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<p>MORRIS CANAL REDEVELOPMENT AREA COMMUNITY DEVELOPMENT CORPORATION and JUNE JONES, Plaintiffs, v. CITY OF JERSEY CITY, and CITY OF JERSEY CITY PLANNING BOARD, CITY OF JERSEY CITY DIVISION OF PLANNING, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION, HUDSON COUNTY DOCKET NO. HUD-L- CIVIL ACTION <u>COMPLAINT IN LIEU OF PREROGATIVE WRIT</u></p>
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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 improper and illegal government activity to benefit a private developer at the expense of the broader community.
2. Plaintiffs previously filed a Complaint in Lieu of Prerogative Writ (Docket HUD-L-432-21) against Defendants alleging that amendments to a redevelopment plan ("the Amendments") governing the property in question were substantively illegal and that the process by which those amendments were adopted was also illegal.
3. A trial was held before the Honorable Anthony V. D'Elia on August 17, 2021.
4. Judge D'Elia remanded the matter to the Jersey City Planning Board and City Council with specific requirements and directions that had to be obeyed before the amendments could be re-adopted and which will be described in more detail below.
5. Defendants re-adopted the amendments despite failing to comply with the terms of the remand and violating other provisions of New Jersey law.

PARTIES AND JURISDICTION

6. 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 "special interest" in this litigation.

7. 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.

8. 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 JC'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. 22-010, 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 BLOCK 18901, LOTS 23 & 29 ON REMAND PER SEPTEMBER 23, 2021 COURT ORDER," (as same is more fully defined and discussed below).
9. Defendant City of Jersey City Planning Board (the "Planning 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 etseq. (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.

10. 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."

11. At all times mentioned herein, Defendants, and each of them, 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.

12. 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.

PROPERTY AT QUESTION

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

14. 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").

15. Prior to the Amendments, the Plan, a former industrial site subject to EPA clean-up mandates, provided that the Property would be developed into public park space, a use consistent with its industrial zoning.

PROCEDURAL HISTORY

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

17. On November 10, 2020, the Planning Board passed a resolution finding the Amendments consistent with the City's Master Plan and recommending the Amendments to the Council.

The Planning Board was not presented with any specific evidence or rationale as to why the Amendments were allegedly consistent with the City's Master Plan. There was also no discussion of why the rezoning of the site was an improvement over the previous zoning.

18. The Amendments were then adopted by the City Council, again with no discussion or reference to the Planning Board's recommendation.

19. The Amendments provided that the high-rise development of 17 stories and 420 units in a neighborhood of one and two-family homes to replace the park space and required the development provide five percent work-force housing. Work force housing is targeted at families with income between 80% and 120% of average median income (AMI).

20. On January 29, 2021, Plaintiffs filed the Complaint in Lieu of Prerogative Writ against Defendants alleging that in adopting the Amendments, Defendants had violated substantive law and Plaintiff's procedural rights under the Plan.

21. On August 17, 2021, the parties conducted a trial argued before the Hon. Anthony V. D'Elia.

22. Judge D'Elia issued an oral opinion on August 17, 2021 and a written opinion on September 23, 2021 which remanded the matter to the Planning Board and the Council with terms Defendants were required to follow in order to re-adopt the Amendments.

23. Specifically, Defendants had to "expound upon the findings of fact in the record that support" the Planning Board's conclusion that the Amendments were consistent with the Jersey City Master Plan ("Master Plan"), or "that the (Amendments) are in the City's 'best interest'."
24. Additionally, the Planning Board was directed to make "specific factual findings" on the issue of "whether the general welfare of the community is served by the (Amendments)" so that the Council could then specifically discuss and, if it agreed, adopt those findings, or make its own decisions regarding credibility, adopt its own findings of fact and state its reasons for adopting or rejecting the proposed Amendments. Those Amendments were proposed by Planning Board staff to accommodate a Redevelopment Agreement reached between Jersey City Redevelopment Corporation, and the Redeveloper, who, on information and belief, is not at this time the owner of the property, but has agreed to purchase the property.
25. In short, Defendants were required to present a factual basis for conclusions that the Amendments were consistent with the Master Plan and/or in the City's best interest, and that the Amendments are superior to the incumbent plan for a park at the Property in terms of advancing the public welfare.
26. Notably, Defendants did *nothing* to effectuate Judge D'Elia's Order for several months.

27. On the other hand, June Jones and/or Councilman Gilmore organized at least one meeting between the developer and the Morris Canal community to discuss the zoning amendments and the actual site development proposal that the developer intended to build, prior to the City taking any action. Specifically, Councilman Gilmore held a Town Hall meeting, via zoom and live, on December 9, 2021 to discuss the development at 417 Communipaw Avenue and another site. At that meeting, the community primarily opposed the height of the proposed residential development and the lack of affordable housing.
28. Affordable housing means housing that is targeted at families with income that is 80% or less of AMI. With moderate housing targeted at families with an income that is between 51-80% AMI and low-income housing that is targeted at families with an income that is between 31-50% AMI.
29. On December 7, 2021, after the City's municipal elections for city council and mayor, the Planning Board *finally* held a public hearing which was intended to address Judge D'Elia's remand instructions.
30. At the December 7, 2021 Planning Board meeting, various city residents who also may have been affiliated with Plaintiff MCRACDC, including, but not limited to, Plaintiff Jones, were *not* allowed to speak, while any member of the public who was *not* affiliated with MCRADC was allowed to

provide his or her on-the-record opinions.

31. Though their individual interests may not have aligned with those of the MCRACDC (or, at a minimum, with those interest of all other persons affiliated with the MCRACDC), the Planning Board dictated that any person affiliated with the organization would be exclusively represented via the comments of MCRACDC's counsel.

32. The Planning Board did no diligence to determine whether and how extensively any person might have been linked with the MCRACDC before prohibiting such person from commenting. Put differently, the Planning Board barred anyone it merely suspected as being so affiliated from speaking.

33. At that hearing, Matthew Ward, A.I.C.P., P.P., Supervising Planner of the City of Jersey City, Division of Planning, testified on behalf of Defendants and presented a memorandum on the Amendments' consistency with the Master Plan. Plaintiff was only permitted to participate in such meeting through its counsel.

34. Mr. Ward only testified regarding the Amendments' consistency with the Master Plan, not regarding the public welfare.

35. However, Mr. Ward even failed to explain how the Amendments specifically were consistent with the Master Plan. He spoke in generalities, and avoided a detailed analysis.

36. For instance, counsel for MCRACDC cross-examined Mr. Ward

regarding how the Amendments would advance the following goals of the Master Plan:

- Increase the ratio of owner-occupied versus rental housing;
- Achieve a better fit between infill development and existing environment;
- Facilitate context-sensitive growth and development;
- Acknowledge distinct characteristics of neighborhoods and promote development consistent with the character of those neighborhoods; and
- Provide for open space at the Property which the Master Plan specifically called for.

37. Mr. Ward was unable to explain how the Amendments would be consistent with those goals.

38. Further, Mr. Ward admitted that the Amendments propose a development which is inconsistent with the density, height, and scope of the existing homes surrounding the Property.

39. Mr. Ward additionally failed to explain how the Amendments were better in terms of advancing the public welfare than the original concept to develop the Property into park space. Indeed, the Master Plan contains a map designating the Property as open space-park.

40. Mr. Ward's inability to articulate how the Amendments are in the City's "best interests" is not a surprise: As they (among other things) replace planned park space with a

massive, 17-story development that is entirely out of character in its neighborhood, the Amendments are inferior to the original Plan in terms of advancing the public welfare.

41. On December 15, 2021, the Council adopted a new Inclusionary Zoning Ordinance ("IZO") - Ord. 21-077 - which mandated new apartment constructions including amendments to Redevelopment Plans, such as the one proposed by the Amendments, to allot **at least ten percent** of their units as affordable.

42. On January 1, 2022, new Council members were sworn in pursuant to the 2021 election.

43. On January 4, 2022, the Planning Board memorialized a resolution which found the Amendments consistent with the City's Master Plan and recommended adoption of the Amendments by the City Council.

44. On February 8, 2022, Plaintiff MCRACDC held a board meeting at which time they invited the Redeveloper, community stakeholders and an architectural team that was asked to work with the community to attend and discuss the proposed development at 417 Communipaw Avenue. The aim of the meeting was to see if an accommodation could be made between the interests of the Redeveloper and the community. The issue of community benefits were specifically discussed insofar as the JCRA had appeared to impose community benefits on the Redeveloper that were not desired by the stakeholders present

at the meeting.

45. On that same day, a separate, private meeting was held between Councilman Gilmore, his assistant and the developer, which Ms. Jones also attended for part of the time. Councilman Gilmore was urging the Redeveloper to meet again with the community and address their concerns.

46. On February 14, 2022 MCRACDC held a board meeting to which community stakeholders were invited to discuss their interests with the community architects, and to respond to issues raised by the developer during the previous public meeting. At that meeting, it was decided to hold an open community meeting to which all City Council people would be invited as well as the developer to again see if the community and developer could align their interests and agree upon alternative zoning amendments.

47. Four days later, on February 16, 2022, after a public hearing on the second reading of the ordinance that would adopt the Amendments, the City Council narrowly voted to table the ordinance at the behest of the newly elected councilman for Ward F, where the property sits. As noted above, Councilman Gilmore was trying to work with MCRACDC to organize further public discussions between the developer and his constituency.

48. At Councilman Gilmore's March 1, 2022 Town Hall meeting, 417 Communipaw Avenue was discussed, and the community

continued to grapple with what development they would like to see at the site now that the City had taken the extension of Berry Lane Park off the table. A decision was made to try to meet the residential density requirements of the Redeveloper while recommending alternative zoning amendments that accommodated the communities' interest in a development that was more compatible with the neighborhood and included 10% affordable units.

49. But while outreach was occurring to all City Council members, on March 9, 2022, the City Council voted to "un-table" and re-adopted the Amendments to the Plan by through Ordinance No. 22-010. Notably, there was nothing on the City Council agenda that such a vote would take place.

50. The Ordinance does not include any findings regarding the public welfare as mandated by Judge D'Elia's remand.

51. Moreover, the Ordinance allows the development at the heart of the Amendments to set aside only *five percent* of its units for work-force housing, despite the IZO's ten-percent affordable-housing mandate, which has a lower average medium income target.

52. Despite the Council's action, MCRACDC held its planned community meeting to which it invited all City Council members, at which time the community architects would discuss alternative zoning amendments that would accommodate stakeholder issues regarding community benefits, residential

height, set-backs and affordability. No council members attended the well-advertised meeting. At the MCRACDC community meeting the community architects presented alternative zoning amendments that demonstrated consistency with the city's Master Plan while facilitating a context-sensitive approach to growth and development in the neighborhood. This approach provided consideration to the community stakeholders and designated Redeveloper as it relates to community benefits, building heights and set-back

COUNT ONE - VIOLATION OF THE TERMS OF REMAND

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

54. Pursuant to Judge D'Elia's remand, Defendants were required to articulate a factual basis for findings that the Amendments (1) are consistent with the Master Plan or in the City's best interests and (2) better advance the general welfare than the previous plan for the Property.

55. Defendants did not sufficiently articulate the factual bases for the Amendments' consistency with the Master Plan because, in fact, it is abundantly clear that the Amendments are *not* consistent with the Master Plan.

56. Defendants did not even make a finding regarding whether the Amendments better advance the public welfare than the previous plan and thus violated their obligations under the terms of

the remand.

57. Therefore, Ordinance No. 22-010 should be vacated.

COUNT TWO - FAILURE TO COMPLY WITH IZO

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

59. As the matter had been remanded by Judge D'Elia, the Amendments were still under proposal when the new Council members were sworn in.

60. Under the doctrine of Sine Die, proposed municipal legislation expires with the initiation of a new Council per the rule of the City Council.

61. Thus, because the Amendments were not re-adopted prior to January 1, 2022, Defendants were required to re-propose the Amendments before the new Council. Indeed, this is exactly what the City Council did when it introduced Ordinance No. 22-010.

62. In any event, the Council did not pass the new Ordinance (No. 22-010) and approve the Amendments until March 2022 - *three months after* it enacted the IZO.

63. The Amendments are therefore subject to the 2021 IZO.

64. However, the Amendments only provide for five percent work force housing, and as such are in violation of the 2021 IZO's ten-percent affordable mandate.

65. Ordinance No. 22-010 should thus be vacated.

COUNT THREE - ARBITRARY AND CAPRICIOUS ADOPTION

66. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were more fully set forth herein.
67. Defendants are legally required to act for the public good.
68. As stated above, Defendants failed to sufficiently articulate bases for the Amendments' consistency with the Master Plan and failed to make a finding regarding the Amendments' advancing the public welfare.
69. Moreover, the Amendments provide for a massive, "luxury" high-rise development that is out-of-scope and out-of-character in its prospective neighborhood, which is comprised primarily of one- and two-family homes and some of the City's lowest income residents (who cannot afford the development's "luxury" housing).
70. To this end, and without exclusion, any development at the Property is required, under the 2021 IZO, to provide at least ten percent affordable housing, but the Amendments provide for only five percent work-force housing.
71. As the Amendments provide for development that is inconsistent with the surrounding neighborhood, inconsistent with the Master Plan, has not been found to better advance the public welfare than the previous plan for park, which had been in place, and provides not only half the minimum required affordable housing for any development at the Property, but

such units are all targeted at a higher income than that required by the IZO, the Defendants' adoption of the Amendments was arbitrary and capricious. Ordinance No. 22-010 should thus be vacated.

COUNT FOUR - VIOLATION OF OPEN PUBLIC MEETING ACT PUBLIC'S RIGHT TO FREE SPEECH

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

73. The City Council failed to publicly advertise or otherwise state on its meeting agenda that the City Council would vote to ub-table and adopt the Amendments. The Council's own Rules A350-6(a) require advanced notice of agenda items, except, "for reasons of emergency and by an affirmative vote of at least six Council members.'

74. The removal of the item from the tabled agenda without notice to the public precluded the public from commenting that is required at a meeting by N.J.S.A. 10:4-12 and denied Plaintiffs of their right to free speech as they could have spoken out during the public speaking section of the City Council's March 9, 2022 meeting.

75. The New Jersey Civil Rights Act authorizes "[a]ny person who has been deprived of any substantive due process or equal protection rights . . . secured by the Constitution or laws of this State . . . by a person acting under color of law,

may bring a civil action for damages and for injunctive or other appropriate relief." See N.J.S.A. 10:6-2(c).

76. At all times relevant herein, Defendants were acting under color of law.

77. Defendants deprived Plaintiffs of their substantive rights of freedom of speech and association pursuant to the New Jersey Constitution, art. I, Paras. 1, 6, and 18.

78. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant to N.J.S.A.10:6-2(f).

1.

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

- (i) ordering Defendant City to repeal the Ordinance and reinstitute the Property's Industrial zoning earmarked for park and green space;
- (ii) 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;
- (iii) awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(f);; and
- (iv) granting Plaintiffs such other and further legal and

equitable relief as this Court may find just and proper.

Respectfully submitted,

Dated: April 22, 2022

MATSIKLOUDIS & FANCIULLO, LLC
Attorneys for Plaintiffs

/s/William Matsikoudis, Esq.
William Matsikoudis, 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/William Matsikoudis, Esq.
William Matsikoudis, Esq.

Dated: April 22, 2022

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

/s/William Matsikoudis, Esq.
William Matsikoudis, Esq

Dated: April 22, 2022

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

/s/William Matsikoudis, Esq.
William Matsikoudis, Esq..

Dated: April 22, 2022