

19. Whether Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022, and the process by which they were adopted, are contrary to law, including, but not limited to, the provisions and requirements of the MLUL and the OPMA.

20. Whether Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 inappropriately contemplate the Township conveying real property to HNH without HNH having to pay appropriate legal consideration for same.

21. Whether Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 inappropriately contemplate vacating a portion of a public roadway in favor of HNH, without a traffic study ever having been conducted.

22. Whether the Township improperly demonstrated favoritism toward HNH to the detriment of the public in adopting Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022.

Honorable Peter G. Geiger, J.S.C.

Page 21

January 13, 2023

23. Whether the adoptions of Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 were tainted by biased and prejudiced public officials, who knowingly refused to recuse themselves, as required by the LGEL and Code of Ethics.

24. Whether Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 constitute illegal spot zoning.

25. Whether the actions taken by the Board and the Township caused the deprivation of Plaintiffs' constitutionally protected due process rights to fair and unbiased hearings.

26. Whether the Township knew or should have known it was denying Plaintiffs their right to publicly comment in violation of the OPMA and N.J.S.A. 40:49-2.

27. Whether the Township and the Board manipulated the public process to avoid the required consistency reviews on Ord. 22-2022 and Ord. 23-2022, in violation of law.

28. Whether the Township manipulated the public process and vote on Ord. 22-2022 and Ord. 23-2022 in violation of law.

29. Whether the procedures, actions, and decisions of the Board and the Township which deprived Plaintiffs of their due process rights demonstrate egregious government misconduct that shocks the conscience.

30. Whether the procedures, actions, and decisions of the Board and the Township resulting in the deprivation of Plaintiffs' rights were arbitrary, capricious, unreasonable, and a manifest abuse of power.

31. Whether the actions of the Defendants and their officials, officers, employees, and agents, regarding Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 were not logically or legally supportable, were arbitrary, capricious and unreasonable, were an abuse of discretion, and

Honorable Peter G. Geiger, J.S.C.

Page 22

January 13, 2023

constitute a denial of the property and liberty rights of the Plaintiffs under color of state law and in violation of the Constitution of New Jersey and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. (the “NJCRA”).

**DISCOVERY**

Plaintiffs intend to discuss the scope and time to complete discovery at the January 20, 2023 case management conference, in accordance with R. 4:69-4.


**EXHIBITS**

Plaintiffs’ List of Exhibits for Trial will be submitted concurrently with Plaintiffs’ Trial Brief.

Thank you for Your Honor’s consideration of this matter. We look forward to meeting with Your Honor on January 20, 2023.

Respectfully submitted,

HEROLD LAW, P.A.

By:   
Robert F. Simon, Esq.

RFS:kas

cc: Kevin P. Kelly, Esq. (via eCourts and e-mail)  
Christos J. Diktas, Esq. (via eCourts and e-mail)  
David M. Repetto, Esq. (via eCourts and e-mail)