

Daniel A. Greenhouse, Esq.  
Atty. No. 016102005  
Eastern Environmental Law Center  
One Gateway Center, Suite 2600  
Newark, NJ 07102  
(973) 424-1166

Renée Steinhagen, Esq.  
Atty. No. 38691989  
NEW JERSEY APPLESEED PILC  
23 James Street  
Newark, NJ 07102  
(973) 735-0523

Attorneys for Plaintiffs

---

	X	
NEW JERSEY CONSERVATION	:	SUPERIOR COURT OF NEW JERSEY
FOUNDATION and SAVE BRADDOCK PARK-	:	CHANCERY DIVISION: HUDSON
SAFE SCHOOLS,	:	Docket No. HUD-C-174 -21
	:	
Plaintiffs,	:	Civil Action
	:	
-vs.-	:	ROBERT WALDEN
	:	CERTIFICATION IN SUPPORT
TOWNSHIP OF NORTH BERGEN, NICHOLAS	:	SUMMARY JUDGMENT ON
SACCO, in his official capacity as Mayor,	:	COUNTS I AND II AND IN
HUDSON COUNTY, THOMAS DeGISE, in his	:	OPPOSITION TO DEFENDANTS'
official capacity as County Executive, and NEW	:	MOTION. TO DISMISS
JERSEY DEP, GREEN ACRES PROGRAM,	:	
	:	
Defendants.	:	
	X	

---

I, ROBERT WALDEN, hereby certify as follows:

1. I am a resident and taxpayer living in North Bergen. Over the past several years, I have organized Save Braddock Park-Safe Schools, an unincorporated member organization, and serve as its Chair. I have kept my eyes on the diversion, sending photographs of the site to NJDEP that contradict statements made by North Bergen officials to DEP as well sending DEP a steady stream

of properties for sale in North Bergen, which the Township has subsequently sold to private developers or uses for purposes other than housing its pre-school program. I speak my mind directly to Green Acre officials, provide relevant, valuable information to DEP (some of which DEP has considered in its reviews of North Bergen's diversion pre-application), and have made many Open Public Records Act requests ("OPRA") to DEP, Hudson County, the NJ Department of Education ("DOE") and North Bergen Township and Board of Education. For approximately eight years, I have had no success in ending the twenty-year-plus, unlawful diversion of dedicated parkland, which has resulted in the continuing impairment of a significant area of James J. Braddock Park ("Braddock Park) for non-recreational purposes. I make this certification in support of Plaintiffs' motion for summary judgment with respect to Counts I and II of their Complaint against the Township of North Bergen and Hudson County. I also make this certification in support of Plaintiffs' opposition to all defendants', including the Department of Environmental Protection's ("DEP"), motions to dismiss.

2. In 2000, North Bergen commenced building an addition to its Lincoln Elementary School in preparation for its use as a pre-school. When it became apparent that the annex would not be completed in time for the 2001-2002 school year, the Township leased sixteen extra-wide trailers, soon thereafter seventeen trailers, to serve as temporary classroom units ("TCUs") and placed them on a fully functioning recreational field in Braddock Park located at Block 437.02, Lot 1. The lot was encumbered with a Green Acres restriction.

3. At the time, Defendant Sacco (who also served as North Bergen's Assistant Superintendent of Schools at that time) and other North Bergen officials explained to the public that this use of dedicated public parkland was temporary. Specifically, the public was told that

use of this recreational property was necessary only for the 2001-2002 school year, while North Bergen completed the Annex to the Lincoln Elementary School.

4. Only one-year earlier, Township voters had rejected a referendum question seeking to finance the construction of a high school within Braddock Park.

5. To the best of my knowledge, neither North Bergen nor Hudson County notified DEP of North Bergen's removal of a Green Acres-funded ball field and placement of the TCUs on this dedicated parkland and neither entity sought prior authorization for such use. I base this knowledge on DEP's March 16, 2011 violation letters written to North Bergen and Hudson County about the presence of the trailers in Braddock Park, and on OPRA responses which yielded no records regarding the preschool, prior to when the preschool was established in Braddock Park in 2001.

6. However, it appears that DEP had inspected the site already in July 2001 and December 2005 and had not noticed the trailers. I am attaching a copy of the inspection letters I received pursuant to an OPRA request as Ex. A. (Three DEP inspections of Braddock Park noted in letters, dated August 10, 2001 (inspection date July 23, 2001), December 19, 2005 (inspection date December 8, 2005), and March 16, 2011 (inspection date November 18, 2010).

7. Soon after the March 16, 2011 Notice of Violation letter was sent to North Bergen and Hudson County, Mr. Robert Rodriguez of DEP wrote an internal memo to other staff persons in the Green Acres Program. In that memo, he stated: "The Township believes that they may be able to get the North Bergen Board of Education to remove the trailers from the park and relocate the students to another classroom location that is not parkland by September 2012." A copy of the memo is attached hereto as Ex. B.

8. The original notice of violation noted that this matter was a compliance issue, and informed North Bergen and Hudson County, the owner of Braddock Park, that they needed to submit a plan that included a “reasonable timetable for removal of the school trailers” from the Park. For more than eight years, I have watched that “reasonable timetable” requested by DEP shift without any final agency action, enforcement or relief for myself, and members of Save Braddock Park-Safe Schools, and all the residents of North Bergen and Hudson County for whom we are advocating.

9. Due to the changing dates to remove the trailers, North Bergen and Hudson County entered into a 24-month lease that was amended twice before Green Acres required them to make a formal application to divert, after-the-fact, the Green Acre-funded property. I am attaching the Memorandum of Understanding between North Bergen and Hudson County that acknowledged their shared obligation to apply for a diversion, and which spelled out their different obligations regarding that process as Ex. D. Copies of the Lease and two amended Leases are attached as exhibits to that document.

10. In late October, 2012, Hurricane Sandy started a fire which caused irreparable damage to two TCUs, at a time when none of the TCUs had fire exits, as required by N.J.A.C. 6A:26-8.1. Already in October, 2008, the North Bergen Fire Prevention Bureau had issued an egress violation notice for the lack of fire exits in the TCUs. I am attaching, as Ex. E, a Notice of Violations and Order to Correct, dated October 23, 2008, that noted that the Egress Violation was being worked on but was not abated.

11. Notwithstanding the serious limitations of the TCUs as revealed by the storm, the Township and County again missed their deadline to remove the TCUs from Braddock Park by July 2013, and restore the property by September 2013.

12. It is my understanding that since the Second Addendum to the Lease Agreement expired, DEP has not approved another lease. In response to an OPRA request, I received a copy of a Third Addendum to the Lease Agreement, which was submitted to DEP, but never approved by DEP or signed by North Bergen and Hudson County. There were several comments on the draft made by DEP staff, however. That draft indicates that DEP and Hudson County had agreed to evacuate and restore the property no later than August 31, 2021. I am attaching as Ex. F the Draft Third Addendum to Lease Agreement. Also, I am attaching, as Ex. F1, an e-mail between Martha Sapp and Susan McCurrie that I received in response to OPRA request 234176, in which Ms. Sapp expresses DEP's frustrations with the diversion process because of all the delays caused by North Bergen.

13. On November 5, 2014, I and others spoke against granting the diversion at a public "scoping hearing", required by DEP regulations. NJ Conservation Foundation, The League of Women Voters, NJ Sierra Club, Friends of Liberty State Park, NY/NJ Baykeeper and many others submitted comments to DEP, protesting the diversion of the softball field and parking lot for non-recreational purposes. Several noted that there were alternative properties on which the pre-school facilities could be located, others noted that the trailers were neither appropriate nor safe for such young children and, for sure, should not replace valuable recreational parkland in what is a highly dense urban community. Township/County/BOE employees and a few parents of pre-school children stated that they were happy with the preschool program/teachers and the park setting.

14. Following the scoping hearing, I wrote an e-mail to Caroline Armstrong, the Green Acres Program Specialist assigned to this diversion application. I asked her how long the diversion process typically takes. In an e-mail dated November 21, 2014, Ms. Armstrong noted that major diversions "typically" take "anywhere from 9 months to a year (or longer) before obtaining a

determination from the NJDEP Commissioner and State House Commission.” She additionally noted that a second public hearing is required at the time of final application, and that the SHC “usually meets only four times per year.” I am attaching, as Ex. G, the E-mail from Caroline Armstrong to Robert Walden, dated November 21, 2014.

15. North Bergen has yet to file a final application because DEP has yet to deem their application complete. The lack of completeness, in my opinion, is due to North Bergen’s dilatory, incomplete and, at times, non-factual responses to DEP’s completeness questions raised during DEP’s review of North Bergen’s pre-application. Already at the time Ms. Armstrong wrote me, approximately 3-½ years had passed since DEP notified Hudson County and North Bergen that they needed to seek approval for their after-the-fact diversion.

16. More than one year after Hudson County resolved to proceed with the diversion process (which occurred on September 11, 2014), it passed a resolution dated November 8, 2015, approving the pre-application documents it intended to submit to NJDEP. This pre-application had been approved by North Bergen on August 19, 2015. The pre-application, however, was not filed with the Green Acres program until January 26, 2016—over fifteen years after the North Bergen Board of Education first placed the trailers on encumbered parkland.

17. On November 17, 2015, I notified the Green Acres program of the impending availability of the vacated 10-acre Hi-Tech High School campus and suggested that North Bergen could use Hi-Tech as the means of solving North Bergen’s non-compliance with Green Acres law and regulations. DEP investigated the matter and required North Bergen to consider the purchase of the building and campus, including the 2.5 acre parking lot that existed next to the building.

18. Several months later, DEP confirmed in an internal memo dated May 26, 2016 that “(6) GAP believes there are viable alternatives, including but not limited to Hi-Tech High School

and 64<sup>th</sup> Street sites.” In addition, in response to DEP’s first diversion pre-application completeness review questions, North Bergen responded that “This alternative [i.e., the Hi Tech building and campus] is consistent with the Board’s Long Range Facilities Plan as submitted and accepted by the NJ DOE.”

19. From that time on to date, it was my understanding from officials’ public statements and mailings, and documents that I have received from the NJ DOE that the special public referendum that took place in December, 2018 (in which I voted) was intended to approve monies to acquire the Hi-Tech building so that North Bergen, with the approval of the NJ DOE, would reorganize its school system so as to house its entire pre-school program in the existing elementary schools.

20. For example, in a public statement made to the press, in September 2017, the North Bergen Superintendent of Schools confirmed: “. . . the trailers will be removed from the park by Sept. 2019, when a district-wide school reconfiguration plan is to take effect, freeing up classroom space at the district's elementary schools, where pre-K classes will be relocated.” This appeared in an article written by Steven Strunsky, entitled “North Bergen School Officials say North Bergen Pre-K Trailers to get fire safety doors,” dated September 20, 2017, updated January 16, 2019, which I am attaching as Ex. M.

21. Another example was the statement made by the North Bergen Superintendent of Schools in February 2020: “Under the terms of the referendum . . . The reshuffling of middle and high schoolers will create space in North Bergen’s elementary schools for the pre-K students, according to the plan.” He further stated that “The terms of the referendum are still the same, but the timeline has been delayed by a full year.” I am attaching, as Ex. Q, the article written by Peter

D'Auria, entitled "North Bergen school realignment delayed a year; trailers will remain in Braddock Park until 2022," April 18, 2020.

22. Despite this public commitment to remove the trailers, North Bergen has yet to complete its pre-application. Disputes about the amount of illegally diverted land, the required diversion replacement properties, (including one whose eligibility I questioned and DEP ruled was ineligible), whether lease payments had been made by North Bergen to Hudson County and whether Hudson County had used such payments exclusively for recreational purposes as well as other issues, continued to exist; and I and others feared that another deadline to evacuate and restore the ball field would come and go. We decided to organize and bring a lawsuit under the Environmental Rights Act ("ERA") in order to end the continuing impairment of parkland. DEP simply seemed unwilling to enforce its directives and regulations and to impose a timetable on North Bergen. We sent a Demand to Cure under the ERA on June 2, 2020.

23. Rather than submitting the additional information and documents DEP required in order to move the diversion process to its final application, I learned at an August, 11, 2020 public scoping hearing that North Bergen was submitting a new pre-application for a permanent after-the-fact diversion.

24. I attended that scoping hearing via Zoom. Although this hearing also involved a second property that DEP discovered during the preceding process that had also been unlawfully diverted by North Bergen, it focused almost exclusively on the diversion by the preschool in Braddock Park. Also, despite the fact that this hearing occurred during the height of Covid restrictions, numerous residents, including a member of the Hudson County chapter of NJ Sierra Club, attended the scoping hearing via Zoom. I later found out from DEP that numerous written

comments were received separately by DEP about this matter and most were opposed to granting the diversion.

25. I was completely stunned, disappointed and frustrated by DEP's decision to permit North Bergen to submit a new pre-application to make the diversion permanent, rather than temporary. This dramatic shift in posture occurred after nearly a decade during which both North Bergen and Hudson County continually expressed a commitment to the public to remove the trailers from Braddock Park and to place the pre-school children in a more appropriate facility.

26. From mid-August 2020, I kept checking the DEP website to see if North Bergen had submitted its pre-application. North Bergen's second pre-application is dated March 5, 2021, but I didn't find out about it until sometime later, when DEP Green Acres posted it on its website.

27. On April 5, 2022, I filed an OPRA request hoping to receive a copy of North Bergen's response to Green Acres' incompleteness questions. Though Green Acres informed me that they sent me a CD including such documentation, I have yet to receive it. I paid by credit card for the creation of the CD on April 18, 2022.

28. My efforts have been futile. It is now nearly twenty-one years since North Bergen has unlawfully occupied Braddock Park for non-recreational purposes; and DEP has yet to make a final agency determination, let alone enforce any of its previous demands to evacuate and restore the property. DEP has failed to set reasonable time limits on its own process, and I, as a member of the public, have no capacity to expedite the process. The diversion process is in the hands of the applicant, in this case North Bergen/Hudson County, and DEP. It is a regulatory process between DEP and the owner of Green Acres-funded property; it does not provide an opportunity for members of the public who have harmed by North Bergen's unlawful actions to challenge those actions and cause them to cease.

I 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.

By: /s/ Robert Walden  
Robert Walden

Dated: May 3, 2022