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Reply to: Oakland Office

January 20, 2020

ELECTRONICALLY FILED

Hon. Robert C. Wilson, J.S.C.
Bergen County Courthouse
10 Main Street
2nd Floor
Hackensack, New Jersey 07601

Re: Powers v. Township of Mahwah, et al.
Docket No. BER-L-6223-19

Dear Judge Wilson:

Please accept this letter brief in lieu of a more formal brief, on behalf of Defendants Township of Mahwah, Mayor John Roth and the Township Council Members (hereinafter collectively referred to as “Mahwah Defendants”) in further support of said Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint, which is returnable on January 24, 2020.

PRELIMINARY STATEMENT

Because Plaintiff cannot refute the legal precedent in the Mahwah Defendants’ moving brief, Plaintiff attempts to avoid dismissal by arguing that the facts support his claims in this lawsuit. However, as set forth in the moving papers and herein, the facts do not support any viable claim by Plaintiff against the Mahwah Defendants and, accordingly, the motion to dismiss should be granted.

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STATEMENT OF THE CASE

Plaintiff's Amended Complaint includes three counts. (See Ex. H to Reply Certification of Counsel.)¹ Count One seeks to set aside a Settlement Agreement between the Township of Mahwah and Ramapough Mountain Indians, Inc. ("the Ramapough"), which was executed on June 28, 2019 pursuant to a Resolution adopted by the Township Council on May 9, 2019. (The Settlement Agreement and Resolution are Exs. B & C to the Amended Complaint.) Plaintiff alleges in Count One that, "[t]he 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"; "[t]he 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"; and "[t]he Settlement Agreement is in violation of law, arbitrary, capricious and unreasonable [in that] [t]he Settlement Agreement is impermissible contract zoning or spot zoning". (Amended Complaint at ¶¶15-17.)

In Count Two, Plaintiff alleges that the proposed uses and activities under the Settlement Agreement are unsafe and impermissible without approval by the land use board or zoning board. In Count Three, Plaintiff alleges that an existing driveway on Bridle Path Lane is unsafe. As to the last Count, Plaintiff makes no allegation that

¹ The Amended Complaint was inadvertently omitted from the moving papers. It is attached to the Reply Certification of Counsel.

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the driveway was created by any act of the Mahwah Defendants or asserts any legal theory upon which the Court could grant any relief in connection with Bridle Path Lane and, thus, for that reason alone, it should be dismissed.

Plaintiff makes a single prayer for relief for the three counts – to set aside the Settlement Agreement; to set aside the Resolution authorizing execution of the Settlement Agreement; and to mandate that a driveway be relocated. Because Plaintiff has failed to state claims upon which relief may be granted, the Amended Complaint should be dismissed in its entirety.

LEGAL ARGUMENT

POINT I

ANY CLAIM FOR RELIEF FROM THE RESOLUTION ADOPTED ON MAY 9, 2019 AND ANY CLAIM THAT THE MAHWAH DEFENDANTS VIOLATED THE OPEN PUBLIC MEETINGS ACT OR MUNICIPAL LAND USE LAW AT SAID MEETING ARE TIME BARRED AS THE CLAIMS WERE NOT MADE WITHIN FORTY-FIVE DAYS OF MAY 9, 2019.

Plaintiff does not and cannot refute that his claim to set aside the Resolution adopted on May 9, 2019 and any claim that the Mahwah Defendants failed to comply with the law in its handling of that Resolution at the May 9th meeting were not timely made and, accordingly, any such claims must be dismissed including any claim that the council acted arbitrarily, capriciously and/or unreasonably in adopting the Resolution approving the settlement.

Plaintiff instead argues that his challenges to the Settlement Agreement are not time-barred because he did not obtain a copy of the Agreement until after it was

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executed and his Complaint was filed within forty-five (45) days thereof; however, Plaintiff cites no law to support that proposition. In any event, the Council's approval of the Settlement Agreement was made by its Resolution, which authorized the execution of the Settlement Agreement. As such, the date of execution of the Settlement Agreement is not the dispositive date.

Furthermore, as set forth hereafter, Plaintiff has not set forth a viable claim upon which relief may be granted in the way of setting aside the Settlement Agreement and, thus, those claims should be dismissed.

POINT II

ANY CLAIM TO SET ASIDE THE SETTLEMENT AGREEMENT BY PLAINTIFF, A MEMBER OF THE HOMEOWNERS ASSOCIATION OF THE RAMAPOUGH HUNT & POLO CLUB, IS BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL.

Plaintiff's very arguments in opposition to the motion support the argument that his claims are barred by the doctrine of collateral estoppel. Indeed, Plaintiff points to facts that were the basis for the various legal actions that were settled and argues that those facts warrant a contrary result. Those arguments are exactly the type of re-litigation of issues that the doctrine of collateral estoppel prohibits as discussed in Point Four of the moving brief. To hold otherwise would mean that every member of the Polo Club could assert his/her own challenge. Clearly, that would be absurd and could lead to disparate results. Accordingly, Plaintiff's current

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challenge and attempt to re-litigate issues resolved in the settlement must be dismissed.

POINT III

PLAINTIFF HAS NOT SET FORTH VIABLE CLAIMS THAT THE EXECUTION OF THE SETTLEMENT AGREEMENT VIOLATED HIS RIGHTS TO DUE PROCESS, EQUAL PROTECTION OF THE LAW OR AMOUNTED TO A TAKING; AND, HE OTHERWISE LACKS STANDING TO SET ASIDE THE SETTLEMENT AGREEMENT.

Plaintiff argues that the Settlement Agreement should be set aside on a variety of legal theories, which are all premised on the notion that the Settlement Agreement allegedly creates land use rights not allowed in the zoning ordinance, but such is not the case. Plaintiff suggests that because the Township had previously taken the position that the Ramapough's use of the property was contrary to the Zoning Ordinance means that the Township was not allowed to determine otherwise when entering into the Settlement Agreement. That argument should not detain the Court because Plaintiff himself acknowledges that the Ramapough's use of the property for religious purposes is not objectionable. (See Opposition Brief at 2.) Plaintiff is not complaining about the use of the property; just the scope of the use. (Ibid.) While Plaintiff summarily alleges the scope of use expressly acknowledged by the Settlement Agreement is inconsistent with the Zoning Ordinance, neither Plaintiff's opposition papers, nor his Amended Complaint establishes any inconsistency. In fact, the Settlement Agreement expressly recognizes that any use of the property must be consistent with the uses permitted in the C200 Zone. (See ¶2 of the

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Settlement Agreement, which is Ex. B to the Amended Complaint.) Based on the foregoing, the claims in Count Two should be dismissed.

As to an alleged violation of his due process rights in Count One, Plaintiff has failed to establish in his opposition papers that he has set forth a viable due process claim based on an individual interest that is protected by the procedural due process clause and that the process for authorizing the Mayor and Clerk to execute the Settlement Agreement was constitutionally inadequate. As such, for the reasons set forth in the moving Brief at Point One, Plaintiff's claims for violation of due process must be dismissed.

Similarly, Plaintiff has failed to establish in his opposition papers that he has set forth a viable claim that his right to equal protection of the law has been violated. More particularly, Plaintiff has failed to establish the he was singled out and treated differently than similarly situated persons as is necessary for a claim alleging violation of the equal protection clause. Thus, for the reasons set forth in the moving brief at Point Five, Plaintiff's claims for violation of the equal protection clause in Count One must be dismissed.

In addition, Plaintiff's Amended Complaint is devoid of any allegation of the requisite elements to establish that his property was taken without just compensation. Without any basic facts to establish that Plaintiff's property across the street from the Ramapough's property was taken actually or de facto by allowing the Ramapough to use their own property consistent with the Zoning Ordinance, any conclusory allegation that Plaintiff has suffered a taking must be dismissed.

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Finally, as set forth in the Mahwah Defendants' moving brief at Point Three, there are no allegations in the Amended Complaint (because there are no such facts) to premise a claim that the Settlement Agreement was made through fraud or that it is unconscionable or violates public policy and, in any event, an entity that is not a party to the contract cannot attack the enforceability of a contract on those grounds. As such, Plaintiff has no standing to seek an order setting aside the Settlement Agreement on such grounds.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in the Moving Brief, the Mahwah Defendants' Motion to Dismiss the Amended Complaint in its entirety for the failure to state a claim should be granted.

Respectfully submitted,

CLEARY GIACOBBE ALFIERI JACOBS, LLC
Attorneys for Defendants Township of
Mahwah and Mayor John Roth, and the
Township Council Members

/s/ Mary Anne Groh _____
Mary Anne Groh, Esq.