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Attorneys for Plaintiff, Meridia Toms River 40 Urban Renewal LLC,

MERIDIA TOMS RIVER 40 URBAN
RENEWAL LLC,

Plaintiff,

v.

TOWNSHIP OF TOMS RIVER, TOWNSHIP
COUNCIL OF THE TOWNSHIP OF TOMS
RIVER, TOWNSHIP OF TOMS RIVER
PLANNING BOARD, and PETER
PASCARELLA, IN HIS CAPACITY AS
ASSISTANT TOWNSHIP ATTORNEY

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

Docket No. _____-2024

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff, Meridia Toms River 40 Urban Renewal LLC say by way of Complaint against Defendants, the Township of Toms River, the Township Council of the Township of Toms River, the Planning Board of the Township of Toms River, and Peter Pascarella, in his capacity as Assistant Township Attorney (collectively, the “**Defendants**”), as follows:

PRELIMINARY STATEMENT

This is an action in lieu of prerogative writ seeking declaratory relief and damages pursuant to the New Jersey Constitution and laws of the State of New Jersey for the improper and illegal actions of the Defendants in adopting an ordinance entitled an “*Ordinance of the Township Council of the Township of Toms River, Ocean County, New Jersey, Repealing all Ordinances previously adopted by the Township which had adopted and amended a Downtown Core Redevelopment*”

Plan, a Robbins Parkway Redevelopment Plan and a Water Front Redevelopment Plan in accordance with the Local Redevelopment [and] Housing Law, N.J.S.A. 40A:12A-1, et seq.” (the “**Ordinance**”) in violation of the Municipal Land Use Law, *N.J.S.A. 40:55D-1, et seq.*, (the “**MLUL**”), the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1, et seq.*, (the “**LRHL**”), and the New Jersey Civil Rights Act, *N.J.S.A. 10:6-1, et seq.*, and which constitutes a further breach of the parties’ redevelopment agreement. *A copy of the Ordinance is attached hereto as Exhibit A.*¹

As alleged herein, the Defendants have pursued a course of conduct with the purpose of obstructing Plaintiff’s rights to develop its property within the Township. The adoption of the Ordinance is merely another illegal attempt by the Defendants in their efforts to prevent Plaintiff’s development. In furtherance of this goal, the Defendants disregarded the procedural and substantive requirements of the MLUL and LRHL. In doing so, Defendants violated Plaintiff’s civil rights and further breached the parties’ redevelopment agreement. This action seeks to invalidate the illegal and invalid adoption of the Ordinance and seeks redress against the Defendants due to their illegal conduct.

THE PARTIES

1. Plaintiff, Meridia Toms River 40 Urban Renewal LLC (“**Meridia**” or “**Plaintiff**”), with offices at 201 South Wood Avenue, Linden, New Jersey 07036, is a limited liability company formed under the laws of the State of New Jersey.

2. Plaintiff is the owner and designated redeveloper of property in the Township of Toms River at 40 & 48 West Water Street and 511 Irons Street, formally designated as Block 569, Lots

¹ At the time of filing this complaint, Plaintiff was not in possession of a copy of the signed ordinance. Accordingly, the Ordinance attached hereto as Exhibit A is an unsigned copy. Plaintiff will supplement this submission with a copy of the signed Ordinance once received.

3, 4, 5, 5.01, 10 and 11 on the tax map of the Township of Toms River (the “**Property**” or the “**Project Site**”) and is the designated redeveloper of the Property for development of the Project that is the subject of this lawsuit pursuant to that certain Redevelopment Agreement by and between the Township of Toms River (“**Township**”) and Meridia on August 25, 2021, as further detailed herein.

3. Defendant, Township is a municipal corporation of the State of New Jersey with offices at 33 Washington Street, Toms River, NJ 08754.

4. Defendant, Township Council of the Township of Toms River (the “**Township Council**”), is the legislative governing body of the Township, charged with the authority to enact zoning laws while ensuring compliance with the requirements of the MLUL with offices at 33 Washington Street, Toms River, NJ 08754.

5. Defendant, Planning Board of the Township of Toms River (the “**Planning Board**”), is a nine (9) member board with the alternative responsibilities of development and adoption of the Township’s Master Plan (the “**Master Plan**”), review of land use applications in accordance with state and local regulations, and recommendations of revisions to land use ordinances to the Township Council with offices at 33 Washington Street, Toms River, NJ 08754.

6. Defendant, Peter Pascarella (“**Pascarella**”), is Assistant Township Attorney for the Township and a member of the Planning Board with offices at 33 Washington Street, Toms River, NJ 08754.

FACTS COMMON TO ALL CLAIMS

A. TOWNSHIP PLANNING DOCUMENTS.

i. Township Settlement Agreement with Fair Share Housing Center.

7. On July 7, 2015, the Township filed a motion for Declaratory Judgment, Docket No. OCN-

L-001867-15 seeking the declaration of the Court of its compliance with the Mount Laurel doctrine and the Fair Housing Act, *N.J.S.A. 53:27D-301 et seq.*, in accordance the Court’s *Mount Laurel IV*² decision. Fair Share Housing Center, Inc. (“**FSHC**”) and Dover Shopping Center Associates, LLC (“**Dover**”) were granted intervenor status in separate Orders of the Court (the “**Declaratory Judgment Action**”).

8. On November 3, 2016, the Township, Dover, and FSHC resolved the Declaratory Judgment Action via a settlement agreement, which set forth the Township’s Second and Third Round fair share obligations and included a compliance plan to address said obligations (the “**FSHC Settlement Agreement and Compliance Plan**”). *A copy of the FSHC Settlement Agreement is attached hereto as Exhibit B.*

9. The FSHC Settlement Agreement and Compliance Plan required the Township, in part, to: (i) adopt and maintain a redevelopment plan; and (ii) adopt a Housing Element and Fair Share Plan (the “**HEFS Plan**”), which specifically identified the area subject to the redevelopment plan as a “suitable site” for affordable housing.

10. In the FSHC Settlement Agreement and Compliance Plan, the Township agreed:

to maintain the Water Street Redevelopment in the Third Round HEFSP with an anticipated 500 units, 20% of which are to be set aside for affordable housing; however due to the nature and extent of site conditions, the time which may be required to complete remediation of the property in accordance with applicable Technical Requirements for Sire Remediation, N.J.A.C. 7:26E, and other applicable laws may extend beyond 2025, therefor the credits for this property will not [be] counted in the Third Round, but may be used to address obligations for any future rounds.

See FSHC Settlement Agreement and Compliance Plan, at 6, §8(g).

11. The FSHC Settlement Agreement and Compliance Plan further provided that:

[t]he Township reserves its right to modify its Third Round HEFSP

² *In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing*, 221 N.J. 1 (2015)

to include additional developments that are approved during the Third Round, including, those set forth in 8.g, 8.h, and in accordance with Township Ordinance 4243-10, and claim additional bonus credits that be permitted in accordance with those developments, this Agreement, and applicable standards, These developments and credits shall be in addition to all of the other developments required by this Agreement and reflected in Exhibit C and not substitute for those developments.

See FSHC Settlement Agreement and Compliance Plan, at 6, §8(j).

12. On December 31, 2016, the Honorable Mark Troncone, J.S.C. entered an order approving the FSHC Settlement Agreement and Compliance Plan.

13. Upon information and belief, the Township and FSHC agreed upon a reduction in the twenty (20%) percent inclusionary set-aside requirement contained within Section 8(g) of the FSHC Settlement Agreement and Compliance Plan to require fifteen (15%) percent of the total units be affordable units for the Property.

14. The Township and FSHC justified the reduced inclusionary set-aside requirement for the Property based upon Meridia's agreement to provide a total of forty-three (43) two-bedroom and three-bedroom affordable units. The Township, in turn, included these forty-three (43) affordable units as part of its obligation to comply with the FSHC Settlement Agreement and Compliance Plan, and its Third-Round affordable housing obligations.

ii. **The Township's Housing Element and Fair Share Plan.**

15. As contemplated by the FSHC Settlement Agreement and Compliance Plan, on February 3, 2017, the Township Council adopted the HEFS Plan. *A copy of the HEFS Plan is attached hereto as Exhibit C.*

16. The HEFS Plan provides, in relevant part, as follows:

A Draft Redevelopment Plan for the Phase 1 Water Street Redevelopment Area was prepared in 2011 after Block 558.01 was added to the redevelopment area. The Phase 1 area extends along

Water Street from the Garden State Parkway to the west, north to Herflicker Street and east to Main Street. The redevelopment plan yielded a residential component of approximately 500 total units. The Township's redevelopment parameters are anticipated to include requirements that a minimum of 20 percent of all new dwelling units within the redevelopment area be affordable, a minimum of 50 percent of the affordable units to be family rental units, and 13 percent of the affordable units are to be very low income units. Based upon the foregoing, the Planning Board finds that the Water Street Redevelopment Area is a "suitable site" for affordable housing as defined by COAH regulations. The Water Street Redevelopment Area is anticipated to yield approximately 500 total units, 20 percent (i.e., 100) of which are to be affordable units.

See HEFS Plan, at 30.

iii. **The Township's Land Use Element.**

17. On April 19, 2017, the Township Council adopted the Master Plan, Land Use Element, dated April 9, 2017 (the "**Land Use Element Plan**"). *A copy of the Land Use Element Plan is attached hereto as Exhibit D.*

18. The Land Use Element Plan identifies the plan's objectives and goals, which include, in part, the following:

Land Use

6. Provide for the Township's fair share of low-and-moderate-income housing as set forth in the amended Housing Element and Fair Share Compliance Plan adopted in February of 2017 as a result of mediation and a determination of compliance by the court in 2016.

Economic Development

7. Capitalize on mixed-use redevelopment and revitalization of areas that are becoming obsolescent.

Sustainability & Resiliency

3. Amend the Phase 1 Waterfront Redevelopment Plan in accordance with the findings of the Downtown Circulation

Neighborhood Plan so that it can be adopted with its suite of land use, bulk, and design changes for the Downtown area.

See *Land Use Element Plan*, at 2-10.

19. The Land Use Element Plan also contains the following recommendation:

Adopt a Redevelopment Plan for the Water Street Redevelopment Area: This proposal has been under consideration since before the last comprehensive Master Plan update in 2006. There has been a declaration that the area is an Area in Need of Redevelopment, and there has been a proposed redevelopment plan prepared at the request of TR BID, but to date the plan has not been adopted. There are a number of complicating factors that are part of the planning process, including the ongoing coal tar cleanup, flood elevations, traffic flows, communication towers and others.

See *Land Use Element Plan*, at 36.

iv. **The Redevelopment Plan.**

20. On December 13, 2008, the Township Council adopted Resolution #2008-94 to designate the real properties designated on the Township tax maps as Block 566.01; Block 566.02, Lots 3, 7, 8, 9, and a portion of Block 5; Block 566.03; Block 566.04, a portion of Lot 1; Block 567; Block 569; Block 570, Lots 1.04 and 11.02; Block 657; Block 658, Lots 25, 47, 48, and 58, as an area in need of redevelopment (the “**Original Redevelopment Area**”).

21. In 2012, the Township Council supplemented the Original Redevelopment Area by designating Block 658.01 as an area in need of redevelopment (collectively with the Original Redevelopment Area, the “**Redevelopment Area**”).

22. As contemplated by the FSHC Settlement Agreement and to enact the recommendations of the Master Plan, on November 28, 2017, the Township Council introduced an ordinance on first reading to adopt a redevelopment plan, dated November 16, 2017, entitled *Phase 1 Downtown Waterfront Redevelopment Area* for a portion of the Redevelopment Study Area, including Block 566.01; Block 566.02, Lots 3, 7, 8, 9, and a portion of Block 5; Block 566.03; Block 567; Block

569, Lots 4, 5, 6, 7, 8, 9, 10 and 11; and Block 658, Lots 25, 47, 48, and 58 (the “**Original Redevelopment Plan**”).

23. On December 20, 2017, the Planning Board, pursuant to *N.J.S.A.* 40A:12A-7, determined that the Original Redevelopment Plan was consistent with the Master Plan and recommended its adoption to the Township Council.

24. On December 26, 2017, the Township Council approved on second reading the ordinance to adopt the Original Redevelopment Plan and specifically noted therein that the Planning Board “determined that [the Original Redevelopment Plan] is consistent with the [Master Plan], with particular reference to the Land Use Element [Plan]” (the “**Original Redevelopment Plan Ordinance**”). *A copy of the Original Redevelopment Plan Ordinance, as memorialized in the Township Council’s meeting minutes, is attached hereto as Exhibit E.*

25. The Original Redevelopment Plan Ordinance provided, in part, as follows:

Section 2. The Redevelopment Plan for Phase 1 Downtown Waterfront Redevelopment Area, ... dated November 16, 2017, is hereby adopted pursuant to the terms of *N.J.S.A.* 40A:12A-7 of the [LRHL]. Further, said **Redevelopment Plan shall supersede the existing zoning within Phase 1 portion of the designated Redevelopment Area except as otherwise provided in the said Redevelopment Plan.**

Section 3. The Official Zoning Map, dated July 25, 2017, is hereby amended to include the boundaries described in the Redevelopment Plan as the Phase 1 Downtown Redevelopment Area as “RDV” for “Redevelopment Area.

...

Section 5. **All ordinance or parts of ordinances which are inconsistent herewith are repealed,** but only to the extent of the inconsistency.

See Original Redevelopment Plan Ordinance (emphasis added).

26. On June 22, 2021, the Township Council introduced an ordinance on first reading to adopt an amendment to the Original Redevelopment Plan to: (i) include therein Block 566.04, a portion of Lot 1, Block 569, and Block 570, Lots 1.04 and 11.02; (ii) revise certain development and affordable housing standards; and (iii) include a reference to the Arts and Culture District (the “**First Amended Redevelopment Plan**”).

27. On July 7, 2021, the Planning Board, pursuant to *N.J.S.A.* 40A:12A-7, determined that the First Amended Redevelopment Plan was consistent with the Master Plan and recommended its adoption to the Township Council.

28. On July 13, 2021, the Township Council approved on second reading the ordinance to adopt the First Amended Redevelopment Plan and specifically noted therein that “the Planning Board’s review and report regarding the [First Amended Redevelopment Plan] confirms, that the [First Amended Redevelopment Plan] is reasonable and appropriate, and is not inconsistent with the Township’s Master Plan” *A copy of the ordinance to approve the First Amended Redevelopment Plan, as memorialized in the Township Council’s meeting minutes, is attached hereto as Exhibit F.*

29. On November 9, 2021, the Township Council introduced an ordinance on first reading to adopt a second amendment to the Original Redevelopment Plan to: (i) remove “private schools” as a permitted use; and (ii) require the installation of electric vehicle charging stations (the “**Second Amended Redevelopment Plan**”, collectively with the Original Redevelopment Plan and the First Amended Redevelopment Plan, the “**Redevelopment Plan**”).

30. On December 1, 2021, the Planning Board, pursuant to *N.J.S.A.* 40A:12A-7, determined that the Second Amended Redevelopment Plan was consistent with the Master Plan and recommended its adoption to the Township Council.

31. On December 14, 2021, the Township Council approved on second reading the ordinance to adopt the Second Amended Redevelopment Plan and specifically noted therein that “the Planning Board’s review and report ... confirms, that the [Second Amended Redevelopment Plan] is reasonable and appropriate, and is not inconsistent with the Township’s Master Plan” *A copy of the ordinance to approve the Second Amended Redevelopment Plan, as memorialized in the Township Council’s meeting minutes and a copy of the Redevelopment Plan, are attached hereto as Exhibit G and Exhibit H, respectively.*

32. The Redevelopment Plan reiterates the stated goals and objectives of the Master Plan, noting:

[t]he 2017 Toms River Township Master Plan acknowledges the designation of the waterfront redevelopment area, and anticipates the level of redevelopment as depicted in Figures 17 and 18 above. Throughout the 2017 Master Plan, which incorporates the 2005 Downtown Toms River Master Plan, the importance of promoting redevelopment and making the downtown a more “walkable” is stressed repeatedly.

See Redevelopment Plan, at 37.

B. THE REDEVELOPMENT AGREEMENT

33. In order to effectuate the Redevelopment Plan, the Township entered into a redevelopment agreement with Meridia on August 25, 2021, as amended on December 21, 2022 and July 12, 2023 (the “**Redevelopment Agreement**”). *Attached hereto are copies of the Redevelopment Agreement and amendments as Exhibit I, Exhibit J, and Exhibit K, respectively.*

34. Pursuant to the Redevelopment Agreement, Plaintiff was designated the Redeveloper of the Project Site.

35. Pursuant to §2.03 of the Redevelopment Agreement, the Plaintiff agreed to develop the Project Site as a mixed-use development with a maximum of ten (10) stories providing

approximately 242 market-rate units and 43 affordable units, a minimum of 16,000 square feet of retail and commercial components, and appropriate amenities and related Project Improvements, in accordance with the Redevelopment Plan (the “**Project**”).

36. Pursuant to §8.09(b) of the Redevelopment Agreement, the Township covenanted and agreed that “[t]he Township shall not amend the Redevelopment Plan with respect to the Project Site, without prior written consent of the Redeveloper.”

37. On November 1, 2023 the Planning Board adopted a resolution granting preliminary and final major site plan approval and variance and design waiver relief to Plaintiff for development of a six-story mixed-use building with 281 residential apartment units consisting of 238 market rate units and 43 affordable units, as well as 14,731 square feet of retail space, with 389 indoor parking stalls in a two-story enclosed parking deck and 22 exterior parking spaces, along with additional site improvements including an outdoor amphitheater, elevated boardwalk, loading areas, trash enclosure areas, retaining walls, lighting and landscaping.

38. The 43 affordable units in the approved Project provide a substantial contribution to satisfy the Township’s affordable housing obligations, as contemplated by the FSHC Settlement Agreement and Compliance Plan.

39. On August 8, 2024, Meridia filed a ten-count complaint against the Township and the Mayor entitled *Meridia Toms River 40 Urban Renewal LLC v. Township of Toms River, et al*, Docket No. OCN-L-002065-24 (the “**Redevelopment Agreement Complaint**”) alleging, in part, the Township breached their obligations under the Redevelopment Agreement. *A copy of the Redevelopment Agreement Complaint is attached hereto without exhibits as Exhibit L.*

C. **THE ORDINANCE**

40. On October 23, 2024, the Township Council introduced and approved the Ordinance on first reading.

41. The Ordinance provides that upon adoption “[e]ach of the Redevelopment Plans, designations, Ordinances and Resolutions adopted in accordance with said plans be and hereby are repealed and rescinded” and further states that “the parcels of land designated in said Redevelopment Plans ... shall forthwith be subject to the municipal zoning that was applicable to each respective parcel [of] property immediately prior to the adoption of said Ordinances, Redevelopment Plans and Resolutions as same may be amended in the future”

42. The Ordinance purports to rezone the properties within the Redevelopment Area by repealing the Redevelopment Plan and reinstating the unspecified “municipal zoning that was applicable ... immediately prior to the adoption” of the Original Redevelopment Plan.

43. On October 29, 2024, the Township published notice in the Asbury Park Press that the Ordinance would be considered by the Township Council for adoption on November 13, 2024. *A copy of the October 29, 2024 Notice is attached hereto as Exhibit M.*

44. On November 12, 2024, the undersigned submitted a written objection, supported by the certification of Plaintiff’s planner, Creigh Rahenkamp, PP (the “**Rahenkamp Certification**”), to the Township asserting that the adoption of the Ordinance would violate the MLUL, the LRHL, and constitute a breach of the Redevelopment Agreement and a breach of the FHSC Settlement Agreement (the “**November 12, 2024 Objection Letter**”). *A copy of the November 12, 2024 Objection Letter is attached hereto as Exhibit N.*

45. The Ordinance was listed on the Planning Board’s December 4, 2024 meeting agenda to be reviewed for consistency with the Master Plan (the “**Consistency Review Hearing**”).

46. In advance of the December 4, 2024, Planning Board meeting, the undersigned notified the Township Council and the Planning Board on December 3, 2024 that the adoption of the Ordinance would violate the MLUL and LRHL (the “**December 3, 2024 Objection Letter**”). *A copy of the December 3, 2024 Objection Letter is attached hereto as Exhibit O.*

47. On December 4, 2024 the Planning Board, including planning board members, the Mayor of the Township and Defendant, Pascarella, held the Consistency Review Hearing. *A copy of the transcript of the Consistency Review Hearing is attached hereto as Exhibit P.*

48. The evidence heard by the Planning Board during the Consistency Review Hearing was limited to the testimony of the Planning Board planner, Christine Winter (the “**Planning Board Planner**”).

49. The Planning Board Planner’s testimony was limited to a recitation of certain goals and objectives within the Master Plan.

50. Upon information and belief, the members of the Planning Board were provided no written planning report regarding the Ordinance’s consistency with the Master Plan.

51. Upon information and belief, the members of the Planning Board were not even provided a copy of the Ordinance until just minutes before the start of the December 4th Planning Board meeting.

52. On December 4, 2024, the Planning Board determined the Ordinance was substantially consistent with the Master Plan.

53. By letter dated December 6, 2024, counsel for the Planning Board to advise the Township Council that the Planning Board recommended the adoption of the Ordinance (the “**Planning Board Recommendation Letter**”). *A copy of the Planning Board Recommendation Letter is attached hereto as Exhibit Q.*

54. On December 18, 2024, the Township Council approved on second reading the Ordinance with a vote of four (4) in favor, two (2) opposed and one (1) abstention.

55. The Ordinance provides that it “shall take effect following its final passage by the Township Council, approval by the Mayor, and twenty days after publication as required by law.” *See Ordinance*, at §13.

56. On December 23, 2024, the Township published notice in the Asbury Park Press that the Ordinance was adopted by the Township Council. *A copy of the Notice of Adoption is attached hereto as Exhibit R.*

D. THE PROTEST PETITION.

57. *N.J.S.A.* 40:55D-63 permits certain property owners to file a protest against any proposed amendment or revision of a zoning ordinance.

58. The Ordinance seeks to revise the zoning regulations for the Redevelopment Area, in part, through the adoption of the VB Village Business Zone (the “**VB Zone**”) zoning regulations in effect in December 2017 for the properties within the Redevelopment Area.

59. The November 12, 2024 Objection Letter also included a protest petition pursuant to *N.J.S.A.* 40:55D–63 (the “**Protest Petition**”) based upon the Ordinance’s intended revision to the zoning regulations for the Redevelopment Area.

60. The Protest Petition calculates the Redevelopment Area to consist of approximately 53.55 acres.

61. The Protest Petition was signed and filed by property owners within the Redevelopment Area, as follows:

Block	Lot	Address	Owner	Land Size (Acres)
566.01	4	320 West Water St.	320 Assoc LLC	5.38
569	3	40 West Water St.	Meridia Toms River 40 Urban Renewal	.0459

569	4	511 Irons Street	Meridia Toms River 40 Urban Renewal	2.54
569	5	2 West Water St.	Meridia Toms River 40 Urban Renewal	.560
569	10	48 West Water St.	Meridia Toms River 40 Urban Renewal	.608
658	48	109 West Water St.	Car Cave LLC	.01722
658.01	19	216 Main St.	Lotano Development Inc.	.315
658.01	30	40 Main St.	Grace Acquisitions NJ LLC	1.68
658.01	34	28-30 Main St.	Toms River Holdings LLC	.314
658.01	35	26 Main St.	Toms River Holdings LLC	.43
658.01	38	36 Irons St.	36 Irons Street LLC	.367
658.01	42	25 West Water St.	Anddee Water Street Associates LLC	.590
658.01	44	24 Main St.	24 Main Partners LLC	.4086
TOTAL				13.26 Acres

62. The property owned by those individuals that signed the protest petitions represents approximately 24.76% of the Redevelopment Area.

63. The Township Clerk accepted the Protest Petition without any objection.

64. Meridia was not notified that the Protest Petition was rejected by the Township for failure to meet the requirements of *N.J.S.A. 40:55D-63*.

65. On December 4, 2024, Pascarella, in his capacity as Assistant Township Attorney, wrote to counsel for Meridia (the “**Pascarella Letter**”), a *copy of which is attached hereto as Exhibit S*, stating, in-part, the Township’s incorrect interpretation that the MLUL does not apply to the Ordinance and, thus, the Protest Petition would not be acknowledged or approved by a two-thirds vote as required by *N.J.S.A. 40:55D-63*.

66. The Township’s interpretation of the law relies upon the incorrect conclusion that *N.J.S.A. 40:55D-63* does not apply to an ordinance seeking to repeal a redevelopment plan under the LRHL.

67. The Township’s conclusion is contrary to its prior claim in the Pascarella Letter that states “[t]he LRHL is silent to the repealing of redevelopment plans. Since the Subject Ordinance deals

with repealing previously adopted redevelopment plans – as opposed to adopting, revising, or amending them, as is contemplated in the statute – there is no requirement that the Planning Board consider the Subject Ordinance.”

68. The Pascarella Letter further noted that the Protest Petition would not be acknowledged or approved by a two-thirds vote as required by *N.J.S.A. 40:55D-63* since “roughly one-third of the protest petitions submitted were from Meridia’s proprietor, Mr. Capodagli, who arguably has no ownership interest in these lots since the project site should have reverted back to the Township ...”

69. The Council approved the Ordinance with less than a two-thirds affirmative vote.

COUNT ONE

(Violation of *N.J.S.A. 40:55D-63*)

70. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

71. *N.J.S.A. 40:55D-63* provides, in pertinent part, as follows:

A protest against any proposed amendment or revision of a zoning ordinance may be filed with the municipal clerk, signed by the owners of 20% or more of the area either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of two-thirds of all the members of the governing body of the municipality.

72. In accordance with *N.J.S.A. 40:55D-63*, a valid protest petition in opposition to the Ordinance with respect to the repeal of the Redevelopment Plan was filed with the Township Clerk.

73. As a result of the filed protest petition, the adoption of the Ordinance required the approval of a two-thirds majority vote of the entire Township Council.

74. The Ordinance was not approved by a two-thirds majority vote of the entire Township Council.

75. The failure to obtain the approval of a two-thirds majority vote of the entire Township Council renders the Ordinance null and void.

WHEREFORE, Plaintiff demands that Judgment be entered in its favor and against Defendants as follows:

- (a) Declaring the Ordinance invalid for failing to meet the requirements of *N.J.S.A. 40:55D-63*;
- (b) Awarding reasonable costs and attorneys fees; and
- (c) Granting such other and further relief as the Court deems just and equitable.

COUNT TWO

(Violation of *N.J.S.A. 40:55D-62.1*)

71. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

72. As per *N.J.S.A. 40:55D-62.1*, notice of the hearing on this possible adoption was required to be given to all property owners within the Redevelopment Area and within 200 feet of said zone.

73. The Township failed to provide Meridia notice of the Ordinance in accordance with *N.J.S.A. 40:55D-62.1*.

74. Upon information and belief, the Township failed to provide all property owners within the Redevelopment Area and within 200 feet of said zone the notice required by *N.J.S.A. 40:55D-62.1*.

75. As proper notice is jurisdictional, the absence of valid notice renders the Ordinance unlawful, invalid and void.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- (a) Declaring the Ordinance invalid for failing to provide Plaintiff proper notice in accordance with *N.J.S.A.* 40:55D-62.1;
- (b) Awarding reasonable costs and attorneys fees; and
- (c) Granting such other and further relief as the Court deems just and equitable.

COUNT THREE

(The Ordinance is Inconsistent with the Master Plan)

76. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

77. *N.J.S.A.* 40:55D-26 provides, in part, that prior to the adoption of an amendment to a zoning ordinance, “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 ... amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies

78. *N.J.S.A.* 40A:12A-7 provides that prior to the adoption of a redevelopment plan, or revision or amendment thereto the planning board shall prepare and transmit a report containing its recommendation to the governing body.

79. The Land Use Plan Element and the HEFS Plan of the Master Plan both recommended the adoption of the Redevelopment Plan.

80. The Planning Board, during three (3) separate consistency review hearings, has previously found the Redevelopment Plan to be consistent with the Master Plan and recommended its adoption to the Township Council.

81. The Ordinance is clearly “inconsistent” with the Land Use Plan Element and the HEFS Plan of the Master Plan.

82. The Planning Board’s finding that the Ordinance was substantially consistent with the Master Plan was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands that Judgment be entered in its favor and against Defendants as follows:

- (a) Declaring the Ordinance inconsistent with the Master Plan and therefore the Defendants’ actions to be arbitrary, capricious and unreasonable invalid;
- (b) Awarding reasonable costs and attorneys fees; and
- (c) Granting such other and further relief as the Court deems just and equitable.

COUNT FOUR

(Violation of *N.J.S.A. 40:55D-62(a)*)

83. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

84. Pursuant to *N.J.S.A. 40:55D-62(a)*, any zoning ordinance or amendment or revision to the existing zoning regulations which “in whole or part is inconsistent or not designed to effectuate the land use plan element and the housing plan element” can only be validly adopted if the Governing Body recognizes the inconsistency, and adopts a Resolution setting forth its reasons for adoption given the inconsistency, and acts by an affirmative vote of a majority of the full authorized membership of the Governing Body.

85. The introduction and adoption of the Ordinance was not the product of any Periodic Reexamination of the Master Plan, pursuant to *N.J.S.A. 40:55D-89*, or any adoption of a Revised Master Plan or its modification, pursuant to *N.J.S.A. 40:55D-28*.

86. The Ordinance is clearly “inconsistent” with the Land Use Plan Element and the HEFS Plan of the Master Plan.

87. Given the clear inconsistency of repealing the Redevelopment Plan and implementing the VB Zone regulations the Ordinance could only be adopted after Township Council’s recognition of said inconsistency, and the adoption of a so-called “Reasons Resolution” detailing the Township Council’s basis and reasons for adoption of this inconsistent zoning ordinance, and acting on the adoption of the Ordinance by the enhanced vote required.

88. That required process and voting procedure was not followed. As a consequence, the adoption of the Ordinance was invalid due to the failure to adhere and comply with the required adoption process.

WHEREFORE, Plaintiff demands that Judgment be entered in its favor and against Defendants as follows:

- (d) Declaring the Defendants failed to comply with *N.J.S.A.* 40:55D-62(a) at the time it adopted the Ordinance;
- (e) Awarding reasonable costs and attorneys fees; and
- (f) Granting such other and further relief as the Court deems just and equitable.

COUNT FIVE

(The Ordinance is Unconstitutionally Vague)

89. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

90. The adoption of land use regulations affects constitutionally protected property rights and therefore the ordinance implementing the regulations must be clear and explicit so that property owners and the public are notified of the ordinance’s requirements.

91. The failure of an ordinance that implements a land use regulation to meet the “test of certainty and definiteness” will be deemed invalid as “impermissibly vague and indefinite.”

92. The Ordinance purports to reenact the “municipal zoning that was applicable ... immediately prior to the adoption” of the Redevelopment Plan.

93. The Ordinance fails to set forth any of the proposed regulations and standards that would govern the Redevelopment Area properties upon its adoption.

94. The failure to include the proposed regulations and standards renders the Ordinance impermissibly vague and indefinite and thus invalid.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- (a) Declaring the Ordinance invalid as impermissibly vague and indefinite and thus invalid based upon the failure to set forth the proposed regulations and standards;
- (b) Awarding reasonable costs and attorneys fees; and
- (c) Granting such other and further relief as the Court deems just and equitable.

COUNT SIX

(Violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2)

95. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

96. The right to engage in protest of the adoption of a land use regulation through petition, is deemed by the New Jersey Supreme Court to be a substantive right under state law specifically *N.J.S.A. 40:55D-63*.

97. In accordance with *N.J.S.A. 40:55D-63*, a valid protest petition in opposition to the Ordinance was filed with the Township Clerk.

98. Defendants arbitrarily, capriciously, unreasonably, and without any basis in law, declared that the Ordinance could not be subject to a protest petition filed pursuant to *N.J.S.A. 40:55D-63*.

99. The Township's unlawful actions have deprived Plaintiff of the reasonable use of the Property and deprived Plaintiff of its contractual rights.

100. By depriving Plaintiff of its substantive right to protest, Defendants have violated the New Jersey Civil Rights Act, *N.J.S.A. 10:6-2, et seq.*

101. Defendants were acting under color of law and are liable to the Plaintiff for a violation of the New Jersey Civil Rights Act.

WHEREFORE, Plaintiff demands that Judgment be entered in its favor and against Defendants as follows:

- (a) Declaring that the actions of the Defendants amount to an impairment of the substantive rights of the Plaintiff under color of law;
- (b) Declaring that the Defendant's conduct is an unlawful deprivation of Plaintiff's substantive due process and property rights in violation of the New Jersey Constitution and New Jersey Civil Rights Act, *N.J.S.A. 10:6-2, et seq.*
- (c) Awarding such other and further relief as the Court may deem equitable and just in the circumstance including consequential damages, attorney's fees and costs of suit pursuant to the New Jersey Civil Rights Act, *N.J.S.A. 10:6-2, et seq.*

COUNT SEVEN

(Pascarella - Conflict of Interest)

102. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

103. Pascarella serves as the Assistant Township Attorney for the Township with the duties, pursuant to §49-4 of the Township Code, to serve as “legal advisor to the Mayor, Township Council and all other departments, except as otherwise provided by the Charter or Township Code.”

104. Pascarella also serves as the Class II member of the Planning Board pursuant to *N.J.S.A.* 40:56A-1 and §348-3.1(2) of the Township Code.

105. Upon information and relief, Pascarella, in his capacity as Assistant Township Attorney, drafted or participated in the drafting of the Ordinance for the Township Council.

106. On December 4, 2024, prior to the Consistency Review Hearing, Pascarella, in his capacity as Assistant Township Attorney, defended the Township’s adoption of the Ordinance in the Pascarella Letter.

107. Pascarella, in his capacity as Planning Board member participated in the Consistency Review Hearing and voted to recommend the Township Council the adoption of the Ordinance.

108. Pascarella, in his capacity as Assistant Township Attorney, provided legal counsel to the Mayor and Township Council during the hearing on the adoption of the Ordinance.

109. The actions of Pascarella in his dual roles created an irreparable conflict of interest in violation of the common law, the Local Government Ethics Law, *N.J.S.A.* 40A:9-22.1, and the Municipal Land Use Law, *N.J.S.A.* 40:55D-1, et seq. that renders the adoption of the Ordinance invalid, and null and void.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- (a) Declaring the Ordinance invalid based upon Pascarella’s conflict of interest;
- (b) Awarding reasonable costs and attorneys fees; and

(c) Granting such other and further relief as the Court deems just and equitable.

COUNT EIGHT

(Councilman Lamb – Conflict of Interest)

110. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

111. Councilman Justin Lamb (“**Councilman Lamb**”) participated in the public hearing on the adoption of the Ordinance, motioned for a vote on the Ordinance, and voted to approve the Ordinance.

112. Upon information and belief, Councilman Lamb or an immediate family member has ownership interests of a property subject to the Ordinance.

113. Upon information and belief, Councilman Lamb maintains a business office within a property subject to the Ordinance.

114. Upon information and belief, Councilman Lamb had a conflict of interest that precluded him from taking any action on the Ordinance.

115. The actions of Councilman Lamb with regard to the Ordinance were in violation of the common law, and the Local Government Ethics Law, *N.J.S.A. 40A:9-22.1* and renders the adoption of the Ordinance invalid, and null and void.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- (a) Declaring the Ordinance invalid based upon Councilman Lamb’s conflict of interest;
- (b) Awarding reasonable costs and attorneys fees; and
- (c) Granting such other and further relief as the Court deems just and equitable.

COUNT NINE

(Breach of Redevelopment Agreement)

116. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint as if set forth at length.

117. Plaintiff and Defendant Township executed the Redevelopment Agreement, and the Township is obligated to perform its obligations under the Agreement.

118. Plaintiff has expended substantial funds in connection with the performance of the Redevelopment Agreement and pursuit of approvals in compliance with the Redevelopment Agreement, in reasonable reliance upon the Township's performance thereof, including, but not limited to, the covenant and agreement not to modify the Redevelopment Plan.

119. The Township has breached its obligations to Plaintiff under the Agreement by adopting the Ordinance to repeal the Redevelopment Plan.

120. The Township had an obligation and duty to act in good faith and to deal fairly with Plaintiff in connection with the Redevelopment Agreement.

121. The adoption of the Redevelopment Agreement resulted in a breach of the Township's obligation and duty to act in good faith and to deal fairly with Plaintiff in connection with the Redevelopment Agreement.

122. As a direct and proximate result of the Township's adoption of the Ordinance, Plaintiff has been deprived of the use and enjoyment of its property and has suffered and will continue to suffer actual, severe and direct economic harm.

WHEREFORE, Plaintiff demands that Judgment be entered in their favor and against Defendants as follows:

- (a) Declaring that Defendant's adoption of the Ordinance breached its obligations to Plaintiff under the Redevelopment Agreement;
- (b) Declaring that Defendant breached its duty of good faith and fair dealing in connection with its obligations to Plaintiff;
- (c) Specific enforcement of the Redevelopment Agreement requiring Defendant Township to honor its obligations under the Agreement;
- (d) Awarding compensatory and punitive damages;
- (e) Awarding interest;
- (f) Awarding attorneys' fees;
- (g) Awarding costs of suit; and
- (h) Awarding such other and further relief as the Court may deem equitable and just.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff

Dated: December 23, 2024

By: /s/ Steven Mlenak
Steven G. Mlenak

DEMAND FOR JURY TRIAL

Pursuant to R. 4:35-1, Defendant hereby demands a trial by jury of all issues triable of right by jury.

DEMAND FOR DOCUMENTS PURSUANT TO R. 4:18-2

Defendant hereby demands that Plaintiff produce and serve copies of all documents referred to in the Complaint within five (5) days of the date hereto.

CERTIFICATION OF NO OTHER ACTIONS

I certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, nor is any action or arbitration proceeding contemplated with the exception of the following pending matters:

1. In the Matter of the Township of Toms River, County of Ocean, Docket No. OCN-L-1867-15
2. Meridia Toms River 40 Urban Renewal LLC v. Township of Toms River, et al, Docket No. OCN-L-002065-24

At the present time, and prior to discovery, I know of no other parties who should be joined in the within action at this time.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff

By: /s/ Steven Mlenak
Steven G. Mlenak

Dated: December 23, 2024

CERTIFICATION PURSUANT TO R. 1:38-7

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 R. 1:38-7(b).

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Plaintiff

Dated: December 23, 2024

By: /s/ Steven Mlenak _____
Steven G. Mlenak