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

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

NATURE OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

PARTIES AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF THE PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT TWO – SPOT ZONING

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

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

Spot Zoning Defined

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

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

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

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

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

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

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

The Property Was Unlawfully Spot Zoned

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

Dated: January 29, 2021

MATSIKOUDIS & FANCIULLO, LLC
Attorneys for Plaintiffs

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

And

NEW JERSEY APPLESEED PILC
Attorneys for Plaintiffs

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

DESIGNATION OF TRIAL COUNSEL

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

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

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

Dated: January 29, 2021

CERTIFICATION PURSUANT TO RULE 4:5-1

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

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

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

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

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

Dated: January 29, 2021

CERTIFICATION PURSUANT TO RULE 4:69-4

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

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

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

Matsikoudis & Fanciullo, LLC
Attorneys for Plaintiffs

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

Dated: January 29, 2021