

SUMMONS

Attorney(s) \_\_\_\_\_  
Office Address \_\_\_\_\_  
Town, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Attorney(s) for Plaintiff \_\_\_\_\_

Superior Court of  
New Jersey

Bergen COUNTY  
Law DIVISION

Thomas Powers, Pro Se  
51 Bridle Path Lane, Mahwah NJ 07430  
Plaintiff(s)

Docket No: L-6223-19

CIVIL ACTION  
SUMMONS

vs. Township of Mahwah,  
Ramapoough Mountain Indians, Inc,  
Defendant(s)

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/pro se/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/pro se/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

Michelle Smith

Clerk of the Superior Court

DATED: 9/9/19

Name of Defendant to Be Served: Ramapoough Mountain Indians, Inc.

Address of Defendant to Be Served: 189 Stag Hill Road, Mahwah NJ 07430

<p>Thomas Powers  51 Bridle Path Lane, Mahwah NJ 07430  T: 201-248-6090  <b>Plaintiff, Pro Se</b></p> <p><b>v</b></p> <p>Township of Mahwah,  Mayor John Roth,  Township Council Members,  <b>Defendants, and</b></p> <p>The Ramapough Mountain Indians, Inc.  <b>as Nominal Defendant</b></p>	<p>Superior Court of New Jersey  Law Division Bergen County</p> <p>CIVIL ACTION</p> <p>Docket No. <b>L-6223-19</b></p> <p><b>AMENDED COMPLAINT  (In Lieu of Prerogative Writs)</b></p> <p>RECEIVED  2019 SEP -6 1 P 12:33  CIVIL DIVISION  CASE PROCESSING</p>
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Plaintiff, Thomas Powers, residing at 51 Bridle Path Lane, Mahwah NJ 07430, by way of Complaint In Lieu of Prerogative Writ against Defendants Township of Mahwah ("Township"), a municipality organized under the State of New Jersey law, Mayor John Roth and the Township Council Members, and Nominal Defendant, the Ramapough Mountain Indians, Inc. ("RMI"), hereby says:

1. Defendants Mayor John Roth and the Township Council Members entered into a Settlement Agreement on June 28, 2019 with the RMI related to Civil Action No. BER-L-3189-17 and real property owned by the RMI designated on the Township Map as Block 1, Lot 131, otherwise known as 95 Halifax Road, the "Subject Property".
2. The agenda for a Township Council meeting on May 9, 2019 listed a Closed Session for pending litigation between the Township and the RMI as well as Resolution 186-19 approval for litigation settlement, but the agenda and draft Resolution 186-19 did not describe or include the proposed settlement. The agenda and draft Resolution 186-19 are provided as Exhibit A.
3. Plaintiff filed an OPRA request with the Township on June 10, 2019 requesting a copy of the Settlement Agreement and Resolution. Plaintiff, sent follow up emails to Ms. Kathy Coviello, Township Clerk, on June 21, June 27, July 1, and July 2. Ms. Coviello responded each time that the documents were not available. Later on July 2 Ms. Coviello did finally provide the documents. The Settlement Agreement and amended Resolution 186-19 are provided in Exhibits B and C.
4. The RMI are joined as Nominal Defendant to this Complaint for purpose of notice, opportunity to be heard and to be bound by any judgment entered into by this court. No affirmative relief is sought against this Nominal Defendant.
5. Plaintiff owns real property across the street from the Subject Property, designated on the Township Map as Block 1, Lot 119, otherwise known 51 Bridle Path Lane. Plaintiff's property is part of a Homeowners Association (HoA) known as the Ramapo Hunt & Polo Club Association, Inc., a 29-lot

Private Planned Residential Community. The Subject Property and all 29 HoA properties / lots can only be accessed by a single lane vehicle bridge owned by the HoA.

#### **COUNT ONE**

#### **THE SETTLEMENT AGREEMENT IS IN VIOLATION OF LAW BECAUSE IT VIOLATES THE PLAINTIFF'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, IT VIOLATES AND MUNICIPAL ORDINANCES AND AVOIDS LAND USE AND SITE PLAN APPROVAL PROCESS APPLICABLE TO ALL TAXPAYERS**

6. The proposed Settlement Agreement is in violation of law because it violates zoning and municipal ordinances, avoids land use and site plan approval process applicable to all other taxpayers. As a resolution of a zoning dispute, the proposed Settlement Agreement had to be debated in public and subject to a public hearing under New Jersey law.
7. The Settlement Agreement institutes "Contract Zoning" or "Spot Zoning" because it rezones a particular parcel of land for a purpose that is significantly less restrictive than the surrounding zoning. New Jersey case law defines spot zoning as the "use of zoning power to benefit particular private interests rather than the collective interests of the community."
8. The Subject Property and the HoA, a Private Planned Residential Community, are located in an area zoned as C-200 Conservation Zone, which allows open space, agriculture and single family residential. Public Assembly and religious gatherings are not permitted uses or conditionally permitted uses in the Conservation Zone, pursuant to Section 24-4.1 of the Municipal Code of the Township.
9. The Settlement Agreement singles out the Subject Property for a Zoning Use classification totally different from that of the surrounding area, for the benefit of the owner of the Subject Property and to the detriment of other property owners.
10. The Settlement Agreement acknowledges in Section 2 (f) that the Subject Property Uses are inconsistent with the C-200 zone as it states "any conveyance of the Property shall terminate the use herein to the extent inconsistent with the C-200 zone"
11. The Settlement Agreement allows for the continuance of Zoning and Site Plan violations as described in letters from the Township to the RMI with the subject line "Zoning & Site Plan Violations", dated January 17, 2018 and April 24, 2018, attached as Exhibit D. In the letters the Township states the following:
  - Proper zoning approval has not been received for the uses and the structures utilized for these uses on site.
  - The structures on site are used for religious uses and public activity and are located within the floodplain and flood hazard area of the Ramapo River and are not developed above the maximum flood elevation.

- Article 24-6.lh(l) of the Township Code states: "No permanent structure or building or any enlargement of same which is used or designated to be used for housing, commerce, industry or public activity shall be located in a floodplain or flood hazard area. Exceptions to this restriction shall include uses which are developed above the maximum flood elevation with appropriate access provided or as provided in Chapter XVIII of the Code, as may be amended".
  - Our office is seeking compliance for the continued violations that are present at the site.
  - Since the uses occurring on site are not permitted uses, to obtain proper approval, a complete Board of Adjustment Application is required to be submitted to the Township's Department of Land Use for Use Variance Approval. Also, Site Plan Approval will be required as noted above.
12. The Settlement Agreement changes the Zoning Use without any appearance before a Zoning Board; without any requirement for a Zoning Use Variance; without any notification to nearby residents - all as required by law and subject to public comment.
  13. The Proposed Zoning Use changes require a site plan and a public hearing before a Zoning Board or Land Use Board with advance notice to property owners within 200 feet of the subject property.
  14. The Proposed Zoning Use changes in a Conservation Zone require an Environmental Impact Statement pursuant to Section 24-6.1 of the Township Municipal Code.
  15. The implementation of the Settlement Agreement has violated the Plaintiff's right to due process and equal protection of the law as set forth in the Fourteenth Amendment to the United States Constitution as well as the same guaranteed protection by the Constitution of the State of New Jersey.
  16. The Township's actions, which allow the public to have access to a privately owned bridge and roads, is an effective 'taking' of privately owned property without consent or compensation.
  17. The Settlement Agreement is in violation of law, arbitrary, capricious and unreasonable. The Settlement Agreement is impermissible contract zoning or spot zoning.
  18. The Settlement Agreement was made in disregard of Plaintiff's property rights and damages Plaintiff by resulting in a reduction in the value of Plaintiff's property and other nearby property.

## **COUNT TWO**

### **PROPOSED ZONING USES AND ACTIVITIES ARE NOT ONLY IN VIOLATION OF EXISTING ORDINANCES SUCH ZONING USES AND ACTIVITIES ARE NOT SAFE**

19. The proposed Zoning Uses and activities under the Settlement Agreement are not safe and should be reviewed by a land use board and/or zoning board. The proposed Zoning Uses and activities require an Environmental Impact Statement and should require a traffic study.

20. The Zoning Uses and activities proposed on the Subject Property can create health and safety issues and damages to the Private Planned Residential Community and nearby properties.
21. Development of all lands within the Conservation Zone are environmentally sensitive as provided in the New Jersey State Development Guide Plan and the New Jersey Development and Redevelopment Plan as promulgated by the New Jersey State Planning Commission.
22. Approximately 90% of the Subject Property is in a flood zone and specifically the Floodway of the Ramapo River, which does flood frequently. Under Chapter 27 of the Municipal Code of the Township Providing Flood Damage Prevention Regulations:
  - 27-1.3 Statement of Purpose: It is the purpose of this ordinance to promote the public health, safety, and general welfare, and minimize public and private losses due to flood conditions in specific area by provisions designated to:
    - a. Protect human life and health,
    - b. Minimize expenditure of public money for costly flood control projects,
    - c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public,...
  - 27-2: Definition of Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than 0.2 feet.
  - 27-5.3 Floodways: Located within areas of special flood hazard established in section 27-3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
    - Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
23. A flash flood or heavy rainfall can strand visitors and create safety issues on the single lane bridge, including emergency access. The single lane bridge is the only ingress and egress.
24. On January 13, 2018 the Township Fire Department were called to the Subject Property to remove several propane tanks that were floating in water on the flooded Subject Property. The unattended propane tanks could have created environmental and safety issues for nearby residents and the Ramapo River which supplies water for millions of people.
25. Under the Township Zoning Ordinances development in Conservation Zone C-200 requires an Environmental Impact Statement, site plan approval or a Zoning Use variance request. No such

Environmental Impact Statement, site plan approval or Zoning Use variance request was provided nor is it required under the Settlement Agreement.

26. Under the Settlement Agreement a 25 vehicle parking lot may be constructed in the Floodway and without a site plan or Environmental Impact Statement. An Agreement that allows such parking lot to bypass the land use board and site plan requirements should not be permitted.
27. The proposed Zoning Uses and activities should require a traffic study. The single lane bridge, that is the only ingress or egress to access the Subject Property and all 29 lots in the Private Planned Residential Community, and narrow roads are not designed for large gatherings as permitted under the Settlement Agreement.
28. On May 5, 2012 over 200 people attended an event at the Subject Property held by the RMI. The single lane access bridge became completely blocked and HoA residents could not access the bridge to get to or from their homes. The Township Police were called and eventually resolved the issue.
29. Traffic volume and parking issues related to increased usage of a single lane bridge and narrower than normal roads (24' vs 30' normal width), which have been addressed in prior Township Planning Board Resolutions, have been ignored under the Settlement Agreement.
30. High traffic volume in a small private development (29 lots) with roads that are narrower than standard (24' vs 30") is a real safety issue that has previously been recognized by the Township.
31. According to the Township's July 12, 1982 Planning Board Resolution " The Board's approval of the Halifax Rd One-Lane Bridge and road improvements are deemed adequate for the development as proposed. Any future development and/or use of said roadway by adjacent property owners will necessitate further bridge and road improvements to be reviewed and approved by this board." See Exhibit E.
32. According to the Township's June 10, 2002 Planning Board Resolution, for the last two approved lots in the 29 lot Private Planned Residential Community, the Planning Board stated "The Board lacks jurisdiction to consider or determine the right of the applicant (i.e. the new lot owners) to utilize the Bridge." The Planning Board required and relied on expert testimony of a Professional Engineer who addressed the adequacy of the HoA bridge and roads to handle traffic from two additional homes. See Exhibit F.
33. At a minimum the same requirement for a Zoning Use Variance and standard of review of the adequacy of additional vehicular traffic usage of the HoA bridge and roads that applied to the original development in the 1980s and the two additional lots in 2002 should be applied to any expanded use of the Subject Property.

**COUNT THREE**

**THE EXISTING SUBJECT PROPERTY DRIVEWAY ON BRIDLE PATH LANE IS IN VIOLATION OF LAW  
AND IT IS A SAFETY ISSUE FOR THE PLAINTIFF AND NEARBY RESIDENTS**

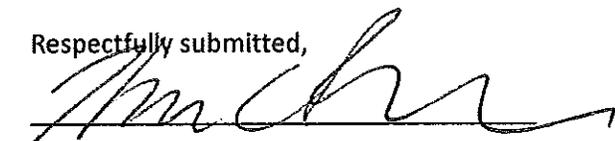
34. The existing Subject Property driveway on Bridle Path Lane is in violation of law and it poses a serious safety issue for the Plaintiff and nearby residents because the street is narrow (24' wide vs 30' standard), high traffic volume of the RMI that has included school buses, large RVs and trucks as well as the over 3 foot deep water drainage ditches that run along Bridle Path Lane (necessitated by steep slope topography of the Private Planned Residential Community).
35. There are line of sight and turning radius issues for large vehicles on such a narrow street further exacerbated by the over 3 foot deep drainage ditches that run along the street.
36. Plaintiff wrote to the Township regarding the safety issues posed by the Subject Property driveway on Bridle Path Lane numerous times over the last two years. See emails and associated pictures that show the respective driveways and the drainage ditches in Exhibit G & H.
37. The safety issue associated with the Subject Property driveway has been recognized by the Town Engineer and former Zoning Officer, as stated by Plaintiff in his emails to Township representatives.
38. No permit was applied for or issued for the existing Subject Property driveway on Bridle Path Lane, even though it is required under Township Zoning Ordinances.
39. The Subject Property driveway on Bridle Path Lane can be relocated to Halifax Road where there are no water drainage ditches.

Therefore, Plaintiff respectfully demands judgment to:

- A. Cancel, annul, and set aside the Settlement Agreement between the Township of Mahwah and the Ramapough Mountain Indians, Inc. dated June 28, 2019 related to Civil Action No. BER-L-3189-17.
- B. Cancel, annul, and set aside the related Township of Mahwah Resolution 186-19
- C. Require the existing Subject Property driveway on Bridle Path Lane be relocated to Halifax Road and any future driveway on Subject Property to be located on Halifax Road.

Dated: September 5, 2019

Respectfully submitted,



Thomas Powers,

51 Bridle Path Lane

Mahwah NJ 07430

VERIFICATION

I am plaintiff in the above-entitled action. I have read the complaint and know its contents. The contents are true of my own knowledge, except as to matters stated on information and belief, and, as to such matters, they are true to the best of my knowledge and belief.



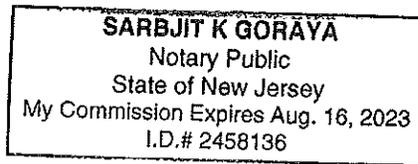
Thomas Powers,

Subscribed and sworn to me on [date of attestation]



9/5/19

Notary



BERGEN COUNTY COURTHOUSE  
SUPERIOR COURT LAW DIV  
BERGEN COUNTY JUSTICE CTR RM 415  
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 221-0700  
COURT HOURS 8:30 AM - 4:30 PM

DATE: SEPTEMBER 03, 2019  
RE: POWERS THOMAS VS TOWNSHIP OF MAHWAH  
DOCKET: BER L -006223 19

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON LISA PEREZ-FRISCIA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003  
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

THOMAS POWERS  
51 BRIDLE PATH LANE  
MAHWAH NJ 07430

JUBCAB0