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RUBINSTEIN, DAVID SCHLUSSEL, MARC
SCHLUSSEL, and SHORANA SCHLUSSEL,

Plaintiffs,

vs.

TOWNSHIP OF TEANECK and TOWNSHIP OF
TEANECK PLANNING BOARD

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L-

CIVIL ACTION

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiffs, Michael Akerman, Georgina B. Asante, Yaw Asante, Daniel Bellin, Rena Donin Schlusssel, Yaron Hirschhorn, Rachel Kaye, Ashira Loike, Alan Rubinstein, David Schlusssel, Marc Schlusssel, and Shorana Schlusssel (collectively “Plaintiffs”), by way of Complaint in Lieu of Prerogative Writs (the “Complaint”), against Defendants, Township of Teaneck (the “Township”) and Township of Teaneck Planning Board (the “Board”) (collectively, “Defendants”), say:

NATURE OF ACTION

1. In this action, Plaintiffs challenge the improper adoptions of Ordinance No. 22-2022 (“Ord. 22-2022”) and Ordinance No. 23-2022 (“Ord. 23-2022”) and the validity of the actions at the June 28, 2022 Township Council meeting wherein Ord. 22-2022 and Ord. 23-2022 were arbitrarily, capriciously, improperly, and illegitimately adopted, in violation of law, including the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., (the “OPMA”), the Municipal Land Use

Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. (the “LGEL”), and the Township Code of Ethics (the “Code of Ethics”).

2. Plaintiffs also challenge the Board’s purported adoption of an Amendment to the Township’s Master Plan (the “Master Plan Amendment”) on December 16, 2021.

3. The Township had previously adopted Ordinance 9-2022 (“Ord. 9-2022”) to amend and revise sections 33-22, -24, of Article V, Chapter 33, of the Township’s Development Regulations and Zoning Ordinance (the “Ordinances”), regarding the expansion of the Township’s Hospital “H” Zoning District (the “H-Zone”).

4. Following the adoption of Ord. 9-2022, Plaintiffs filed a Complaint in Lieu of Prerogative Writs, Docket No. BER-L-2234-22 challenging Ord. 9-2022, in part because impermissible conflicts of interest required the invalidation of Ord. 9-2022.

5. Acknowledging these conflicts, the Township introduced and subsequently adopted Ord. 22-2022, which repealed Ord. 9-2022 and replaced it with nearly identical language.

6. Ord. 22-2022 was adopted for the express purpose of avoiding the conflicts of interest which tainted Ord. 9-2022.

7. Ord. 22-2022 expressly seeks to benefit Holy Name Medical Center, Inc. (“HNN”) and HNN’s development plans, through vacating a portion of Chadwick Road in favor of HNN.

8. Ord. 22-2022 and Ord. 23-2022 were introduced on May 17, 2022 and adopted on June 28, 2022.

9. The real property zoned and re-zoned by Ord. 9-2022 and subsequently Ord. 22-2022, all located in the H-Zone, is owned and/or controlled by Holy Name Medical Center, Inc., and identified on the Tax Maps of the Township as Block 3003, Lots 2, 3, 4, 8, 9, 10, 11, 12, 13, and 14; and Block 3002, Lots 2, 3, 4, 5, 6, 7 and 8 (jointly and severally, the “HNN Property”).

10. The H-Zone only contains properties owned and/or controlled by HNN.

11. The adoptions of Ord. 22-2022 and Ord. 23-2022 were accomplished without consideration of the general welfare of the Township of Teaneck, do not advance the health, safety, or welfare of the Township's residents and property owners, are not in the best interest of good zoning and planning, and are contrary to the MLUL, the LGEL, the OPMA, and the Code of Ethics.

12. The purported Master Plan Amendment was irreparably tainted by conflicts of interest by the Board's members and the attorney advising the Board and was void ab initio.

13. Plaintiffs seek, *inter alia*, judgment declaring Ord. 22-2022, Ord. 23-2022 and the purported Master Plan Amendment invalid, void and contrary to law.

14. This Court has subject matter jurisdiction over Plaintiffs' claims in this Complaint pursuant to the MLUL and R. 4:69.

THE PARTIES

15. Defendant, Township of Teaneck, including the Township Council, the Mayor, Deputy Mayors (individually and collectively, the "Council"), Township Manager, Council Members, and other municipal officials thereof (individually and collectively, the "Township"), is a municipal corporation of the State of New Jersey, having offices at 818 Teaneck Road, Teaneck, NJ 07666.

16. Defendant, Township of Teaneck Planning Board, including its Board members (individually and collectively the "Board"), is a municipal agency constituted by the Township pursuant to the MLUL, with offices at 818 Teaneck Road, Teaneck, NJ 07666.

17. Plaintiffs Michael Akerman and Rachel Kaye are individual residents of Teaneck and owners of the property located at 692 Grange Road, Teaneck, N.J. 07666.

18. Plaintiffs Marc Schlusell and Shorana Schlusell are individual residents of Teaneck and the owners of the property located at 695 Grange Road, Teaneck, NJ 07666.

19. Plaintiffs David Schlusser and Rena Donin Schlusser are individual residents of Teaneck residing at 681 Grange Road, Teaneck, NJ 07666.

20. Plaintiff Alan Rubinstein is an individual resident of Teaneck and the owner of the property located at 3 Grange Court, Teaneck, NJ 07666.

21. Plaintiff Yaron Hirschhorn is an individual resident of Teaneck and the owner of the property located at 728 Grange Road, Teaneck, NJ 07666.

22. Plaintiffs Daniel Bellin and Ashira Loike are individual residents of Teaneck and the owners of the property located at 135 Vandelinda Avenue, Teaneck, NJ 07666.

23. Plaintiffs Yaw Asante and Georgina B. Asante are individual residents of Teaneck and the owners of the property located at 140 Chadwick Road, Teaneck, NJ 07666.

24. Plaintiffs Meryl Mark and Joseph Mark are individual residents of Teaneck and the owners of the property located at 166 Norma Road, Teaneck, NJ 07666.

RELEVANT FACTS

25. Upon information and belief, HNH has for many years sought to redevelop and expand its buildings, structures, and facilities.

26. These efforts included the purchase of various properties that currently comprise the HNH Property.

27. At various times between 2019 and the present, HNH, including its agents, employees, and professionals, discussed and negotiated with the Township terms to expand HNH's buildings, structures and facilities within the HNH Property, to permit the vacation of a certain Township right of way in favor of HNH, and for an amendment of the Township Master Plan and amendment of the Township's Ordinances so to permit the development, redevelopment and expansion of HNH's buildings, structures and facilities within the HNH Property.

28. During said timeframe, the Council also formed a Holy Name Medical Center three-person subcommittee (the “Holy Name Medical Center Subcommittee”) to engage in said discussions and negotiations with HNH to enact a Master Plan Amendment and an amendment of the Ordinances for the development, redevelopment and expansion of HNH’s buildings, structures and facilities within the HNH Property, all to benefit HNH.

29. Elie Y. Katz (“Katz”) is the First Deputy Mayor of the Township, a Member of the Council, a Member of the Holy Name Medical Center Subcommittee, and a Life Member of the Teaneck Volunteer Ambulance Corp (the “TVAC”).

30. The adoptions of Ord. 22-2022 and Ord. 23-2022 will directly benefit TVAC.

31. Mark J. Schwartz (“Schwartz”) is the Second Deputy Mayor of the Township, a Member of the Council, a Member of the Holy Name Medical Center Subcommittee, a Class III Member of the Planning Board, a Life Member and a 19-year active Member of TVAC and the Vice President of Operations, a Member of the Executive Committee, a Member of the Board of Directors of Yavneh Academy & Talmud Torah of Paterson (“Yavneh”), and Publisher of The Jewish Link Newspaper (the “Jewish Link”).

32. Katz and Schwartz were members of, and controlled, the Holy Name Medical Center Subcommittee.

33. HNH is a frequent paid advertiser in the Jewish Link.

34. The Jewish Link has published articles publicly supporting the zoning changes implemented in Ord. 9-2022 and re-adopted in Ord. 22-2022.

35. Karen Orgen (“Orgen”) is a Member of the Township Council and a Life Member and former President of TVAC.

36. Orgen’s husband, Eric Orgen, is a Life Member and the current President of TVAC.

37. Upon information and belief, a family member of Orgen was recently hired by HNH.

38. James Dunleavy (“Dunleavy”) is the Mayor of the Township, and, upon information and belief, an employee of HNH from approximately 1999 to 2003.

39. On or about July 8, 2020, HNH and the Township issued a joint press release that disclosed a plan agreed to by HNH and the Township to expand the hospital and for HNH to donate monies to TVAC for TVAC equipment and supplies (the “Joint Press Release”).

40. The Joint Press Release disclosed, among things, that “[a]s part of the plan, the hospital [HNH] will pay \$10 million over 10 years in property, sewage and water taxes and fees for property it owns in Teaneck. The hospital [HNH] will also cover the Township’s annual contribution to the Teaneck Volunteer Ambulance Corps (TVAC) for the same number of years.”

41. According to the Township Budget for 2021, the Township paid \$70,000.00 to TVAC.

42. A similar annual amount has been paid by HNH to TVAC in 2018, 2019, and 2020.

43. Based on the contents of the Joint Press Release, HNH will be paying TVAC \$700,000.00 over a 10-year period, or \$70,000.00 annually.

44. The payments contemplated in the Joint Press Release do not preclude the Township from continuing to make its own (additional) \$70,000.00 annual contributions to TVAC.

45. The Township’s annual contributions to TVAC are limited to \$70,000.00 pursuant to N.J.S.A. 40:5-2, which statutory limit does not apply to payments made by HNH.

46. As part of the agreement between HNH and the Township to facilitate the redevelopment and expansion plans for the HNH Property as sought by HNH, the Township

negotiated with HNH for TVAC to receive from HNH a financial benefit; namely, HNH making the Township's annual contribution to TVAC.

47. As demonstrated by the contents of the Joint Press Release, the Township and HNH created a direct nexus between the Township's annual obligation to fund TVAC and HNH's expansion plans.

48. The Township and HNH negotiated HNH funding of the Township's annual financial obligations to TVAC for the benefit of TVAC, a private entity in which three (3) Council Members are Life Members, active Members, or former President.

49. Life Membership status in TVAC is an honor which acknowledges ten (10) years of active service to TVAC and means that an individual remains a full member of TVAC even after their active participation ceases.

50. Just prior to the date of the Joint Press Release, HNH entered into a contract with Yavneh to purchase property located at Block 3002, Lot 6 in Teaneck, New Jersey, commonly known as 75 Chadwick Road, Teaneck, New Jersey 07666, for a purchase price of \$750,000.00 (the "Yavneh Property").

51. Yavneh had purchased the Yavneh Property from 75 Chadwick LLC on December 29, 2017, for a purchase price of \$600,000.00.

52. The closing on the Yavneh Property occurred on or about July 20, 2020, twelve (12) days after the date of the Joint Press Release.

53. Schwartz, as the Vice President of Operations of Yavneh, was actively involved in the sale of the Yavneh Property by Yavneh to HNH.

54. The Township Council, at a meeting held on August 11, 2020, adopted Resolution 159-2020 by a unanimous vote of 6-0, authorizing Phillips, Preiss, Grygiel, Leheny, Hughes LLC, Planning and Real Estate Consultants ("Phillips Preiss") to undertake a master plan reexamination

report under the direction of the Planning Board for expansion of the Hospital Zone within the Township.

55. Katz abstained from voting on Resolution 159-2020, while Orgen, Dunleavy and Schwartz all voted in favor of Resolution 159-2020.

56. At the August 11, 2020 Township Council meeting, the Council adopted Resolution 160-2020 by a unanimous vote of 7-0, authorizing the Planning Board to undertake a master plan reexamination and prepare a report, including recommendations of proposed development regulations, regarding the Township's H-Zone.

57. Katz, Orgen, Dunleavy and Schwartz all voted in favor of Resolution 160-2020.

58. At the August 11, 2020 meeting, Katz and Orgen emphasized their connection to TVAC and the importance of the organization.

59. Orgen's husband spoke at the Township Council meeting on August 11, 2020 in favor of Resolution 159-2020 and Resolution 160-2020, introducing himself to the Council as the President of TVAC and as a trustee of TVAC.

60. On November 17, 2020, the Township issued Special Emergency Directive No. 03-2020 (the "2020 Special Emergency Directive"). The 2020 Special Emergency Directive, among other things, authorized HNH "to construct a temporary parking lot to accommodate the anticipated parking needs for the second round of COVID-19 cases" on Block 3002, Lots 1-6 (the "Temporary Parking Lot").

61. Even though the Township offices were open, and its land use boards were meeting regularly via the Zoom virtual platform, the 2020 Special Emergency Directive asserts that given the COVID-19 health emergency, the "approval process to approve such proposed temporary emergency medical facilities has experienced extensive delays."

62. The 2020 Special Emergency Directive further asserts that the “provisions set forth in Chapter 33, Development Regulations of the Code of the Township of Teaneck...present a potential impediment to protect and maintain the health, safety, and welfare of New Jersey residents and visitors against the effects of COVID-19 with respect to the provision of emergency medical care.”

63. The 2020 Special Emergency Directive defines “Temporary Emergency Medical Facilities” to include “parking lots, which are immediately necessary to care for and treat patients suffering from COVID-19 during the current health emergency.”

64. The Yavneh Property that HNH bought four (4) months earlier from Yavneh for \$150,000.00 more than Yavneh paid for it is part of the parcels that were included in the 2020 Special Emergency Directive.

65. At the March 10, 2022 Board meeting, the Board’s traffic engineer, John Corak of Stonefield Engineering, testified regarding the parking requirements in Ord. 9-2022 and stated that HNH’s parking needs during COVID-19 were less than its parking needs pre-COVID-19.

66. At that same March 10, 2022 Board meeting, Deputy Mayor Schwartz said that there is not a parking problem at HNH, and that there is plenty of parking, maybe due to COVID-19.

67. The 2020 Special Emergency Directive suspended “the procedural requirements for obtaining site plan, subdivision, and zoning approvals for the construction of temporary emergency medical facilities, including parking areas.”

68. Although the 2020 Special Emergency Directive required that “Applications for temporary emergency medical facilities shall be submitted to Teaneck’s Construction Code Official for processing” according to the Township’s Construction Official, the applications were not filed by HNH with the Township until on or about Monday, April 19, 2021

69. The Township allowed the Temporary Parking Lot to be built by HNH prior to the filing by HNH of said applications for temporary emergency medical facilities.

70. The Temporary Parking Lot was built by HNH prior to the filing by HNH of said applications for temporary emergency medical facilities.

71. The Zoning Permits that were issued pursuant to the 2020 Special Emergency Directive were signed by the Township's Construction Official on May 14, 2021.

72. Although the 2020 Special Emergency Directive required that "all plans shall comply with the setback, coverage, height, floor area ratio, landscaping and other substantive criteria applicable for site plans, subdivisions and zoning, other than the provisions relating to uses", as the entirety of Lots 2-6 are gravel parking areas, the Temporary Parking Lot was permitted by the Township to be built, and was in fact built, without first complying with all applicable site plan and zoning criteria including but not limited to lot coverage limitations, landscaping, storm water or other substantive criteria that are required for the development and use of other properties within the Township.

73. Upon information and belief, the Temporary Parking Lot was built without complying with the New Jersey Department of Environmental Protection storm water requirements for water quality or for storm water runoff.

74. Four (4) zoning permits that were applied for by HNH on or about April 19, 2021 were issued by the Township's Construction Official on or about May 14, 2021, pursuant to the 2020 Special Emergency Directive – Zoning Permit Number 20210344 for Block 3002, Lot 2 (70 Cedar Lane), Zoning Permit Number 20210345 for Block 3002, Lot 4 (45 Chadwick Road), Zoning Permit Number 20210346 for Block 3002, Lot 5 (53 Chadwick Road), and Zoning Permit Number 20210347 for Block 3002, Lot 6 (75 Chadwick Road).

75. Each of these zoning permits was “Approved with Conditions” and stated in the additional comments directly above the signature of the Township’s Construction Official that the permits “shall expire upon termination of the Health Emergency or Special Emergency Directive.”

76. The 2020 Special Emergency Directive states in subparagraph f. that “Any permits issued by the Construction Official under these temporary rules and regulations promulgated hereunder shall expire upon the termination of the health emergency or the termination of the Special Emergency Directive, whichever first occurs.”

77. On June 4, 2021, Governor Murphy signed Assembly Bill No. 5820 into law as P.L.2021, c.103 and issued Executive Order No. 244, which terminated the public health emergency declared in Executive Order No. 103 (March 9, 2020). Executive Order No. 244 states in paragraphs 1 and 3 that “The Public Health Emergency declared in Executive Order No. 103 (2020) pursuant to EHPA, N.J.S.A. 26:13-1, et seq., is hereby terminated” and “This Order shall take effect immediately.”

78. Once said public health emergency was terminated by Governor Murphy on June 4, 2021, the temporary rules and regulations and procedural requirements that were suspended temporarily and purportedly authorized by the 2020 Special Emergency Directive were automatically reinstated by operation of law. This resulted in the expiration of the zoning permits issued to HNH.

79. On November 27, 2021, the Township of Teaneck improperly issued Special Emergency Directive No. 01-2021 (the “2021 Special Emergency Directive”) that ordered and directed that the procedural requirements necessary for obtaining site plan, subdivision, and zoning approvals would not apply to HNH for the construction of commercial parking areas primarily in a Residential Zone on five properties on Chadwick Road and Cedar Lane.

80. The 2021 Special Emergency Directive notes that procedural requirements are “temporarily suspended, *nunc pro tunc* [sic] from the date of the termination of the Public Health Emergency on June 4, 2021 and until the termination of the State of Emergency initially declared in Executive Order No. 103 (2020).”

81. The 2021 Special Emergency Directive improperly abrogated the MLUL and the rules and regulations of the New Jersey Department of Environmental Protection to the benefit of HNH.

CONFLICTS OF INTEREST

82. On or about June 29, 2021, real property at 115 Chadwick Road, Block 3002, Lot 12, was listed for \$429,000.00, and months later sold for \$465,000.00 to Holy Name Real Estate Corp., a subsidiary of HNH.

83. The real estate agent representing HNH for that transaction was Kenneth Croonquist, the Captain of Operations for the Teaneck Police Department, and the Board’s Class II Board Member (“Croonquist”).

84. On May 8, 2020, Croonquist filed a Financial Disclosure Statement in accordance with the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.*, for 2020 that disclosed that he received income in excess of \$2,000.00 from Russo Real Estate during 2020.

85. Croonquist did not file Financial Disclosure Statements with the State of New Jersey Department of Community Affairs Division of Local Government Services Local Finance Board for the 2021 and 2022 years of service.

86. On December 16, 2021, Croonquist and Schwartz voted for the Master Plan Amendment at the December 2021 Planning Board meeting, on a motion made by Schwartz that was seconded by Croonquist, one month after the closing on the property (November 17, 2021)

for which Croonquist acted as real estate agent for HNH (115 Chadwick Road) and one day after the date that HNH recorded the deed for property (December 15, 2021).

87. The Board was advised by Brian Eyerman, Esq., the Board's attorney and a member of the law firm Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz & Krouse LLC ("Eyerman").

88. Eyerman has a conflict of interest preventing his representation of the Board with regard to matters concerning HNH, due to the employment of his brother, Luke E. Eyerman, M.D., by HNH.

89. In addition to his employment by HNH, Luke Eyerman at points during the last few years had, upon information and belief, a leadership position at HNH.

90. Plaintiffs were not aware of Board attorney Eyerman's disqualifying conflict of interest until after the March 10, 2022 Board meeting.

91. Eyerman failed to recuse himself from consideration of the Master Plan Amendment in December 2021 and drafted the consistency review report concerning Ordinance 9-2022 and the Master Plan Amendment by letter dated March 14, 2022.

92. During the consistency review Eyerman also gave instructions to and helped frame the acceptable bounds of the conversation of the Planning Board members.

93. These disqualifying conflicts by Schwartz, Croonquist, and Eyerman render the December 2021 purported Master Plan Amendment for development, redevelopment, and expansion of HNH's buildings, structures, and facilities, as null and void and of no force or effect.

94. Ord. 22-2022 contemplates vacating portions of a public right of way, Chadwick Road, to HNH, whereby HNH would receive almost an acre of real property from the Township for its use without HNH having to pay appropriate consideration for same, to be implemented through Ord. 23-2022.

95. Upon information and belief, no traffic study has ever been commissioned to analyze the implications of vacating the portions of Chadwick Road contemplated by Ord. 23-2022.

96. On March 15, 2022, at approximately 10:15 a.m., certain Plaintiffs filed with the Township Clerk 42 Protest Petitions (“Protest Petition”) along with a Professional Planner Certification by T. Andrew Thomas in opposition to proposed Ord. 9-2022, in accordance with N.J.S.A. 40:55D-63.

97. At the March 15, 2022 public hearing on Ord. 9-2022, no discussion was held concerning the previously alleged conflicts of Katz, Schwartz and Orgen, except for a statement by Orgen just prior to a vote on the ordinance that she was recusing herself because an unnamed family member was recently employed by HNH.

98. No other members of the Council recused from voting on Ord. 9-2022, despite some having disqualifying conflicts of interest.

99. The motion to adopt Ord. 9-2022 was made by conflicted Council Member Deputy Mayor Schwartz and seconded by conflicted Council Member Deputy Mayor Katz.

100. Ord. 9-2022 was approved and adopted on March 15, 2022 by the Council by a vote of 6-0-1, with Orgen being the only recusal.

101. On April 21, 2022, the individuals who are Plaintiffs in this action filed a complaint in lieu of prerogative writs (Docket No. BER-L-2234-22) against the Township and the Board.

102. Count I of Plaintiffs’ prior complaint challenges the March 10, 2022 invalid purported review of Ord. 9-2022, based in part upon Schwartz’s and Croonquist’s knowing refusal to recuse themselves despite knowing they had conflicts of interest which prevented them from participating in those hearings, in violation of law, including the LGEL, the MLUL, and the Township Code of Ethics.

103. Count II of Plaintiffs' prior complaint challenges the Council's invalid purported adoption of Ord. 9-2022, based in part upon Katz's, Schwartz's, and Dunleavy's knowing refusals to recuse themselves despite knowing they had conflicts of interest which prevented them from participating in consideration of Ordinance 9-2022 in violation of law, including the LGEL, the MLUL, and the Township Code of Ethics.

104. The remaining Counts III through VIII of Plaintiffs' prior complaint address other relevant violations of law in connection with the hearing on and purported adoption of Ord. 09-2022 and the Board's invalid review of Ord. 09-2022.

105. In acknowledgement of their conflicts of interest, on May 17, 2022, the Council introduced Ord. 22-2022 to repeal Ord. 9-2022.

106. The Council admitted in the penultimate introductory "Whereas" clauses of Ord. 22-2022 that "allegations have been made concerning potential conflicts of interest respecting the review and enactment of Ordinance 9-2022" and "to dispel any such allegations, the Township Council finds that it is in the best interest of the citizens of the Township of Teaneck to repeal Ordinance No. 9-2022 and to introduce a new ordinance respecting the expansion of the Hospital H Zoning District."

107. During the May 17, 2022 Council meeting, the Township attorney announced there are multiple Council members who have determined that they should recuse themselves, and they would identify themselves at the appropriate time.

108. Nevertheless, only Orgen announced that she would recuse herself, as she previously had announced at the February 22, 2022 and March 15, 2022 Council meetings.

109. Schwartz left the meeting prior to the voting on the ordinance but did not explain the reason for his departure from the meeting.

110. Despite the conflicts of interest noted in the Complaint concerning Katz and Dunleavy, both Katz and Dunleavy remained at the hearing, and both voted in favor of the Ord. 22-2022.

111. Ord. 22-2022 contains an admission of conflicts of interest involving Council members, demonstrating not only the invalidity of Ord. 9-2022, but also all actions taken by the Council and its members involving the Master Plan Amendment and negotiations undertaken by the Council's Hospital Subcommittee.

112. The first paragraph of Ord. 22-2022 states, "BE IT RESOLVED by the Township of Teaneck that Ordinance #22-2022 passed on first reading and that said Ordinance will be further considered for a public hearing and final adoption thereon at a meeting of the Township Council to be held on June 14, 2022 Meeting at 8PM."

113. The third paragraph of that Ordinance stated that "BE IT RESOLVED by the Township of Teaneck that Ordinance #22-2022 passed on first reading and that said Ordinance will be further considered for a public hearing and final adoption thereon at a meeting of the Township Council to be held on May 31, 2022 Meeting at 8PM."

114. The text of Ord. 22-2022 appeared with inconsistent language for the date of the public hearing on both the Agenda Outline and Agenda Packet tabs on the Township website, and hard copies of the draft ordinance with inconsistent public hearing dates were distributed to members of the public at the May 17, 2022 Council meeting.

115. On May 17, 2022, Ord. 22-2022 passed on first reading with inconsistent dates for the public hearing, as both May 31, 2022 and June 14, 2022 were approved as the dates for the public hearing.

116. Instead of invalidating an improperly noticed ordinance, on May 18, 2022, **the Township backdated its records** by changing the “official” Agenda Outline and Agenda Packet for the May 17 meeting by improperly changing the date of the public hearing to June 28, 2022.

117. Since the time and place of the public hearing that passed at the first reading differs from the time and place identified in the newspaper notice published on May 22, 2022, the purported adoption of Ord. 22-2022 was in violation of N.J.S.A. 40:49-2, and therefore invalid.

REFUSAL TO CONDUCT CONSISTENCY REVIEW

118. On May 19, 2022, pursuant to the requirements of N.J.S.A. 40:55D-64, the Council referred Ord. 22-2022 and Ord. 23-2022 to the Planning Board for a consistency review, identifying the second reading as scheduled for June 28, 2022, a little over 35 days later.

119. Per Teaneck Township Code, Art. XVI, Sec. 2-92 and Teaneck Planning Board By-Laws, Planning Board members shall include the Mayor (Class I member), a Township Official appointed by the Mayor (Class II member), and a Council Member appointed by the Council (Class III member).

120. At the time of the May 19, 2022 referral, the Class I member was the conflicted Mayor, the Class II member was conflicted member Croonquist, and the Class III member was conflicted member Schwartz.

121. The Planning Board was required to transmit its report to the Council within 35 days after referral (*i.e.*, by June 23, 2022), in accordance with N.J.S.A. 40:55D-26(a): “the planning board **shall** make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulations, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate.” (emphasis added).

122. The Board had the opportunity to conduct consistency reviews of Ord. 22-2022 and Ord. 23-2022 at three separate scheduled meetings (May 26, 2022, June 9, 2022, and June 23, 2022) within the mandatory 35-day time window.

123. The Board failed to schedule or hold any hearings to review either ordinance for consistency with the Master Plan, in violation of N.J.S.A. 40:55D-26.

124. The Board also cancelled the regularly scheduled meeting on May 26, 2022, based on the demonstrably false claim of “a lack of agenda items”.

125. Upon information and belief, the Board intentionally permitted the 35-day period for consistency review under N.J.S.A. 40:55D-26 to lapse, to avoid with the legal requirement that a consistency review be held for Ord. 22-2022 and Ord. 23-2022.

126. On June 24, 2022, certain Plaintiffs filed with the Township Clerk forty-six (46) Protest Petitions along with a Professional Planner Certification by T. Andrew Thomas in opposition to proposed Ordinance 22-2022, in accordance with N.J.S.A. 40:55D-63.

127. On June 28, 2022 (the backdated hearing date), the Township Council conducted a hearing on Ord. 22-2022 and Ord. 23-2022, notwithstanding the absence of any Planning Board report pursuant to N.J.S.A. 40:55D-26.

128. At the June 28, 2022 public hearing on Ord. 22-2022 and Ord. 23-2022, no discussion was held concerning the previously identified conflicts of Katz and Dunleavy.

129. During the comments by the Council, Councilwoman Gervonn Romney Rice (“Rice”) indicated she would abstain from voting on the Ordinances.

130. During the meeting and after Rice’s statement, Katz approached Rice and whispered to her for approximately one-half minute, in violation of the OPMA.

131. Prior to voting on the Ordinances, Katz appeared to be reading and sending text messages, then whispered to Dunleavy, and then Dunleavy requested a point of personal privilege and a five-minute recess.

132. At no time was the public meeting adjourned or a motion made to enter a closed session.

133. The Council recessed for approximately ten minutes, during which time four (4) of the five (5) non-recused members of the Council (Dunleavy, Katz, Rice, and Michael Pagan (“Pagan”)) exited the Council Chambers and entered the Municipal Court Office, which was only open to all of the Council Members.

134. Upon information and belief, an effective majority of Council members proceeded to discuss the pending Ordinances in the Municipal Court Office.

135. Pagan returned to the dais of the Council Chambers approximately four and a half minutes after entering the Municipal Court Office.

136. Upon information and belief, a conversation continued in the Municipal Court Office between Dunleavy, Katz, and Rice, an effective majority of eligible Council members, behind closed doors.

137. Katz exited the Municipal Court Office and had conversations in the Building’s Lobby Area with Township attorney John Shahdanian (“Shahdanian”) and then with HNH’s Executive Vice President Steven Mosser, its consultant Stan Steinreich, and attorney Wendy Berger.

138. At no point were the public, any of the objectors, or their attorney advised of the ongoing negotiations or that a non-public closed-session meeting was being held by an effective majority of Council members.

139. When the official Council Meeting resumed, Dunleavy announced, “We’re just going to be telling you something now. Here’s what we want. What we want from the hospital and from the good neighbors is a commitment, a strong commitment that you will continue to talk to each other and try to come to some agreement on some of these issues as we move forward. I want that commitment from both of you.”

140. HNH Attorney Wendy Berger agreed to the condition.

141. Plaintiffs’ attorney Robert F. Simon was attending the meeting via Zoom and was unaware of the surreptitious and secret closed session meeting that had transpired behind closed doors in the Municipal Court Office, the meeting between Katz and HNH in the Building’s lobby, or any decision made by the Council concerning the vote.

142. Attorney Simon inquired what would happen with the vote on the pending Ordinances.

143. In response, Dunleavy stated no information would be provided, but emphasized the hospital has given its commitment.

144. Attorney Simon agreed to continue negotiations in good faith.

145. Given a protest petition had been filed, adoption of Ord. 22-2022 required a supermajority of five votes to pass, in accordance with N.J.S.A. 40:55D-63.

146. When Shahdanian was asked if the votes for Ord. 22-2022 and 23-2022 should be held separately, Shahdanian said to vote on them together.

147. Orgen had announced her recusal, Schwartz had announced his recusal, and Rice had previously announced she would abstain from voting, leaving only four votes available for voting.

148. The Board nevertheless put both Ordinances up for one vote, even though there was a different voting requirement to pass each of the Ordinances, and instead of abstaining as she

previously had announced, before the secret closed-session meeting, Rice changed her mind and voted in favor of adopting the Ordinances, providing the fifth vote necessary for adoption.

149. Upon information and belief, Rice changed her mind based on the secret closed session meeting held by an effective majority of the non-recused members of the Council during a ten-minute recess, in violation of OPMA.

150. Ordinances 22-2022 and 23-2022 were approved and adopted on June 28, 2022 by the Council by a vote of 5-0-2, with recusals by Orgen and Schwartz.

151. On May 17, 2022, the Council introduced Ord. 23-2022 to vacate a portion of Chadwick Road.

152. The Township was required by N.J.S.A. 40:55D-62.1 to provide “Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, in the case of a classification change, within the district and within the State within 200 feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.”

153. On or about June 14, 2022, the Township provided notices to some of the properties located within 200 feet of the portion of Chadwick Road proposed to be vacated under Ord. 23-2022.

154. The Township failed to provide the required notices to the six properties located at:
80-140 Cedar Lane (Block 3002, Lot 1);

105 Chadwick Road (Block 3002, Lot 10);

109 Chadwick Road (Block 3002, Lot 11);

118 Chadwick Road (Block 3003, Lot 1);

55-63 Cedar Lane (Block 2914, Lot 1); and

70 Sterling Place (Block 2914, Lot 2).

155. Ord. 23-2022 was adopted without any discussion or hearing on the merits.

COUNT I

THE BOARD'S ACTIONS IN ADOPTING THE DECEMBER 16, 2021 AMENDMENT TO THE MASTER PLAN WERE VIOLATIVE OF LAW

156. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

157. The December 16, 2021 purported Master Plan Amendment failed to comply with N.J.S.A. 40:55D-28.

158. Schwartz and Croonquist improperly failed to acknowledge at the December 16, 2021 Board meeting that they each had conflicts of interest that precluded them from participating in any discussion or vote as to an amendment of the Master Plan to support HNH's development plans.

159. Eyerman also improperly failed to acknowledge he had a conflict of interest that precluded him from advising the Board regarding the consideration of the Master Plan Amendment in December 2021.

160. Schwartz subsequently acknowledged his conflict of interest when he recused himself from consideration of Ord. 22-2022 and Ord. 23-2022 at the June 28, 2022 Council Meeting.

161. Croonquist's participation at the December 16, 2021 meeting concerning the Master Plan Amendment was unlawful and a violation of the LGEL, the MLUL, and the Code of Ethics.

162. Croonquist's unlawful participation at the December 16, 2021 meeting concerning the Master Plan Amendment irreparably tainted any Board action as to same.

163. Croonquist's unlawful participation in the December 16, 2021 Board meeting concerning the Master Plan Amendment means the Master Plan Amendment is void ab initio.

164. Schwartz's participation at the December 16, 2021 meeting concerning the Master Plan Amendment was unlawful and a violation of the LGEL, the MLUL, and the Code of Ethics.

165. Schwartz's unlawful participation at the December 16, 2021 meeting concerning the Master Plan Amendment irreparably tainted any Board action as to same.

166. Schwartz's unlawful participation in the December 16, 2021 Board meeting concerning the Master Plan Amendment means the Master Plan Amendment is void ab initio.

167. Eyerman's participation at the December 16, 2021 meeting in the Board's consideration of the Master Plan Amendment was unlawful and a violation of the LGEL, the MLUL, and the Code of Ethics.

168. Eyerman's participation in the Board's consideration of the Master Plan Amendment irreparably tainted any Board action as to same.

169. Eyerman's participation in the Board's consideration of the Master Plan Amendment means the Master Plan Amendment is void ab initio.

170. The Board's failure to address the disqualifying conflicts of interest for Schwartz, Croonquist, and Eyerman pursuant to law was arbitrary, capricious, unreasonable, and unlawful, rendering the Master Plan Amendment as void ab initio.

171. The Board's actions as to the Master Plan Amendment have deprived Plaintiffs of their right to an impartial quasi-judicial body and a fair proceeding.

172. As the Master Plan Amendment was invalid and void as a matter of law, the adoption by the Council of Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022 were invalid as a matter of law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Board's actions at the Board's December 21, 2021 meeting concerning the Master Plan Amendment were arbitrary, capricious, unreasonable, and unlawful;
- (b) Finding that Croonquist, Schwartz, and Eyerman suffered disqualifying conflicts of interest;
- (c) Enjoining and restraining Croonquist, Schwartz, and Eyerman from further participation in any proceeding involving the Master Plan Amendment, Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022 or the HNH Property;
- (d) Finding the Master Plan Amendment and the actions of the Board at its December 21, 2021 meeting concerning the Master Plan Amendment as void, ultra vires and without effect;
- (e) Invalidating Ord. 9-2022, Ord. 22-2022, and Ord. 23-2022;
- (f) Awarding attorneys' fees, costs of suit and interest; and
- (g) Awarding any and all such other relief as this Court deems equitable and just.

COUNT II

**IMPERMISSIBLE CONFLICTS
OF INTEREST**

173. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

174. The Township's refusal to address at the public hearing on Ord. 22-2022 and Ord. 23-2022 the multiple disqualifying conflicts of interest of Council members was arbitrary, capricious, unreasonable, and a violation of law including the LGEL, the Code of Ethics, and the OPMA.

175. Katz suffered a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022 and should have recused himself as to any consideration of Ord. 22-2022 or Ord. 23-2022.

176. Despite Katz having a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022, requiring him to recuse himself from publicly participating in the consideration of, or in the vote on these ordinances, he improperly participated in the public hearing on June 28, 2022, in violation of law including the LGEL and the Code of Ethics.

177. Despite Katz having a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022, requiring him to recuse himself from publicly participating in the consideration of, or in the vote on these ordinances, he improperly voted on said Ordinances, in violation of law including the LGEL and the Code of Ethics.

178. Katz's participation during the June 28, 2022 Council meeting regarding consideration of Ord. 22-2022 and Ord. 23-2022 irreparably tainted any Council action as to same and requires the invalidation of Ord. 22-2022 and Ord. 23-2022.

179. Dunleavy suffered a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022 and should have recused himself as to any consideration of Ord. 22-2022 or Ord. 23-2022.

180. Despite Dunleavy having a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022, requiring him to recuse himself from publicly participating in the consideration of, or in the vote on, these ordinances, he improperly participated in the public hearing on June 28, 2022, in violation of law including the LGEL and the Code of Ethics.

181. Despite Dunleavy having a disqualifying conflict of interest regarding Ord. 22-2022 and Ord. 23-2022, requiring him to recuse himself from publicly participating in the consideration of, or in the vote on, these ordinances, he improperly voted on said ordinances, in violation of law including the LGEL and the Code of Ethics.

182. Dunleavy's participation during the June 28, 2022 Council meeting regarding consideration of Ord. 22-2022 and Ord. 23-2022 irreparably tainted any Council action as to same and requires the invalidation of Ord. 22-2022 and Ord. 23-2022.

183. Upon information and belief, members of the Board and/or the Township, including the Mayor, both Deputy Mayors and members of the Township Council, participated in substantive discussions, meetings and negotiations with HNH and its employees, agents and representatives concerning development of the HNH Property, all prior to the introduction of Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022, in violation of the OPMA.

184. Said participation by members of the Board and/or Council disqualified such members from hearing, participating in, deliberating upon or voting on Ord. 22-2022 and Ord. 23-2022.

185. Given the conflicts of interest of certain members of the Council, Ord. 22-2022 and Ord. 23-2022 would not have received the required, favorable vote of two-thirds of all the members

of the governing body of the municipality following the filing of the Protest Petition, per N.J.S.A. 40:55D-63.

186. The Council's actions improperly deprived Plaintiffs of their right to an impartial legislative body and a fair proceeding.

187. Ord. 22-2022 and Ord. 23-2022 are invalid as adopted contrary to law.

188. The Township's actions at the June 28, 2022 meeting as to Ord. 22-2022 and Ord. 23-2022 were in violation of law and deprived Plaintiffs of their legal rights.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Township's actions at the June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 were arbitrary, capricious, unreasonable, and unlawful;
- (b) Finding that Katz and Dunleavy suffered disqualifying conflicts of interest as to Ord. 22-2022 and Ord. 23-2022;
- (c) Enjoining and restraining Katz, Schwartz, Dunleavy, Orgen and Croonquist from further participation in any proceeding involving Ord. 9-2022, Ord. 22-2022, Ord. 23-2022, or the HNH Property;
- (d) Invalidating Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022 and the actions of the Township at its June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 as ultra vires and without effect;
- (e) Awarding attorneys' fees, costs of suit and interest; and
- (f) Awarding any and all such other relief as this Court deems equitable and just.

COUNT III

UNLAWFUL AVOIDANCE OF CONSISTENCY REVIEW

189. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

190. N.J.S.A. 40:55D-64 requires:

Prior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to [N.J.S.A. 40:55D-26.a]

191. N.J.S.A. 40:55D-26.a requires:

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

192. On May 19, 2022, the Council referred Ord. 22-2022 and Ord. 23-2022 to the Planning Board for a consistency review, identifying the second reading as scheduled for June 28, 2022.

193. The Planning Board was required to create and transmit a report to the Council within 35 days after referral (*i.e.*, by June 23, 2022).

194. The Board had the full opportunity to conduct consistency reviews of Ord. 22-2022 and Ord. 23-2022 at three separate scheduled meetings (May 26, 2022, June 9, 2022, and June 23, 2022) within the mandatory 35-day time window.

195. The Board refused to schedule or hold any hearings to review either ordinance for consistency with the Master Plan, in violation of N.J.S.A. 40:55D-26.

196. Instead, the Board cancelled the regularly scheduled meeting on May 26, 2022 based on the demonstrably false claim of a lack of agenda items, despite having been advised of the requirement to conduct consistency reviews for Ord. 22-2022 and Ord. 23-2022.

197. N.J.S.A. 40:55D-26.a provides:

Failure of the planning board to transmit its report within the 35-day period provided herein shall relieve the governing body from the requirements of this subsection in regard to the proposed development regulation, revision or amendment thereto referred to the planning board.

198. Upon information and belief, the Board intentionally permitted the 35-day period for consistency review under N.J.S.A. 40:55D-26 to lapse to dispense with the legal requirement for the Council to consider the Board's report and address the Board's recommendations.

199. Upon information and belief, this was done to unlawfully expedite, and reduce the public's opportunities to scrutinize and object to the adoption of two spot-zoning ordinances intended to provide a benefit to HNH.

200. This manipulation of the required legal process was a violation of the LGEL, including but not limited to N.J.S.A. 40A:9-22.5.c, which states, "No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;".

201. Upon information and belief, members of the Council were complicit in this unlawful manipulation of the required legal process for adoption of an Ordinance.

202. The Board's refusal to conduct consistency reviews of Ord. 22-2022 and Ord. 23-2022 pursuant to N.J.S.A. 40:55D-26 was arbitrary, capricious, unreasonable, and a violation of law, including the MLUL and the LGEL.

203. The Board's refusal to perform consistency reviews of Ord. 22-2022 and Ord. 23-2022 was arbitrary, capricious, ultra vires, improper and deprived Plaintiffs of their legal rights.

204. Given Plaintiffs were deprived of their rights due to the unlawful manipulation of N.J.S.A. 40:55D-26, the Council's adoption of Ord. 22-2022 and 23-2022 was ultra vires and invalid.

205. Ord. 22-2022 and 23-2022 are invalid, as adopted contrary to law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Board's refusal to perform consistency reviews of Ord. 22-2022 and Ord. 23-2022 was arbitrary, capricious, unreasonable, and unlawful;
- (b) Invalidating Ord. 22-2022 and Ord. 23-2022 as ultra vires and without effect;
- (c) Awarding attorneys' fees, costs of suit and interest; and
- (d) Awarding any and all such other relief as this Court deems equitable and just.

COUNT IV

**FAILURE TO COMPLY WITH
N.J.S.A. 40:55D-62**

206. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

207. Ord. 22-2022 was not drawn with reasonable consideration to the character of each district in the Township of Teaneck and its particular suitability for particular uses and to encourage the most appropriate use of land.

208. Ord. 22-2022 is invalid, as adopted contrary to law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Township's actions in adopting Ord. 22-2022 were arbitrary, capricious, unreasonable, and unlawful;
- (b) Invalidating Ord. 22-2022 as ultra vires and without effect;
- (c) Awarding attorneys' fees, costs of suit and interest; and
- (d) Awarding any and all such other relief as this Court deems equitable and just.

COUNT V

VIOLATIONS OF THE OPMA

209. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

210. The Township's actions in adopting Ord. 22-2022 and Ord. 23-2022 were in violation of the OPMA.

211. According to Rule VI (b) of the Township of Teaneck Council Rules of Procedure, as two members of the Council were recused from the participating in the Council's discussions or actions on Ord. 22-2022 and Ord. 23-2022, they were not counted as part of the quorum for the meeting on those ordinances, and the quorum for that part of the meeting consisted of five (5) members of the Council.

212. An Effective Majority of Members of the Council held a surreptitious, secret, closed-session meeting to discuss Ord. 22-2022 and Ord. 23-2022 during a recess at the June 28, 2022 Council meeting.

213. The secret closed-session meeting was conducted without public notice, in violation of the OPMA, including N.J.S.A. 10:4-9.

214. The June 28, 2022 secret closed session meeting, while open to all eligible members of the Council, was not open to the public, in violation of the OPMA, including N.J.S.A. 10:4-12.

215. The Council failed to adopt a resolution adhering to N.J.S.A. 10:4-13 and its requirements for announcing a closed session, in connection with the June 28, 2022 secret closed session meeting.

216. The Township's actions at the June 28, 2022 meeting were in violation of the OPMA, were arbitrary, capricious, unreasonable, unlawful, deprived Plaintiffs of their legal rights, and illegally tainted the public proceedings concerning Ord. 22-2022 and Ord. 23-2022.

217. Ord. 22-2022 and Ord. 23-2022 are invalid, as adopted contrary to law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Township's actions at the June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 were arbitrary, capricious, unreasonable, and unlawful;

- (b) Invalidating Ord. 22-2022 and Ord. 23-2022 and the actions of the Township at its June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 as ultra vires and without effect;
- (c) Awarding attorneys' fees, costs of suit and interest; and
- (d) Awarding any and all such other relief as this Court deems equitable and just.

COUNT VI

ILLEGAL GOVERNMENTAL ACTION

218. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

219. Upon information and belief, on or about April 24, 2021, the then Township Planner, Richard Preiss, sent an email to Katz and Schwartz stating: "why allowing them [HNH] to get their way, imperils the neighborhood, the Township, and most of all the two of you and other members of the council who may be tempted to go along with them."

220. The Township bestowed illegal favoritism on HNH by improperly manipulating the public process that led to the adoption of Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022.

221. Upon information and belief, representatives of HNH initiated substantive discussions with representatives and officials of the Township concerning a plan for the redevelopment of the HNH Property to only benefit HNH.

222. The adoptions of Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022 were intended to improperly bestow a private benefit upon HNH, and was arbitrary, capricious, unreasonable, unconstitutional, and contrary to law.

223. Ord. 22-2022 and Ord. 23-2022 improperly treat the HNH Property more favorably than other properties in the Township of Teaneck.

224. Ord. 22-2022 and Ord. 23-2022 do not maintain a relationship of mutual benefit among different land uses.

225. Ord. 22-2022 and Ord. 23-2022 do not serve the common good or the general welfare.

226. Ord. 22-2022 and Ord. 23-2022 are not compatible with and do not further a legitimate comprehensive land use scheme or plan for the zoning of the Township of Teaneck.

227. Ord. 22-2022 and Ord. 23-2022, and the process by which they were adopted, are contrary to law, including, but not limited to, the provisions and requirements of the MLUL and the OPMA.

228. Ord. 22-2022 and Ord. 23-2022 do not serve the purposes of zoning set forth in the MLUL.

229. In adopting Ord. 22-2022 and Ord. 23-2022, the Township failed to provide adequate reasons in a resolution for acting inconsistent with, and in a manner not designed to effectuate the Land Use Element of the Master Plan.

230. The adoptions of Ord. 22-2022 and Ord. 23-2022 constitute additional examples of improper favorable treatment of HNH and accommodations to HNH by the Township, including improperly allowing violations of the Ordinances and the MLUL to continue to go unabated by HNH, and to allow HNH to dictate and direct with the complicity of the Township HNH's intended current and future development of the HNH Property, all to the detriment of the surrounding neighborhood and the general welfare of the community.

231. Ord. 22-2022 and Ord. 23-2022 inappropriately contemplate the Township conveying real property to HNH without HNH having to pay appropriate legal consideration for same.

232. Ord. 22-2022 and Ord. 23-2022 inappropriately contemplate vacating a portion of a public roadway in favor of HNH, without a traffic study ever having been conducted.

233. HNH's ongoing advocacy for desired zoning regulations was the impetus for implementing Ord. 22-2022 and Ord. 23-2022.

234. The actions of the Township improperly bestowed a private benefit upon HNH.

235. The Township improperly demonstrated favoritism toward HNH to the detriment of the public in adopting Ord. 22-2022 and Ord. 23-2022.

236. The adoptions of Ord. 22-2022 and Ord. 23-2022 were tainted by biased and prejudiced public officials, who knowingly refused to recuse themselves, as required by the LGEL and Code of Ethics.

237. Ord. 22-2022 and Ord. 23-2022 are arbitrary, capricious, unreasonable, unlawful, and confer an improper benefit upon HNH at the expense, and to the detriment, of Plaintiffs and the public.

238. Ord. 22-2022 and Ord. 23-2022 constitute illegal spot zoning.

239. The adoptions of Ord. 22-2022 and Ord. 23-2022 were arbitrary, capricious, unreasonable, and contrary to law.

240. Ord. 22-2022 and Ord. 23-2022 are therefore void, of no effect, and invalid.

241. Ord. 22-2022 and Ord. 23-2022 are to be declared void and without effect.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that the Township's actions at the June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 were arbitrary, capricious, unreasonable, and unlawful;
- (b) Invalidating Ord. 22-2022 and Ord. 23-2022 and the actions of the Township at its June 28, 2022 meeting concerning Ord. 22-2022 and Ord. 23-2022 as ultra vires and without effect;

- (c) Awarding attorneys' fees, costs of suit and interest; and
- (d) Awarding any and all such other relief as this Court deems equitable and just.

COUNT VII

**DEPRIVATION OF RIGHTS PURSUANT TO
THE NEW JERSEY CONSTITUTION,
N.J.S.A. 10:6-1, et seq.**

242. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if set forth at length herein.

243. All actions taken by the Board and the Township were done under color of law.

244. The actions taken by the Board and the Township caused the deprivation of Plaintiffs' due process rights by denying Plaintiffs their Constitutionally protected due process rights to fair and unbiased hearings.

245. Plaintiffs' due process rights were established and well-settled at the time of the deprivations caused by the actions of the Board and the Township.

246. The arbitrary and predetermined findings of the Township and the Board deprived Plaintiffs of their Constitutionally guaranteed rights to due process and a fair hearing.

247. The Board refused to consider in an unbiased and fair manner evidence and legal arguments regarding disqualifying conflicts of interest.

248. The Board knew or should have known that Croonquist suffered a disqualifying conflict of interest.

249. The Board knew or should have known that Schwartz suffered a disqualifying conflict of interest.

250. The Board knew or should have known that Eyerman suffered a disqualifying conflict of interest.

251. The Board failed to act in good faith.

252. The Township refused to consider in an unbiased and fair manner evidence and legal arguments regarding disqualifying conflicts of interest, illegal spot zoning, and the Protest Petition.

253. The Township knew or should have known it was denying Plaintiffs their right to publicly comment in violation of the OPMA and N.J.S.A. 40:49-2.

254. The Township and the Board manipulated the public process to avoid the required consistency reviews on Ord. 22-2022 and Ord. 23-2022, in violation of law.

255. The Township manipulated the public process and vote on Ord. 22-2022 and Ord. 23-2022 in violation of law.

256. The Township knew or should have known that Katz suffered a disqualifying conflict of interest.

257. The Township knew or should have known that Dunleavy suffered a disqualifying conflict of interest.

258. The Township failed to act in good faith.

259. All attempts to obtain a fair hearing by Plaintiffs were futile due to the predetermined actions and decisions by the Board and Township.

260. The procedures, actions, and decisions of the Board and the Township which deprived Plaintiffs of their due process rights demonstrate egregious government misconduct that shocks the conscience.

261. The procedures, actions, and decisions of the Board and the Township resulting in the deprivation of Plaintiffs' rights were arbitrary, capricious, unreasonable, and a manifest abuse of power.

262. The procedures, actions, and decisions of the Township in approving Ord. 22-2022 and Ord. 23-2022 were arbitrary, capricious, unreasonable, and a manifest abuse of power.

263. The actions of the Board and the Township constitute final decisions by the respective municipal bodies.

264. Plaintiffs reasonably expected to have the Defendants and its officials, employees and agents, as government officials, exercise its duty to properly act to protect Plaintiffs' constitutional due process, equal protection and property rights.

265. The actions of the Defendants and their officials, officers, employees, and agents, regarding Ord. 22-2022 and Ord. 23-2022 were not logically or legally supportable, were arbitrary, capricious and unreasonable, were an abuse of discretion, and constitute a denial of the property and liberty rights of the Plaintiffs under color of state law and in violation of the Constitution of New Jersey and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 *et seq.* (the "NJ CRA").

266. Having acted without lawful warrant under color of state laws to deprive Plaintiffs of their constitutional rights, the Defendants are liable to Plaintiffs under the NJ CRA and the New Jersey Constitution.

267. Plaintiffs were deprived of their rights to due process and equal protection and were denied their right to fair and unbiased proceedings by the Board's and the Township's actions in furtherance of their illegal campaign to adopt Ord. 22-2022 and Ord. 23-2022.

268. Said actions of Defendants rendered the Township's findings as to Ord. 22-2022 and Ord. 23-2022 and any other ordinances adopted in furtherance of same, as invalid, arbitrary, capricious, and contrary to law.

269. Plaintiffs are without alternative relief, administrative or otherwise, and therefore resort to intervention by the Court.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- (a) Finding that Defendants' actions resulted in an intentional deprivation of Plaintiffs' rights;

- (b) Finding that Katz, Schwartz, Dunleavy, Croonquist, and Eyerman suffered disqualifying conflicts of interest;
- (c) Enjoining and restraining Katz, Schwartz, Dunleavy, Croonquist, and Eyerman from further participation in any proceeding involving Ord. 9-2022, Ord. 22-2022, Ord. 23-2022 or the HNH Property;
- (d) Invalidating the actions of the Board at its December 16, 2021 meeting as to amendment of the Master Plan as ultra vires and without effect;
- (e) Invalidating the actions of the Township at its June 28, 2022 meeting as to Ord. 22-2022 and Ord. 23-2022 as ultra vires and without effect;
- (f) Invalidating Ord. 9-2022, Ord. 22-2022 and Ord. 23-2022;
- (g) Awarding damages pursuant to N.J.S.A. 10:6-1, *et seq.*;
- (h) Awarding reasonable attorney's fees and expert fees pursuant to N.J.S.A. 10:6-2(f);
- (i) Awarding attorneys' fees, costs of suit and interest; and
- (j) Awarding any and all such other relief as this Court deems equitable and just.

HEROLD LAW, P.A.
Attorneys for Plaintiffs

By: /s/ Robert F. Simon
Robert F. Simon

Dated: August 10, 2022

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Robert F. Simon, Esq. is hereby designated as trial counsel for Plaintiffs.

HEROLD LAW, P.A.
Attorneys for Plaintiffs

By: /s/ Robert F. Simon
Robert F. Simon

Dated: August 10, 2022

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that there are no related matters currently pending in any Court of competent jurisdiction other than an action with Docket No. BER-L-0002234-22 pending in Superior Court, Law Division, Bergen County. I further certify that I know of no other parties who should be joined in this matter at the present time, other than possibly Holy Name Hospital, Inc. given the Court's Order permitting Intervention of said party in said litigation with Docket No. BER-L-0002234-22 pending in Superior Court, Law Division, Bergen County.

HEROLD LAW, P.A.
Attorneys for Plaintiffs

By: /s/ Robert F. Simon
Robert F. Simon

Dated: August 10, 2022

CERTIFICATION PURSUANT TO RULE 4:69-4

I hereby certify that all necessary transcripts of local agency proceedings in this cause have been ordered.

HEROLD LAW, P.A.
Attorneys for Plaintiffs

By: /s/ Robert F. Simon
Robert F. Simon

Dated: August 10, 2022