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RESOURCE ENGINEERING LLC,

Plaintiff,

vs.

MONMOUTH COUNTY BOARD OF
FREEHOLDERS; MONMOUTH COUNTY
SOLID WASTE ADVISORY COUNCIL;
MONMOUTH COUNTY DEPARTMENT OF
PUBLIC WORKS AND ENGINEERING.

Defendant.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY**

Docket No.: MON-L-2495-20

CIVIL ACTION

**FIRST AMENDED VERIFIED COMPLAINT
IN LIEU OF PREROGATIVE WRIT**

Plaintiff Resource Engineering LLC (“Resource Engineering” or “Plaintiff”), by way of
Complaint in Lieu of Prerogative Writ against the Defendants herein, says:

NATURE OF ACTION

1. This is an action in lieu of prerogative writ by which Plaintiff seeks an order compelling the Defendants to perform certain mandatory duties, as well as compelling the Defendants to exercise their discretion with regard to Resource Engineering’s request for inclusion in the Monmouth County Solid Waste Management Plan (“MCSWMP”).

PRELIMINARY STATEMENT

2. In 2015, Resource Engineering began the process of seeking approvals from Monmouth County to construct and operate a new solid waste transfer station in Howell.

3. The need for a new solid waste facility is indisputable; construction debris and other materials generated by the rapid expansion of residential housing in Lakewood and

surrounding municipalities is currently being trucked through Ocean and Monmouth Counties, which is causing pollution, stressing local and County roadways, and depriving Monmouth County of tax revenue and jobs.

4. Monmouth County and Howell agreed; Defendant Monmouth County Solid Waste Advisory Council (“SWAC”) and Howell Township (“Howell”) both gave their blessing to the project; Howell by letter of support dated March 6, 2017, and SWAC by unanimous approval on May 18, 2017.

5. A final step in this process – consideration and a vote by the Monmouth County Board of Freeholders – was scheduled for July 27, 2017.

6. On the date of the Board meeting, the Mayor of Howell – vacationing abroad – sent a scathing e-mail objecting to the proposed transfer station; an inexplicable repudiation of the Township’s March 6th letter, upon which SWAC and other County officials had relied in moving forward with the project.

7. Instead of questioning the Mayor’s about-face, taking testimony on the application and voting, the Board ran for cover; the meeting was canceled, and Resource Engineering’s application was improperly sent back to SWAC.

8. Thus began a now more than **three-year** merry-go-round of Defendants’ interference, stonewalling and red tape.

9. Upon information and belief, powerful political interests in Monmouth County and beyond coordinated with the Board and SWAC to improperly interfere with, obstruct and hinder Resource Engineering’s proposal.

10. Respectfully, the Court should order SWAC and the Board to stop their endless “studies” of Plaintiff’s proposal and approve the application.

11. Resource Engineering is also entitled to recoup from Defendants the hundreds of thousands of dollars that it spent over the past three years on experts, lawyers and other professionals trying to satisfy Defendants' demands.

THE PARTIES

12. Plaintiff Resource Engineering is a New Jersey limited liability company and the owner of property located at 34 Randolph Road in Howell Township, New Jersey, also known as Block 5, Lot 4 on the Howell Township Tax Map (the "Subject Property").

13. Defendant Monmouth County Board of Freeholders (the "Board") is the elected five-member legislative body for Monmouth County, responsible for the executive and legislative functions of County government.

14. Defendant Monmouth County Solid Waste Advisory Council ("SWAC") is an advisory board that: assists the County with the development and formulation of the MCSWMP; assists the County with its biennial review of the MCSWMP; and provides advice and assistance to the County on any other matter concerning solid waste.

15. Defendant Monmouth County Department of Public Works and Engineering ("DPWE") is the government agency designated in the MCSWMP to prepare and oversee implementation and enforcement of that Plan. Defendant Board, along with SWAC and DPWE, are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

16. Venue is proper in this county pursuant to N.J. Ct. R. 4:3-2(a) as the parties are residents of Monmouth County and the property at issue is located in Monmouth County.

FACTS APPLICABLE TO ALL COUNTS

The Solid Waste Transfer Station Approval Process

17. The MCSWMP provides that all solid waste facilities “require a NJDEP permit, but may not apply for this permit until they are ‘included in the County Solid Waste Plan.’”

18. To be included in the MCSWMP, a facility must submit a request for inclusion, which must contain certain identified information.

19. Once the County Solid Waste Coordinator determines that the submission is complete, a copy thereof and a request for comments is sent to the Municipal Clerk of the host municipality.

20. Following a presentation by the applicant before SWAC and a site visit by SWAC, a thirty-day public comment period is held.

21. Thereafter, the applicant must make another presentation at a SWAC public meeting.

22. Then, “[t]he Solid Waste Advisory Council will vote on the application.”

23. If SWAC votes favorably on the request for inclusion, the matter “move[s] up to consideration by the Monmouth County Board of Chosen Freeholders.”

24. Following notice to the public, a public hearing is held before the Board.

25. Ultimately, the Board votes upon the request for inclusion; if the Board votes to amend the plan to include the proposed facility, the applicant must begin the NJDEP’s permit process.

Resource Engineering’s Request for Inclusion

26. On or about August 19, 2015, Resource Engineering submitted to SWAC a Request for Inclusion (“RFI”) into the MCSWMP.

27. The RFI, which was prepared by InSite Engineering, LLC (“InSite”) on Resource Engineering’s behalf, proposes the construction of a new solid waste transfer station (the “Transfer Station”) at the Subject Property.

28. The Subject Property is located in the SED Zone District, which includes all of Randolph Road and the east side of County Road 547 (Lakewood Farmingdale Road).

29. The SED zone allows for a variety of commercial uses and, although it does not identify recycling facilities or transfer stations as permitted uses, the proposed Transfer Station is very similar in nature to the manufacturing uses permitted in the SED Zone.

30. For example, as shown below, other commercial/manufacturing businesses located on Randolph Road include Arnold Steel, Pillari Construction, Suburban Building Products, and a large office/warehouse with various tenants.



31. As shown above, south of the Resource Engineering property is the JCP&L Larrabee Power Substation, which has a 200-foot easement around its power lines.

32. There are no residential structures in the vicinity of the proposed Transfer Station.

33. Resource Engineering currently operates a Class B recycling facility on the Subject Property, which processes brush, trees, tree parts, tree stumps and wood.

34. As explained below, the proposed Transfer Station (a Class C recycling facility) will deliver significant benefits to Howell Township and its residents, including:

a. a substantial reduction in on-site stockpiling of solid waste and external recycling operations;

b. a smaller carbon footprint because the Transfer Station will reduce the substantial truck mileage currently logged by out-of-County haulers traversing the Township, and smaller trucks will come in, while larger trucks will go out;

c. lower taxes, because the facility will be a significant commercial tax rateable for the Township;

d. improvements at the intersection of Randolph Road and County Route 547/Lakewood Farmingdale Road;

e. the widening and repaving of approximately 1/4 mile of Randolph Road;

f. installation of a traffic signal and left and right turn lanes at the intersection of Randolph Road and County Route 547/Lakewood Farmingdale Road;

g. the payment of a substantial Municipal Host Fee by Resource Engineering to Howell for every ton of material processed;

h. recycling materials that would ordinarily be dumped in New Jersey landfills; and

i. over forty new jobs.

35. The Transfer Station would require the construction of a new 36,000 square foot building, an 8,000 square foot maintenance garage and office building, and a scale house.

36. The following rendering of the project was produced in March 2018:



37. The new buildings would incorporate air quality control mechanisms, a concrete floor for waste material sorting, water supply and fire-fighting equipment.

38. A sweeper truck would be on site at all times to minimize dust pollution, and the Transfer Station would be served by an on-site wastewater treatment system.

39. The Transfer Station would have the operational capacity to handle 1,500 tons of solid waste per day, as recommended and approved by SWAC.

40. The Transfer Station would receive and process Type 13 waste (appliances, furniture, etc.) and Type 13-C waste (construction debris).

41. After the Type 13 and Type 13-C waste is delivered, Resource Engineering will extract from the waste stream materials such as wood, gypsum, copper, and aluminum for processing and recycling. No household waste shall be accepted, and no material shall remain permanently on site.

42. After processing, the facility would provide wholesale mulch to local yards and garden centers, scrap metal to local salvage yards for shredding, and non-recyclable material for disposal at the regional landfill.

43. Once the Transfer Station is completed and operational, Class B operations at the Property would be reduced by approximately 50%.

44. According to a report submitted with the RFI that was authored by Resource Engineering's environmental consultant, Envirotactics, Inc., the Transfer Station would have minimal to no impact on the environment.

45. Also included with the RFI was a Request for Pre-Application Conference to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste.

46. On September 14, 2015, in response to comments from SWAC's professionals, Resource Engineering revised the RFI to, among other things:

- a. describe in more detail the proposed operation of the Transfer Station, including a step-by-step exposition of when vehicles enter the station until they leave;
- b. incorporate Resource Engineering's agreement that the Transfer Station would only extract wood, gypsum, copper, and aluminum for processing, not recycling;
- c. limit the storage of extracted material in the Class B area to only extracted wood material and reflect that other extracted material would be transferred to an appropriate facility for either recycling or disposal; and

d. agree that Resource Engineering will transport “processed,” rather than “sorted,” material from the Station in 100-yard tractor trailers.

47. Because the Transfer Station is located on a County Road, a copy was also delivered to the Monmouth County Engineering Division.

48. On September 17, 2015, SWAC deemed the RFI administratively complete and, according to Stuart Newman, SWAC’s Solid Waste Coordinator, the RFI would be introduced to SWAC that same evening.

Howell’s Initial Objections to the RFI

49. On September 16, 2015, a copy of the RFI was submitted to the Howell Township Clerk.

50. On October 21, 2015, McKenna (Kingdon) Torcivia, Howell’s Director of Law, sent an e-mail to SWAC stating that, because the proposed Transfer Station is not a permitted use, it would require the approval of the Howell Zoning Board.

51. According to Ms. Torcivia, Howell objected to the RFI.

NJDEP Pre-Application Conference

52. On November 10, 2015, the NJDEP convened a pre-application conference to discuss the RFI.

53. In attendance at the conference were, among others, Tom Byrne (DEP Secretary and Chief of the Bureau of Solid Waste Permitting), Stuart Newman (SWAC), Doug French (Owner, Resource Engineering, LLC) and Patrick Ward, Insite Engineering (Resource Engineering’s civil engineer).

54. During the conference, Doug French explained that the Transfer Station is required to handle the significant solid waste being generated by the Lakewood building boom (currently being transported through Monmouth County).

The RFI Continues to Progress

55. On November 23, 2015, Resource Engineering, NJDEP, SWAC and the Howell Departments of Community Development and Land Use met to discuss the RFI.

56. NJDEP discussed the benefits of the Transfer Station, including the host fee, which Resource Engineering would pay to Howell Township.

57. Howell voiced concerns about a potential increase in truck traffic around the Property and said it would request that SWAC commission a traffic study regarding same.

58. NJDEP assured Howell that all of its comments would be considered at SWAC's hearing on the RFI, which was scheduled for January 21, 2016.

59. On January 21, 2016, during its regular meeting, SWAC discussed the RFI and reviewed comments submitted by Howell and others.

60. Although invited to all SWAC meetings, no Howell representative attended the meetings.

Although Not the Decision-Maker, Howell Demands that Resource Engineering Make Concessions

61. Howell was involved from the inception of Resource Engineering's proposal and made several demands relating to the plans for the Transfer Station.

62. Although not required to do so, Resource Engineering satisfied nearly all of them.

63. For example, in early 2016, Resource Engineering engaged traffic consultant McDonough & Rea Associates ("MRA") to undertake a traffic impact analysis of the proposed Transfer Station.

64. On or about April 27, 2016, MRA issued its draft traffic impact analysis.

65. The draft impact analysis concluded that a traffic signal should be installed at the intersection of Randolph Road and County Route 547, even if the Transfer Station is not constructed.

66. According to MRA, once a traffic signal is installed and the intersection is widened for turning lanes, it “would operate at an acceptable [LOS] ‘B’ during the AM Peak street hour and ‘B’ during the PM peak street hour,” and “[t]he site access to Randolph Road will also operate at an acceptable [LOS] ‘C’ during both peak hours.”

67. Ultimately, Resource Engineering agreed to pay for the signalization of the intersection.

68. Howell commissioned civil engineering consultant CME Associates (“CME”) to review the RFI and “determine if [it] meets the basic requirements for site plan approval from Howell Township.”

69. By letter dated September 12, 2016, CME communicated its findings to SWAC.

70. According to CME, Resource Engineering should:

a. “demonstrate[e] how the public good will be advanced by the location of the facility at this specific site, and whether alternative sites have been considered”;

b. “[i]ndicate the origin of the material brought to the site”;

c. show that it will comply with Howell’s standards regarding noise, air pollution, and flammable materials, among other things;

d. disclose “the anticipated truck routes to the facility and the ability [of] said road network to support truck traffic”;

e. show that it has received approval to build within JCP&L’s right of way;
and

f. provide reports to show “that the site complies with NJDEP stormwater management regulations.”

71. On October 7, 2016, Resource Engineering’s civil engineer, InSite, issued a formal response to the CME Report which addressed CME’s concerns, to wit:

a. “the public good will be advanced by the location of the facility” because it “would significantly reduce truck traffic travelling through the Township,” as Type 13-C debris was being transported on Route 547 through Howell to other stations in Monmouth County, and by noting that the “site was chosen because of its strategic location and its current use, which is a NJDEP-approved Class B Recycling Facility”;

b. material would be brought to the site from Monmouth County and the northern half of Ocean County, among other places;

c. “it will comply with the township’s standards of performance re: noise, air pollution, and flammable materials, among other things” because no onsite generators were currently proposed, and buildings will have “adequate air quality control mechanisms, water supply and adequate fire suppression systems” designed per state requirements;

d. it is “anticipated that a considerable majority of truck traffic generated by the facility will utilize Route 547”;

e. Resource Engineering will seek JCP&L’s approval to build within its right of way once the station is included in the MCSWMP; and

f. regarding storm water management, “[o]nce the facility has obtained inclusion . . . , full site engineering will be completed and submitted to the NJDEP for review.”

Howell Gives the RFI its Blessing

72. On February 10, 2017, Howell Township Engineer Jim Herrman forwarded to Newman (SWAC) an e-mail that he wrote to Township Manager Jeff Mayfield and Township Counsel McKenna Torcivia regarding the Transfer Station.

73. Herrman wrote that, in light of the rigorous review of the proposal by Howell and SWAC, and certain promised improvements to the project, Howell was prepared to move forward with the Transfer Station.

74. According to Herrman:

a. Howell had been working with SWAC for over a year regarding the application;

b. “We have voiced our opposition to this facility from the beginning but understand that these types of facilities are governed by SWAC instead of local zoning boards”;

c. Herrman’s office and the planning board engineer had “writ[ten] multiple letters to ensure that we provide the most comprehensive review possible”;

d. “SWAC . . . will make the facility comply with most reasonable requests. It appears that the applicant has done their best to comply with our site plan ordinance based on these letters and I believe that this will actually help clean up the current facility at that location”;

e. Resource Engineering has promised to signalize the intersection;

f. the station will have fences and landscaping, and the entrances roads will be paved, “thereby reducing the amount of dirt tracking that happens at the facility now”;

g. Howell is “requesting that [Resource Engineering] widen the road and curb the shoulders”;

h. the facility will “hopefully . . . be a slight improvement to the area even though this is not an ideal type of facility to have in town”; and

i. SWAC was scheduled to vote on the RFI in March 2017, so if Howell were “vehemently opposed to th[e] application, then [it] must draft a letter from the Council opposing this plan and send it to [SWAC] by the end of next week. If not, the plan will be up to SWAC.”

75. On February 27, 2017, Resource Engineering responded to additional comments made by Howell’s consultant, CME, including whether there will be sufficient area for vehicle movement within the facility and if the electric utility’s prior approval will be required before proceeding with construction.

76. Resource Engineering reminded CME that, although its “application preempts the Municipal Land Use Law by way of the Solid Waste Management act, [it] ha[s] been open to the comments and suggestions made by SWAC and Township officials. The site design and layout ha[ve] evolved since the initial SWAC submission to address many of the comments”

77. On March 6, 2017, Howell Township Manager, Jeff Mayfield, wrote SWAC to express Howell’s **support** for the Transfer Station, subject to Resource Engineering complying with the recommendations and requirements that Howell submitted to SWAC including: (a) installing a traffic signal; and (b) “widening and curb installation of Randolph Road[’s] . . . frontage and engineering confirmation that [it] can support the weight of the proposed vehicles that will utilize this facility.”

78. Mayfield wrote the March 6, 2017 letter “[o]n behalf of the Howell Township Governing Body and professional staff.”

SWAC Unanimously Approves the RFI

79. During the first two weeks of May 2017, Resource Engineering and the Board negotiated a developer’s agreement under which, prior to the issuance of a certificate of

occupancy for the Transfer Station, Resource Engineering would be required to install a traffic signal at the intersection of Randolph Road and County 547/Lakewood Farmingdale Road.

80. On May 16, 2017, Howell Manager Mayfield wrote to SWAC that Howell had reviewed the revised Transfer Station plan and “has no objection to this project moving forward as designed.”

81. On May 18, 2017, the **ten-member SWAC unanimously approved** the RFI submitted by Resource Engineering and, it was sent to the Board for a public meeting and a vote.

The Board Schedules a Public Hearing on the RFI

82. On July 1, 2017, SWAC confirmed that a hearing and vote on the RFI was scheduled for July 27, 2017 at Union Beach Borough Hall in Freehold.

83. SWAC also confirmed that notices of the hearing would be published in the Asbury Park Press on July 14 and July 17, 2017, and that notices were also sent to all fifty-three municipalities in Monmouth County.

Howell’s Inexplicable About-Face on the RFI

84. On July 27, 2017, the day of the Board meeting, Howell Mayor Teresa Berger sent an e-mail to the Board vehemently opposing the Transfer Station.

85. Because Mayor Berger was traveling abroad and unable to attend the Board meeting in person, she asked that her e-mail be read into the record.

86. Among other things, Mayor Berger:

- a. objected to “vehicles idling and emitting carbon fumes and pollution,” and to “large traffic issues . . . on the intersection” of “roads [that] are already highly travelled”;
- b. characterized the proposed signalization as a “patchwork approach that will have only a minor impact” and that did not “address the impact of the noise and smog in this largely residential area of town”;

c. stated that “this type of infrastructure would . . . diminish [Howell’s] home town and family focused town feel”; and

d. did not believe the facility was in Howell residents’ best interests, as the residents “would much rather look at a neighbor’s backyard than hear, smell and see a dump.”

87. Howell Deputy Mayor Robert Nicastro, Councilman Bob Walsh, Councilman Pauline Smith, and Councilwoman Evelyn O’Donnell also sent a letter to SWAC purporting to relay “the concerns and comments of the . . . Council” regarding Resource Engineering’s application.

88. According to that letter, “the Governing Body does not want, nor would it advocate for the inclusion of this site in the County [SWMP].”

89. Deputy Mayor Nicastro cited “increase in traffic, noise and air pollutants” and “respectfully request[ed] that a hearing be held at Town Hall . . . to allow our residents to voice their concerns.”

The July 27, 2017 Board Meeting

90. At the beginning of the July 27 Board meeting, Monmouth County Administrator Teri O’Connor stated that the Transfer Station application was incomplete and recommended that the hearing be cancelled and the RFI returned to SWAC for further consideration.

91. Administrator O’Connor was wrong; as explained above, SWAC had already deemed the RFI complete and unanimously approved it.

92. Nonetheless, Board Attorney Michael D. Fitzgerald, Esq. closed the question-and-answer portion of the meeting and stated, “the Freeholders have cancelled the public hearing. . . . it will be noticed . . . when all of the procedures are complied with”

93. Freeholder Director Burry concluded Board discussion of the RFI by stating, “all that we have accomplished today, if you consider it an accomplishment, is we have literally just

suspended the process until further notice based on the fact that we have . . . we received new information.” “And sent it back to SWAC.” And “we can’t make any more comment.”

94. Like Administrator O’Connor, the Freeholder Director was incorrect that SWAC was required to re-evaluate the RFI in light of “new information”; the only thing “new” at the Freeholder meeting was Mayor Berger’s about-face, which is not grounds for denying the RFI.

**The Media is Awash in False and Misleading Accusations About
the Transfer Station**

95. On July 25, 2017, just two days before the Board hearing, an article appeared on the heavily trafficked website called “The Lakewood Scoop,” which was titled, “local residents being urged to protest.”

96. The article was rife with false and misleading statements about the proposed Transfer Station, including the article’s claim that the Station would “dump upon the area . . . heavy odors, pollution, noise and a steady stream of major truck traffic.”

97. The article also falsely claimed that “it is speculated that the peculiar location of the proposed facility has been deliberately selected in order to discourage Lakewood residents from purchasing homes in Howell”

98. According to the article, the “Lakewood Vaad is actively lobbying Senator Robert Singer and others in position of influence in Monmouth County to help stop the proposal.”

99. Upon information and belief, the Lakewood Scoop article, and others like it mentioned here, were instigated by competing solid waste competitors and their representatives.

100. Another inflammatory article was published in “Shore News Network” and titled “Watchdog Group: Proposed Howell Recycling Facility Stinks.”

101. That article falsely suggested that the Transfer Station is linked to the former Monmouth County Clerk: “Crooked as a dog’s hind leg,” said . . . a member of the Howell NJ Strong Facebook group. ‘Nahhhh , no conflict there,’ quipped Charles O’Donnell.”

102. Lakewood Mayor Raymond Coles issued a false and misleading statement opposing “the proposed 33,000 square foot trash dump and transfer center that is to be built at the border of Lakewood Township.”

Howell and the Board Ramp-Up Their Opposition to the RFI

103. On August 1, 2017, Resource Engineering sent a letter to Howell Manager Mayfield requesting a meeting with Mayor Berger “and appropriate Howell officials to discuss [the] application as soon as possible.”

104. Among other things, Resource Engineering sought an explanation for Howell’s abrupt change of position from supporting the RFI to actively opposing it.

105. Howell would not agree to meet until more than six weeks later, on September 18, 2017, but then cancelled that meeting and never rescheduled it.

106. Rather than making a meeting with Resource Engineering a priority, Howell and the Board ramped-up their opposition to the RFI.

107. For example, on August 7, 2017, Freeholder Board Clerk Marion Masnick sent a letter to SWAC requesting, “[o]n behalf of the County of Monmouth, . . . that the Solid Waste Advisory Committee . . . reconsider and relist [Resource Engineering’s] application,” as “[a] complete application requires an official statement of position from the township for the proposed location.”

108. On August 18, 2017, the Howell Environmental Commission sent a letter to SWAC opposing the RFI because, inter alia, raising its concerns: “[a]t this time, it appears that [officials’ and the public’s] comments and concerns have not been solicited, and are not being

heard, despite the fact that numerous citizens and groups have indicated they are opposed to the project.”

SWAC Decides to “Rehear” the RFI

109. Despite Howell’s clear and unambiguous support for the Transfer Station, which was memorialized in Township Manager Mayfield’s March 6, 2017 letter, SWAC concluded that the RFI should be placed back on its agenda to give Howell another opportunity to comment on the application.

110. Accordingly, on September 11, 2017, Newman (SWAC) sent a letter to Resource Engineering informing it that “for the SWAC to consider an application,” Howell must provide “a formal expression of [its] position.”

111. Newman was wrong; there is no MCSWMP requirement that, as part of the RFI process, a municipality must state its position in writing.

112. Nonetheless, according to Newman, SWAC “requires the position of the host community, in writing, from the Mayor and Council.”

113. Newman also incorrectly stated that:

It is my understanding that the team representing the applicant has a meeting with officials from Howell Township on September 18, 2017. As we have discussed previously, it is solely the applicant’s responsibility to garner municipal support for this project. Once this approval is received by your town, in writing, and is forwarded to me for review, I will then forward it on to the SWAC Chairman for his review. Until said letter is received and properly reviewed, the application will not appear on any SWAC agenda.

Howell Township Manager Mayfield “Resigns”

114. On or about September 9, 2017, Howell announced that its Township Manager, Jeff Mayfield, was resigning effective September 15, 2017 – only three days before Howell’s scheduled meeting with Resource Engineering to discuss the Transfer Station.

115. It was Jeff Mayfield who on March 6, 2017 communicated Howell's support for the Transfer Station.

116. Upon information and belief, Howell elected officials and others forced Mayfield to resign his position as Township Manager.

117. In January 2018, about four months after he resigned, Mayfield confirmed to a news reporter that he provided the Howell governing body with information about the Transfer Station and that he had the authority – in writing – to send a letter of support to SWAC on the Township's behalf.

The January 25, 2018 SWAC Meeting

118. On January 10, 2018, new Howell Township Manager, Brian Geoghehan, wrote to Newman (SWAC) to confirm that Howell's "position has not changed from [its] July 28, 2017 letter and [it] remain[ed] opposed to the construction of this transfer station in Howell. . . . Please accept this letter of objection on behalf of the Mayor and Council of the Township of Howell."

119. Two days later, on January 12, 2018, Monmouth County Deputy Administrator, Geoffrey Perselay, wrote Newman that a notice should "go out that the SWAC meeting is rescheduled for the 25th and that it will be held in Howell."

120. According to Perselay, the only agenda item "would be the 'rehearing' on Resource Engineering's application."

121. Perselay stated that Newman had:

already received the official position of the town The SWAC will hear comments from the interested public and that will complete the record for the Freeholder's consideration. That will then be presented to the Freeholder Board when they hold their public hearing on February 22[,] 2018. The public will have a chance to present their views and the Board will then vote whether to amend the Solid Waste Plan and send the proposed amendment to DEP for their consideration and review.

122. To the extent Perselay was referring to Howell's January 10, 2018 letter as the statement of Howell's "official" position on the Transfer Station, he was wrong.

123. Nearly a year before, on March 6, 2017, Howell had already unequivocally stated its "official" position on the Transfer Station: Howell supported it.

124. On January 25, 2018, SWAC held a "rehearing" on the RFI at the Howell Township Municipal Building, which Mayor Berger again did not attend.

125. According to comments made by SWAC during the hearing, the purpose of the meeting was to create a record for the Freeholders to consider when reviewing the application; **however, there would be no new vote.**

126. Thus, the Board's referral of the RFI back to SWAC changed nothing; it simply delayed the process and provided a platform for Transfer Station detractors.

127. During the meeting, Howell elected officials, Township Department Heads and members of the public voiced their concerns about the Transfer Station.

128. At the conclusion of the public comment period, SWAC closed the proceedings and announced that the RFI would be considered again at the February 22, 2018 Freeholder meeting.

The Freeholders Allow SWAC More Time To "Study" the RFI

129. On February 5, 2018, SWAC Chairman, Scott Johnson, wrote to Howell Mayor Berger that SWAC asked the Board for more time to further review the RFI.

130. According to Johnson, SWAC's request was based on "the comments received at the open public meeting, as well as new information that was brought to SWAC's attention that evening."

131. Johnson further wrote that SWAC intended to “hire an independent engineering consultant to review the major traffic concerns raised at the public hearing, due to their significance to the town as well as the balance of the county.”

132. According to Johnson, the Board agreed to give SWAC more time to study the RFI, and the February 22, 2018 Board meeting was cancelled.

133. A few weeks later, Mayor Berger wrote to Freeholder Director Arnone that she “object[ed] to any action being taken by the Freeholders until such time as the Governing Body’s independently retained professionals have had an opportunity to review and opine as to all traffic and other studies relating to the application.”

During Delay, Competitors Opposing the Transfer Station Rush In

134. By granting SWAC an extension of time to further “study” the RFI with no end date, the Board created the environment for opportunistic competitors to retain counsel, lodge objections and try to protect their turf.

135. For example, on February 20, 2018, Tinton Falls based Mazza Recycling Services sent a letter and engineer report to SWAC objecting to the Transfer Station.

136. Ocean County Landfill Corporation also filed objections with SWAC, and commissioned traffic and environmental studies in connection with the same.

137. Upon information and belief, Mazza, Ocean County Landfill and others coordinated with Defendants and Howell to obstruct and delay the RFI.

The Freeholder Traffic Study

138. On April 17, 2018, the Board solicited and received Statements of Professional Qualifications for professional traffic engineering services in connection with the proposed Transfer Station (the “Traffic Study”).

139. On August 10, 2018, the Board received proposals from three finalist traffic engineering firms.

140. On September 4, 2018, the Monmouth County Engineer recommended that the Board accept the proposal submitted by Boswell Engineering.

141. The Board finally accepted the Boswell proposal on September 27, 2018, and limited the contract to approximately \$30,000.

142. On or about that same date, Howell Township Manager Geoghegan sent a letter to the Monmouth County Administrator requesting “the opportunity to review the [independent traffic] study [requested by the County] prior to its finalization and submission to the Freeholders . . . to ensure that [it] accurately reflects traffic movements in the area,” and “point[ing] out two (2) projects along Randolph Road that should be considered by your engineers when performing the traffic study”

143. Since February 5, 2018, the day the Board meeting was cancelled, nearly **seven months** had elapsed with no progress on the RFI.

The Traffic Study Shell Game

144. Although work on the Traffic Study ostensibly began in September 2018, as of the date of this Complaint – **two years later** – it is still not complete.

145. On October 1, 2018, Boswell informed SWAC that “due to a bridge collapse on Ramtown-Greenville Road, . . . traffic levels on Randolph Road have been impacted,” such that “no accurate traffic study will be feasible until normal traffic patterns are reestablished after the bridge is repaired and reopened.”

146. On October 29, 2018, Howell Township Engineer Herrman wrote SWAC to make sure it was aware of “5 projects in the area” that should be included in the Traffic Study.

147. On December 3, 2018, Transfer Station objector Mazza sent a letter to SWAC stating that the Traffic Study “should consider the aggregate impact of all municipal, county, or state approved developments on or near Randolph Road in Howell Township.”

148. On January 9, 2019, the Monmouth County Engineer Ettore wrote to SWAC and others to advise them that the bridge collapse has been repaired and will be open to traffic by January 18, 2019.

149. Ettore recommended that any traffic counts be delayed two weeks after the bridge re-opens.

150. It would not be until July 18, 2019 – **six months later** – that SWAC confirmed it was in possession of the draft Traffic Study.

151. The next day, Resource Engineering sent an OPRA request to Monmouth County requesting a copy of the Traffic Study.

152. On July 24, 2019, the County **denied** Resource Engineering’s request, stating that “the traffic study requested is a ‘draft’ and, therefore, is not eligible for release.”

153. Four more months passed with no apparent SWAC and/or Monmouth County action on the RFI.

154. Frustrated with the continuing lack of activity on the RFI, Resource Engineering representatives attended the November 21, 2019 SWAC meeting to voice their concerns.

155. In response, SWAC Committeeman Throckmorton asked if it were possible to “hold a special meeting in which [Deputy County Administrator] Geoff [Perselay] or a Freeholder could appear.”

156. SWAC’s Stuart Newman stated that he would speak with Geoff.

157. SWAC Chairman Lomangino then said, “We are becoming lost in space as a committee.”

158. SWAC Committeeman Branch queried if SWAC “should go to a Freeholder meeting.”

159. In response, Throckmorton stated, “if we don’t do something soon, we may see something legal. Maybe we can hold a meeting in December to meet with Geoff.”

160. Committeeman Posten then asked, “**Who is stonewalling?**”

161. Despite these concerns, it appears that SWAC did nothing to end the stonewalling by the Board.

162. On January 23, 2020, Resource Engineering filed another OPRA request seeking a copy of the Traffic Study, which the County denied on January 29, 2020 because the Study “has not yet been finalized.”

163. On February 5, 2020, Howell sent a letter to the Board again requesting a copy of the traffic study so its “professionals have the time to study it” and “object to any action being taken” until its “independently retained professionals have had an opportunity to review and opine about all . . . studies relating to the application.”

Resource Engineering Advises the Board of Potential Legal Action

164. Faced with a Board unwilling to act on the RFI as required by law, Resource Engineering had no choice but to retain counsel to protect its rights.

165. On May 8, 2020, undersigned counsel wrote on behalf of Resource Engineering to Freeholder Director Arnone to request that the RFI be placed on the June 11, 2020 Freeholder meeting agenda for discussion.

166. The letter also requests that, within ten (10) days, Director Arnone provide Resource Engineering with a copy of the Traffic Study, and advises the Board that Resource Engineering is simultaneously submitting another OPRA request for that information.

167. Finally, the letter summarizes the tortured history of the Transfer Station proposal and advises the Freeholder Director that, among other things, Resource Engineering “may seek judicial relief against the Board or others for the unjustified continuing delay and/or if we discover improper conduct by any parties to this matter.”

168. On May 21, 2020, Monmouth County Deputy Administrator Geoff Perselay responded to Resource Engineering’s May 8 letter, stating “Please be advised that the issues that you raised, in your correspondence, are being reviewed and a more formal response will be forthcoming.”

169. Aside from again rejecting our request for a copy of the Traffic Study, almost three months have passed and the County has not issued any further response.

The Board’s Continuing Inaction is Harming Resource Engineering

170. Over the past three years, the RFI clearly has become a political football that is being tossed back and forth between SWAC, the County and Howell.

171. All the while, Resource Engineering has acted in good faith and has expended hundreds of thousands of dollars drafting revised plans, paying professionals and engaging in endless meetings and negotiations.

172. Respectfully, the Board should be compelled to follow the law, schedule a hearing on the RFI and approve Resource Engineering’s application.

173. Enough is enough.

FIRST CAUSE OF ACTION
(WRIT OF MANDAMUS AGAINST THE BOARD)

174. Plaintiff repeats each and every allegation contained above as if fully set forth at length herein.

175. Pursuant to New Jersey Court Rule 4:69-1, Resource Engineering may seek “[r]eview, hearing and relief heretofore available by prerogative writs and not available under R. 2:2-3 or R. 8:2” through this action. N.J. Ct. R. 4:69-1.

176. One prerogative writ available through an action pursuant to Rule 4:69-1 is that of mandamus. Selobyt v. Keough-Dwyer Corr. Facility of Sussex Cty., 375 N.J. Super. 91, 96 (App. Div. 2005).

177. Specifically, a party may pursue mandamus relief “to compel a governmental agency to perform” a ministerial duty or exercise its discretion in a non-specific manner. Twp. of Neptune v. State, Dep’t of Env’tl. Prot., 425 N.J. Super. 422, 434 (App. Div. 2012).

178. The Board has a number of ministerial duties and obligations to exercise its discretion under the Solid Waste Management Act (“SWMA”), N.J.S.A. § 13:1E-1 et seq., its implementing regulations, and the MCSWMP.

179. For one, “[u]pon the development of a solid waste plan amendment, a board of chosen freeholders . . . shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment.” N.J.A.C. § 7:26-6.10(c).

180. The Board is additionally required to “cause a hearing to be held at an appointed time and place for the purpose of hearing persons interested in, or who would be affected by, the adoption of the solid waste management plan for the relevant solid waste management district, and who are in favor of or are opposed to such adoption.” N.J.S.A. § 13: 1E-23(c).

181. Moreover, “[a]t th[at] hearing, . . . the board of chosen freeholders . . . shall hear all persons interested in the solid waste management plan and shall consider any, and all, written objections that may be filed and any evidence which may be introduced in support of the objections, or any opposition to the adoption of the solid waste management plan for the solid waste management district.” N.J.S.A. § 13:1E-23(e).

182. The Board failed to satisfy these ministerial duties by, including, but not limited to:

a. Cancelling the July 27, 2017 public hearing despite the fact that a solid waste plan amendment had been developed;

b. Cancelling the public hearing and not “receiving comments from persons interested in or affected by the adoption of the plan amendment,” N.J.A.C. § 7:26-6.10(c), despite the attendance of such interested persons;

c. Cancelling the public hearing and not “hear[ing] [from] all persons interested in the solid waste management plan” or “consider[ing] any, and all, written objections” and accompanying evidence,” N.J.S.A. § 13:1E-23(e), despite the attendance of such interested persons;

d. Cancelling the public hearing scheduled for February 22, 2018; and

e. Not “causing a[nother] hearing to be held . . . for the purpose of hearing” from interested persons since July 27, 2017, N.J.S.A. § 13:1E-23(c), despite having had a draft of the Boswell Traffic Study since at least July 18, 2019.

183. The Board also is obligated to exercise its discretion regarding a proposed amendment to a solid waste management plan.

184. For instance, after a public hearing, the board must “adopt or reject, in whole or in part, the solid waste management plan.” N.J.S.A. § 13:1E-23(e).

185. The Board failed to exercise its discretion as required by neither approving nor rejecting the Proposed Amendment in the three years since the July 27, 2017 public hearing.

186. As a result of the foregoing conduct by the Board, Resource Engineering’s Proposed Amendment is being, and has been, held in abeyance for more than three years.

187. As a result of the foregoing conduct by the Board, Resource Engineering’s proposed Transfer Station has been stonewalled and blocked from consideration.

WHEREFORE, Plaintiff demands judgment against the Board as follows:

- a. Compelling the Board to hold a public hearing regarding the Proposed Amendment;
- b. Compelling the Board to approve or reject the Proposed Amendment;
- c. Enjoining the Board from deferring action on the Proposed Amendment absent agreement by Resource Engineering and for any reason other than an identified, discrete issue;
- d. Awarding attorney’s fees and costs of suit to Plaintiff; and
- e. Awarding such further relief as the Court deems just and proper.

SECOND CAUSE OF ACTION
(WRIT OF MANDAMUS AGAINST SWAC)

188. Plaintiff repeats each and every allegation contained above as if fully set forth at length herein.

189. Like the Board, SWAC is subject to both ministerial duties and the obligation to exercise its discretion under the SWMA and the MCSWMP.

190. First, SWAC must “assist each board of chosen freeholders in the development and formulation of the solid waste management plans.” N.J.S.A. § 13:1E-20(b); see also Monmouth Cty. Admin. Code § 8-23.5 (“The Solid Waste Advisory Council shall assist the Board in the development and formulation of the solid waste management plans required by N.J.S.A. 13:1E-1 et seq.”)

191. Second, the MCSWMP provides that, following a public meeting before SWAC, “[t]he Solid Waste Advisory Council will vote on the application” that is the subject of the meeting. MCSWMP at 142.

192. On May 18, 2017, SWAC unanimously approved the RFI.

193. Yet, subsequently and at the Board’s request, SWAC re-opened the RFI proceedings to take additional testimony from Howell officials and others in opposition to the project.

194. This improper “second bite at the apple” tainted the SWAC process and prejudiced Resource Engineering by allowing untimely and improper testimony.

195. SWAC failed to satisfy its ministerial duty of assisting the Board by re-opening the RFI that SWAC already approved and, as a result, violated the MCSWMP.

196. As a result of the foregoing conduct by SWAC, Resource Engineering’s Proposed Amendment is being, and has been, held in abeyance for nearly three years.

197. As a result of the foregoing conduct by SWAC, Resource Engineering’s proposed Transfer Station has for nearly three years been stonewalled and blocked from consideration.

WHEREFORE, Plaintiff demands judgment against SWAC as follows:

a. Directing SWAC to record and report to the Board its unanimous approval of the RFI based upon the record generated during SWAC’s May 18, 2017 meeting;

b. Enjoining SWAC from relying upon any testimony taken during the January 25, 2018 “rehearing” of the RFI, which was improper, violated MCSWMP procedures, and should be disregarded.

c. Enjoining SWAC from deferring any further action on the Proposed Amendment absent agreement by Resource Engineering and for any reason other than an identified, discrete issue;

d. Awarding attorney’s fees and costs of suit to Plaintiff; and

e. Awarding such further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION
(WRIT OF MANDAMUS AGAINST THE DPWE)

198. Plaintiff repeats each and every allegation contained above as if fully set forth at length herein.

199. Like the Board and SWAC, the DPWE has certain ministerial duties.

200. As pertinent to this matter, the DPWE, as “the designated agency for preparing and supervising the implementation of the Monmouth County District Solid Waste Management Plan,” MCSWMP at 15, must ensure, in compliance with the Updated Statewide Solid Waste Management Plan (“USSWMP”), that the MCSWMP contains “[a] procedure for the processing of applications for inclusion of solid waste . . . facilities within the district solid waste management plans,” which “shall state . . . the specific county review process/procedures, including time frames for county approvals or rejections.” USSWMP at A-7.

201. The DPWE failed to satisfy its ministerial duty of including with the MCSWMP "time frames for county approvals or rejections." USSWMP at A-7.

202. The foregoing conduct by the DPWE has made it possible for Resource Engineering Recycling's Proposed Amendment to be held in abeyance for more than three years.

203. The foregoing conduct by the DPWE has caused Resource Engineering's proposed Transfer Station to be stonewalled and blocked from consideration for more than three years.

WHEREFORE, Plaintiff demands judgment against the DPWE as follows:

- a. Compelling the DPWE to incorporate into the MCSWMP time frames for approvals or rejections of proposed amendments to the MCSWMP;
- b. Awarding attorney's fees and costs of suit to Plaintiff; and
- c. Awarding such further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION
(Violation of New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.)

204. Plaintiff repeats and reiterates the allegations of the proceeding paragraphs of this Complaint as if set forth herein verbatim and at length.

205. The New Jersey Civil Rights Act, N.J.S.A. 10:6-2 provides:

Any person who has been deprived of any substantive due process or equal protection rights, or privileges or immunities secured by the constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the constitution or laws of this State, or whose exercise or enjoyment of their substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation, or coercion by a person acting under color of law, may bring a civil action for damages and for injunction or other appropriate relief. The penalty provided in Section (e) of this section shall be applicable to the violation of this subsection

206. The New Jersey Constitution prohibits the State from the arbitrary exercise of governmental power that interferes with citizens' rights to "acquiring, possessing and protecting property."

207. By virtue of the actions set forth in detail above, Defendants, acting under color of law, have interfered with Plaintiff's property rights deriving from the Solid Waste Management Act, which actions constitute a deprivation of Plaintiff's substantive due process and equal protection rights secured by the Constitution and laws of the United States and of the State of New Jersey.

208. As a direct and proximate result of Defendants' violation of Plaintiff's rights, Plaintiff has suffered and will continue to suffer substantial damages.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. Awarding compensatory damages;
- b. Awarding punitive damages;
- c. Awarding Plaintiff's costs of suit, including reasonable attorneys' fees and expenses pursuant to N.J.S.A. 10:6-2(f); and
- d. Awarding such other and further relief as the Court may deem equitable and just.

SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiff,
Resource Engineering, LLC

By: /s/ Frank J. Vitolo
FRANK J. VITOLO

Dated: August 5, 2022

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4 of the New Jersey Rules of Court, Frank J. Vitolo, Esq. is hereby designated as trial counsel on behalf of Plaintiff Resource Engineering, LLC.

SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiff,
Resource Engineering, LLC

By: /s/ Frank J. Vitolo
FRANK J. VITOLO

Dated: August 5, 2022

RULE 4:5-1 CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. I know of no other parties who must be joined in this action at this time.

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

SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiff,
Resource Engineering, LLC

By: /s/ Frank J. Vitolo
FRANK J. VITOLO

Dated: August 5, 2022