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MICHAEL AKERMAN; GEORGINA B. ASANTE; YAW ASANTE; DANIEL BELLIN; RENA DONIN SCHLUSSEL; YARON HIRSCHKORN; RACHEL KAYE; ASHIRA LOIKE; MERYL MARK; JOSEPH MARK; ALAN RUBINSTEIN; DAVID SCHLUSSEL; MERYL MARK, JOSEPH MARK; MARC SCHLUSSEL; and SHORANA SCHLUSSEL,

Plaintiffs,

vs.

TOWNSHIP OF TEANECK and TOWNSHIP OF TEANECK PLANNING BOARD,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-2234-22
DOCKET NO. BER-L-4361-22
Civil Action

**TEANECK PLANNING
BOARD
STATEMENT OF
FACTUAL AND
LEGAL ISSUES
PURSUANT TO RULE
4:69-4**

Defendant, Planning Board of the Township of Teaneck (hereinafter “Planning Board”), a municipal entity of the County of Bergen, State of New Jersey, doing business at, New Jersey, by their attorneys, hereby submits the following Statement of Factual and Legal issues pursuant to Rule 4:69-4:

1. Statement of the Actions

This matter consists of two separate actions in lieu of prerogative writ (Docket Nos. BER-L-2234-22 and BER-L-4361-22), and both concern the Township of Teaneck's ("Teaneck") amendment of its Master Plan and the adoption of various Ordinances to amend and revise Teaneck's Development Regulations and Zoning Ordinance (the "Ordinances"), regarding the expansion of the Township's Hospital "H" Zoning District (the "Hospital Zone"). Plaintiffs are Teaneck residents who own property around or near the Hospital Zone.

The Hospital Zone contains real property owned and/or controlled by Holy Name Medical Center, Inc. ("Holy Name"). The property is identified on the Tax Maps of Teaneck 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. Holy Name's existing hospital facilities are located within the Hospital Zone. Since 2007, the Township's Master Plan and Reexamination Reports has acknowledged the community's need for a more modernized and expansive facility than presently exists.

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On August 11, 2020 the Township Council referred the issue to the Planning Board for study, in connection with a re-examination of the Township's Master Plan pursuant to N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-28. The governing body authorized the Township Planner to make recommendations to the Planning Board for revisions of the Township's Master Plan and zoning ordinance, including goals, parameters and

criteria, to meet this important community need. (Resolution 159-2020 and Resolution 160-2020).

The Township Planner's recommendations were set forth in a report dated December 2021, proposed as an Amendment to the Land Use Element of the Township of Teaneck Master Plan. The proposed Amendment recommended the expansion of the boundaries of the Hospital zone to incorporate certain properties already owned by Holy Name or companies it controlled. The plan recommended the vacation of a section of a street in Teaneck called Chadwick Road, which is located in the Hospital zone. The Planner recommended an amendment of the zone's use and bulk standard and the established design guidelines to govern the construction within the zone. A public hearing on the proposal was conducted by the Planning Board on December 16, 2021 and thereafter, the proposed amendment was approved.

On February 22, 2022 the Township Council introduced Ordinance 9-2022 amending and revising the Township's Development Regulations and Zoning Ordinance to re-zone those properties within the Hospital zone area identified in the Amendment to the Land Use Element of the Master Plan. In compliance with the MLUL, a referral of the ordinance was made to the Planning Board and a hearing was conducted on March 10, 2022. After same, the Planning Board determined the Ordinance to be consistent with the goals and objectives of the Township's Master Plan and reported this to the governing body by way of a letter dated March 14, 2022. The Plaintiffs allege the Board was arbitrary, capricious in its actions which are claimed to violate the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., ("OPMA"), the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), the Local Government Ethics Law, N.J.S.A. 40A:9-

22.1 *et seq.* (the “LGEL”), and the Township Code of Ethics (the “Code of Ethics”). Ultimately, Plaintiffs simply disagree with the decision of the Board.

Plaintiffs challenge to the validity of the action of the Planning Board’s actions on March 10, 2022, alleging that two Board members participated in the meeting despite having disqualifying conflicts of interest, in violation of the MLUL, the LGEL, and the Code of Ethics.

The Defendant Board disputes all of the factual allegations of Plaintiffs, as well as Plaintiffs legal arguments. The Board acted at all times in good faith, and within the limits of its authority. The Board was not arbitrary or capricious and complied with all applicable laws.

Plaintiffs allege that Class III Member, Mark J. Schwartz (“Schwartz”) is Second Deputy Mayor of the Township, a Member of the Council, and was a Member of the Holy Name Medical Center Subcommittee and a 19-year Member of the Teaneck Volunteer Ambulance Corp (“TVAC”). Plaintiffs claim that the adoption of Ord. 9-2022 will directly benefit TVAC. They claim that on or about July 8, 2020, Holy Name and the Township issued a joint press release that disclosed a plan agreed to by Holy Name and the Township to expand the hospital and Holy Name agreed to donate monies to TVAC for TVAC equipment and supplies. They claim that the Joint Press Release disclosed, that Holy Name will make the Township’s annual \$70,000 contribution to TVAC for a ten-year period.

They also claim that Schwartz is a Member of the Board of Directors of Yavneh Academy & Talmud Torah of Paterson (“Yavneh”). They allege that on December 29, 2017, Yavneh purchased real property located 75 Chadwick Road, Teaneck, New Jersey

07666 (the “Yavneh Property”), for a purchase price of \$600,000.00. In July of 2020 Holy Name purchased the Yavneh Property for \$750,000.00. Plaintiffs claim Schwartz was actively involved in the sale of the Yavneh Property by Yavneh to HNH.

Plaintiffs allege that Kenneth Croonquist, the Board’s Class II Board Member (a Captain in the Teaneck Police Department and a real estate agent) also has a disqualifying conflict. Plaintiffs allege that on or about June 29, 2021, real property at 115 Chadwick Road, Block 3002, Lot 12, was sold for \$465,000 to Holy Name Real Estate Corp. (a subsidiary of Holy Name). Plaintiffs allege that Kenneth Croonquist, was the real estate agent representing Holy Name in the June transaction.

Cronquist and Schwartz each voted for the Master Plan Amendment at the December 2021 Planning Board meeting. In addition, Croonquist and Schwartz each participated on March 10, 2022 in the Board’s discussion of Ord. 9-2022 and subsequently both voted to recommend that Ord. 9-2022 was consistent with the Township’s Master Plan.

Defendant Board maintains that the plaintiffs’ allegations do not establish disqualifying conflicts of interest.

Plaintiffs allege that during the March 10, 2022 hearing, the Board noted recommendations for Ord. 9-2022 which were not incorporated into the March 14, 2022 report to the Governing Body. This allegation is not accurate and the report of the board speaks for itself.

Plaintiffs seek to overturn the adoption of Ord. 9-2022 and challenge the actions at the Teaneck Council on March 15, 2022 in adopting same. The Plaintiffs allege the Council was arbitrary, capricious in its actions and it improperly, and amended the

Ordinance in violation of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., (“OPMA”), the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. (the “LGEL”), and the Township Code of Ethics (the “Code of Ethics”).

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On **August 10, 2022**, Plaintiffs filed a second law suit by way of complaint in lieu of prerogative writ, seeking again to overturn the adoption of Ordinance No. 9-2022 as well as overturning Ordinance Nos. 22-2022 and 23-2022. The second complaint against the Township and the Planning Board was filed by the twelve individuals named as plaintiffs in the first complaint, plus two additional newly named individual plaintiffs.

In this second complaint, Plaintiffs recite the same litany of allegations made about the actions of the Board and Township *vis a vis* the 2019 amendment to the Master plan and adoption of Ordinance 9-2022 articulated in BER-L-4361-22. The complaint also challenges the actions at the Teaneck Council **on May 17, 2022** introduced Ordinance 22-2022 and Ordinance 23- 2022. Ordinance 22-2022, **which repealed** Ordinance 9-2022 and replaced its provisions with those set forth in Ordinance 22-2022. The provisions of Ordinance 22-2022 amended and revised the Township's zoning ordinance and development regulations to expand the boundaries of the hospital zone consistent with the Amendment to the Land Use Element which had been adopted by the Planning Board on December 16, 2021. Ordinance 23-2022 Vacated the aforementioned portion of Chadwick Road located in the expanded Hospital zone.

The Defendant Board disputes all of the factual allegations of Plaintiffs, as well as Plaintiffs legal arguments. The Board acted at all times in good faith, and within the limits

of its authority. The Board was not arbitrary or capricious and complied with all applicable laws.

The second complaint reiterates the conflicts of Schwartz and Croonquist and raises another disqualifying conflict, this time against the Board Attorney Brian Eyerman. Plaintiffs also allege that Mr. Eyerman advised the Board in connection with the Master Plan Amendment, but suffered from a conflict of interest preventing his representation of the Board regarding matters concerning Holy Name due to the employment of his brother, Luke E. Eyerman, M.D. at the hospital. The plaintiffs allege that Eyerman failed to disclose this and drafter the consistency review report concerning no repealed Ordinance 9-2022 and the Master Plan Amendment by letter dated March 14, 2022.

Defendant Board maintains that the plaintiffs' allegations do not establish disqualifying conflicts of interest.

Plaintiffs also allege that the Council referred Ord. 22-2022 and Ord. 23-2022 to the Planning Board as required by N.J.S.A. 40:55D-64, for review and in accordance with N.J.S.A. 40:55D-26(a). The Board failed to undertake its consistency review of both proposed ordinances within 35 days (by June 23, 2022). Plaintiffs claim the Board intentionally permitted the 35-day consistency review period to lapse, despite "ample opportunity" to review the ordinances in question. The Board cancelled the regularly scheduled meeting on May 26, 2022, due to a lack of agenda items. Plaintiffs claim this was false and claim this violates Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.* (the "LGEL"), and the Township Code of Ethics (the "Code of Ethics").

The Defendant Board disputes all of the factual allegations of Plaintiffs, as well as Plaintiffs legal arguments. The Board acted at all times in good faith, and within the limits

of its authority. The Board was not arbitrary or capricious and complied with all applicable laws.

2. The Legal issues before the court are:

- A. Whether the two pending cases ought to be consolidated for purposes of case management and trial.
- B. Whether the claims and issues raised in BER- L-2234-22 have been rendered moot by the enactment of Ordinance 22-2022 and Ordinance 23-2022 and, if not, whether adjudication of any of the claims and issues raised in BER- L-2234-22 should await adjudication of the claims and issues raised in BER- L-4361-22.
- C. Whether the action in BER- L-4361-22 is barred by the applicable statute of limitations.
- D. Whether any of plaintiffs' remaining claims are time-barred.
- E. Whether Plaintiffs have standing to assert claims under Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, (“OPMA”), the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* (the “MLUL”), the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.* (the “LGEL”), and the Township Code of Ethics (the “Code of Ethics”).
- F. Whether Plaintiffs have cognizable claims under Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, (“OPMA”), the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* (the “MLUL”), the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.* (the

“LGEL”), and the Township Code of Ethics (the “Code of Ethics”).

G. Whether any member of the Planning Board (or Mr. Eyerman) challenged by plaintiff had a disqualifying conflict of interest in any of the matters before the Planning board.

H. Whether any member of the Planning Board (or Mr. Eyerman) challenged by plaintiff had a disqualifying conflict which require the invalidation of Ordinance 9-2022 or Ordinance 22-2022 or Ordinance 23-2022.

I. Whether plaintiffs are entitled to an order enjoining challenged members of the Planning Board and Township Council, or any of them, from participating in future official governmental proceedings pertaining to Ordinance 9-2022 or Ordinance 22-2022 or Ordinance 23-2022 or to the property owned by Holy Name Medical Center.

J. Determining the time for and scope of discovery as to the civil rights violation claim of plaintiffs and each of them.

K. Do Plaintiffs claims fall within the contemplation of the statute. (Specifically, the LGEL and Code of Ethics).

L. Whether plaintiffs or any of them suffered a compensable deprivation of legal and/or constitutional rights as a result of proceedings conducted and actions taken by the Planning Board.

M. Whether Ordinance 9-2022, Ordinance 22-2022 and Ordinance 23-2022 and each of them was adopted in accordance

with New Jersey Law.

N. Were the actions of the Board arbitrary and capricious.

3. Settlement Discussions:

It is my understanding that there have been informal efforts by various parties to meet and resolve disputes and counsel for Holy Name and Plaintiff apparently conferred on one occasion once litigation was filed. No formal settlement discussions have occurred between all parties with counsel since litigation commenced. This matter will benefit from Mediation with all parties and corporate decisions makers being required to attend.

4. Exhibits:

This appeal is limited to the record below and the Board Joins in the exhibit list submitted by the Township of Teaneck.

5. Witnesses:

This appeal is limited to the record below and Plaintiffs are each witnesses.

6. Unserved or Unnamed Parties:

None. Holy Name has intervened in this litigation.

7. Related Cases Pending

There is currently an application for site plan approval with Bulk variance relief pending before the Planning Board. The next wetting date is January 26, 2022.

8. Briefing Schedule and Time Required

Time required for trial for the Prerogative Writ Action: one day

Briefing Schedule: As directed by the Court.

9. **Trial Date**

At the Court's direction.

Respectfully submitted,

**KELLY, KELLY, MAROTTA
& TUCHMAN, LLC**
Attorneys for Defendant,
Planning Board of the Township of Teaneck

By: 

Kevin P. Kelly, Esq.

Dated: January 16, 2023

Cc. All counsel of record.
Chairman Bodner