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Attorneys for Plaintiffs

[REDACTED]

of other similarly situated residential objectors,

Plaintiffs,

v.

TOWNSHIP OF HOWELL PLANNING BOARD,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY: LAW DIVISION

DOCKET NO.

**CIVIL ACTION**  
**COMPLAINT IN LIEU OF PREROGATIVE WRITS**

[REDACTED]

individually, and on behalf of other similarly situated residential objectors (collectively “Plaintiffs”), brings this action in lieu of a prerogative writ against Defendant, the Township of Howell Planning Board (“Defendant” or the “Board”), and state as follows:

**PARTIES**

1. [REDACTED]

New Jersey.

2. [REDACTED]

Freehold, New Jersey.

3. [REDACTED]

Jersey.

4. [REDACTED]

New Jersey.

5. [REDACTED]

New Jersey.

6. [REDACTED]

New Jersey.

7. [REDACTED]

Jersey.

8. [REDACTED]

Freehold, New Jersey.

9. [REDACTED]

New Jersey.

10. [REDACTED]

11. Plaintiffs bring this action individually, and on behalf of other similarly situated residential objectors.

12. Defendant, Township of Howell Planning Board, is a municipal agency constituted by the Township of Howell (the "Township") pursuant to MLUL, with offices at 4567 Rt. 9 North, Township of Howell, County of Monmouth, New Jersey.

**VENUE**

13. Venue is in Monmouth County. All real property at issue is located wholly within the State of New Jersey, County of Monmouth. Venue is also found pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* (the “MLUL”) and R. 4:69.

14. Moreover, all of the Plaintiffs reside in Monmouth County.

**BACKGROUND**

15. This Complaint in Lieu of Prerogative Writs concerns the Defendant’s arbitrary, capricious and unreasonable approval of Board Application No. SP-1085, Application No. SP-1095 and Application No. SP-1102, each requesting Preliminary and Final Site Plan approvals from the Defendant, and the resulting Board’s adopted resolutions concerning each of these applications.

16. The real property proposed for development via Application No. SP-1085 consists of approximately 29.6 acres, located at 29 Howell Road, Township of Howell and designated on the Official Tax Map as Block 164, Lot 5.01.

17. The real property proposed for development via Application No. SP-1095 consists of approximately 49.3 acres, located at 375 Fairfield Road, Township of Howell and designated on the Official Tax Map as Block 177, Lot 8.01.

18. The real property proposed for development via Application No. SP-1102 consists of approximately 11.8 acres, located at 308 & 413 Fairfield Road, Township of Howell and designated on the Official Tax Maps as Block 168, Lots 17, 18, 19.02, 19.04 and 19.08.

19. As set forth below, the Board’s arbitrary, capricious and unreasonable actions have violated the Plaintiffs’ legal rights.

**FACTS RELEVANT TO ALL THREE APPLICATIONS**

20. The Statements for Corporate Ownership for all three applications identify the same individual, Seth Gerszberg, as principal owner of a real estate development company known as Active Acquisitions, LLC (the "Applicant").

21. All three applications were filed by single-member limited liability companies who list Active Acquisitions, LLC as the member of each entity. As such, all available information indicates that Active Acquisitions, LLC is the real party in interest and acting as the parent company to each of the LLCs who submitted the applications.

22. As this information was disclosed at the time of application, the Board knew (or should have known) of the common ownership of all three LLCs when it considered each application.

23. The real properties for all three applications are situated within one mile of each other.

24. All three approvals included massive warehouse and infrastructure development for intense trailer truck traffic for the respective properties and allowed for unrestricted warehouse and commercial activity operating 24 hours per day and 7 days per week.

25. All three applications submitted Environmental Impact Reports relying upon an outdated Environmental Resource Inventory (a portion of the Township's Master Plan) dated November 2008, rather than the updated and valid Environmental Resource Inventory which had been adopted by the Planning Board as part of the Conservation Element of Howell Township's Master Plan in September 2021.

26. The Environment Impact Reports submitted separately for each application by their professionals did not consider the future cumulative impacts caused by the operation of all three entities on the surrounding areas, despite being under common ownership.

27. Furthermore, there is no record of the Board's professionals directing the applicants to consider such cumulative impacts, nor did they themselves attempt to gain such an understanding.

28. There is also no record of the Board members themselves considering such cumulative impacts nor their effects on any of the surrounding communities.

29. All three approved development applications, when fully developed, will create significant environmental impacts with increased trailer truck traffic, noise pollution and air pollution.

30. All three approved development applications, when fully developed, will have a negative impact on the health, safety and welfare of the residents living in proximity to these entities' operations.

31. All three development applications were approved by the Board in hearings that were held via remote technology at public hearings conducted via the Zoom Remote Platform.

32. A number of residents opposed each of the three applications. However, the Zoom Remote Platform used by the Board for all three Applications did not allow the public to know who, or how many members of the public were attending the hearing, or to see or interact with other members of the public, other than when the Board permitted an audience member to ask questions or make comments on the screen.

33. The Zoom Remote Platform used by the Board denied the public the freedom to assemble and interact with one another as if they attended the meeting in-person.

34. The Board voted to memorialize the Resolutions of Approval for all three applications being challenged in this action on the same date, April 13, 2023.

**FACTS RELEVANT TO APPLICATION NO. SP-1085**

35. The Plaintiffs recite all foregoing paragraphs as if fully set forth herein.

36. In an application identified as Application No. SP-1085, the Applicant proposed to build two (2) one-story warehouse buildings totaling 424,565 square feet which includes office space.

37. Warehouse Building "A" is proposed to contain 325,737 square feet with 55 loading bays, two drive-in bays and parking spaces accommodating 149 vehicles.

38. Warehouse Building "B" is proposed to contain 98,828 square feet with 28 loading bays, 2 drive-in bays and parking spaces accommodating 86 vehicles.

39. The real property to be developed is currently used as a farm and has frontage along Howell Road to the south and Okerson Road to the north.

40. The North Howell Little League Field is located on Okerson Road approximately 500 feet from the property. Upon information and belief, this field is designated as open space.

41. The real property to be developed is located near the intersection of Rt. 33 with Howell Road to the south and Five Points Road to the north.

42. Both Howell Road and Five Points Road have a 4-ton weight restriction.

43. The Board held public hearings for the application via the Zoom Remote Platform on September 2, 2021, and October 21, 2021.

44. The Board denied the application by way of a tie vote to approve and memorialized this decision in a resolution dated December 16, 2021.

45. The Applicant subsequently filed a timely appeal of the Board's denial of the application to the Superior Court of New Jersey, Law Division, Monmouth County. The litigation was assigned Docket No. MON-L-000269-22.

46. The Court conducted a Pre-Trial Conference on April 12, 2022.

47. Thereafter, on August 4, 2022, the Board approved a settlement agreement with the Applicant, and memorialized the resolution by settlement on August 18, 2022.

48. The settlement agreement required a Whispering Woods hearing<sup>1</sup> to be held on or before September 1, 2022. However, this did not happen.

49. The Court then conducted a Case Management Conference on October 13, 2022, and issued an Order establishing a timeline for trial in the event a Whispering Woods hearing was not held before November 30, 2022.

50. The Court further ordered that the testimony and the exhibits from the Board hearings on September 2, 2021, and October 13, 2021, be incorporated by reference for the Whispering Woods hearing.

51. The Whispering Woods hearings for this application were held via the Zoom Remote Platform on November 22, 2022, and November 29, 2022. The Applicant appeared before the Board for both hearings.

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<sup>1</sup> See, Whispering Woods at Bamm Hollow v. Middletown Planning Bd., 220 N.J. Super. 161 (Monmouth Cty Law Div. 1987).

52. The Board did not make the settlement agreement available to the public or incorporate it into the application documents as an exhibit prior to the Whispering Woods hearings.

53. The Applicant's attorney represented to the Board that all prior commitments made by the Applicant during the September and October 2021 hearings remained.

54. The Applicant presented testimony about revisions made to the original application denied by the Board on October 21, 2021.

55. None of the Board members who were appointed in January 2022 certified that they had reviewed the original Application and/or read transcripts from the Board hearings held on September 2, 2021, and October 21, 2021.

56. Prior to the Board closing the public comment on November 29, 2022, two other members of the public raised their hands via the Zoom Remote Platform but were not brought into the Zoom meeting to speak because the Board stated that those members had already spoken at the previous meeting on November 29, 2022.

57. At the conclusion of the Whispering Woods hearings, the Board denied the application and memorialized its decision in a resolution dated December 15, 2022.

58. Thereafter, the Court conducted a Prerogative Writ trial considering only the original denial from October 21, 2021, Board hearing that was memorialized on December 16, 2021.

59. The Honorable Gregory L. Acquaviva, J.S.C., issued an Order on January 9, 2023, which held, in part, that the Board's original denial was arbitrary, capricious and unreasonable.



60. The Court then remanded the application to the Board to consider the merits of the design waiver relief being requested by the Applicant, and to “impose reasonable conditions.”

61. Prior to the Court remanding the application, at the Council Reorganization meeting in January of 2023, the Township Council appointed additional new members to the Board who had no prior involvement with this application (SP-1085).

62. The Board (via its counsel) and the Applicant entered into settlement discussions again and agreed to hold another Whispering Woods hearing on or before February 16, 2023 via the Zoom Remote Platform.

63. At the hearing held on February 16, 2023, the Board’s attorney recited the procedural history of the application and advised the Board that their second settlement agreement involved an agreement to allow the Applicant to present again the revised plans denied at the Whispering Woods hearing held on November 29, 2022.

64. The Board attorney advised the Board that the second settlement agreement provided that if it denied the revised plans again, the Applicant would move forward with the plans remanded by the Court and the Board could only consider the request for design waivers.

65. The Board voted to approve the second settlement agreement, then immediately held the Whispering Woods hearing on the Applicant’s revised proposal.

66. The second settlement agreement was not made available to the public for review prior to the Board holding this Whispering Woods hearing on February 16, 2023. Accordingly, it is unknown whether there were other elements to the agreement, other than as set forth

above. Furthermore, the public ***was not afforded any opportunity*** to offer comments or raise questions about the settlement agreement.

67. During the hearing for the revised application, the Applicant presented testimony from Jeromie Lange, who identified himself as the Director of Development for Active Acquisitions, LLC, the parent company of the Applicant.

68. Mr. Lange stated that although he was a licensed Professional Engineer and Professional Planner, he was only presenting testimony as a representative of the Applicant.

69. Mr. Lange was sworn in to provide testimony as a representative of the Applicant, but he was not sworn in to provide expert testimony, nor were his credentials placed on the record.

70. Mr. Lange testified about the reorientation of the loading docks on one of the warehouse buildings.

71. Mr. Lange testified that a Class 30 sound wall proposed to be built within the front-yard setback would provide maximum sound mitigation and required variance relief.

72. Mr. Lange testified about the redesigned drive aisles and relief from providing curb ramps.

73. Mr. Lange testified about a farmland buffer on the western property line and a buffer on the eastern property line.

74. Mr. Lange testified about seeking design waiver relief from screening trash enclosures.

75. Mr. Lange testified about water tank design and sanitary pumps.

76. Mr. Lange testified that the ingress driveway on Howell Road was narrowed from thirty (30) feet to twenty (20) feet wide.

77. Mr. Lange testified about industry standards for drive aisles for trucks and passenger vehicles and further testified that a Howell Township Fire Official agreed with the proposed drive aisle widths.

78. Mr. Lange testified about the proposed lighting plan and that the Applicant preferred an alternative plan that he asserted complied with the Illuminating Engineers Society standards and was more appropriate for a warehouse use.

79. Mr. Lange testified about changes made to the grading and stormwater management system.

80. Following Mr. Lange's testimony, the Applicant's Planner, Christine Cofone, was sworn in as a licensed Professional Planner and the Board accepted her credentials.

81. Ms. Cofone testified that the Applicant needed three C-2 variances for the proposed sound wall. She also testified, however, that there was no need for the sound wall because there would be no negative impact of noise on the neighbors.

82. Then contradicting herself, Ms. Cofone rendered her professional opinion that the sound wall provided greater screening and sound attenuation for the benefit of the neighboring properties and residents and that the positive and negative criteria for granting the variance were satisfied.

83. Ms. Cofone testified that the Applicant could comply with all applicable state and local noise regulations without building the sound wall.

84. Ms. Cofone did not provide any testimony as to what the expected sound levels from the warehouse operations would be, or as to the impact on the neighboring property and residents, with or without the sound wall being built. She also did not provide testimony identifying the state and local noise regulations that would be applicable, or how the warehouse operations could comply.

85. Ms. Cofone testified about the design waivers related to screening for trash enclosures, the lighting, and providing curb ramps along drive aisles.

86. Kathy Okerson, a member of the public, tried to comment about potential flooding on her property and was advised by the Board attorney that Judge Acquaviva did not permit the Board to revisit stormwater management, even though there were substantial changes to the application that were now being considered by the Board.

87. Plaintiff Marc Parisi, a member of the public, raised his hand via the Zoom Remote Platform. However, Mr. Parisi was not brought into the Zoom meeting to speak.

88. Prior to reviewing the second Whispering Woods application, none of the newly-appointed Board members in January 2023 (five of eight Board members approving the application) certified that they had reviewed the original application and read the transcripts from the Board hearings held on September 2, 2021, and October 21, 2021.

89. The Board voted to approve the second Whispering Woods application on February 16, 2023, and memorialized its decision in a resolution on April 13, 2023.

**FACTS RELEVANT TO APPLICATION NO. SP-1102**

90. The Plaintiffs recite all foregoing paragraphs as if fully set forth herein.

91. In an application identified as Application No. SP-1102, the Applicant proposed to build a one (1) story warehouse building totaling 202,049 square feet including office space.

92. The warehouse building will provide 25 loading bays, two (2) drive-in bays and 73 vehicle parking spaces.

93. The property consists of five separate lots and the Applicant proposes to consolidate the lots into one new lot.

94. The property is located on the west side of Fairfield Road near the intersection of Route 33.

95. The proposed warehouse will be located just north of a recently-constructed warehouse totaling approximately 370,000 square feet, referred to as the "Rock Solid" warehouse.

96. The Applicant submitted an Environmental Impact Report ("EIR") dated November 30, 2021.

97. This EIR relied upon information from the Environmental Resource Inventory adopted by the Board as part of the Conservation Element of the Howell Township Master Plan on January 15, 2009.

98. The Applicant failed to submit an EIR relying upon the current Environmental Resource Inventory approved by the Board as part of the Conservation Element of the Howell Township Master Plan on September 23, 2021.

99. The Board voted to approve Application SP-1102 on March 2, 2023, and subsequently memorialized its decision in a resolution on April 13, 2023.

**FACTS RELEVANT TO APPLICATION NO. SP-1095**

100. The Plaintiffs recite all foregoing paragraphs as if fully set forth herein.

101. In an application identified as Application No. SP-1095, the Applicant proposed to build two (2) one-story warehouse buildings totaling 503,956 square feet including office space.

102. Warehouse Building "A" is proposed to contain 369,242 square feet with 50 loading bays, two drive-in bays, 149 vehicle parking spaces and 30 truck parking spaces.

103. Warehouse Building "B" is proposed to contain 134,714 square feet with 32 loading bays, two drive-in bays and 58 vehicle parking spaces.

104. The property currently has a one-story residential dwelling and largely consists of open fields along the frontage of Fairfield Road and undeveloped woods along the back portion of the property.

105. The property is located on the east side of Fairfield Road approximately 1,000 feet south of Route 33.

106. The property is located across Fairfield Road from the Rock Solid warehouse.

107. The Board held public hearings via the Zoom Remote Platform for this application on February 2, 2023, and March 16, 2023.

108. The Applicant testified that the anticipated increase in vehicular traffic on a 24-hour basis for this application would be approximately 560 passenger vehicles and 300 trailer trucks daily.

109. The Applicant's traffic expert testified that the Traffic Impact Report for the application relied upon the Rock Solid warehouse Traffic Impact Report in formulating an opinion that vehicles could safely ingress and egress onto Fairfield Road.

110. The Applicant's traffic expert did not provide data from the traffic studies performed in connection with the Rock Solid warehouse to support this opinion.

111. During public comment, a resident inquired if the Applicant would consider additional buffering like installing a sound attenuation wall between the property and the neighboring residences. The Applicant indicated that it would not do this.

112. The Board voted to approve this application on March 16, 2023, and memorialized its decision in a resolution on April 13, 2023.

**COUNT I**

**In Failing To Consider The Cumulative Environmental Impacts From All Three Warehouse Projects, The Board's Approvals Were Arbitrary, Capricious And Unreasonable.**

113. The Plaintiffs recite all preceding statements as though fully set forth herein.

114. As the Board considered and approved each warehouse application in February and March of 2023, it was aware of the existence and common ownership of all three projects. The Board did not, however, in its considerations, assess the cumulative impact of all three projects and their effects on the immediate neighborhood, which include a Little League sports field, a recreation center and a Wawa, where, among other residents, children and teens congregate.

115. The EIRs submitted separately for each of the three projects by the same Applicant did not consider the collective cumulative effects of all three projects and their impacts on the surrounding areas.

116. The Board failed to consider the cumulative environmental impacts from all three warehouse operations, not only on the named Plaintiffs, but the health, safety and welfare of

all residents in the North Howell community, including with respect to the effects on noise and air pollution.

117. In failing to consider the cumulative environmental impact from all three warehouse operations on the health, safety and welfare of all residents in the North Howell community, the Board acted arbitrarily, capriciously and without sound consideration of relevant information in granting both Preliminary and Final Site Plan approvals of the three applications.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified applications and resulting resolutions; (ii) remanding for proper consideration of the cumulative environmental impacts of the proposed developments; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

**COUNT II**

**Denying The Public The Opportunity To Review The Settlement Agreement  
And Limiting The Scope Of Public Questions, The Board's Approval For  
Application SP-1085 Was Arbitrary, Capricious And Unreasonable.**

118. The Plaintiffs restate all preceding statements as though fully set forth herein.

119. Application SP-1085 was remanded by Judge Acquaviva by way of an Order dated January 9, 2023, requiring the Board to hold a remand hearing.

120. Judge Acquaviva ordered that the testimony and the exhibits from the hearings on September 2, 2021 and October 21, 2021 be incorporated by reference into the first Whispering Woods hearing.



121. The Board did not hold a remand hearing, but rather held a Whispering Woods hearing on February 16, 2023 in which the prior testimony and exhibits were to be incorporated.

122. At the February 16, 2023 Whispering Woods hearing, the Board approved a settlement agreement between the Applicant and the Board attorney.

123. The Board denied the public the opportunity to review this settlement agreement.

124. The Board did not provide detailed information concerning the terms of the settlement.

125. The Board denied the public the opportunity to ask questions about the issues addressed in the Remand Order. The Board's grant of approval while denying the public the opportunity to review the settlement agreement and limiting the scope of public questions was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified application and resulting resolution; and (ii) remanding for a proper public hearing and comment on the full and exact terms of the settlement agreement pursuant to the Whispering Woods hearing; (iii) complying with Judge Acquaviva January 9, 2023 Remand Order; and (iv) granting all other legal and equitable relief as this Court may find just and proper.

### **COUNT III**

#### **The Board's Approvals Predicated On The Outdated Environmental Resource Inventory Was Arbitrary, Capricious And Unreasonable.**

126. The Plaintiffs recite all preceding statements as though fully set forth herein.

127. Howell Township Ordinance 188-6(A), titled "Environmental Impact Report," states in sum that an applicant submitting an application for development, it must provide testimony and evidence regarding the effect of the development in an Environmental Impact Report. The Ordinance states specifically that "Said environmental impact report shall be coordinated with the natural resources inventory in the Township of Howell."

128. There is no evidence that the Board or its professionals ever considered the reporting requirements of the Environmental Impact Report Ordinance, including Sections 188-6(A)(2)-(6), requiring inventories of environmental conditions, impact assessments, mitigation measures and resource commitments.

129. The Board previously adopted the November 2008 Environmental Resource Inventory (also referred to as the "Natural Resource Inventory") as part of the Conservation Element of the Howell Township Master Plan on January 15, 2009.

130. The Board adopted the February 2021 Environmental Resource Inventory as part of the Conservation Element of the Howell Township Master Plan on September 23, 2021.

131. The EIR submitted by the Applicant for SP-1085 was dated March 2021 and attached the Environmental Resource Inventory of the Conservation Element of the Howell Township Master Plan from November 2008.

132. The EIR submitted by the Applicant for SP-1095 was dated October 29, 2021 and the References section cited the Environmental Resource Inventory of the Conservation Element of the Howell Township Master Plan from November 2008.

133. The EIR submitted by the Applicant for SP-1102 was dated November 30, 2021 and the References section cited the Environmental Resource Inventory of the Conservation Element of the Howell Township Master Plan from November 2008.

134. The EIRs for all three applications failed to consider the current Environmental Resource Inventory adopted by the Board and relied upon outdated information that was approximately twelve years old.

135. The Applicant for each entity failed to provide updated and accurate analyses of the environmental impacts of all three applications.

136. The Board's approvals predicated on the outdated Environmental Resource Inventory were arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified applications and resulting resolutions; (ii) remanding for proper consideration of the updated and accurate Environmental Resource Inventory; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

#### **COUNT IV**

#### **The Board's Approval For Application SP-1095 Without Requiring The Applicant To Construct A Sound Attenuation Wall For The Neighboring Residents On Fairfield Road Was Arbitrary, Capricious And Unreasonable.**

137. The Plaintiffs recite all preceding statements as though fully set forth herein.

138. The EIR submitted with Application SP-1085 states in Section 3.1.9 that a quiet residential street may have sound levels of 5-60 dBA, while heavy trucks generate sound levels in the 85-95 dBA range.

139. The EIR further states in Section 4.1.3 that the estimated noise levels from warehouse operations will be less than 65 dBA.

140. Both the N.J.A.C. Noise Control 7:29 and Howell Township Noise Ordinance 208-7 prohibit a commercial facility, like a warehouse, from producing any sound levels measured at a residential property line in excess of 65 dBA from 7am to 10pm, and 50 dBA from 10pm to 7am.

141. The Applicant proposes to build two warehouses with 84 loading bays that will generate an increase in truck trailer traffic from a no-build condition.

142. The proposed warehouse shares a property line to the east with residential properties.

143. Heavy trucks generating noise levels in the 85-95 dBA range will ingress and egress from the proposed warehouse 24 hours per day and 7 days per week.

144. The noise from these tractor trailers will negatively impact the health, safety and welfare of the neighboring residences.

145. The Applicant proposes to build a sound wall to attenuate the noise from tractor trailers.

146. The Applicant did not present any studies or proofs that the sound wall will perform its intended purpose and mitigate noise such that warehouse operations will be in full compliance with state mandated noise regulations and the local Howell noise ordinance.

147. The Board's grant of approval without requiring the Applicant to provide this evidence was arbitrary, capricious and unreasonable.

148. With respect to Application SP-1095, the Board could have imposed a reasonable condition and required the Applicant to build a sound attenuation wall for the neighboring residents on Fairfield Road.

149. The Board's grant of approval without requiring this Applicant to construct a similar sound attenuation wall for the same reasons was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified application and resulting resolution; (ii) remanding for proper consideration of the noise impacts and the imposition of reasonable conditions thereupon; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

**COUNT V**

**The Board's Approvals Without Sufficient And Quantifiable Traffic Data For The Adjacent Warehouse Approvals Were Arbitrary, Capricious And Unreasonable.**

150. The Plaintiffs recite all preceding statements as though fully set forth herein.

151. The Application for SP-1095 failed to consider the cumulative traffic impacts with the previously approved warehouses on Fairfield Road.

152. The Applicant's Traffic Expert, Dan Disario, testified that the expected traffic on a 24-hour basis would be approximately 560 passenger vehicles and 300 tractor trailers daily.

153. Mr. Disario testified that he relied upon the traffic study for the Rock Solid warehouse in his analysis of this Application.

154. Mr. Disario testified that he did not know the total vehicle trips in a 24-hour period for the Rock Solid warehouse.

155. Mr. Disario testified that he only knew the peak hour traffic for the Rock Solid warehouse.

156. The Board had a Traffic Engineer, Brian Chen, present for this hearing.

157. Plaintiff, Marc Parisi, questioned Mr. Disario about the Rock Solid warehouse traffic data.

158. The Board Planner interjected into the line of traffic-related questions that Mr. Parisi was asking Mr. Disario specifically.

159. The Board's Traffic Engineer never interjected regarding these questions; the only response came from the Board Planner.

160. Mr. Disario was unable to provide the 24-hour total vehicle trips for this proposed warehouse with the Rock Solid warehouse trip totals and the trip totals for Application SP-1102 that was approved on March 2, 2023.

161. The Board lacked sufficient information to evaluate if the potential for queuing could cause an unsafe condition with the safety of ingress and egress at the proposed warehouse for Application SP-1102.

162. The Board's grant of approval without sufficient and quantifiable traffic data for the adjacent warehouse approvals was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified application and resulting resolution; (ii) remanding for proper consideration of the traffic impacts and the imposition of reasonable conditions thereupon; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

**COUNT VI**

**The Board's Approval For Application SP-1085 Without Requiring  
The Applicant To Seek A Variance For The Minimum Driveway Width  
Was Arbitrary, Capricious And Unreasonable.**

163. The Plaintiffs recite all preceding statements as though fully set forth herein.

164. Howell Township Ordinance 188-106(F)(1)(A) states, "All main driveways into commercial and/or industrial areas shall be a minimum of 30 feet wide, or as controlled by outside agencies. On industrial and commercial applications, a thirty-foot-wide circulation aisle must be maintained for emergency purposes."

165. Howell Township Ordinance 188-106(F)(1)(B) states, "All aisles other than the main driveways into commercial and/or industrial areas shall be a minimum of 25 feet wide. In the interest of public safety, the Board of Fire Commissioners does not support any waivers to Subsection F(1)(A) and (B)."

166. The Applicant reduced the width of the main driveway onto Howell Road from thirty (30) feet to twenty (20) feet for Application SP-1085.

167. This is inconsistent with Ordinance 188-106 (F)(1)(A) and (B).

168. The Applicant testified a Fire Official agreed with the proposed reduction in width, however the Ordinance clearly states the Board of Fire Commissioner does not support any waivers in the interest of public safety.

169. The Application required a variance to reduce the width of the main driveway on Howell Road.

170. The Board's grant of approval without requiring the Applicant to seek said variance and weighing the negative and positive criteria of the requested relief was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified application and resulting resolution; (ii) remanding for proper consideration of the positive and negative criteria of granting said variance on Application SP-1085; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

**COUNT VII**

**The Board's Approval Of All Three Applications While Failing To Consider  
The Requirements Of Howell Township Ordinance 188-26  
Was Arbitrary, Capricious And Unreasonable.**

171. The Plaintiffs recite all preceding statements as though fully set forth herein.

172. Howell Township Ordinance 188-26 states, "No topsoil shall be removed from the Township of Howell. Any proposal for the removal of more than 600 cubic yards of topsoil from one location in the Township to another shall be the subject of a site plan application containing the information required for an application under Article XII of this chapter for both the sending and receiving lots."

173. Ordinance 188-26 further provides that any application for development involving the removal of over 600 cubic yards of material shall include on its site plans a report indicating the means and amount of topsoil removal, effects on abutting lands, preservation of soil fertility and other factors "as may reasonably bear upon or relate to the public health, safety and general welfare."

174. The Applicant's proposals for all three sites involve massive amounts of soil excavation and disturbance.

175. The Applicant's site plans for all three applications do not contain reports evaluating the factors detailed in Ordinance 188-26.



176. Despite these massive amounts of soil excavation and disturbance, the Board failed to investigate the nature and degree of any proposed soil excavation and/or removal.

177. The Board was aware (or should have been aware) that all three applications were submitted by the same Applicant.

178. There is no record of the Board nor its professionals inquiring, investigating or evaluating the possibility of soil excavation, removal and/or redistribution between the construction sites of all three applications as required by Ordinance 188-26.

179. The Board's approval of all three applications, while failing to consider the requirements of Ordinance 188-26, was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified applications and resulting resolutions; (ii) remanding for proper consideration and investigation of the possibility of soil excavation and/or redistribution for all three applications pursuant to Howell Township Ordinance 188-26; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

**COUNT VIII**

**The Board's Approval Of Application SP-1095 While Failing To Consider Or Investigate The Issue Of The "Anomalies" Found On The Property Was Arbitrary, Capricious And Unreasonable.**

180. The Plaintiffs recite all preceding statements as though fully set forth herein.

181. Many community residents, including Plaintiffs, have expressed concerns about the "anomalies" found on the property of Application SP-1085, which is across the street from the Jerseyville Cemetery.

182. The belief among the residents is that such "anomalies" were, in fact, unmarked graves.

183. Neither the Applicant nor the Board raised any issues concerning the possibility that construction of the warehouses would be located on the final resting places of past community residents.

184. The New Jersey Cemetery Board (under the umbrella of the New Jersey Department of Community Affairs) should have been contacted to conduct an investigation.

185. Similarly, the Board's approval of Application SP-1085 was done without any identified consideration of addressing and investigating these anomalies.

186. The Board's approval of Application SP-1095 while failing to consider or investigate the issue of these anomalies was arbitrary, capricious and unreasonable.

WHEREFORE, the Plaintiffs demand relief against Defendant issuing an Order in Lieu of Prerogative Writ: (i) vacating the approval of the identified application and resulting resolution; (ii) remanding for proper consideration and investigation of the anomalies discovered on the subject property of Application SP-1095; and (iii) granting all other legal and equitable relief as this Court may find just and proper.

Dated: June 2, 2023

**JARDIM, MEISNER & SUSSEY, P.C.**  
*Attorneys for the Plaintiffs*

By: 

Bennet Susser  
Bennet Susser

**RULE 4:5-1 CERTIFICATION**

I certify that the matter in controversy is not, to the best of my knowledge, information and belief, the subject of any other action pending in any Court or pending arbitration proceeding. I further certify that no other Court action or arbitration is contemplated by the Plaintiffs and no other party should be joined as a party to this action at the present time.

Dated: June 2, 2023

**JARDIM, MEISNER & SUSSER, P.C.**

*Attorneys for the Plaintiffs*

By: 

Bennet Susser

**RULE 4:69-4 CERTIFICATION**

I certify that all necessary transcripts relating to this matter have been ordered or obtained and attached hereto.

Dated: June 2, 2023

**JARDIM, MEISNER & SUSSER, P.C.**

*Attorneys for the Plaintiffs*

By: 

Bennet Susser

**RULE 4:25-4 CERTIFICATION**

Plaintiffs hereby designate THOMAS C. JARDIM, ESQ. and BENNET SUSSER, ESQ. as trial counsel.

Dated: June 2, 2023

**JARDIM, MEISNER & SUSSER, P.C.**

*Attorneys for the Plaintiffs*

By: 

Bennet Susser