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LHN OWNER URBAN RENEWAL, LLC and LHN II, LLC, Plaintiffs, v. JERSEY CITY PLANNING BOARD and LIBERTY HARBOR NORTH PARTNERS, LLC, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY Docket No.: HUD-L- Civil Action **COMPLAINT IN LIEU OF PREROGATIVE WRITS**

Plaintiffs LHN Owner Urban Renewal, LLC and LHN II, LLC ("Plaintiffs"), through their counsel, Genova Burns LLC, by way of Complaint in Lieu of Prerogative Writs against Defendants, Jersey City Planning Board ("Planning Board") and Liberty Harbor North Partners, LLC ("Applicant"), allege as follows:

PARTIES

1. Plaintiffs are New Jersey limited liability companies and affiliated entities, with their principal place of business located at 33 Park View Avenue, Jersey City, New Jersey 07302.

2. The Planning Board is a body corporate and politic organized under the laws of the State of New Jersey, and a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23, *et seq.* The Planning Board has its principal place of business located at 360 Martin Luther King Drive, Jersey City, New Jersey 07302.

3. Applicant is a New Jersey limited liability company with its principal place of business located at 921 Elizabeth Avenue, 5th Floor, Elizabeth, New Jersey 07201-0720.

JURISDICTION AND VENUE

4. This is an action in lieu of prerogative writs, filed pursuant to Rule 4:69-1, challenging the Resolution adopted by the Planning Board in Case No. P2024-0118, and memorialized on December 10, 2024 ("Resolution"), which granted Preliminary and Final Site Plan Approval to Applicant for the construction of a 30-story mixed use building with 300 residential units (the "Project"). A true and correct copy of the Resolution is attached as **Exhibit A**.

5. Notice of the Resolution was published in the Jersey Journal on December 18, 2024. A true and correct copy of the Notice is attached as **Exhibit B.**

6. Venue is proper in Hudson County under Rule 4:3-2(a)(2), because the Resolution was adopted in the City of Jersey City, in Hudson County.

FACTUAL BACKGROUND

A. The Property is established as a condominium regime under a Master Deed.

7. The Project and Resolution at issue in this case related to the property designated as Block 15907, Lot 3 on the Tax Map of the City of Jersey City (the "Property"). The Property is located within the Liberty Harbor North Redevelopment Area and governed by the Liberty Harbor North Redevelopment Plan ("Redevelopment Plan").

8. On January 30, 2013, the then-owner of the Property recorded a Master Deed with respect to the Property, which was subsequently amended four times, with the final amendment occurring on July 18, 2019 (the "Master Deed").

9. Under the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., the Master Deed established the Property under a condominium regime, organizing a condominium

association under the name of Liberty Harbor North Condominium Association, Inc. (the "Association").

10. The Association includes two Master Units: (i) Master Unit 1, with an 83.26% proportionate membership interest in the Association, which was eventually divided into two sub-units, Master Unit 1.1 (owned by LHN Owner Urban Renewal, LLC) and Master Unit 1.2 (owned by LHN II, LLC); and (ii) Master Unit 2, with a 16.74% proportionate membership interest in the Association, which is owned by Applicant.

B. Plaintiffs construct the Vantage Buildings in accordance with the Master Deed.

11. Plaintiffs developed and built two residential structures on Master Unit 1, as contemplated in the Master Deed: Master Unit 1.1 (33 Park View Avenue, Jersey City); and Master Unit 1.2 (1 Park View Avenue, Jersey City), connected by a parking garage (the "Parking Garage"), which is now known as the Vantage.

12. As part of their development of the Vantage, Plaintiffs sought and received Major Site Plan Approval from the Planning Board.

13. As part of their application to the Planning Board, Plaintiffs sought and received written consent from the owner of Master Unit 2, which was included as part of their application to the Planning Board.

14. Consistent with the Master Deed, Redevelopment Plan, and site plan approval, Plaintiffs constructed Master Unit 1, containing a total of 900 residential units.

15. Plaintiffs proceeded to develop the Vantage buildings in a manner that would accommodate what was anticipated in both the Master Deed and the Redevelopment Plan to be an adjacent hotel to be built on Master Unit 2.

16. During construction, Plaintiffs sought and received amended site plan approval to,

among other things, eliminate the basement floor of the Parking Garage, reducing the total indoor parking spaces from 700 to 555 spaces.

17. As part of their application for amended site plan application, Plaintiffs sought and received written consent from the owner of Master Unit 2, which was included as part of their application to the Planning Board.

18. The Planning Board approved the amended site plan application, and the new design of the Parking Garage was also reflected in a drawing attached to an amendment to the Master Deed, showing 555 spaces.

19. With respect to parking, the Redevelopment Plan provides that residential buildings will have a minimum of 0.5 parking spaces per residential unit.

20. Thus, Plaintiffs were required to have a minimum of 450 parking spaces available to the Vantage to comply with the Redevelopment Plan's parking requirements.

C. The Applicant purchases Master Unit 2 and is granted Site Plan Approval from the Planning Board.

21. The Applicant purchased Master Unit 2 from a lender following a foreclosure sale in late 2022, closing in or around May 22, 2023.

22. Among other things, Applicant filed an application with the Planning Board for Preliminary and Final Site Plan Approval to construct the Project (the "Site Plan Application").

23. Applicant's Project relied exclusively on its ability to access 200 parking spaces in the Parking Garage connecting the Vantage Buildings.

24. Plaintiffs and Applicant are party to an arbitration proceeding regarding whether the Master Deed requires Plaintiffs to designate and thereafter provide 200 parking spaces in the Parking Garage for Applicant's use (the "Arbitration").

25. On December 9, 2024, the Arbitrator issued a Partial Final Award finding and

declaring that Applicant was entitled to 200 parking spaces under the Master Deed.

26. As part of the Arbitration, Plaintiffs asserted several counterclaims, including, but not limited to, a counterclaim, seeking a declaration that the requirement of dedicating 200 parking spaces to Applicant would create a legal impossibility in that it would require Plaintiffs to violate the parking requirements of the Redevelopment Plan.

27. The Arbitrator failed to issue any ruling on Plaintiffs' counterclaims.

28. On October 22, 2024, before the Arbitrator's ruling, the Planning Board formally heard and considered the evidence relating to Applicant's Site Plan Application.

29. At the Planning Board hearing, a licensed professional engineer testified that Master Unit 2 is approximately 15,300 square feet in size and is undeveloped.

30. Plaintiffs, through counsel, appeared at the Planning Board hearing and objected on numerous grounds to the application, including, that (i) the Planning Board lacked jurisdiction to consider the application because Applicant only owned or controlled Master Unit 2, and did not have the consent of the Association; and (ii) that the Planning Board should wait until the arbitrator's ruling before considering or voting on the Application.

31. Ultimately, despite these objections, the Planning Board unanimously voted to approve Applicant's Site Plan Application, approving Applicant's proposed Project.

32. Notably, the Resolution assumes that 200 parking spaces will be provided in the existing Parking Garage on Master Unit 1 to Master Unit 2.

COUNT ONE
(Applicant's Lack of Standing to File Site Plan Application and Planning Board's Lack of Jurisdiction to Consider Application)

33. Plaintiffs repeat and incorporate by reference the allegations in the preceding paragraphs as though set forth in full herein.

34. Pursuant to the Municipal Land Use Law ("MLUL"), one must be a "developer" to bring a development application before a planning board. N.J.S.A. 40:55D-3.

35. A "developer" is "the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land." N.J.S.A. 40:55D-4.

36. Although condominium units are considered separate parcels of real property, under the New Jersey Condominium Act, "the land described in the master deed" is a "[c]ommon element" that cannot be owned solely by any unit owner. N.J.S.A. 46:8B-3(d).

37. The Property is owned as a condominium and governed by the New Jersey Condominium Act.

38. Applicant seeks to develop not just Master Unit 2, but also the underlying land, which is a common element as a matter of law under the New Jersey Condominium Act.

39. Applicant does not possess legal or beneficial ownership over the Property, only of Master Unit 2.

40. Applicant did not obtain approval or permission from the Association or Plaintiffs to submit its Site Plan Application.

41. As such, Applicant, as owner of Master Unit 2, is not a developer and therefore, did not have standing to bring a major site plan application to the Planning Board with respect

to the Property.

42. Because Applicant lacked standing, the Planning Board lacked jurisdiction to hear the Site Plan Application.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

a. Declaring the Resolution null and void;

b. Enjoining the Applicant from enforcing the Resolution; and

c. Awarding such other and further relief as the Court deems just and proper.

COUNT TWO
(Arbitrary and Capricious – Parking Requirements in Resolution Rely on a Legal Impossibility)

43. Plaintiffs repeat and incorporate by reference the allegations in the preceding paragraphs as though set forth in full herein.

44. The Redevelopment Plan requires Plaintiffs to maintain a minimum of 0.5 parking spaces per residential unit.

45. The Parking Garage has 555 total spaces.

46. Consistent with the Master Deed, Redevelopment Plan, and their site plan approval, Plaintiffs constructed Master Unit 1, containing a total of 900 residential units.

47. Thus, Plaintiffs were required and did provide 450 parking spaces to Vantage to comply with the Plan's parking requirements and did so within the Parking Garage.

48. At the time the Master Deed and Amendments were executed, it was "a presumed mutual assumption" that Master Unit 2 would be constructed as a hotel and would only require 75 spaces without violating Jersey City law.

49. The Resolution relies exclusively on the testimony of Applicant's architect and professional planner, Dean Marchetto, that Applicant would be provided 200 parking spaces

located in the Parking Garage. (Resolution at p. 9, p. 16 ¶ 16.)

50. The Planning Board's conclusion is arbitrary and capricious because it fails to consider that providing 200 of the 555 parking spaces from the Parking Garage would leave only 355 parking spaces for the 900 residential units at the Vantage, causing Plaintiffs to be in violation of the parking requirements of the Redevelopment Plan, and exposing Plaintiffs to fines or other potential consequences from the City.

51. Since it would be impossible for Plaintiffs to provide the 200 spaces, the Planning Board's assumption that they would be provided (based on the testimony of an architect without direct knowledge of the reality of the situation) was arbitrary, capricious, and unreasonable.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

a. Declaring the Resolution null and void;

b. Enjoining the Applicant from enforcing the Resolution;

c. Declaring that designation of 200 parking spaces as assumed by the Resolution would render Plaintiffs' meeting of the parking requirements under the Redevelopment Plan impossible; and

d. Awarding such other and further relief as the Court deems just and proper.

COUNT THREE
(Arbitrary and Capricious - Failure to Comply with Jersey City Municipal Code §345-17 – Traffic Impact Assessment)

52. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as though set forth in full herein.

53. Site plan approvals in Jersey City require a traffic impact study for new construction for Major Site Plans. Specifically, Jersey City Municipal Code § 345-17(A) provides: "The

Division of City Planning shall require a traffic impact assessment for applications that require major site plan […], whether or not parking is proposed."

54. The traffic impact assessment shall be prepared by a New Jersey licensed professional engineer with appropriate experience and education. See Jersey City Municipal Code § 345-17 (B)(1).

55. Site plans for new construction fall within the major site plan review threshold when the "[p]rojects are on parcels of 10,000 or more square feet." Jersey City Municipal Code § 345-16 (A)(1).

56. Here, the Site Plan Application was for new construction on a site that is approximately 15,3000 square feet. As such, the Site Plan Application is considered a Major Site Plan for which a traffic impact study was required.

57. On September 9, 2024, the Division of Transportation Planning and Division of Traffic Engineering (the "Divisions") submitted a memorandum to the Planning Board regarding Applicant's Site Plan Application, indicating that they had not received a Traffic Impact Study.

58. The September 9, 2024, memorandum raised several additional concerns about Applicant's Site Plan Application, including that the civil site plans did not depict where the proposed 200 parking spaces were to be located and that the plans did not provide information on compliance with New Jersey's Model Statewide Electric Vehicle (EV) Ordinance.

59. Applicant purports to have submitted a Traffic Impact Study after the September 9, 2024, Memorandum.

60. During the hearing, however, Applicant's engineer admitted to not having reviewed the September 9, 2024 Memorandum and, therefore, the Divisions comments could not be addressed or incorporated.

61. The Planning Board's failure to consider the Divisions' recommendations or to ensure that the Applicant addressed the Divisions' concerns was arbitrary and capricious.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

a. Declaring the Resolution null and void;

b. Enjoining the Applicant from enforcing the Resolution; and

c. Awarding such other and further relief as the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, Plaintiffs hereby designate Lawrence Bluestone, Esq. as trial counsel in this action.

Dated: January 31, 2025

Respectfully submitted,

GENOVA BURNS LLC

By: */s/ Lawrence Bluestone*
Lawrence Bluestone

Attorneys for Plaintiffs,
LHN Owner Urban Renewal, LLC
and LHN II, LLC

RULE 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge, information, and belief, the within matter in controversy is not the subject of any other pending or contemplated court actions or arbitration proceedings, except for the following: Liberty Harbor North Partners LLC v. LHN Owner, LLC and LHN II, LLC, American Arbitration Association, Case Number 01-24-0004-4977

I further certify that to the best of my knowledge, information, and belief, I am not aware of any non-parties who should be joined in the action.

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.

Dated: January 31, 2025

GENOVA BURNS LLC

By: */s/ Lawrence Bluestone*
Lawrence Bluestone

RULE 4:69-4 CERTIFICATION

I hereby certify that all necessary transcripts of the proceedings at issue in this action were ordered.

Dated: January 31, 2025

GENOVA BURNS LLC

By: */s/ Lawrence Bluestone*
Lawrence Bluestone