FAIR SHARE HOUSING CENTER, INC.,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, HUDSON COUNTY DOCKET NO. HUD-L-4499-20
Plaintiff,	:	
-vs.-	:	CIVIL ACTION
THE CITY OF JERSEY CITY and THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY,	:	
Defendants.	:	

BRIEF OF AMICUS NEW JERSEY APPLESEED PUBLIC INTEREST LAW CENTER IN SUPPORT OF FAIR SHARE HOUSING CENTER'S MOTION FOR SUMMARY JUDGEMENT

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Michael Manville & Taner Osman, Motivations for Growth Revolts: Discretion and Pretext as Sources of Development Conflict, 16 CITY & COMMUNITY 66, 66 (2017). 32-33

Emily Nonko, Jersey City is Booming but Gentrification Fears Loom Large, CURBED (May 5, 2017). 35

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AMICUS' STATEMENT OF INTEREST

Amicus curiae, New Jersey Appleseed Public Interest Law Center ("New Jersey Appleseed") submits this brief in support of Fair Share Housing Center's ("FSHC") prerogative writ complaint challenging the validity of City of Jersey City Ordinance No. 20-089, "An Ordinance Creating Chapter 187 (Inclusionary Zoning) of the Municipal Code Requiring the Inclusion of Affordable Housing Units in All Development Projects With Residential Which Have Received Use Variances or Increased Density or Height" (the "IZO") on both procedural and substantive grounds. Certification of B. Gergi, Exhibit D (hereinafter "Gergi Cert., ___").

New Jersey Appleseed is a twenty-year old nonprofit legal advocacy organization located in Newark, New Jersey. It has its own advocacy agenda in certain areas of public policy and often represents other nonprofit New Jersey community-based organizations that share its agenda and concerns in litigation. Two of our advocacy areas that are implicated in this matter are Corporate and Government Accountability and Community and Environmental Health.

Specifically, under the area of Corporate and Government Accountability, New Jersey Appleseed operates the Prerogative Writ Project, with respect to which, it has represented numerous community organizations in court actions, when that is the only mechanism for forcing government officials to do what the law

requires. It has also assisted community organizations employ other avenues of advocacy when nonlitigation methods are available to hold government entities accountable to the public, whose interests they are required to serve.

Within the past two years, New Jersey Appleseed has represented PLANewark successfully in ESX-L-008631-17 (challenging the Newark Council's failure to acknowledge that the MX-3 amendment, adopted by the Council, was inconsistent with the Master Plan) and advised Save-32-Acres, an unincorporated member association located in Ocean County, with respect to its challenge to a zoning ordinance amendment based on a procedural defect under the Municipal Land Use Law ("MLUL"), not unlike the procedural challenge (with substantive import) launched in this case.

Under the area of Community and Environmental Health is New Jersey Appleseed's Sustainable and Equitable Local Redevelopment Project, pursuant to which it has represented several environmental organizations and community-based development corporations seeking to vindicate their rights to participate in, and influence the development process.

At this time, New Jersey Appleseed represents Morris Canal Area Community Development Corporation ("MCACDC") in an action pending within the Hudson County vicinage with respect to amendments to a redevelopment plan in Jersey City. Here the City defendant seemingly followed the development process that was

later codified in the IZO, which is currently under challenge in this case. This standardless process permitted a councilman and the Jersey City Redevelopment Agency ("JCRA") to trade housing units affordable to low-income families for community benefits desired by the councilman in private negotiations with a developer. Comment/input requested from the public was only permitted after the deal was already done.

More generally, New Jersey Appleseed has partnered with or has represented nonprofit community organizations, such as Van Vorst Neighborhood Association, Newark Homes for All, Pinelands Preservation Alliance, New Jersey Conservation Foundation and others that advocate in the areas of affordable housing, environmental protection or land conservation. When our goals mesh, New Jersey Appleseed works with such groups as a partner in our shared fight for sustainable, equitable and environmentally sound development.

As a result of NJA's aforementioned advocacy activity, mission and guiding principles, as well as its current representation of the MCACDC, New Jersey Appleseed is intimately involved in the subject matter of this litigation and has a special interest therein.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus New Jersey Appleseed incorporates Plaintiff FSHC's statement of facts and procedural history as set forth in its Statement of Undisputed Material Facts ("SUMF"), ¶1-¶71, dated June 25, 2021. We highlight the following undisputed facts that pertain to our argument:

--- Ordinance No. 20-089 was introduced by the Jersey City Municipal Council (the "Council") on October 7, 2020, at a regularly scheduled meeting. SUMF, ¶15.

--- As stated in the "WHEREAS" clauses, the statutory authority for Ordinance No. 20-089 is: the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 *et seq.*; the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 *et seq.*; and the Local Housing and Redevelopment Law ("LHRL"), N.J.S.A. 40A:12A-1 *et seq.* Gergi Cert., Ex. D.

--- There is no mention in any WHEREAS clause, which prefaces Ordinance No. 20-089, that the ordinance is related to, based on, or materially similar to an inclusionary zoning ordinance (amending and supplementing Chapter 345) proposed and approved by the Jersey City Planning Board ("Planning Board" or "Board") on May 7, 2019 (memorialized on May 21, 2019), one month after the Board approved its Master Plan Re-examination report, dated April 9, 2019. Ibid.

--- Ordinance No. 20-089 was not referred by the Council to the Planning Board for consistency review with the City's Master Plan. SUMF, ¶18.

--- Ordinance No. 20-089 was adopted on October 21, 2020 by the Council a mere fourteen (14) days after it was first introduced. SUMF, ¶26 & 27.

--- The Council adopted the ordinance after more than four hours of public criticism and opposition from dozens of speakers; however, the Council did not consider any report or recommendations prepared by the Planning Board and transmitted to the Council regarding the proposed Ordinance, or any other proposed inclusionary zoning ordinance. SUMF, ¶27 & 29; Certification of Bassam F. Gergi, Esq., Attaching Transcript of October 21, 2020, Jersey City Council Meeting, dated July 27, 2021. ("Gergi Cert. 1T:__")

--- Ordinance No. 20-089 grants Jersey City's municipal officials absolute discretion to trade away affordable housing as blatant quid pro quo agreements with favored developers. SUMF, ¶P41.

--- In Section 187-8, the ordinance states that the requirements of the ordinance "may be waived by the City Council." SUMF, ¶49. This section does not have any standards or criteria governing whether or when housing set-asides could be waived. Id., ¶50.

--- The ordinance also empowers the "Approving Authority," in "consult[ation] with the Councilperson for the ward in which 9a reduction in the mandatory on-site affordable units. ¶54. Specifically, in Section 187-6, such reduction should be "relative to the value of community benefits proposed by the developer . . . for projects in a redevelopment area." Id., ¶57. However, Section 187-6 does not limit what could be deemed an eligible "community benefit," Id., ¶59; set forth criteria to guide or govern when or why a "community benefit" in lieu of affordable housing units would be appropriate, Id., ¶62; or require the community benefit to be on-site, proximate to the proposed development or even within the redevelopment area.

These provisions are not authorized by the MLUL, LHRL, FHA, on which they are based, and thus are void as a matter of public policy.

PRELIMINARY STATEMENT

For several years, Jersey City residents have seen their municipal officers undertake a development process that has appeared to become more and more political, with individual deals being made between favored developers and council members, the JCRA and other administrative officials prior to disclosure to the public and any request for community input. Negotiations are held, redevelopment plans are amended to accommodate the deals struck by the municipal government behind closed doors, and the

comprehensive planning that is required by the MLUL (which on paper involves participation by the public) has given way to ad-hoc decision-making resulting, among other things, in the rapid change in the character of neighborhoods, increasing housing-cost burdens and gentrification.

Ostensibly to meet the growing demands of several community-based organizations (representing the economic and racial diversity of Jersey City residents) and to mandate the creation of affordable housing, the City has enacted the IZO at issue herein to codify this de facto politically saturated (re)development process. Pursuant to the IZO, an alleged mandatory 20% affordable housing requirement may be whittled down to a "minimum of five percent (5%)" affordable units on-site, with the other fifteen (15%) permitted to be "off-site, payments in a lieu and community contributions." SUMF, ¶¶52-53. And, this minimum requirement can be waived in its entirety, id., ¶49, with no statutory authority or standards guiding any decision to do so. As a result, the process is a sham; a shameful attempt to legalize an inherently unfair, irrational development process that is a breeding ground for corruption and is void as a matter of public policy and under the demands of due process. See Hoboken Land Buildings, L.P. v. City of Hoboken, Docket No. HUD-L-4580-18 (March 26, 2019)(standardless exaction of community benefits is ripe for "fraud and abuse in negotiations"); Gergi Cert., Ex. U.

Moreover, to avoid proper analysis and public discussion of the IZO by the Planning Board, the City Council effected its approval in haste, without referring the ordinance to the Planning Board for a determination of consistency with the Master Plan, recommendations, and a report, as the Council was required to do. By failing to refer the ordinance to the Planning Board prior to its adoption on second reading, as mandated by N.J.S.A. 40:55D-26 and -64, the City Council also avoided a full consideration of the IZO's merits at the time of adoption, in accord with the Council's duties as imposed by the plain language of the MLUL and the "spirit of municipal planning." Hasbrouck Heights Hospital Ass'n v. Hasbrouck Heights, 15 N.J. 447, 453 (1954). The lack of a referral constitutes a material violation of N.J.S.A. 40:55D-26(a) also rendering the ordinance void.

LEGAL ARGUMENT

POINT I

DEFENDANT'S FAILURE TO REFER ORDINANCE NO. 20-089 TO THE PLANNING BOARD CONSTITUTES A FATAL PROCEDURAL DEFECT WITH SUBSTANTIVE IMPORT.

Ordinance No. 20-089 is a land use and development regulation that by its terms is governed by the MLUL, LHRL and the FHA. In accord with N.J.S.A. 40:55D-26(a), such an ordinance is required to be referred for analysis and consideration to the Planning Board, including a determination of consistency with the Master Plan. Regardless of its name (inclusionary zoning or mandatory

affordable housing set-aside) or location within the Jersey City Municipal Code (placement within the Code's Zoning Chapter or elsewhere), Ordinance No. 20-089 is intended as a modification of the land use process, implicates the MLUL process and therefore is subject to the MLUL's procedural and substantive requirements.[1]

On its face, the Council's statutory obligation to refer a zoning or development ordinance to the Planning Board for analysis and recommendation and to consider the Board's report prior to adoption appears to be procedural only. But the central role that a planning board plays in ensuring the coherence of the comprehensive master plan imbues this procedural duty with substantive import. Thus, a violation of this obligatory referral and review constitutes a material breach of duty, rendering Ordinance No. 20-089 void.

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[1] At the time of adoption of the IZO, Counsel to the Council, Nick Strasser, stated:

> This is not an amendment to Chapter 345 which is our zoning ordinance, it's an independent chapter of Chapter 187, which is actually a vacant chapter, right before the affordable housing chapter, where we put it. And as it is not an amendment to our zoning, it would not need to go before the Planning Board.

Gergi Cert., (1T:155-33 to 156:1). At the same time, Mr. Strasser additionally stated that the ordinance in fact "did not go before the Planning Board." (1T:156-20) Jersey City has now reversed its position with respect to both the duty to refer and whether referral took place. The latter reversal, however, is not credible and is nothing more than sophistry.

The record as set forth in Plaintiff FSH's Statement of Undisputed Material Facts indicates that the City's failure to refer the IZO to the Planning Board was not a mere oversight; but rather, demonstrates a deliberate intention to avoid the analysis of the Planning Board, any additional public hearings that the Planning Board was likely to have held, as well as the additional scrutiny of the many Jersey City residents who opposed this IZO. The IZO deserves to be defeated, and Defendant needs to start the legislative process anew.

A. THE PLAIN LANGUAGE OF THE STATUTE LEAVES NO DOUBT THAT REFERRAL OF ORDINANCE NO.20-089 IS MANDATORY.

N.J.S.A. 40:55D-26(a), entitled *Referral Powers*, states in relevant part:

> Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation. [emphasis added]

N.J.S.A. 40:44D-64, *Referral to the Planning Board*, specifically applies to zoning ordinances and incorporates the process set forth in N.J.S.A. 40:55D-26(a) (L.1975, c.291, s17a,

effective August 1, 1976), rendering the referral requirement one and the same for all land use and development regulations governed by the MLUL. It reads in its entirety:

> Prior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to subsection 17a. of this act.
> [N.J.S.A. 40:55D-64 (emphases added)][2]

One of the central questions posed in this case is whether the referral requirement is mandatory, or can a governing body waive it, as the Jersey City Council effectively did in this case.[3]

---

[2] The LHRL includes a nearly identical referral requirement prior to the adoption by the governing body of a redevelopment plan or revision or amendment thereto. It states, in part:

> Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a redevelopment plan or revision or amendment thereof, shall review the report of the planning board and may approve or disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following the recommendations.
> [N.J.S.A. 40A:12A-7(e)(emphasis added)]

[3] Both the MLUL and the LHRL permit the governing body to adopt a zoning ordinance or redevelopment plan amendment without considering a report prepared by the Planning Board only if the Planning Board does not transmit such a report within 35 or 45 days, respectively, to the governing body after it had been

Our answer is no: the language of the relevant provisions of the MLUL are clear, and the Council had no choice but to follow the procedural requirements set forth in the MLUL.

It is axiomatic in New Jersey that municipalities do not independently possess the power to zone, that their authority to regulate land use generally is restricted to the powers delegated to them by the Legislature, and that strict compliance with substantive and procedural statutory requirements is required to render municipal action valid. See e.g., Shipyard Assoc., L.P. v. City of Hoboken, 242 N.J. 23,41 (2020) (a municipality's zoning powers must be "exercised in strict conformance" with the requirements set forth in the MLUL, i.e., "the delegating enactment"); Riggs v. Twp. of Long Beach, 109 N.J. 601, 610-612 (1988)(failure to comply with statutory and municipal procedural requirements renders land use ordinance invalid); Hasbrouck Heights Hospital Ass'n v. Hasbrouck Heights, supra, 15 N.J. at 455 (where the exercise of the zoning power "not within contemplation of the Legislature must be restrained within proper bounds and be held void"); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 324 (App. Div. 1996) (finding that a municipality has

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referred by the council. Since Jersey City did not refer Ordinance No. 20-089 to the Planning Board after first reading, there is not an issue as to whether the Planning Board failed to produce a report, with recommendations, in a timely fashion thus excusing the Council's failure to consider the Board's report.

"no power to circumvent . . . statutory and municipal procedural safeguards" when it comes to land use and development regulations).

The duty of the governing board to refer a development or zoning regulation to the Planning Board, and to consider the Planning Board's report and recommendations prior to adopting such ordinance predates the MLUL, and is in fact a longstanding established practice. See Hasbrouck Heights Hospital Ass'n v. Hasbrouck Heights, supra, 15 N.J. at 454 (discussing identical requirement found in Zoning Act post-1948). In addition to its longevity, the referral requirement is relatively routine.[4] And its routine nature makes lack of referral the exception. See EL at Jackson, LLC v. Township of Jackson, Docket No. OCN-L-1398-20 (and consolidated actions) (February 24, 2021) (where township failed to comply with N.J.S.A 40:55D-26(a) only because it erroneously deemed a development ordinance, which was subject the MLUL, to be

[4] The routine nature of such referral is demonstrated by the fact that FSHC was in possession, at the time this litigation commenced, of at least two such notices, which it had received as part of its ordinary legal practice. Resolution No. 2020-115 (Asbury Park) Authorizing Referral to the Planning Board of Various Affordable Housing Ordinances and Amendments to the Zoning Ordinance . . . To Effectuate the City's Adopted 2019 Third Round Housing Element and Fair Share Plan, along with a proposed Revised Official Map and Legal Notice of Introduction of Ordinance No. 2019-63 (Township of Parsippany-Troy Hills), An Ordinance to Amend Chapter 430 Entitled "Zoning" . . .to Establish Mandatory Affordable Housing Set Aside Requirement. These notices are attached to the Verified Complaint as Exhibits B and C, respectively.

an environmental ordinance outside its ambit) See Gergi Cert., Ex. T.

Though routine in nature, the governing body's duty to refer a development ordinance to the Planning Board for analysis, recommendation and report, and its obligation to consider such recommendations prior to adoption of the ordinance is neither simple or casual. Indeed, in Hasbrouck Heights Hospital, the N.J. Supreme Court held that an ordinance that would have prohibited the use of any building as a hospital was invalid for failure to properly refer it to the Planning Board, even though the Board had held a meeting, at which time the ordinance had been discussed. The Court found fault with the informal nature of the borough's referral and the Planning Board's discussion of the ordinance, which was done without proper notice to the public. The Court noted:

> The borough clerk's testimony and the minutes of the governing body and the planning board show that the ordinance was not submitted to the planning board, even informally, prior to first reading; that it was not officially referred by the governing body to the planning board prior to the second reading; and that the purported approval by the planning board was not officially reported by it to the governing body either orally or in writing. No minutes of an order for transmission appear in the minutes of the planning board and no minutes of the governing body recite receipt of any report on this ordinance from the planning board. Under these circumstances the presumption of validity of the enactment of the ordinance is overcome.
> [Hasbrouck Heights Hosp. Ass'n v. Hasbrouck Heights, supra, 15 N.J. at 455]

Based on the above set of facts and its interpretation of the statute, the Court found the referral process to be "fatally defective," and set aside the ordinance. Id., at 452. In doing so, the Court admonished that "[a] statute should not be construed to permit its purpose to be defeated by evasion." Id. at 453.

Similarly, in a case decided under the MLUL, the Appellate Division invalidated an ordinance that would have added multifamily dwellings and structured parking as conditional uses in a mobile home district for failure to strictly comply with the procedural requirements of N.J.S.A. 40:55D-26(a) and -64. In Jennings v. Borough of Highlands, 418 N.J. Super. 405 (App. Div. 2011), the governing body, after introducing the ordinance, directed the planning board to review the ordinance and provide recommendations. The board subsequently held properly noticed hearings, discussed the proposed ordinance and adopted a resolution making findings and proposing significant changes to the ordinance. Id. at 412-13. After receiving the board's report advising against adoption of the ordinance without changes, the governing body discussed the report and then voted unanimously to reject the ordinance. Id. at 413.

However, this unanimous "no" vote was found to be invalid due to a defective meeting notice. As a result, approximately four months later, the ordinance was revived, and public notice of a third governing body hearing on the ordinance was issued.

Id. at 413-14. At the third meeting, the ordinance was adopted; however, there was no "specific discussion by the governing body about the Planning Board's report and recommendations." Id. at 415.

The Appellate Division held that "the governing body's failure to review the report and recommendations of the Planning Board pursuant to N.J.S.A. 40:55d-26(a)" at the time of adoption was an "abdicat[ion of] its duty to legislatively review the Planning Board's handiwork" and that "[t]his willful disregard is contrary to the MLUL." Id. at 423. According to Judge Harris, the MLUL "impose[s] a mandatory duty upon a governing body to "review the report of the planning board" and that "[s]tray references to the existence of the report of the Planning Board do not suffice . . . [for] the obligatory review." Id. at 424. And similar to the N.J. Supreme Court in Hasbrouck Heights Hospital, he called the deliberate failure to accept, change or reject any part of the planning boards' recommendations prior to adoption a "fundamental[] defect in the municipal proceedings." Id. at 409. Judge Harris strongly concluded:

> [W]e believe that members of a governing body acting pursuant to N.J.S.A. 40:55d-26(a) owe an implied duty under the MLUL to at least acknowledge that they reviewed the planning board's report. The record in this case provides us little confidence that any review occurred. Moreover, we believe that a remand to the governing body would be futile -- a vain effort to backfill the missing acknowledgment, and we decline to order a do-over. [Id. at 424-25 (emphasis added)]

Based on the opinions in Hasbrouck Heights Hospital and Jennings, this court must conclude that the process employed by Jersey City was materially and fundamentally flawed. The language of N.J.S.A. 40:55D-26(a) does not support any notion of a "waiver" of the referral requirement, nor the ability of a governing body to point to a previous planning board report that was issued with respect to a different ordinance to satisfy its obligations to refer and consider the planning board's recommendations prior to the adoption of a zoning ordinance. The fact that the Jersey City Planning Board had discussed, approved and issued a report regarding a substantially different inclusionary zoning ordinance in April, 2019 does not justify the Council's deliberate failure to refer Ordinance No. 20-089 to the Planning Boarding for review in October 2020.

Strict compliance with the plain language of the statute requires formal review and direct engagement with the recommendations of the planning board at the time of adoption - nothing more and nothing less. Jersey City's willful disregard of this procedural requirement is fatal to the validity of the ordinance.

B. THE RESPONSIBILITY OF THE PLANNING BOARD TO ENSURE CONSISTENCY OF ZONING AND OTHER DEVELOPMENT ORDINANCES WITH THE MASTER PLAN JUSTIFIES THE PROCEDURAL REFERRAL REQUIREMENT AND REQUIRES THE CITY COUNCIL TO CONSIDER THE BOARD'S FINDINGS PRIOR TO THE ADOPTION OF SUCH AN ORDINANCE.

Although it is the mandatory obligation of the governing body to refer a development regulation or land use/zoning ordinance to the planning board for analysis and to review the board's report, it is the central role of the planning board in implementing the comprehensive master plan that justifies these procedural requirements found in N.J.S.A. 40:55D-26(a) and -64. The essential role planning boards play in providing the expertise necessary to ensure that the goals of the MLUL are attained and achieving uniformity of procedure throughout the State in zoning matters imbues the procedural requirements of N.J.S.A. 40:55D-26(a) and -64 with substantive import that compels strict compliance with these provisions.

Prior to the enactment of the MLUL in 1976, New Jersey courts acknowledged that zoning ordinances were not like "any" other ordinance (for purposes of determining whether voters could initiate such ordinances or seek their repeal through the referendum process) primarily due to the role of the planning board in drafting, analyzing and implementing such land use ordinances.

First raised in Smith v. Township of Livingston, 106 N.J. Super. 44 (Ch. Div. 1969), the Chancery Division, after reviewing

judicial decisions in several other states, concluded:

> If [a city council's] action may be nullified by a referendum, then the comprehensive master plan becomes a nullity and every change of classification of property made by the city council will be subject to the whims of the electors without regard to the master plan.
> [Id. at 455 (cases omitted)]

And, the court further noted that the planning board's role in ensuring consistency with the master plan is central to its holding denying voters the right to initiate a zoning ordinance. It wrote:

> The Legislature, in enacting [the initiative provisions] the Faulkner Act, did not intend to impliedly supersede the specific procedure for amending a zoning ordinance prescribed in the Zoning Act. A contrary conclusion would disregard the valuable expertise of the planning board, and permit the electorate to defeat the beneficent purpose of the comprehensive zoning ordinance.
> [Id. at 457 (emphasis added)]

Four years later, the Appellate Division in Township of Sparta v. Spillane, 125 N.J. Super. 519 (App. Div. 1973) addressed a similar issue, but in the context of the right to repeal a zoning ordinance through a referendum vote. The court again based its decision on planning principles, the need for uniformity among municipalities in this area of regulation, and the expertise provided by planning boards. Specifically, the court wrote:

> Zoning is intended to be accomplished in accordance with a comprehensive plan and should reflect both present and prospective needs of the community. See Rudderow v. Mt. Laurel Tp., 121 N.J. Super. 409 (App. Div. 1972); Bellings v. Denville Tp., 96 N.J. Super. 409 (App; Div. 1967). Among other things, the social, economic and

> physical characteristics of the community should be considered. The achievement of these goals might well be jeopardized by piecemeal attacks on the zoning ordinances if referenda were permissible for review of any amendment. Sporadic attacks on a municipality's comprehensive plan would tend to fragment zoning without any overriding concept. That concept should not be discarded because planning boards and governing bodies may not always have acted in the best interest of the public and may not, in every case, have demonstrated the expertise which they might be expected to develop. [Id. at 535-526]

There is little doubt that the Legislature codified these judicial precedents when enacting the MLUL in 1976[5] and amending the LHRL in 1992[6] to prohibit voters from either initiating or repealing zoning ordinances and all matters governed by the LHRL through a referendum vote. The Legislature, like the courts, were thus solicitous of the special role planning boards were intended to play in the municipal land use and development process, and recognized the need for minimal interference from the electorate.

Indeed, the Legislature, through the MLUL, authorized municipal governing bodies to establish planning and zoning boards to assist them in the performance of functions in the land use and development area and laid down very specific and detailed

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[5] N.J.S.A. 40:55D-62(b)("No zoning ordinance and no amendment or revision to any zoning ordinance shall be submitted to or adopted by initiative or referendum.")

[6] N.J.S.A. 40A:12A-28("No ordinance, amendment or revision of an ordinance, or resolution under this act shall be submitted to or adopted by initiative or referendum, notwithstanding any other law to the contrary.")

procedures to be followed by all governmental bodies in carrying out such functions. Such comprehensive and precise treatment demonstrates the special concern of the Legislature in this area or municipal regulation, and requires strict adherence to procedural requirements, such as the governing body's referral and obligatory review requirements set forth in N.J.S.A. 40:55D-26(a), which are certainly of substantive import, and cannot be treated lightly.

POINT II

ORDINANCE NO. 20-089 UNLAWFULLY ENABLES JERSEY CITY TO SELL LAND-USE APPROVALS TO THE HIGHEST BIDDER.

The Jersey City Council adopted Ordinance No. 20-089 under the auspices of maximizing new opportunities for affordable housing for low- and moderate-income families. That is not what it ultimately accomplishes. Instead, the IZO unlawfully grants the City's officials the power to engage in backroom negotiations with favored developers to trade away required affordable housing on a case-by-case basis.

This type of ordinance, which in many ways is unique in New Jersey, flies in the face of well-established precedent that holds that the purpose of inclusionary zoning is to provide affordable housing for the most vulnerable in the State.

The Jersey City Council has not enacted an ordinance aimed at the salutary end of providing affordable housing. Rather, without

statutory authority, it has adopted one that allows the City to treat favored developers differently based on connection and clout and enables the extraction of payouts from unfavored developers for potentially corrupt personal gain. Two sections of the ordinance particularly undermine any argument that Jersey City is authorized to enact this ordinance.

First, section 187-8 states that "[t]he terms of the Chapter may be waived by the City Council." SUMF, ¶49. And, it does not establish any criteria or guidelines to govern that waiver. In other words, it is totally standardless.

Here, the City Council has unconstitutionally given itself the absolute discretion to choose winners and losers in the development process with no objective criteria to be considered. By adopting an inclusionary zoning ordinance with such a standardless waiver, the Jersey City Council has violated the federal and state due process clauses, which both prohibit vague statutes. U.S. Const. amend. XIV § 1; N.J. Const. art. 1, para. 1. The Council has violated such clauses by delegating to itself the unconstrained ability to remove affordable housing requirements for connected developers in sweetheart deals or to arbitrarily impose them on disfavored builders.

As the United States Supreme Court has held, such standardless provisions are impermissibly vague "in the sense that no standard of conduct is specified at all." Coates v. City of Cincinnati, 402

U.S. 611, 614 (1971). Ordinances of this kind are unconstitutional, in part, because they enable arbitrary and corrupt decision-making.

Second, section 187-6 of the IZO states that "[t]he Approving Authority is permitted to approve a reduction in the mandatory on-site Affordable Housing requirement relative to the value of community benefits proposed by the developer." SUMF, ¶47. This provision allows the City's officials to engage in freewheeling negotiations to trade away affordable housing on a case-by-case basis for an unlimited array of off-tract improvements that typically do not assist low- or moderate-income individuals in need of an affordable home.

The New Jersey Supreme Court has repeatedly rejected this approach holding that nowhere has the State Legislature delegated to municipalities the authority to adopt ordinances that pressure developers into deals for "community benefits" at the expense of the construction of new affordable homes.

A. ORDINANCE NO. 20-089'S STANDARDLESS WAIVER PROVISION VIOLATES THE DUE PROCESS CLAUSE'S PROHIBITION ON VAGUE STATUTES AND COULD FUEL AN ENVIRONMENT OF CORRUPTION.

Section 187-8 of the ordinance facially violates due process on grounds of vagueness because it lacks any standard for guiding the exercise of discretion. The Jersey City Council has granted itself the unchecked power to waive the ordinance's affordable

housing requirements for any developer, for any reason, at any time, and to impose it only when it so desires. The judiciary has consistently ruled that legislative bodies may not create this type of standardless discretionary authority because it enables impermissible discrimination and corruption.

The U.S. Supreme Court has interpreted the due process clause to bar such "vague" statutes that contain provisions that "are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108, (1972). This doctrine "addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012).

With the second type of due-process concern, if an ordinance is "so standardless that it authorizes or encourages seriously discriminatory enforcement" or arbitrary decision-making, courts must void the ordinance for vagueness. United States v. Williams, 553 U.S. 285, 304 (2008) (emphases added). The vagueness doctrine has been developed against standardless provisions in statutes because it has long been recognized that when governing bodies have standardless discretion, the door to corruption and discrimination is opened wide.

As the Chief Judge of New Jersey's federal district courts has explained, such an arrangement is fundamentally unsound because decision-makers may impermissibly favor or disfavor certain groups using arbitrary factors -- "from the name of an applicant's business or a disagreement with a separate zoning ordinance to cronyism, economic protectionism, ethnic or racial bias, or a preference for a particular religion." Rosedale & Rosehill Cemetery Ass'n v. Twp. Of Reading 510 F. Supp. 3d 250, 273 (D.N.J. 2020).

Indeed, in Rosedale, this doctrine was specifically applied in the context of land-use. There, the court ruled that subsection (a) of the New Jersey Cemeteries Act was unconstitutional because "it places no boundaries on [a] Township's power to grant or withhold consent [for the approval of new cemeteries] and, to that extent, vests Township[s] with unfettered discretion." Id. at 273. The lack of standards for granting land-use approvals meant that the court, "with little effort," could "formulate dozens of arbitrary and/or improper reasons why the Township might" abuse its power. Ibid. Thus, the statute was just the type that was prohibited under the vagueness doctrine.

The court in Rosedale chose not to sever the standardless waiver and instead invalidated the entire statute. It did so because "the objectionable feature of the statute [could not] be exercised without substantial impairment of the principal object

of the statute." Id. at 277 (quoting Affiliated Distillers Brands Corp. v. Sills, 60 N.J. 342, 345 (1972)).

Like in Rosedale, the Jersey City Council has adopted a local ordinance that places no boundaries on its own power to grant or withhold a waiver of the IZO and, to the contrary, gives itself unfettered decision-making authority. Simply put, this is unlawful and unconstitutional. "Due process requires more," and municipal governments "must make decisions based on some ascertainable standard, not just for any reason or no reason." Id. at 273. Ordinances that give power to officials' "wholly subjective judgments," United States v. Williams, supra, 553 U.S. at 306, are void when officials may "condem[n] all that [they] personally disapprove and for no better reason than that [they] disapprove it." Jordan v. De George, 341 U.S. 223, 242, (1951) (Jackson, J., dissenting). This is exactly the sort of power the Jersey City Council has granted itself over developers through the enactment of the IZO.

The standardless nature of Jersey City's waiver is particularly egregious because it would allow and encourage not just arbitrary decision-making, but could also fuel corruption. As one commenter at the public hearings held on the Ordinance stated, this is "a pay to play disaster waiting to happen." Gergi Cert., (1T:53-4). This fear of corruption is justified and one can, with

little effort, formulate dozens of arbitrary and/or improper reasons why the City's elected officials might abuse its power.

As a result, Ordinance No. 20-089 should be held void because U.S. Supreme Court precedent has consistently recognized that standardless laws that are open to abuse, such as the waiver provision herein, are unconstitutional and unlawful.

B. ORDINANCE NO. 20-089'S PROVISION ALLOWING DEVELOPERS TO PROVIDE "COMMUNITY BENEFITS" IN LIEU OF AFFORDABLE HOUSING UNITS IS ULTRA VIRES.

Section 187-6 of the IZO, which allows for developers to provide so-called "community benefits" in lieu of affordable housing, is also impermissible. No statutory authority exists that allows Jersey City to enact an inclusionary zoning ordinance that gives officials negotiating redevelopment deals the ability to trade affordable housing for any other public improvement the City wants instead. While municipalities may require developers to set aside a percentage of new residential construction as affordable housing, this does not mean that the governing body may leverage affordable housing requirements to exact, on a case-by-case basis, an endless array of off-tract benefits from developers.

Affordable housing set-asides are permissible "because they are specifically designed and applied to aid in the creation of affordable residential housing," which is a major public policy goal for the state of New Jersey. Holmdel Builders Ass'n v.

Holmdel, 121 N.J. 550, 569 (1990); S. Burlington Cty. NAACP v. Mount Laurel, 92 N.J. 158, 271 (1983) (Mount Laurel II). Even in-lieu payments are only allowed when the money collected is used "for creating more affordable-housing units." See Holmdel Builders Ass'n, supra, 121 N.J. at 565.

Recognizing that it has no authority to explicitly exact unlimited off-tract benefits from developers, the Jersey City Council decided to frame Ordinance No. 20-089 as an inclusionary zoning law to piggyback off the public policy allowance for mandatory affordable housing set-asides to secure what it otherwise would not be allowed to demand from developers. While members of the City Council have stated that the ordinance is an attempt to maximize opportunities for the construction of affordable housing, the truth is that the affordable housing contemplated in the ordinance is being used as a bargaining chip to leverage developers in order to illegally extract whatever benefits the elected officials choose to demand.

Researchers have found that when municipal governments are given the chance to engage in the type of free-wheeling and standardless negotiations enabled by this waiver provision, a political patronage system tends to develop.

A study from Ontario, Canada, for example, details that when granted the discretion to haggle with developers over exactions without clear standards, elected officials bargained mainly for

"desirable visual amenities" like parks, roads, streetscapes, and public art rather than benefits that would specifically improve the lives of low-income people. The study explains that,

> [a]s with cash payments, these very visible amenities represent a kind of political patronage in which a councillor requests that a developer provide a specific benefit that reflects the desires of ward residents. In the case of both cash payments and in-kind benefits, the councillor's actions are public and legal. Yet, the true beneficiaries are local councillors and existing neighbourhood residents.
>
> [Stanley Makuch & Matthew Schuman, Have We Legalized Corruption? The Impacts of Expanding Municipal Authority Without Safeguards in Toronto and Ontario, 53 OSGOODE HALL L. J., 301, 324 (2015).]

Unconstrained discretion does not just create a climate that tends to support political patronage, it also drives explicit cash-based quid-pro-quo corruption.

Globally, researchers have determined that "corruption in the public sphere requires the co-presence of three 'structural' fundamental elements," one of which is discretion. Francesco Chiodelli & Stefano Moroni, Corruption in Land-Use Issues: A Crucial Challenge for Planning Theory and Practice, 86 TOWN PLANNING REV. 437, 441 (2015). The other two necessary elements are the presence of high economic rents and the possibility for government officials to profit from unlawful transactions. Id. at 441-42. All three of these factors are present in Jersey City, where developers are clamoring for a chance to fulfill the regional market's demand for housing.

As required by law, it is incumbent on the Jersey City Council to work to reduce the City's susceptibility to corruption, yet it has chosen to only exacerbate the problem by gifting itself standardless discretion in the development sphere that is ripe for abuse. Although both projects predated the effective date of the IZO, two notable complaints filed against Jersey City within the past year (and currently pending in the Hudson County vicinage) allege explicitly or implicitly that it has used its redevelopment authority to reach arbitrary and potentially corrupt deals with favored developers to the detriment of those seeking affordable units.

The complaint in Saddlewood Court, LLC v. City of Jersey City, Docket No. HUD-L-002638-21, alleges that the City impermissibly used its condemnation authority for a developer's benefit in a *quid pro quo* exchange for that developer's agreement to construct a public school for the City. In a backroom deal, Jersey City essentially abused its discretionary redevelopment authority to gift a development opportunity to a favored private builder in "sham" redevelopment proceedings. Ex. A.

Similarly, the complaint in Morris Canal Redevelopment Area Community Development Corporation v. City of Jersey City, Docket No. HUD-L-000432-21, alleges that Jersey City seemingly followed the standardless development process later codified in the IZO, that permitted a councilman and the JCRA to trade housing units

affordable to low-income families for community benefits desired by the councilman in private negotiations with a selected developer. Comment/input requested from the public was only permitted after the deal was already done, and the City had promised the favored developer a $3 million windfall in the form of exclusive development rights to build a high-density residential development, with only 5% workforce house, so long as he also committed to build a recreational center on site and public parking. Here, the City disregarded several procedural requirements embedded in the original redevelopment plan that were specifically intended to empower the community to unfairly provide a handout to a single developer while exacting community benefits. Ex. B.

Members of Jersey City's government have also been criminally convicted for their corrupt dealings with developers. In 2009, as part of an FBI sting that included forty-four arrests, the Deputy Mayor of Jersey City was charged with and ultimately convicted for accepting a quid pro quo bribe to speed approval for a development project. Katherine Santiago, FBI Corruption Probe Sheds Negative Light on Jersey City Development, STAR LEDGER (Aug. 7, 2009). Other members of the City's government were also implicated for assuring this favored developer that he would be granted "smooth access," confidential information, and assistance applying for a zoning change and environmental approval. Ibid.

At the time, Professor Brigid Harrison of Montclair State University commented that municipal elected officials in Jersey City were "steering either permits or contracts or development schemes toward developers." She continued, "[t]here are developers and planners and engineers out there making payoffs, and this is indicative of how business is done." Ibid.

Such allegations will only increase if Jersey City is allowed to codify a system that enables its elected officials to pick and choose winners and losers amongst developers -- waiving affordable housing requirements for those with the right connections and demanding whatever contributions instead of affordable homes on a whim. At best, even if the ordinance does not lead to outright corruption, it will create the appearance of corruption, and has already done so.

As Professor Michael Manville and Taner Osman of the University of California, Los Angeles Luskin School of Public Affairs have noted, discretion in land-use decisions can "create misunderstanding and conflict, because when governments trade zoning for cash or amenities, the zoning no longer reliably predicts future planning. Converting zoning to a tool of fiscal policy dilutes its traditional role as a guarantor of land use policy. As land use planning becomes less predictable, citizens become less satisfied with it." Michael Manville & Taner Osman,

Motivations for Growth Revolts: Discretion and Pretext as Sources of Development Conflict, 16 CITY & COMMUNITY 66, 66 (2017).

Michael Wainwright Whitcher agrees, writing that highly discretionary land use negotiations between governments and developers can easily "serve as a vehicle for government corruption, at least in the eyes of the general public." Michael Wainwright Whitcher, Durand v. Idc Bellingham, LLC: Towns for Sale?, 39 NEW ENG. L. REV. 871, 878 (2005). Courts should do all they can to avoid even the appearance of corruption to prevent citizens from losing faith in governing institutions and local democracy.

Furthermore, as written, the IZO may, in fact, be more likely to raise housing costs for low- and moderate-income individuals in Jersey City rather than contribute to the goal of providing affordable housing. Professor Cristopher Elmendorf at U.C. Davis Law has shown that ad hoc negotiations over community benefits, such as the kind that will result from section 187-6, favor small and inefficient, yet locally connected developers rather than larger developers that can construct buildings at low costs. For example:

> Discretionary, . . . project-specific decision-making . . . creates huge informational costs for developers. A developer has to figure out who the relevant decision-makers are in each neighborhood—not only which public officials are nominally in charge, but also which interest groups have clout—and then learn what they want and what their reservation price is to consent to a

> rezoning. Interest groups will hold their cards tight to their vests in the hopes of getting better offers from developers. The developers who fare best in this game are likely to be local actors with deep local networks and intimate knowledge of city politics.
> [Christopher Elmendorf, Auctioning the Upzone, 70 CASE WEST. RES. L. REV. 513, 530 (2020).]

Professor Elmendorf's research is supported by Professor C. Tsuriel Somerville's research at the U.B.C. Sauder School of Business, who performed a regression analysis to show that the size of home building firms is on average smaller in small jurisdictions that have complex ad hoc land-use arrangements. C. Tsuriel Somerville, The Industrial Organization of Housing Supply: Market Activity, Land Supply and the Size of Homebuilder Firms, 27 REAL ESTATE ECON. 669, 669 (1999).

It is also likely that the IZO in question will make affordable housing units less attainable by forcing developers to raise the cost of their market-rate units to pay for the illegal "community benefits." As Professor Vicki Been, the former Commissioner of Housing Preservation and Development for New York City, explains, exactions are not costless. Developers have to pay to produce the benefits required and as such have to fund them -- which developers do almost exclusively by passing costs off to renters or homebuyers. Vicki Been, Impact Fees and Housing Affordability, 8 CITYSCAPE 139, 146 (2005). Even when developers are willing to build in a community with substantial exactions, these charges "will represent unfair rent-seeking by existing

residents -- of either new residents (who often will not be able to protect themselves in the jurisdiction's political process) or the owners of undeveloped land." Id. at 147.

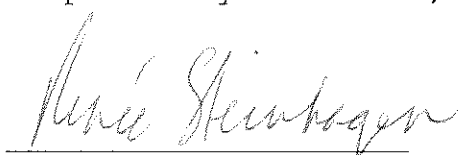
Jersey City claims that it has adopted an ordinance that accords with the goals of providing affordable homes, yet in reality, the ordinance has enacted an unlawful scheme that may do little to further the stated goal of increasing opportunities for the construction of new affordable housing. With this IZO, increasing housing costs and the displacement of the City's low-income individuals, which is currently occurring at an alarming rate, will continue. Emily Nonko, Jersey City is Booming but Gentrification Fears Loom Large, CURBED (May 5, 2017).

The Jersey City Council's proposal therefore on its face appears to have been passed to largely consolidate the power of local officials over developers at the expense of affordable housing. It will only fuel potential corruption and foster an environment where land-use approvals are sold to the highest bidders; it will not create affordable housing.

CONCLUSION

For all the above reasons, Amicus New Jersey Appleseed asserts that the Jersey City Council had no authority to enact Ordinance No. 20-089, and it thus must be found null and void.

Respectfully submitted,



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Dated: August 2, 2021

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SADDLEWOOD COURT, LLC, Plaintiff, v. CITY OF JERSEY CITY, JERSEY CITY REDEVELOPMENT AGENCY, LENNAR MULTIFAMILY COMMUNITIES, and LMC LAUREL-SADDLEWOOD HOLDINGS, LLC, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO. Civil Action **COMPLAINT IN LIEU OF PREROGATIVE WRITS AND FOR OTHER RELATED CLAIMS AND RELIEF**

Plaintiff, Saddlewood Court, LLC ("**Saddlewood**"), by way of Complaint in lieu of prerogative writs and for other related claims and relief against the defendants, City of Jersey City (the "**City**"), Jersey City Redevelopment Agency (the "**Agency**"), Lennar Multifamily Communities ("**Lennar**") and LMC Laurel-Saddlewood Holdings, LLC ("**LMC**"), states and alleges as follows:

INTRODUCTION

1. Through this Complaint in Lieu of Prerogative Writs, Saddlewood challenges the City and Agency's bad faith adoption of certain ordinances which, among other things, (i) declared Saddlewood's property, along with thirty-eight (38) other properties located within the Laurel-Saddlewood Block 11501 (collectively, the "**Laurel-Saddlewood Block**"), as a condemnation area in need of redevelopment under N.J.S.A. 40A:12A-1 et seq. (LRHL); (ii) authorized the

execution of a sham redevelopment agreement between the City and LMC for the redevelopment of the Laurel-Saddlewood Block, and (iii) designated LMC as the redeveloper of the Laurel-Saddlewood Block. The City and Agency's decision to adopt those ordinances was the product of a fraudulent agreement between the City and Lennar pursuant to which the City agreed to blight the Laurel-Saddlewood Block and designate Lennar and/or its affiliate as the redeveloper in exchange for Lennar's agreement to fund the construction of a new public school.

2. In 2020, the mayor of the City publicly announced that the City was confronted with an "education crisis" due to the lack of State funding for the construction of public schools in urban areas. In order to combat the lack of funding, the mayor proudly proclaimed that his administration was getting "creative" by "leverag[ing] the private sector. . .to build new schools as no cost to the taxpayers." As part of its so-called leveraging of the private sector, the City reached a corrupt *quid pro quo* arrangement with Lennar whereby the City agreed to a pre-determined, sham blight designation of the Laurel-Saddlewood Block, and further agreed to designate LMC as the redeveloper of same, in exchange for Lennar's development of a multi-million dollar school.

3. Pursuant to its illicit agreement with Lennar, on February 13, 2020, the City adopted Resolution No. 20-103 designating the Laurel-Saddlewood Block as an area in need of redevelopment under the LRHL. Approximately one year later, in February 2021, and after the City's blight determination was affirmed, Saddlewood learned of the City's improper arrangement with Lennar. In fact, Lennar's representative, Charles Epstein, recently revealed the City's backroom deal with Lennar, which he justified by explaining that "this is the way things are done in New Jersey."

4. Further, the Agency recently adopted Resolution No. 21-05-12 which, among other things, (i) authorized the execution of a redevelopment agreement between the City and LMC for the Laurel-Saddlewood Block, and (ii) designated LMC as the redeveloper of the Laurel-Saddlewood Block.

5. The above Resolutions must be vacated, in their entirety, pursuant to well-settled New Jersey law which prohibits a decision to condemn private property where, as here, "the condemning authority acted with improper motives, bad faith or some other consideration amount[ing] to a manifest abuse of the power of eminent domain." Monroe v. Noonan, A-1443-99T1 (App. Div. Mar. 9, 2011).

THE PARTIES

6. Saddlewood is a New Jersey limited liability company with a principal place of business located at 155 2nd Street, Jersey City, New Jersey 07302.

7. The City is a municipal corporation of the State of New Jersey with a principal place of business located at 280 Grove Street, Jersey City, New Jersey 07302.

8. The Agency is a body politic of the State of New Jersey with a principal place of business located at 280 Grove Street, Jersey City, New Jersey 07302.

9. Upon information and belief, Lennar is a Delaware limited liability company with a principal place of business located at 12 Christopher Way, #200, Eatontown, New Jersey 07724.

10. Upon information and belief, LMC is a Delaware limited liability company with a principal place of business located at 12 Christopher Way, #200, Eatontown, New Jersey 07724. Lennar is the sole member and owner of LMC.

FACTS COMMON TO ALL COUNTS

The Laurel-Saddlewood Block

11. The Laurel-Saddlewood Block consists of certain properties identified on the office tax maps of the City as Block 11501, Lots 1-39, commonly known as 1-15 Laurel Court, 2-20 Laurel Court, 1-19 Saddlewood Court, 2-20 Saddlewood Court and 384 Manila Avenue.

12. Specifically, the Laurel-Saddlewood Block consists of 39 parcels, including that certain real property located at 11 Saddlewood Court, Jersey City, New Jersey, which is designated as Block 11501, Lot 19 on the City's Tax Map (the "**Saddlewood Property**").

13. The Saddlewood Property is an approximately 1,287 square foot irregularly shaped parcel of land developed with an approximately 987 square foot two-story townhouse.

14. Saddlewood is the owner of the Saddlewood Property.

The City Enters an Illicit Agreement with Lennar to Blight the Laurel-Saddlewood Block and Designate LMC as Redeveloper

15. In or around late 2018, representatives of Lennar engaged in discussions with Saddlewood regarding Lennar's desire to acquire the Saddlewood Property. At that time, Lennar's representatives indicated that Lennar was actively negotiating to acquire all of the adjoining parcels for purposes of redeveloping the properties into a high rise apartment complex.

16. After Saddlewood indicated to Lennar that it was not interested in selling its property to Lennar, Lennar embarked on a series of back room negotiations with City officials to persuade the City to exercise its redevelopment authority as a means to improperly appropriate Saddlewood's property and designate Lennar (or an entity created by Lennar) as the redeveloper as part and parcel of the sham redevelopment proceedings.

17. To that end, and unbeknownst to Saddlewood at that time, Lennar approached the City and proposed an improper *quid pro quo* arrangement whereby the City would blight the

Laurel-Saddlewood Block and designate Lennar or its affiliate as the redeveloper. In exchange, Lennar offered to construct a multi-million dollar public school for the City.

18. The City agreed to the sham, preordained agreement with Lennar as part of its ongoing efforts to "leverage the private sector" to construct public schools at no cost to the City and/or its taxpayers.

19. To be clear, Saddlewood now understands that the City agreed to blight the properties and appoint (or cause to be appointed) Lennar or its affiliate as the redeveloper for no other reason than to obtain a multi-million dollar school at no cost.

20. On or about April 24, 2019, the City, after reaching the improper agreement with Lennar, directed the Jersey City Planning Board (the "**Board**") to investigate whether the Laurel-Saddlewood Block qualified as a condemnation area in need of redevelopment under the LRHL.

21. On January 7, 2020, the Board conducted a hearing to review whether the Laurel-Saddlewood Block qualified as an area in need of redevelopment. The Board adopted a Resolution recommending that the City Council designate the Laurel-Saddlewood Block as an area in need of redevelopment.

22. On February 13, 2020, the City Council adopted Resolution No. 20-103 designating the Laurel-Saddlewood Block as an area in need of redevelopment under the LRHL.

23. But for Lennar's back room promise to develop a multi-million dollar school for the City, the City would not have caused the City Council to adopt Resolution No. 20-103.

24. To be clear, the City's blight determination was not motivated by any perceived deficiencies at the subject properties, but rather by the City's desire to obtain a new public school. This is evidenced by, among other things, the City's secret agreement with Lennar to blight the

properties before the City commissioned an investigation of the Laurel-Saddlewood Block pursuant to the LRHL.

Saddlewood Learns About the Illicit Agreement Between the City and Lennar

25. In or around February 2021, Saddlewood was contacted by a representative from Lennar, Charles Epstein, who requested to meet with Saddlewood to discuss the redevelopment of the Laurel-Saddlewood Block, which includes the Saddlewood Property.

26. On February 25, 2021, representatives of Saddlewood attended a meeting with Mr. Epstein. At that meeting, Lennar advised that the City had promised and, in fact, guaranteed Lennar, well before the redevelopment process began, that the Laurel-Saddlewood Block would be blighted and that Lennar or its affiliate would be designated as the redeveloper.

27. When Saddlewood expressed disdain at what appeared to be a premature and improper determination, Mr. Epstein advised that Lennar had promised the City a new school in exchange for the City agreeing to declare the Laurel-Saddlewood Block as an area in need of redevelopment and to designate LMC as the redeveloper.

28. In fact, Mr. Epstein went so far as to comment that Lennar was told by the City, prior to the time it even commissioned an investigation of the Laurel-Saddlewood Block, that if the City received a new school from Lennar, it would blight the Laurel-Saddlewood Block and designate LMC as redeveloper.

LMC is Designated as Redeveloper in Accordance with Lennar's Improper Arrangement with the City

29. On or about March 18, 2021, Lennar created and formed LMC for purposes of serving as the redeveloper of the Laurel-Saddlewood Block pursuant to, and in furtherance of, Lennar's illicit agreement with the City.

30. On May 18, 2021, the Agency, in accordance with the City's illicit agreement with Lennar and at the instruction of City representatives, adopted Resolution No. 21-05-12 which provides, in relevant part, as follows:

> **Section 2.** The Board of Commissioners hereby designates LMC Laurel-Saddlewood Holdings, LLC as redeveloper of the Property.
>
> **Section 3.** The Chair, Vice-Chair, Executive Director and/or Secretary of the Agency are hereby authorized to execute the Redevelopment Agreement, in substantially the form on file with the Agency, together with such additions, deletions and modifications as deemed necessary or desirable by the Executive Director in consultation with Counsel, and any and all other documents necessary or desirable to effectuate this Resolution, in consultation with Counsel.
>
> **Section 4.** The Chair, Vice-Chair, Executive Director and/or Secretary of the Agency are hereby authorized to undertake all actions necessary to effectuate this Resolution.
>
> **Section 5.** This Resolution shall take effect immediately.

31. The Agency's decision to authorize the execution of a redevelopment agreement between the City and LMC, and to designate LMC as the redeveloper of the Laurel-Saddlewood Block, was a predetermined conclusion pursuant to the City's improper agreement with Lennar.

32. But for Lennar's back room promise to develop a multi-million dollar school for the City, the City would not have caused the Agency to adopt Resolution No. 21-05-12.

33. On May 26, 2021, the Agency, pursuant to Resolution No. 21-05-12, executed a Redevelopment Agreement (the "**Redevelopment Agreement**") with LMC for the proposed redevelopment of the Laurel-Saddlewood Block.

34. As set forth herein, the City and Agency's designation of LMC as redeveloper of the Laurel-Saddlewood Block and execution of the Redevelopment Agreement was a foregone conclusion predicated on the City's improper agreement with Lennar. Those actions were

motivated by an improper purpose, undertaken in bad faith and constitute a manifest abuse of power.

FIRST COUNT
(Bad Faith – Resolution 20-103)

35. Saddlewood repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if set forth at length herein.

36. It is well settled that a decision to condemn shall not be enforced where "the condemning authority acted with improper motives, bad faith or some other consideration amount[ing] to a manifest abuse of the power of eminent domain." Monroe v. Noonan, A-1443-99T1 (App. Div. Mar. 9, 2011).

37. The City agreed to: (i) cause the Laurel-Saddlewood Block to be declared as a property being in need of redevelopment under the LRHL, (ii) exercise its power of eminent domain over the Laurel-Saddlewood Block, and (iii) designate LMC as the redeveloper of the Laurel-Saddlewood Block, in exchange for Lennar's back room promise to construct a multi-million dollar public school for the City.

38. In furtherance of its illicit agreement with Lennar, the City adopted (or caused to be adopted) Resolution No. 20-103 designating the Laurel-Saddlewood Block as a condemnation area in need of redevelopment.

39. But for Lennar's promise to develop the school for the City, the City would not have blighted the properties at issue.

40. To be clear, the City's decision to declare the Laurel-Saddlewood Block as a condemnation area was intended to disguise the City's ulterior and true motive, *i.e.*, to secure a multi-million dollar benefit from Lennar.

41. The City's "blight" finding and concomitant exercise of its eminent domain power were undertaken in bad-faith, for an improper motive, and constitutes a manifest abuse of the power of eminent domain.

WHEREFORE, Plaintiff, Saddlewood Court, LLC, hereby demands judgment against Defendant, City of Jersey City, as follows:

A. Declaring null and void and/or vacating the City's Resolution No. 20-103 designating the Laurel-Saddlewood Block as a condemnation area in need of redevelopment;

B. Declaring null and void all actions taken by the City in furtherance of the authorization and designation made by Resolution No. 20-103; and

C. Such other further relief as the Court may deem just and equitable.

SECOND COUNT
(Bad Faith – Resolution No. 21-05-12)

42. Saddlewood repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if set forth at length herein.

43. It is well settled that a decision to condemn shall not be enforced where "the condemning authority acted with improper motives, bad faith or some other consideration amount[ing] to a manifest abuse of the power of eminent domain." Monroe v. Noonan, A-1443-99T1 (App. Div. Mar. 9, 2011).

44. The City agreed to: (i) cause the Laurel-Saddlewood Block to be declared as a property being in need of redevelopment under the LRHL, (ii) exercise its power of eminent domain over the Laurel-Saddlewood Block, and (iii) designate LMC as the redeveloper of the Laurel-Saddlewood Block, in exchange for Lennar's back room promise to construct a multi-million dollar public school for the City.

45. In furtherance of the City's agreement with Lennar, the Agency adopted Resolution No. 21-05-12 which (i) authorized the execution of a redevelopment agreement between the City and LMC for the Laurel-Saddlewood Block, and (ii) designated LMC as the redeveloper of the Laurel-Saddlewood Block.

46. But for Lennar's promise to construct the school for the City, the Agency would not have adopted Resolution No. 21-05-12.

47. To be clear, the Agency's decision to designate LMC as the redeveloper of the Laurel-Saddlewood Block and execute the Redevelopment Agreement was intended to disguise the City's ulterior and true motive, *i.e.*, to secure a multi-million dollar benefit from Lennar.

48. The Agency's decision to adopt Resolution No. 21-05-12 was undertaken in bad-faith, for an improper motive, and constitutes a manifest abuse of the power of eminent domain.

WHEREFORE, Plaintiff, Saddlewood Court, LLC, hereby demands judgment against Defendants, City of Jersey City, Jersey City Redevelopment Agency, and LMC Laurel-Saddlewood Holdings, LLC, as follows:

A. Declaring null and void and/or vacating Resolution No. 21-05-12, which, among other things, (i) authorized the execution of a redevelopment agreement between the City and LMC for the Laurel-Saddlewood Block, and (ii) designated LMC as the redeveloper of the Laurel-Saddlewood Block;

B. Declaring null and void all actions taken by the Agency or the City in furtherance of the authorization and designation made by Resolution No. 21-05-12, including, without limitation, the Agency's execution of the Redevelopment Agreement; and

C. Such other further relief as the Court may deem just and equitable.

THIRD COUNT
(Civil Conspiracy – Against the City, Lennar and LMC)

49. Saddlewood repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if set forth at length herein.

50. The City, Lennar and LMC entered into an agreement or confederation with a common purpose to deprive real property owners, including Saddlewood, of their rights and interest in and to their real property through the improper exercise of the City's condemnation power.

51. On or about March 18, 2021, Lennar created and formed LMC for the purpose of facilitating the illicit agreement with the City.

52. In furtherance of the unlawful agreement set forth herein, the City, Lennar and LMC acted in concert and undertook or caused the following overt acts: (i) declared the Laurel-Saddlewood Block as a property being in need of redevelopment under the LRHL, (ii) exercised the City's power of eminent domain over the Laurel-Saddlewood Block, (iii) designated LMC as the redeveloper of the Laurel-Saddlewood Block, and (iv) executed the Redevelopment Agreement.

53. The City, Lennar and LMC knew, or should have known, that their actions constituted an improper and bad-faith exercise of the City's power of eminent domain.

54. As a direct and proximate result of the City, Lennar and LMC's actions, Saddlewood has suffered, and will continue to suffer, substantial damage.

WHEREFORE, Plaintiff, Saddlewood Court, LLC, hereby demands judgment against Defendants, City of Jersey City, Lennar Multifamily Communities and LMC Laurel-Saddlewood Holdings, LLC, as follows:

A. Declaring null and void and/or vacating Resolution No. 21-05-12, which, among other things, (i) authorized the execution of a redevelopment agreement between the City and LMC for the Laurel-Saddlewood Block, and (ii) designated LMC as the redeveloper of the Laurel-Saddlewood Block;

B. Declaring null and void all actions taken by the Agency or the City in furtherance of the authorization and designation made by Resolution No. 21-05-12, including, without limitation, the Agency's execution of the Redevelopment Agreement;

C. Compensatory damages; and

D. Such other further relief as the Court may deem just and equitable.

FOURTH COUNT
(Declaratory Judgment – Illegality of the Redevelopment Agreement)

55. Saddlewood repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if set forth at length herein.

56. Under well-settled New Jersey law, an agreement that is illegal or that violates public policy is unenforceable and void *ab initio*.

57. As set forth herein, the Redevelopment Agreement is the product of a corrupt *quid pro quo* arrangement between the City and Lennar whereby the City agreed to a pre-determined, sham blight designation of the Laurel-Saddlewood Block, and further agreed to designate LMC as the redeveloper of same, in exchange for Lennar's development of a multi-million dollar school.

58. The Redevelopment Agreement violates longstanding New Jersey public policy that prohibits bribery of public officials and the acceptance of benefits in exchange for official acts.

59. The acts and/or omissions of the City, the Agency, Lennar and LMC leading up to and including the execution and delivery of the Redevelopment Agreement, as set forth above,

constitute acts that violate New Jersey law including, without limitation, N.J.S.A. § 2C:27-2 (Bribery in official and political matters), N.J.S.A. § 2C:27-10 (Acceptance or receipt of unlawful benefit by public servant for official behavior), N.J.S.A. § 2C:27-11 (Offer of unlawful benefit to public servant for official behavior) and N.J.S.A. § 2C:30-2 (Official misconduct).

60. An actual controversy has arisen and now exists concerning the legality and enforceability of the Redevelopment Agreement. A judicial declaration is necessary and appropriate at this time to protect Saddlewood's rights in and to its real property.

WHEREFORE, Plaintiff, Saddlewood Court, LLC, hereby demands judgment against Defendants, Jersey City Redevelopment Agency, Lennar Multifamily Communities and LMC Laurel-Saddlewood Holdings, LLC, as follows:

A. Declaring that the Redevelopment Agreement is null and void as violative of public policy and New Jersey law; and

B. Such other further relief as the Court may deem just and equitable.

COLE SCHOTZ P.C.
Attorneys for Plaintiff, Saddlewood Court, LLC

By: */s/ Joseph Barbiere*
Joseph Barbiere

DATED: July 2, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, this court is hereby advised that Joseph Barbiere, Esq. and Michael R. Yellin, Esq. are designated as trial counsel for Plaintiff, Saddlewood Court, LLC.

COLE SCHOTZ P.C.
Attorneys for Plaintiff, Saddlewood Court, LLC

By: */s/ Joseph Barbiere*
Joseph Barbiere

DATED: July 2, 2021

CERTIFICATION

I certify that the foregoing matter in controversy is not the subject of a pending action or arbitration proceeding, nor is any action or arbitration proceeding contemplated at this time. I further certify that, to the best of my knowledge, no other parties need be joined in this matter.

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).

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

/s/ Joseph Barbiere
Joseph Barbiere

DATED: July 2, 2021

CERTIFICATION PURSUANT TO RULE 4:69-4

I hereby certify that, in accordance with Rule 4:69-4, all necessary transcripts of the Jersey City Redevelopment Agency have been ordered.

COLE SCHOTZ P.C.
Attorneys for Plaintiff, Saddlewood Court, LLC

By: */s/ Joseph Barbiere*
Joseph Barbiere

DATED: July 2, 2021

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MORRIS CANAL REDEVELOPMENT AREA COMMUNITY DEVELOPMENT CORPORATION and JUNE JONES, Plaintiffs, v. CITY OF JERSEY CITY, CITY OF JERSEY CITY PLANNING BOARD, CITY OF JERSEY CITY DIVISION OF PLANNING, JOHN DOES 1-10, and XYZ CORPS. 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, HUDSON COUNTY DOCKET NO. HUD-L- CIVIL ACTION **COMPLAINT IN LIEU OF PREROGATIVE WRIT**

Plaintiffs, Morris Canal Redevelopment Area Community Development Corporation ("MCRACDC") and June Jones ("Jones," and, together with MCRACDC, the "Plaintiffs," and, each a "Plaintiff") by way of Complaint in Lieu of Prerogative Writ, hereby complain and allege as follows:

NATURE OF THE CASE

1. This is a case of promises - and a community-driven public-private partnership - broken, all to pave the way for a developer to profit.
2. At issue is a particular piece of Property, known technically as 417 Communipaw Avenue and colloquially as the "Steel Tech site," which is a key component of the City of Jersey City's Morris Canal Redevelopment Plan.
3. Developed via a unique participatory public-private partnership more than two decades ago, the Plan is a comprehensive blueprint designed to revitalize a large, once-bustling group of neighborhoods that, per the Plan, were the City's "heart."
4. To compose the Plan and craft the sprawling Redevelopment Area's future, Defendants, as required by federal funders at the time, asked for community participation in a very intense, "hands-on" decision making process, which a coalition of residents, business owners and community groups gladly gave.
5. Together, Defendants and this coalition determined that the Plan needed to protect and preserve the Redevelopment Area's historic one- and two-family homes, bring jobs to the Area and create parks, greenspace and other recreational opportunities for residents.

6. For more than twenty years, this public-private partnership has worked - and has produced results: Pursuant to the Plan, the City remediated toxically contaminated land in the Redevelopment Area, built Berry Lane Park (its largest park), and lured business to the area, all while maintaining the historic, small-scale charm of its various neighborhoods.
7. Rehabilitation of the "Steel Tech" property was meant to be the one of the Plan's jewels: Pursuant to the plans developed with the aforesaid coalition for Berry Lane Park, the City had until recently intended to purchase the Property and turn it into greenspace - a *de facto* front-door to the rest of the Park.
8. The City codified its intent to transform the Steel Tech Property into park land in the Plan - then was awarded grant monies from the State and Hudson County governments on express promises it would acquire the site and turn it into greenspace.
9. Then, in December 2020, everything changed. The City passed an ordinance that effectively allowed a prominent developer to construct a massive, 420-unit residential high-rise on the Steel Tech site - a development out of place by every measure in a neighborhood of one- and two-family homes, and certainly not the park the City had long promised the coalition, not to

mention the various governments that had awarded grant monies to the City.

10. The Ordinance stands in violation of New Jersey law, which prohibits the so-called "spot zoning" it effectuated.

11. Just as bad, in passing the Ordinance, the City violated the Plan in process and substance – and the promises Defendants had made to the coalition that helped compose it.

12. Given the time and energy its private citizens and community groups had expended, Defendants enshrined their partnership with the coalition in the Plan's provisions, ensuring that the coalition would be have a real say in any potential changes to the Plan, not a perfunctory one.

13. The Plan sets forth requirements for dialogue, participatory decision-making and specific notice provisions, which require Defendants and any developer proposing a change to the Redevelopment Plan to work with the community prior to proposing those changes and to fully inform the coalition of their intentions along specific timelines before a hearing on those changes is actually held.

14. However, in this case, Defendants plainly violated those requirements for real participatory decision-making, and were more than casual in their adherence to the notice provisions – possibly because they knew what the coalition's members

would say about the high-density high-rise the City planned to jam into their neighborhood.

15. Notably, the illicit spot-rezoning of the Steel Tech Property is slated to net the aforesaid high-rise's developer nearly $3 Million in profit.

16. Respectfully, and for the reasons set forth herein, Plaintiff requests that this Court strike down the Ordinance at issue, reverse the illicit rezoning of the Steel Tech site, and compel the Defendants to follow the procedural and substantive scriptures of both the Plan and New Jersey State law in any future efforts to change the use of the Property and develop it in any way other than as part of Berry Lane Park.

PARTIES AND JURISDICTION

17. Plaintiff MCRACDC is, and has been at all times relevant, a non-profit corporation organized and operating under the laws of the State of New Jersey, with its primary place of business located in the City of Jersey City, County of Hudson and State of New Jersey. In short, MCRACDC is an urban development organization based in Jersey City. It was founded in November 1999, as the formal successor of the Morris Canal Redevelopment Area Community Coalition (the "Coalition"). The Coalition was established to ensure community inclusion in the decision-making process of the Morris Canal

Redevelopment Plan (the "Plan"), and it was given special stakeholder status in that Plan, as adopted by the Municipal Council via ordinance. In addition to serving as the official vehicle to maintain community involvement throughout the redevelopment process within the Morris Canal Redevelopment Area (the "Redevelopment Area"), the MCRACDC encourages community development, provides good-quality affordable housing, fosters economic development, and provides employment and job training. It has a democratic structure open to wide community participation that it has maintained for approximately 20 years. It has a "special interest" in this litigation.

18. Plaintiff Jones is and has been Executive Director of the MCRACDC since its incorporation in 1999. She is and has been one of the designated agents registered with the Division of City Planning, as per the Plan, and in that role has remained active in the redevelopment process of the Redevelopment Area, and in particular the development of Berry Lane Park. She resides in Jersey City and has a "special interest" in this litigation.

19. Defendant City of Jersey City ("JC" or the "City") is, and has been at all times relevant, a municipal corporation formed under the laws of the State of New Jersey, including, but not limited to, N.J.S.A. 40:43-1. Notably, JC is organized under

the Optional Municipal Charter Law (the "Faulkner Act"), N.J.S.A. 40:69 A-1, et seq., whereby the City operates pursuant to and in accordance with the Faulkner Act's Mayor-City Council form of government: In sum, the Jersey City Council (the "Council") is authorized to and does in fact adopt ordinances and resolutions, which Jersey City's Mayor (the "Mayor") then may sign into law. At instant issue, the City, via its Council's adoption, and its Mayor's signature, enacted ORDINANCE OF THE CITY OF JERSEY CITY No. 20-103, an "Ordinance Adopting Amendments to the Morris Canal Redevelopment Plan Regarding the Creation of the Berry Lane Park North Zone A.K.A. 417 Communipaw Avenue (the "Ordinance," as same is more fully defined and discussed below).

20. Defendant City of Jersey City Planning Board (the "Board") is the duly constituted planning board of the City of Jersey City, per the Municipal Land Use Law, N.J.S.A. 40:55-D-1 et seq. (the "MLUL") and City Ordinance § 345-7. Among its functions, prior to the Council's adoption of, or revision or amendment to any development regulation, the Planning Board must review the provisions of, and make and transmit to the Council a report detailing its recommendations regarding same.

21. Defendant City of Jersey City Division of City Planning (the "Division of Planning" or the "Planning Department") is, and has been at all times relevant, a discrete subdivision of the City, organized pursuant to City Ordinance § 3-80 and under the City's Department of Housing, Economic Development and Commerce. In its own words, the Division of Planning is generally responsible for "comprehensively planning the rational development of land in the City." As it is specifically relevant, pursuant to the Redevelopment Plan, as same is more fully defined *infra*, the Division of Planning must designate an agent to and otherwise liaise with the MCRACDC regarding any "investigation, remediation and redevelopment" of the Property.

22. Plaintiffs are unaware of the true names and/or capacities of Defendants Does 1 through 10 and XYZ Corps. 1 through 10, and, therefore, sues such Defendants by fictitious names. Plaintiffs hereby reserve their right to amend the Complaint as a result of such pleading of such fictitious parties, and will seek leave of this Court to insert true names and capacities once they are ascertained.

23. At all times mentioned herein, Defendants, and each of them, inclusive of Defendants Doe 1 through 10 and XYZ Corps. 1 through 10, were authorized and empowered by each other to act, and did so as agents of each other, and all of the claims

herein alleged to have been done by any and/or all of them were thus done in the scope and capacity of such agency. Upon information and belief, each Defendant is and all Defendants are responsible in some manner for the events described herein.

24. As Plaintiffs are located in the City of Jersey City, County of Hudson and State of New Jersey; as all Defendants are located in the City of Jersey City, County of Hudson and State of New Jersey; as the Property, as same will be more fully defined *infra*, is located in the City of Jersey City, County of Hudson and State of New Jersey; as Defendants' wrongful acts, as set forth herein, occurred in or otherwise have a direct nexus to the City of Jersey City, County of Hudson and State of New Jersey; and as Plaintiff's claims sound exclusively in New Jersey state law, this Court is the proper forum for trial in this action.

DESCRIPTION OF THE PROPERTY

25. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were more fully set forth herein.

26. Colloquially known as the "Steel Tech" site, the property at instant issue consists of a more than three acres of real estate located at 417 Communipaw Avenue, Jersey City, New

Jersey, and, more technically still, Block 18901, Lots 23 and 29 on the City of Jersey City Tax map (the "Property").

27. The Property thus sits squarely in the City's Bergen-Lafayette section, where it abuts historic single- and two-family homes, Mom-and-Pop retail establishments, small-scale industrial operations, and, perhaps most relevantly, JC's Berry Lane Park – at nearly 18 acres, one of the largest municipal parks in the City, and a mix of recreational facilities and green-space borne of JC's rehabilitation of once heavily toxically contaminated industrial land.

28. The Property is also identified, addressed and otherwise contemplated in the City's Morris Canal Redevelopment Plan (the "Plan"), which sought to reinvigorate an approximately 280-acre swath of City territory (the "Redevelopment Area"). Authored in March 1999, the Plan is a product of a City-citizen partnership: To wit, the Plan expressly memorializes the multifaceted process by which the City and the Division of Planning collaborated with and shared decision-making with City residents and community groups to identify problems in the Redevelopment Area, brainstorm solutions to those issues, and mutually develop a vision for the Plan and the Redevelopment Area's future. As a consequence of this front-end public-private partnership, and as Plaintiffs will detail more fully *infra*, the Plan essentially established the

MCRACDC, then defined the MCRACDC's responsibilities and rights as the Plan's aims were effectuated.

29. The Plan also expressly designated the Property for Industrial zoning.

30. This said, interestingly, while "Light Industrial" facilities are (obviously) a generally accepted "Principal Permitted Use" in the Plan's Industrial zone, such facilities are *not* permitted in the "Berry Lane Area," where the Property is situated.

31. Instead, the Property, like many parcels in the "Berry Lane Area," was ostensibly designated for a different destiny: parkland and green-space. The Plan allows as "Permitted Principal Uses" in its Industrial Zone "[p]ark and recreation" space. In short, upon information and belief, from the Plan's inception in 1999 through the Ordinance's enactment in late 2020, the Property was *always* supposed to become the northern entrance to Berry Lane Park.

32. The Plan thus also expressly identifies the Property as "To Be Acquired" by the City.

33. Accordingly, upon information and belief, the City maintained the Property's Industrial designation (until it passed the Ordinance, as described below) to facilitate its acquisition of the Property, so it could transform the Property into

parkland – simply, "Industrial" land is cheaper to buy than land zoned for "Residential" use.

34. This said, on or about December 16, 2020, upon a recommendation from the Board, the Council adopted an Ordinance amending the Plan (as delineated *supra*, the "Ordinance"). The next day, on or about December 17, 2020, the Mayor signed the Ordinance into law.

35. Among other things, at the behest of a specific developer, the Ordinance conditionally changed the Property's zoning designation: from Industrial, where the Property would have become a park, to high-density, high-bulk Residential, so the Property could support the developer's specific 17-story, 420-unit high-rise residential complex.

COUNT ONE – VIOLATION OF THE MCRACDC'S RIGHTS UNDER THE PLAN'S COMMUNITY EMPOWERMENT PROVISIONS

36. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were more fully set forth herein.

37. In and during 1997, the Jersey City Redevelopment Agency (the "JCRA") entered into an agreement with the U.S. Environmental Protection Agency (the "EPA") regarding a Brownfields Pilot Program. Pursuant to that program, JCRA was required to engage the community pursuant to a formal Community Involvement Plan. Under this Involvement Plan, neighborhood

groups and stakeholders were promised they would play an active role in the site-selection and development planning process. Mandatory planning charettes were described in program documents as "'hands on'" working sessions where stakeholders participate (as opposed to just comment or advise) in the planning process."

38. Pursuant to this agreement with the EPA, the Jersey City Environmental Commission and the City's Environmental Specialist, Betty Kearns, commenced outreach to the Garfield/Lafyette community, which included several scattered brownfield sites, to discuss the possibility of remediation and redevelopment within a 5.2 mile radius area, eventually known as the Morris Canal Redevelopment Area (as noted above, the "Redevelopment Area"). The industrially-zoned area that was eventually designated to be Berry Lane Park was the largest of such brownfield sites.

39. Throughout 1998, approximately 15 meetings were held by JCRA and Jersey City Environmental Commission personnel to exchange ideas about remediation with various community groups located within and immediately adjacent to the Area. In addition, a series of three planning charrettes was conducted by the Division of Planning on the evenings of October 29, November 4, and November 9, 1998. During the charrettes, approximately 83 members of the Lafayette area

community, including homeowners, tenants, businessowners, and other property owners, joined with staff from the Division of Planning, JCRA, the Environmental Commission and other municipal agencies, to explore options for the future of the Redevelopment Area.

40. These meetings were followed by a post-charrette meeting held on January 12, 1999 at City Hall. The Division of Planning presented a concept plan, and many of the charrette participants were present to listen and discuss the proposals. Additional neighborhood residents and business owners were also present, and were able to raise and discuss their concerns.

41. What emerged from the various aforesaid discussions, charettes and community participation was the Morris Canal Redevelopment Plan, originally named the Garfield-Lafayette Redevelopment Plan. An integral part of the strategy delineated in Plan was "to maintain an active dialog with the Redevelopment Area community throughout the development process" by establishing the Coalition. Thus, and importantly, the "hands-on" approach required by the above-referenced EPA Brownfields Pilot program, which distinguished between participation and the mere ability to comment or advise, was expressly embedded in the Plan.

42. The Plan makes clear that the Coalition was established to maintain "community empowerment in the redevelopment process" and to ensure community inclusion in the decision-making process of the Plan, including implementation of, and amendment to, the Plan. The Plan itself states that the active role of the community, including residents, property owners, business owners, and community leaders such as Plaintiff Jones in the development of the Plan, justifies "community empowerment in the continuing development process" and the special role given to the Coalition, and its successor, Plaintiff MCRACDC.

43. In addition to requiring the Environmental Commission, the City Planning Department and the JCRA to ensure the Coalition's continuing involvement in the development process as it unfolds over the years, the Plan specifically requires that the MCRACDC, through its representatives registered as agents with the Mayor's office: (1) "be consulted for input regarding design and development of all park and greenspace areas; (2) be "notified and informed of [plans for site investigation and/or remediation] conducted by, or under agreements with, the municipality, or any agency of the municipality," at least fourteen (14) days prior to commencement of any on-site activity; (3) receive a site plan and site plan application not less than twenty-one (21)

calendar days prior to the Planning Board hearing for which they are scheduled; and (4)receive notice of a hearing to amend the Plan at least twenty-one (21) days prior to the date set for the hearing, which must include notice of the proposed amendments to the Plan.

44. Pursuant to the Plan, the Coalition was permitted to designate "a maximum of four agents who shall register name and current contact information that includes mailing address and telephone number with the Division of City Planning."

45. The original four agents designated by the Coalition were: Ms. June Jones, Sister Julie Scanlon, Ms. Tina Senatore, and Deniene Morant. At some point, the Communipaw Block Association and the Lafyette Neighborhood Association were specifically authorized via amendment to the Plan to appoint two agents, although such organizations have since dissolved.

46. Over the years, Plaintiff Jones has notified the City Department of Planning when the designated agents have changed - for instance, when the two organizations named in the amended Redevelopment Plan dissolved (in 2018), and most recently, in May 2020, after Sister Scanlon unexpectedly died of the coronavirus.

47. Likewise, the Plan requires both the Division of Planning and the City's Environmental Commission to designate agents to serve as the City's liaison to the Coalition. In this vein,

Douglas Greenfield (Planning) and Betty Kearns (EC) were the designated liaisons in the early years of the Plan. More recently, Matt Ward, PP,AICP, has served as the Division of Planning's liaison to the Coalition. It was and is the obligation of the liaison to keep the Coalition "apprised of events as they occur throughout the investigation, remediation and redevelopment process."

48. The Coalition (both itself and via its successor, Plaintiff MCRACDC), and all the community stakeholders have been integral players in the planning and creation of Berry Lane Park, a process that commenced in 1999 and remains ongoing. As described in a presentation made by Ben Delisle (JCRA) to the City Council, dated, April 21, 2014, "This ambitious project will transform some 17.5 acres of property—including former rail yards, junk yards, auto repair shops, industrial facilities, and warehouses—into the largest municipally owned park in the City. When complete, the project will result in a 9% increase in the amount of useable open space in Jersey City." In that presentation, one slide was reserved for the Steel Technologies site (the Property) and it noted the City "anticipate[d] a purchase agreement [for the Property] in 2014." Map F in the Plan also reflects the community's understanding that this site would be acquired by the City for use as part of Berry Lane Park.

49. Over the years, Plaintiff Jones, in her capacity as Executive Director of MCRACDC, wrote letters of community support to enable the JCRA to apply for and be granted funds from the New Jersey Green Acres program and the Hudson County Open Space Trust Fund. Ms. Jones has reviewed correspondence from the Green Acres program dated March 31, 2017, and Green Acre Agreements attached to two City Resolutions in 2017 and 2018 that led her to believe that Green Acres had approved JCRA's grant application for funds to acquire the Steel Technology site.

50. Upon information and belief, the JCRA actually received funds of approximately $1.2 million for acquisition of the Property in February 2010, via a grant that was attributed to the Hudson County Open Space Trust Fund.

51. In addition to participating in the planning and creation of Berry Lane Park, the MCRACDC has facilitated the active participation of community stakeholders in the development of many sites throughout the Redevelopment Area over the past twenty years. Typically, whether a developer intends to present a site plan application as of right or seeks plan amendments, the City Planning Department requires the developer to contact the MCRACDC to set up stakeholder meetings to enable direct communication between the community and developers. With respect to site plan applications, one

or two community meetings is deemed sufficient to come to a consensus. However, plan amendments typically take several meetings so the community can actively discuss a developer's concept, express their own thoughts about what should be built, and then review specific plans.

52. Over the years, developers and the stakeholders – including Plaintiff MCRACDC - have usually come to an amicable agreement as to what is most appropriate and needed by the community to be built on a particular site.

53. In this instance, however, the dialogue and participatory process required by the Plan, though started, was not completed. An in-person stakeholder meeting was held on March 3, 2020 organized by the MCRACDC. The developer was present and shared his concept. No documents or plans were ever submitted to the stakeholder group. The stakeholders were stunned, since they thought the site was slotted to be acquired by the JCRA to complete Berry Lane Park.

54. City Councilman Jermaine Robinson attended this meeting and, upon questioning, made clear that he, the developer and the Planning Department had been talking about this proposal for approximately *two years.* At no time during that period, had anyone from Planning or the JCRA informed the Morris Canal CDC that they had decided not to pursue acquisition, and to rezone the site for mixed commercial/housing purposes.

55. In early May 2020, Matt Ward, as noted above, the Division of Planning's designated liaison, reached out to Plaintiff Jones to try to set up another stakeholder meeting with the developer, suggesting June 3, 2020 via Zoom. Ms. Jones responded by trying to make sure that such meeting would also include the JCRA, so the community's questions regarding the acquisition of the Property for park land could be answered, before a discussion of other uses could be contemplated. Additional correspondence indicates that the Planning Department had been discussing changes to the concept with the developer since March 3, 2020, and that it was just looking for stakeholder comment, not participation.

56. Ms. Jones anticipated that the Division of Planning would set up the Zoom call for the second stakeholder meeting. That meeting did not happen. Instead, the Division of Planning distributed flyers advertising a community meeting, at which the public could comment on the developers' proposal. Ms. Jones attended this "virtual neighborhood meeting" on June 16, 2020. It was not a participatory stakeholder meeting as contemplated by the Plan.

57. Not relying on the Planning Department, Plaintiff MCRACDC Board members tried to open up dialogue with the developer themselves. A series of e-mails in late-August/early-September between Board member Venus Smith and the developer,

Mr. Lou Mont, indicate that the two were negotiating as to who would attend a stakeholder meeting to discuss the proposed amendments. On September 3, 2010, Mr. Mont wrote:

> That's great news! I will get a few dates and times and get back with you. Thanks so much for "brokering" this meeting. I really appreciate the opportunity to discuss the project with the group.
>
> Lou

Mr. Mont never got back to Ms. Smith or others within Plaintiff MCRACDC with dates; and the meeting did not occur.

58. On September 18, 2020, Plaintiff Jones received an email from Mr. Ronald Shaljian, attorney for Skyline Development Group LLC - a company owned and/or operated by Mr. Mont, the Property's proposed developer. The email simply said "see attached." The attachment included a letter dated September 17, 2020, stating that the "Planning Board may schedule the consideration of these amendments as early as the September 29, 2020 special meeting date." The cover letter also alleged that her organization (addressed incorrectly as the Morris Canal Redevelopment Coalition rather than the Morris Canal CDC) had received written notice of a planning board hearing on Skyline's proposed amendments to the Redevelopment Plan. That Notice said that the Planning Board hearing was to be held on June 23, 2020, and listed some proposed amendments

that read like typical zoning variances regarding height and density. The attached notice did not specifically note that the proposed amendments to the plan, in effect, permit a fundamental use change from industrial to high-density, high-bulk mixed-residential, through an obscure provision permitting only the designated "Redeveloper" to build such structures in the Industrial zone.

59. Plaintiff Jones had not previously received a copy of the document entitled Notice of Hearing, whether personally, as a registered agent/liaison or in her capacity as Executive Director of Plaintiff MCRACDC. No cover letter dated June 1, 2020 was included in the attachment sent electronically, and the three U.S. Postal Service Certified Mail Receipts stamped June 1, 2020 did not indicate proof of receipt. The other two Certified Mail Receipts were made out to the two designated agent organizations that Ms. Jones had notified the Planning Department had dissolved.

60. In any event, the Notice indicated that the Board might hold a special hearing on September 29, 2020, which was eleven days from the day Plaintiff MCRACDC received the attachment electronically. Plaintiff Jones was required to independently verify that the amendment to the Plan (to allow for the Property's re-zoning) was in fact on the Planning Board's agenda for that date.

61. On September 29, 2020, Plaintiff Jones wrote a letter to the City Council and Planning Board asserting that she had received inadequate notice and requesting that the Steel Tech site proposed amendments be removed from the agenda. That letter was sent simultaneously to Mr. Shaljian.

62. The Planning Board met on September 29, 2020, but, due to technical difficulties, the meeting was closed after 15 or so minutes. The amendment of the Plan to rezone the Property was not discussed and voted on by the Board Planning Board until October 13, 2020. Plaintiffs did not receive any notice from the developer other than the letter and Notice of Hearing attached to the September 18, 2020 email from Mr. Shaljian to Plaintiff Jones.

63. As a result, Plaintiffs MCRACDC and June Jones, as a designated agent, did not receive adequate, timely notice as required by the Plan. First, Plaintiffs did not receive timely notice of the scheduled September 29, 2020 hearing. Second, Plaintiffs never received *any* notice from the developer that the Board would meet to discuss the Property and the Plan on October 13, 2020. And third, the notice received via email on September 18, did not explicitly note the proposed changes that would permit only the designated Redeveloper to build high-rise residential housing in what remained an industrial zone.

64. Pursuant to the Plan, as adopted by Ordinance, the City and/or the Division of Planning had a ministerial duty to ensure that the MCRACDC, and the stakeholders that it represents, were fully engaged in a participatory decision-making process with respect to the Property, and that the developer properly satisfied the specific notice provisions set forth in the Plan.

65. Because the stakeholder process as set forth in the Redevelopment Plan was truncated prior to the Board and Council's approval of the Plan amendments and never properly completed, and insufficient notice was given to the MCRACDC, the City, Division of Planning and Board have violated their obligations under the Plan and the law.

COUNT TWO - SPOT ZONING

66. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were more fully set forth herein.

67. As the Defendants' adoption of the Ordinance amounts to illicit "spot zoning," it should be reversed.

Spot Zoning Defined

68. As New Jersey courts have identified it, "spot zoning" refers to the impermissible re-zoning of land for the benefit of an owner or developer over the community at large, where the relevant real estate is afforded a use that is "incompatible

with surrounding uses and does not further the comprehensive zoning plan." St. Paul's Missionary Baptist Church v. City of Vineland, 2008 WL 2726729 (App. Div. 2008)(citing Taxpayers Ass'n of Weymouth Twp. v. Weymouth Twp., 80 N.J. 6, 18, 1976)).

69. Though the term may not technically apply when a New Jersey municipality like the City amends a redevelopment plan, the behavior at the core of "spot zoning" is nonetheless just as impermissible in the immediate context - especially when, as here, the amendments to the relevant redevelopment plan are significant and/or run contrary to the redevelopment plan overall. Id.

70. To pass muster, a municipality's amendment of a redevelopment plan must be supported by "substantial credible evidence" that such an amendment is effectively necessary. Id. Courts thus hold municipalities to the same standard they "would have been required to [satisfy] in the first instance when determining the appropriate uses for inclusion in the redevelopment plan." Id.

71. Given the aforesaid, before the Defendants may force-fit a high-rise residential development into the Plan's Industrial zone, immediately adjacent to park land and one- and two-family homes, they must demonstrate via substantial, credible evidence that such an amendment to the Plan is warranted -

the same way they would have had to have shown that such a massive structure would have been appropriate in the Redevelopment Area in the first instance. Id.

72. However, Defendants provided virtually *no* evidence – let alone "substantial, credible evidence" – of why the Ordinance's significant, contrary amendment of the Plan was justified or needed.

The Property Was Unlawfully Spot Zoned

73. The Plan essentially defined the Redevelopment Area as a historic "industrial village" that had fallen on hard times. The Redevelopment Area was once a bustling "company town" where residents "walked to work," and "work and home often shared the same street." But, over time, "well-paying jobs moved on," "income levels decreased," and the "condition of the housing stock began to deteriorate." As a consequence, the Plan notes, the Redevelopment Area suffered from "disinvestment," and, ultimately, "exploitation."

74. The Plan sought to rectify all this. It went to great lengths to describe the "historic" nature of the Redevelopment Area's homes, and the need for the City to preserve those structures and protect and provide opportunities for their inhabitants – the "generations of families [who] continue to own homes and live within the neighborhood."

75. Consequently, and without limitation, the Plan established ambitious Residential and Industrial zones designed to both infuse the Redevelopment Area with high-end jobs and recreational opportunities for residents, and preserve the one- and two-family character of the neighborhoods at issue.

The Plan's Industrial Zone and the Property's Designation as a Park

76. The Plan's Industrial zone both includes the Property and forms the Property's south and west borders.

77. Generally, and obviously, part of the defined purpose of the Industrial zone was to create and provide a "high number of jobs" via the attraction of industrial employers. As such, the Industrial Zone allows as "Permitted Principal Use[s]" a variety of light industrial facilities.

78. However, the Plan expressly *prohibits* almost all of these industrial facilities in the Industrial zone's "Berry Lane Area" - where the Property sits.

79. The reason: As the Plan noted, Defendants and the residents and groups that would later comprise Plaintiff MCRACDC agreed that more park land and greenspace was necessary in the Redevelopment Area.

80. The Plan thus devoted a discrete, major section to "Parks and Greenspace Objectives," where the Plan established that the "Berry Lane Area" (again, an "Area" that includes the

Property) was to be used as a park, and the "development of a recreation facility that could include, but [was] not limited to, playing fields, other recreational facilities [and] structures, passive recreation and amenities." Correspondingly, "Park and Recreation" is included as a Primary Principal Use in the Plan's Industrial zone, and the community Coalition was given an explicit role in the design and development of any park, green space and/or recreational facilities.

81. In short order, Defendants put this Plan into action. They obtained grants worth *millions of dollars* from the State and County to rehabilitate and purchase the Property, on the express promise (which was memorialized in written grant agreements) they would use such monies to transform the Property into a park.

82. In sum, then, Defendants planned for the Property to be part of a park, zoned it so that it could lawfully become a park, and went out and got money to specifically make it a park. Put differently, the Property was *always* supposed to be a park.

83. Just as significantly, however, the Plan made *no* allowance for *any* residential structures or density in its Industrial zone.

84. Indeed, the Plan goes even further: It explicitly states that "No overnight residential facility shall be permitted within the Industrial zone."

85. Put differently, residential structures - like the gargantuan residential high-rise the Ordinance ostensibly approved for the Property - were not merely impermissible in the Plan's Industrial Zone, they were actively, expressly forbidden.

86. Nonetheless, Defendants enacted the Ordinance, which, at once, keeps in place the Plan's designation of the Property as "Industrial," but bends the rules and allows the right "Designated Redevelopers" to build a high-density, high-bulk residential high-rise.

87. The Ordinance is thus incompatible with the Plan and the Property's Industrial Zone, and it certainly is not the park Defendants promised in the Plan, to the Plaintiff, or to the County, State and Federal governments from which Defendants obtained grants.

A High-Density High-Rise has
No Home in the Plan's Residential Zone

88. Just like the high-rise the Ordinance approved would have been expressly forbidden in the Plan's Industrial zone, it would have likewise been impermissible in and/or near the Plan's Residential zone.

89. The Plan expressly designed its Residential Zone – which borders the Property to both the north and east – "[t]o protect and preserve the residential character of the Lafayette neighborhood [of the Redevelopment Area] through due consideration of scale, streetscape, setback, design and impact."

90. As the Plan noted, and as has been discussed above, the Redevelopment Area is primarily composed of historic one- and two-family homes. In other words, the Redevelopment Area was and is defined by small scale residences – not high-density high-rise buildings.

91. Consequently, the Plan dramatically restricted the scope and scale of the residential buildings that may be built in its Residential zone: In short, it *literally* limited construction on any land zoned Residential to what was there already, mandating that "Residential density for any property shall not exceed the density that legally existed on the property at the time of the adoption of this Plan …"

92. With respect to vacant property, the Plan was equally demanding, confining any development on such sites to the limits of the City's R-1 zoning district – i.e., the City's "One and Two Family Housing District."

93. As such, had the Property fallen in the Plan's Residential zone, development of a high-density high-rise thereupon would almost certainly have been impermissible.

94. Stated differently, the ad hoc high-density residential zone the Ordinance created for and superimposed on the Property (to allow for the proposed high-rise's development) contravenes the limitations and requirements of the Plan's general Residential zone.

95. Moreover, the Plan makes clear: "All structures within the [Redevelopment Area] shall be situated with proper consideration of their relationship to other buildings," and buildings in proximity must "be designed to present a harmonious appearance…"

96. In this context, the high-density high-rise contemplated in the Ordinance has no place in its neighborhood. Almost exclusively, small single-family homes populate the only residential areas around the Property. The massive high-rise Defendants have ostensibly approved for the Property is hardly "harmonious" with such small-scale surroundings.

97. In sum, then, just as the Ordinance's high-density high-rise has no place in the Plan's Industrial area, it is similarly incompatible with the Residential zone it neighbors.

The Ordinance Fails to Provide Substantial, Credible Evidence to Warrant Amendment to the Plan

98. As expressed at multiple points herein, the Ordinance conditionally rezones the Property from Industrial to high-density Residential.

99. However, the Ordinance, and the Board resolution upon which it is based, provides virtually *no* evidence, let alone required "substantial, credible evidence," of why this dramatic, materially divergent amendment to the Plan is warranted.

100. For instance, the Ordinance touts the fact that, in return for massively increased density and bulk privileges, any Property Developer will provide "community benefits" including a "recreation center" and "public open space." But, the Ordinance makes no reference to how the Developer's "recreation center" and/or "open space" will be better than - or even different from - the recreational facilities or open greenspace the park that was supposed to be located on the Property. The discussion before the Board at the October 13, 2020 hearing also failed to present substantial credible evidence as to why this massive change to the Plan was preferable.

101. Similarly, by "encouraging" the creation of high-density housing on the Property, the Ordinance (without any evidence)

effectively celebrates such development as beneficial – even though the Plan expressly prohibits *any* residential development in its Industrial zone, and provides ample evidence as to why industrial and park developments were the highest and best use of Industrial-zoned land.

102. This said, curiously, the Ordinance holds in place the Property's Industrial zoning designation – *except* for a "designated redeveloper," exclusively for whom or which the Ordinance *changes* the Property's zoning, to allow the developer to build a high-density, high-bulk residential structure.

103. As the Ordinance expressly states, in renaming the Property the "Berry Lane Park – North Zone": "The Provisions of the Berry Lane Park – North Zone shall only apply to Designated Redevelopers. Any Development conducted within this zone that is not subject to a Redeveloper Agreement with the Jersey City Redevelopment Agency ("JCRA") is subject to the Industrial (I) zone of [the Plan] … Developers within the Berry Lane Park – North Zone are *eligible for an increase in [residential] density and bulk.*"

104. Put another way, what the Ordinance has effectuated is the very definition of impermissible "spot zoning." The Ordinance has rezoned the Property for the exclusive benefit of a designated redeveloper for a use incompatible with not only

the Property's surroundings, but the Property *itself*: As articulated above, residential development in the Plan's Industrial zone is expressly forbidden - and the Ordinance *keeps it that way*, unless a designated redeveloper could benefit from spontaneously switching the Property's zoning to allow construction of a high-density, high-bulk residential complex.

105. Ironically, while it offers almost no evidence to support why the reclassification of the Property is preferable to the prior permitted land uses, the Ordinance proffers strong evidence of how changing the Property's zoning would benefit its designated developer. With the help of an outside financial firm, Defendants determined that rezoning the Property would generate nearly $3 Million in profit for the Property's developer - a number Defendants determined was "reasonable."

106. On its own, the fact that the Board, the City and the Ordinance itself provide no evidence of why amending the Plan is warranted is enough to reverse the rezoning of the Property. That such an amendment was enacted to enrich a developer only makes it a more egregious violation of New Jersey law and virtually mandates vacating the Ordinance.

WHEREFORE, Plaintiff demands relief against the above-captioned Defendants on both Counts I and II as follows:

(i) ordering Defendant City to repeal the Ordinance and reinstitute the Property's Industrial zoning earmarked for park and green space;

(ii) compelling Defendants to strictly comply with all Community Empowerment provisions in the Plan, including, but not necessarily limited to, the stakeholder participatory process set forth therein.

(iii) prohibiting Defendants from amending the Plan in any way, including, but not limited to, rezoning the Property, without providing substantial, credible evidence as to why any such change is warranted and preferable; and

(iv) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

Dated: January 29, 2021

MATSIKOUDIS & FANCIULLO, LLC
Attorneys for Plaintiffs

/s/Derek S. Fanciullo, Esq.
Derek S. Fanciullo, Esq.

And

NEW JERSEY APPLESEED PILC
Attorneys for Plaintiffs

/s/Renée Steinhagen, Esq.
Renée Steinhagen, Esq.

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to Rule 4:25-4, William C. Matsikoudis, Esq., Derek S. Fanciullo, Esq., Caleb J. Thomas, Esq., and Renée Steinhagen, Esq. are hereby designated as trial counsel for Plaintiffs for the within matter.

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

/s/Derek S. Fanciullo, Esq.
Derek S. Fanciullo, Esq.

Dated: January 29, 2021

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, Derek S. Fanciullo, Esq., certifies on behalf of the Plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, counsel for the above-named Plaintiff in the subject action.
2. The matter in controversy in this case is not, to my knowledge, the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.
3. There are no other parties who should be joined in this action that we are aware of at the present time.

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

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

/s/Derek S. Fanciullo, Esq.
Derek S. Fanciullo, Esq.

Dated: January 29, 2021

CERTIFICATION PURSUANT TO RULE 4:69-4

The undersigned, Derek S. Fanciullo, Esq., certifies on behalf of the Plaintiffs as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, counsel for the above-named Plaintiffs in the subject action.
2. All transcripts of local agency proceedings concerning the subject action before the City and Board have been ordered and will be provided to the Superior Court upon request and arrival.

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

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

/s/Derek S. Fanciullo, Esq.
Derek S. Fanciullo, Esq.

Dated: January 29, 2021