

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Wednesday, August 11, 2021 5:34 PM
To: Liam B. McManus
Subject: Fw: Docket# L-000298-21
Attachments: 20210731-TrackAssignmentNotice.pdf; 20210730-Civil Case Information Statement.pdf; 20210803-Notification.pdf; 20210730-Complaint-with-Exhibits.pdf

 (1)

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Bill Sosis
Sent: Wednesday, August 11, 2021 4:19 PM
To: Dena Hrebenak ; Michael Lavery ; Joe Watters
Subject: Docket# L-000298-21
Please see attached docs for Civil Part Docket# L-000298-21

~~REDACTED~~

WARREN COUNTY CIVIL DIVISION
413 SECOND STREET
P O BOX 900
BELVIDERE NJ 07823

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 750-8100
COURT HOURS 8:30 AM - 4:30 PM

DATE: JULY 30, 2021
RE: SOSIS WILLIAM VS TOWNSHIP OF MANSFIEL D COMMITT
DOCKET: WRN L -000298 21

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON KEVIN M. SHANAHAN

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (908) 750-8100 EXT 13056.

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:

ATT: WILLIAM N. SOSIS
SOSIS LAW, LLC
15 BRANTWOOD TERRACE
HACKETTSTOWN NJ 07840

ECOURTS

SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW

The following clerk notice is being sent from eCourts:

Plaintiff Name: WILLIAM N SOSIS
Defendant Name: DENA HREBENAK, TOWNSHIP OF MANSFIELD COMMITTEE
Case Caption: SOSIS VS MANSFIELD TOWNSHIP COMMITTEE ET AL
Case Number: WRN L 000298-21
Docket Text: **CLERK NOTICE:** re: Complaint LCV20211782775 -CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED ON 9/13/21/ AT 2PM BEFORE HON. THOMAS C. MILLER, AJSC. COUNSEL ARE TO CREATE A CONFERENCE CALL NUMBER. ONCE ALL PARTIES ARE ON THE LINE, DIAL CHAMBERS AT 908-332-7700 EXT 13590.
Transaction ID: LCV20211802149

Notice has been electronically mailed to:

Plaintiff Attorney	WILLIAM N SOSIS	BILL@SOSISLAW.COM WILLIAM.N.SOSIS@GMAIL.COM
Defendant	HREBENAK, DENA	DHREBENAK@MANSFIELDTOWNSHIP-NJ.GOV
Defendant	TOWNSHIP OF MANSFIELD COMMITTEE	INFO@MANSFIELDTOWNSHIP-NJ.GOV

Notice was not electronically mailed to:

Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000298-21

Case Caption: SOSIS WILLIAM VS TOWNSHIP OF
MANSFIEL D COMMITT

Case Initiation Date: 07/30/2021

Attorney Name: WILLIAM N SOSIS

Firm Name: SOSIS LAW, LLC

Address: 15 BRANTWOOD TERRACE

HACKETTSTOWN NJ 07840

Phone: 2013453095

Name of Party: PLAINTIFF : Sosis, William, N

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: OTHER Open Public Meetings Act

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: William N Sosis? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Action to enforce Open Public Meetings Act Obligations

Do you or your client need any disability accommodations? YES

If yes, please identify the requested accommodation:

ASSISTIVE LISTENING DEVICE (ALD)

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

07/30/2021

Dated

/s/ WILLIAM N SOSIS

Signed

WILLIAM N. SOSIS, ESQ. (#100032014)

15 Brantwood Terrace
Hackettstown, New Jersey 07840

Tel: (201) 655-6400

Fax: (201) 781-7855

Email: Bill@SosisLaw.com

Plaintiff Pro Se.

WILLIAM N. SOSIS

Plaintiff,

v.

TOWNSHIP OF MANSFIELD COMMITTEE
and DENA HREBENAK, in her official
capacity as Township Clerk for the Township of
Mansfield,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY

DOCKET NO.:

Civil Action

COMPLAINT

Plaintiff, William Sosis, by way of complaint against the Defendants, Township of Mansfield Committee and Dena Hrebenak, states as follows:

PARTIES

1. At At all relevant times, Plaintiff, William Sosis ("Sosis"), was and is residing at 15 Brantwood Terrace, in the Township of Mansfield in the County of Warren and State of New Jersey. Sosis is "any person" who, in accordance with N.J.S.A. 10:4-16, is permitted to enforce the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

2. Defendant Township of Mansfield Committee ("Committee") is a "public body" that is subject to the Meetings Act. The Committee maintains a principal office at 100 Port Murray Road, Port Murray, New Jersey 07865.

3. Defendant Dena Hrebenak ("Hrebenak") is the Township Clerk and Custodian of Records for the Township of Mansfield. She is being sued in her professional capacity. Upon information

and belief, she also maintains a principal office at 100 Port Murray Road, Port Murray, New Jersey 07865.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the Defendants because the Complaint alleges causes of action arising under New Jersey State Law, specifically, the Senator Byron M. Baer Open Public Meetings Act (OPMA or the Act), N.J.S.A. 10:4-6 et seq.

5. Venue is properly laid in Warren County because Defendants Committee and Hrebenak have their offices in Warren County and because the actions or inactions that form the basis of this lawsuit arose in Warren County.

COUNT 1

(Failure to timely post or publish a schedule of the regular meetings in accordance with N.J.S.A. 10:4-18)

6. The following acts constitute a pattern or practice violative of N.J.S.A. 10:4-18:
- a. On January 1, 2021, Defendants held their 2021 Reorganization Meeting but failed to post or publish a schedule of the regular meetings until January 15, 2021. See **Exhibits 1 & 2.**
 - b. On January 1, 2020, Defendants held their 2020 Reorganization Meeting but failed to post or publish a schedule of the regular meetings until February 21, 2020. See **Exhibits 3 & 4.**

WHEREFORE, Plaintiff Sosis demands judgment:

- a. Declaring said actions of the Defendants to be in violation of N.J.S.A. 10:4-18 for failing to timely post or publish a schedule of regular meetings.
- b. Compelling Defendants, going forward, to post or publish a schedule of the regular meetings within seven (7) days of the annual reorganization meeting.

- c. Awarding Sosis his costs of suit.
- d. Such other relief as the Court deems equitable and just.

COUNT 2

(Failure to make meeting minutes "promptly available" pursuant to N.J.S.A. 10:4-14)

7. The Defendants hold regular monthly meetings on the 2nd and 4th Wednesday of each month at 7:30 p.m. Meeting minutes are posted on a public website four (4) or more weeks after the meeting date.¹ See **Exhibit 5** showing thirty-five (35) days without posting minutes for a June 23, 2021 meeting.²

WHEREFORE, Plaintiff Sosis demands judgment:

- a. Declaring said actions of the Defendants to be in violation of N.J.S.A. 10:4-14 for failing to make its minutes "promptly available".
- b. Compelling the Defendants, going forward, to make the minutes from a public meeting available prior to the next scheduled public meeting.
- c. Awarding Sosis his costs of suit.
- d. Such other relief as the Court deems equitable and just.

COUNT 3

(Failure or refusal to timely post its agenda of an open public meeting within forty-eight (48) hours of the meeting. (N.J.S.A. 10:4-9)

8. The OPMA defines adequate notice as notice of at least 48 hours providing the time, date, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting.

¹ Mansfield Township. "Agendas, Minutes & Bill List." **Accessed July 30, 2021.**

<https://mansfieldtownship-nj.gov/index.php/government/agendas-minutes-bill-list>.

² **Exhibit 5:** Mansfield Township. "Agendas, Minutes & Bill List." **Accessed July 30, 2021.**

<https://mansfieldtownship-nj.gov/index.php/government/agendas-minutes-bill-list>.

N.J.S.A. 10:4-8(d). Contrarily, the Defendants' practice is to post its meeting agendas less than 48 hours prior to a scheduled meeting. Agendas are often posted the same afternoon of the meeting date. To illustrate, on July 14, 2021, at 12:36 P.M., the date of a regularly scheduled meeting, Sosis sent an email asking Defendants to make their agenda available. Minutes later, Defendants posted the agenda to their public website at 12:46:39 P.M. Note that this was only six and one-half hours prior to the public meeting scheduled for 7:30 P.M.

9. On information and belief, Defendants' failure or refusal to post their agenda within the forty-eight (48) hours required by law constitutes a pattern or practice. An expert review by a forensic examiner ("*Axiana*"³) confirms this. [Attached hereto as **Exhibit 6** is a true and accurate copy of *Axiana's* metadata report]

10. *Axiana* performed a metadata analysis on the agenda (an electronic PDF file) posted by Defendants on their public website for the July 14, 2021 meeting. The agenda was downloaded directly from Defendants' public website on July 14, 2021. The results show the agenda was authored on July 8, 2021 and that no modifications were made to the agenda since its creation date. Id. In other words, the report provides evidence that the agenda for the July 14, 2021 meeting was available but withheld for six (6) days until the afternoon of the public meeting.

WHEREFORE, Plaintiff Sosis demands judgment:

- a. Declaring said actions of the Defendants to be in violation of N.J.S.A. 10:4-9 for failing to timely post the agenda for its open public meetings.
- b. Compelling the Defendants, going forward, to make its agenda available for public inspection no less than forty-eight (48) hours prior to each public meeting.
- c. Awarding Sosis his costs of suit.

³ "*Axiana*." Accessed July 30, 2021. <https://www.axiana.com/>.

d. Such other relief as the Court deems equitable and just.

COUNT 4

(Failure or refusal to revise its Annual Meeting Schedule. N.J.S.A. § 10:4-18)

11. Due to the pandemic, for several months Defendants held online public meetings. Using the Zoom Video Conferencing platform, Defendants posted notices on their public website that allowed the public to attend and comment during the open public meeting sessions. The notices included the time, date, and “virtual location” of public meetings. **Exhibit 7.**

12. On July 14, 2021, Defendants discontinued conducting remote public meetings and providing “virtual location” information of public meetings. Defendants resorted to conducting in-person meetings without notification to the public either by way of electronic means or newspaper publication.

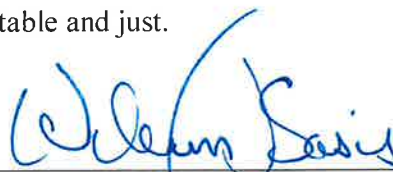
13. Defendants failure to post, mail and submit a revision of regularly scheduled meetings within seven (7) days violates N.J.S.A. § 10:4-18.

WHEREFORE, Plaintiff Sosis demands judgment:

- a. Declaring said actions of the Defendants to be in violation of N.J.S.A. 10:4-18 for failure to post or publish a revised schedule of regular meetings.
- b. Compelling Defendants, going forward, to post or publish within seven (7) days revisions to the time, date, location, and, to the extent known, the agenda of any regular, special or rescheduled meeting.
- c. Awarding Sosis his costs of suit.
- d. Such other relief as the Court deems equitable and just.

Dated: July 30, 2021

By: _____



WILLIAM N. SOSIS

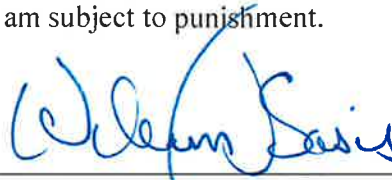
Plaintiff Pro Se

CERTIFICATION PURSUANT TO RULE 1:4-4(b)

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: July 30, 2021

By: _____

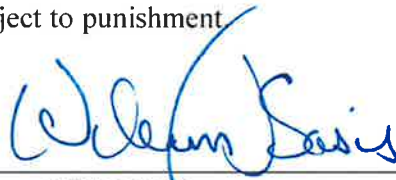

WILLIAM N. SOSIS

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify, pursuant to Rule 4:5-1, that this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and that there exist, to the best of my knowledge and belief, no other parties that need to be joined in this action. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: July 30, 2021

By: _____


WILLIAM N. SOSIS

JURY DEMAND

The plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

Dated: July 30, 2021

By: _____

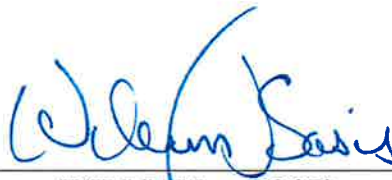

WILLIAM N. SOSIS

Exhibit 1

MANSFIELD TOWNSHIP REORGANIZATION MEETING JANUARY 1, 2021

This is the Reorganization Meeting of the Township Committee. The notice requirements of the law have been satisfied for this meeting by notice to the Express Times-NJ Zone Edition and posting in the Municipal Building, stating the time, date and location thereof.

Meeting called to order by Mayor Watters, at 12:00 noon with the following Committee present: Mr. Farino, Mrs. Mora Dillon, Mr. McGuinness, and Mayor Watters.

Salute to the flag was done by all.

Dena Hrebenak read the Certification of Election for Joseph Farino as Township Committee Member for a term of three (3) years.

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office for Joseph Farino as Township Committee member.

Dena Hrebenak read the Certification of Election for Ron Hayes as Township Committee Member for a term of three (3) years.

Dena Hrebenak read the Certification of Election for Glen McGuinness as Township Committee Member for a term of two (2) years.

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office for Glen McGuinness as Township Committee member.

ELECTION OF MAYOR:

Mrs. Mora Dillon made a motion to appoint Joseph Watters as Mayor for the year 2021, which was seconded by Mr. Farino.

BE IT RESOLVED, that Joseph Watters be appointed Mayor of the Township of Mansfield for the year 2021.

Ayes – Farino, Mora Dillon, McGuinness, Mayor Watters

Abstained – None

Nay – None

Absent – Hayes

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office for Joseph Watters as Mayor of the Township of Mansfield for the year 2021.

DEPUTY MAYOR:

Mayor Watters made a motion to appoint Desiree Mora Dillon as the Deputy Mayor for the year of 2021, which was seconded by Mr. Farino.

Ayes – Farino, Mora Dillon, McGuinness, Mayor Watters

Abstained – None

Nay – None

Absent – Hayes

Exhibit 2

TOWNSHIP OF MANSFIELD

100 Port Murray Road

Port Murray, NJ 07865

TOWNSHIP OF MANSFIELD

PROOF OF INSERTION/PUBLICATION

State of New Jersey

County of Warren

I, Dena Hrebenak, do hereby certify that an advertisement of which the annexed is a true copy, was published in the Express Times-NJ Edition, a newspaper doing business in Warren County and State and circulated in Mansfield Township, Warren County aforesaid, issue(s) as follow(s) to wit:

1/14/2021

Ad was run 1 times.

Certified this 15 day of January
20 21.

Dena Hrebenak

Dena Hrebenak, Notary Public



RESOLUTION 2021-14

SUNSHINE LAW- MEETING DATES

BE IT RESOLVED, that the regular monthly meetings of the Township Committee be held on the 2nd and 4th Wednesday of each month at 7:30 p.m. with the exception of any changes due to holidays.

MANSFIELD TOWNSHIP COMMITTEE

SCHEDULE OF 2021 MEETINGS

LOCATION: MUNICIPAL BUILDING, 100 PORT MURRAY ROAD
PORT MURRAY, NEW JERSEY

DATE	TYPE OF MEETING	LOCATION	TIME
January 13	Regular Meeting	Meeting Room	7:30 p.m.
January 27	"	"	"
February 10	"	"	"
February 24	"	"	"
March 10	"	"	"
March 24	"	"	"
April 14	"	"	"
April 28	"	"	"
May 12	"	"	"
May 26	"	"	"
June 9	"	"	"
June 23	"	"	"
July 14	"	"	"
July 28	"	"	"
August 11	"	"	"
August 25	"	"	"
September 8	"	"	"
September 22	"	"	"
October 13	"	"	"
October 27	"	"	"
November 10	"	"	"
November 23	"	"	"
December 8	"	"	"
December 22	"	"	"

Note: Caucus Work Session held at 7:15 p.m. in the meeting room and immediately following the completion of the regular meeting.

I, Dena Hrebenak, Municipal Clerk of the Township of Mansfield, Warren County, New Jersey do hereby certify the foregoing to be a true copy of a resolution adopted by the Mansfield Township Committee at the regular meeting held on January 1, 2021.

Dated: January 1, 2021

Dena Hrebenak, Municipal Clerk

Exhibit 3

MANSFIELD TOWNSHIP REORGANIZATION MEETING JANUARY 1, 2020

This is the Reorganization Meeting of the Township Committee. The notice requirements of the law have been satisfied for this meeting by notice to the Star-Gazette and the Express Times and posting in the Municipal Building, stating the time, date and location thereof.

Meeting called to order by Mayor Watters, at 12:00 noon with the following Committee present: Mr. Hayes, Mr. Farino, Mrs. Mora Dillon, Mayor Watters.

Salute to the flag was done by all.

Dena Hrebenak read the Certification of Election for Desiree Mora Dillon as Township Committee Member for a term of three (3) years.

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office for Desiree Mora Dillon as Township Committee member.

Ms. Hrebenak stated that a letter of resignation was received from Mr. Tony Cardell, this causes a vacancy on the Township Committee and will be referred to the Municipal County Committee.

ELECTION OF MAYOR:

Mrs. Mora Dillon made a motion to appoint Joseph Watters as Mayor for the year 2020, which was seconded by Mr. Farino.

BE IT RESOLVED, that Joseph Watters be appointed Mayor of the Township of Mansfield for the year 2020.

Ayes – Mr. Hayes, Mr. Farino, Mrs. Mora Dillon, Mayor Watters

Abstained – None

Nay – None

Absent – None

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office for Joseph Watters as Mayor of the Township of Mansfield for the year 2020.

DEPUTY MAYOR:

Mrs. Mora Dillon made a motion to appoint Ron Hayes as the Deputy Mayor for the year of 2020, which was seconded by Mr.

Ayes – Mr. Hayes, Mr. Farino, Mrs. Mora Dillon, Mayor Watters

Abstained – None

Nay – None

Absent – None

Ms. Hrebenak conducted the swearing in ceremony and Oath of Office of Ron Hayes as Deputy Mayor of the Township of Mansfield for the year 2020.

OFFICE ON AGING:

Exhibit 4



NJ Legal Liner

Star-Gazette

LEGAL AFFIDAVIT

AD#: 0009512633

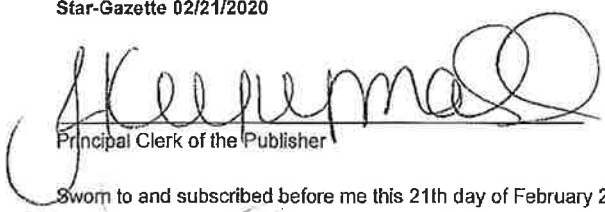
Total

\$39.68

State of New Jersey,) ss
County of Hunterdon)

Jeanette Kryzmaliski being duly sworn, deposes that he/she is principal clerk of NJ Advance Media; that Star-Gazette is a public newspaper, with general circulation in Warren County, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following date(s):

Star-Gazette 02/21/2020


Principal Clerk of the Publisher

Sworn to and subscribed before me this 21th day of February 2020


Notary Public

LORETTA A. DORAN
NOTARY PUBLIC OF NEW JERSEY
ID # 60036436
My Commission Expires 4/6/2021

RESOLUTION 2020-14

SUNSHINE LAW- MEETING DATES

BE IT RESOLVED, that the regular monthly meetings of the Township Committee be held on the 2nd and 4th Wednesday of each month at 7:30 p.m. with the exception of any changes due to holidays.

MANSFIELD TOWNSHIP COMMITTEE

SCHEDULE OF 2020 MEETINGS

LOCATION: MUNICIPAL BUILDING, 100 FORT MURRAY ROAD
FORT MURRAY, NEW JERSEY

DATE	TYPE OF MEETING	LOCATION	TIME
January 8	Regular Meeting	Meeting Room	7:30 p.m.
January 22	"	"	"
February 12	"	"	"
February 26	"	"	"
March 11	"	"	"
March 25	"	"	"
April 8	"	"	"
April 22	"	"	"
May 13	"	"	"
May 27	"	"	"
June 10	"	"	"
June 24	"	"	"
July 8	"	"	"
July 22	"	"	"
August 12	"	"	"
August 26	"	"	"
September 9	"	"	"
September 23	"	"	"
October 14	"	"	"
October 28	"	"	"
November 10	"	"	"
November 24	"	"	"
December 9	"	"	"
December 22	"	"	"

Note: Caucus Work Session held at 7:15 p.m. in the meeting room and immediately following the completion of the regular meeting.

I, Dena Hrebenak, Municipal Clerk of the Township of Mansfield, Warren County, New Jersey do hereby certify the foregoing to be a true copy of a resolution adopted by the Mansfield Township Committee at the regular meeting held on January 1, 2020.

Dated: January 1, 2020

Dena Hrebenak, RMC
(Pr's fee \$39.68)

02/21/20

Resolution
2020-14

Exhibit 5

Township of Mansfield

[Home](#) [Government](#) [Boards / Committees](#) [Offices](#) [Public Services](#) [Recreation](#) [Calendar](#) [Resources](#)

Agendas, Minutes & Bill List

Dates

2021

July 28, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
July 14, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
June 23, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
June 9, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
May 26, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
May 12, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
April 28, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
April 14, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
March 24, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
March 10, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
February 24, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
February 10, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
January 27, 2021 - [View Agenda](#), [View Bill List](#), [View Minutes](#)
January 13, 2021 - [View Agenda](#), [View Minutes](#)
January 1, 2021 - [View Minutes](#)

2020

Meeting Dates

Meets the 2nd and 4th Wednesday of the month at 7:30pm.

Agenda, Minutes, and Bill Lists are saved as PDFs. Meeting Minutes will not be posted until having been approved.

Exhibit 6



METADATA REPORT

MANSFIELD TOWNSHIP COMMITTEE MEETING

July_14_2021.pdf

Prepared For: William N. Sosis, Esq.
Date: July 20, 2021
Prepared by: Tino Kyprianou MSc, CCE, CFE
Certified Computer Examiner – Certified Fraud Examiner

***Axiana LLC, 89 Headquarters Plaza North Tower # 1481, Morristown, NJ 07960
Tel: 973 410 1389 – www.axiana.com***

METADATA REPORT

1. EXECUTIVE SUMMARY

On July 15, 2021 our firm has been retained by William N. Sosis, Esq. of 15 Brantwood Terrace Hackettstown, New Jersey 07840, to extract the internal metadata of an adobe acrobat (pdf) file that he downloaded from the website https://mansfieldtownship-nj.gov/images/July_14_2021.pdf, see Appendix 1 and provide our expert opinion, expressed to a reasonable degree of digital forensic certainty, in answer to the following questions:

- a) Who most likely created the document?
- b) When was the document first created?
- c) Has the document been modified since it was created?

Mr. Sosis supplied the file to us in a zip container on the same date.

2. BACKGROUND AND QUALIFICATIONS

I am a computer forensics consultant and the founder of Axiana LLC, a firm offering digital forensics services for plaintiffs and defendants in connection with various civil and criminal legal matters.

Since 2007, Axiana LLC has facilitated digital forensics investigations, electronic discovery consulting and advisory services, incident response to data breaches, and cyber-security services.

I worked with various organizations and attorneys on complex investigative matters involving electronically stored information ("ESI"), including, but not limited to, issues involving the preservation of ESI and its corresponding metadata.

Throughout my career, I have routinely assisted corporate clients, outside counsel, and other trusted advisers in managing and engaging in digital forensics investigations, electronic discovery consulting and advisory services, and incident response to data breaches and cyber security services.

A true and accurate copy of my most recent curriculum vitae, outlining my background and experience testifying in legal matters such as this is annexed hereto as Appendix 2.

3. DOCUMENT INTERNAL METADATA

To extract the document's internal metadata I used X-Ways Forensics and Intella, two advanced digital forensics software used by computer forensic practitioners worldwide.

The internal metadata extracted is shown in figure 1 below:

Figure 1

PDF-1.7
FileName: July_14_2021.pdf
SHA-1: 69555B47CCAC4FF8C0C9D3FE49204D98F9D89B42
Language: en-US
Author: Dena Hrebenak
Creator: Microsoft® Word 2019
Creation: 07/08/2021 15:04:31 -4
Modification: 07/08/2021 15:04:31 -4
Producer: Microsoft® Word 2019
Pages: 1
Generator signature: 00371BA3 (MS Word 2016 W)
DocumentID: uuid:03FB455A-2963-4364-8C10-5E200AF23336
MM InstanceID: uuid:03FB455A-2963-4364-8C10-5E200AF23336

4. ANSWERS TO QUESTIONS

- a) The document's author is Dena Hrebenak.
- b) The document was created on July 8, 2021 at 3:04 PM EDT
- c) No modifications were made to the document since its creation date on July 8, 2021.



Tino Kyprianou
Certified Computer Examiner
Certified Fraud Examiner

Exhibit 7

Township of Mansfield

[Home](#) [Government](#) [Boards / Committees](#) [Offices](#) [Public Services](#) [Recreation](#) [Calendar](#) [Resources](#)

Mansfield News



Discover the history of Mansfield Township in the safety of your car!

Mansfield Township is a diverse community with many interesting historical facts and locations. Learn the...

[READ MORE](#)



Township Committee Meeting April 14, 2021

The Township Committee meeting will be held in the meeting room and thru the Zoom platform due to regulations from State...

[READ MORE](#)



Household Hazardous Waste Clean Up 10/3/2021

Warren County will be holding a Household Hazardous Waste Clean Up on October 3, 2021 between the hours of 8 am and 12 pm...

[READ MORE](#)





Special Meeting Notice March 24, 2021 7 pm

Dena | 18 March 2021 | Hits: 179

Please take notice that there will be a Special Meeting of the Township Committee to discuss 2021 Municipal Budget to be held on March 24, 2021, at 7:00 pm at the Mansfield Township Municipal Building Offices, located at 100 Port Murray Road Mansfield Township, New Jersey 07865 and through the Zoom Platform.

Township of Mansfield is inviting you to a scheduled Zoom meeting.

Topic: Special Meeting Discussion of 2021 Municipal Budget

Time: Mar 24, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/81675513288?pwd=M2lDV2FEMXkrbjRhZ3VJT3daUnNaZz09>

Meeting ID: 816 7551 3288

Passcode: 883165

One tap mobile

+13017158592,81675513288#,,,,*883165# US (Washington DC)

+13126266799,81675513288#,,,,*883165# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 816 7551 3288

Passcode: 883165

Find your local number: <https://us02web.zoom.us/j/kdWdhm09qi>

Formal Action may be taken.

For the agenda for this meeting click [here](#).

Dena Hrebenak

Municipal Clerk

Print

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000298-21

Case Caption: SOSIS WILLIAM VS TOWNSHIP OF
MANSFIEL D COMMITT

Case Initiation Date: 07/30/2021

Attorney Name: WILLIAM N SOSIS

Firm Name: SOSIS LAW, LLC

Address: 15 BRANTWOOD TERRACE
HACKETTSTOWN NJ 07840

Phone: 2013453095

Name of Party: PLAINTIFF : Sosis, William, N

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: OTHER Open Public Meetings Act

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: William N Sosis? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Action to enforce Open Public Meetings Act Obligations

Do you or your client need any disability accommodations? YES

If yes, please identify the requested accommodation:

ASSISTIVE LISTENING DEVICE (ALD)

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/30/2021

Dated

/s/ WILLIAM N SOSIS

Signed

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Tuesday, August 24, 2021 9:17 AM
To: Liam B. McManus
Subject: Re: NJ eCourts MOTION TO RELIEVE COUNSEL Notification - Civil Case WRN-L-000298-21

(2)
[REDACTED]

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Liam McManus
Sent: Tuesday, August 24, 2021 9:15 AM
To: Dena Hrebenak
Subject: RE: NJ eCourts MOTION TO RELIEVE COUNSEL Notification - Civil Case WRN-L-000298-21

[REDACTED]

Thanks again,
Liam McManus
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
Direct Dial (908) 878-0116
Main Number (908) 454-8300
Fax (908) 454-5390
lmcmamus@floriolaw.com
www.floriolaw.com



STEINHARDT
CAPPELLI
TIPTON &
TAYLOR LLC

From: Dena Hrebenak
Sent: Tuesday, August 24, 2021 9:10 AM
To: Liam McManus
Subject: Fw: NJ eCourts MOTION TO RELIEVE COUNSEL Notification - Civil Case WRN-L-000298-21

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Tuesday, August 24, 2021 9:10 AM
To: Liam B. McManus
Subject: Fw: Case Number: WRN-L-000298-21
Attachments: MotionBriefToRecuse.pdf

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Bill Sosis
Sent: Tuesday, August 24, 2021 9:01 AM
To: Dena Hrebenak ; Michael Lavery ; Joe Watters
Subject: Case Number: WRN-L-000298-21
Please see attached Motion to Recuse Judge Thomas C. Miller, A.J.S.C.

WILLIAM N. SOSIS, ESQ. (#100032014)

15 Brantwood Terrace
Hackettstown, New Jersey 07840

Tel: (201) 655-6400

Fax: (201) 781-7855

Email: Bill@SosisLaw.com

Plaintiff Pro Se.

WILLIAM N. SOSIS

Plaintiff,

v.

TOWNSHIP OF MANSFIELD COMMITTEE
and DENA HREBENAK, in her official
capacity as Township Clerk for the Township of
Mansfield,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY

DOCKET NO.: L-000298-21

Civil Action

**NOTICE OF MOTION
FOR RECUSAL OF JUDGE**

ORAL ARGUMENT REQUESTED

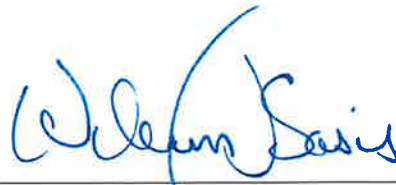
TO: HON. THOMAS C. MILLER, A.J.S.C.
20 North Bridge Street
Somerville, NJ 08876
VIA E-COURTS

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 1:12-2, the undersigned, Plaintiff, William Sosis, will move for an Order to recuse the Honorable Thomas C. Miller, A.J.S.C. as Case Management Judge in this action.

PLEASE TAKE FURTHER NOTICE that this Notice of Motion is being filed in accordance with R. 1:6-2 and plaintiff hereby requests oral argument.

Plaintiff, William Sosis shall rely upon the attached Brief in Support of this Motion.

By: _____



William N. Sosis
Plaintiff Pro Se

Dated: August 19, 2021

WILLIAM N. SOSIS (#100032014)

15 Brantwood Terrace
Hackettstown, New Jersey 07840
Tel: (201) 655-6400
Fax: (201) 781-7855
Email: Bill@SosisLaw.com
Plaintiff Pro Se.

WILLIAM N. SOSIS

Plaintiff,

v.

TOWNSHIP OF MANSFIELD COMMITTEE
and DENA HREBENAK, in her official
capacity as Township Clerk for the Township of
Mansfield,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY

DOCKET NO.: L-000298-21

Civil Action

ORDER

THIS MATTER being opened to the court by William N. Sosis, Plaintiff in the case, by way of motion seeking an Order to Recuse, and the Court having considered the arguments of counsel, the papers submitted and the Court having concluded that valid reasons appear which might lead counsel or the parties to believe that a fair hearing cannot take place before this Court, and other good cause having been shown;

IT IS ON THIS _____ **DAY OF** _____, 2021;

ORDERED that Judge Thomas C. Miller, A.J.S.C., be recused in this action and that another judge of this Court will hear and decide all contested issues in the above captioned matter.

AJSC

This Motion was:

Opposed: _____

Unopposed: _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY

WILLIAM N. SOSIS

Plaintiff,

v.

TOWNSHIP OF MANSFIELD COMMITTEE
and DENA HREBENAK, in her official
capacity as Township Clerk for the Township of
Mansfield,

Defendants.

DOCKET NO.: L-000298-21

Civil Action

**BRIEF IN SUPPORT OF MOTION
TO RECUSE JUDGE**

WILLIAM N. SOSIS (#100032014)

15 Brantwood Terrace

Hackettstown, New Jersey 07840

Tel: (201) 655-6400

Fax: (201) 781-7855

Email: Bill@SosisLaw.com

Plaintiff Pro Se.

On The Brief:

William N. Sosis

Plaintiff Pro Se

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	II
TABLE OF AUTHORITIES	III
PRELIMINARY STATEMENT	1
LEGAL STANDARD	1
ARGUMENT	2
POINT 1: THE JUDGE'S VIEW ON GOVERNMENT LITIGANTS MANIFEST AN APPEARANCE OF PARTIALITY, REQUIRING RECUSAL	2
POINT 2: JUDGE MILLER'S DECISIONMAKING IS POLITICIZED AND REQUIRES RECUSAL	4
A. Judge Miller's conduct during the Warren County Re-Organization Meeting on January 2, 2021 is ground for recusal.....	4
B. Judge Miller's History with Government Defendants or their Municipal Attorneys calls RPC 1.9 into question and requires recusal.....	5
C. Many of the Events during the Warren County Re-Organization Meeting on January 2, 2021 establish an appearance of impropriety and are grounds for recusal.....	6
CONCLUSION	8

TABLE OF AUTHORITIES**CASES**

<u>Chandok v. Chandok</u> , 406 N.J. Super. 595, 604 (App. Div. 2009)	6
<u>City of Atlantic City v. Trupos</u> , 201 N.J. 447 (2010)	5
<u>DeNike v. Cupo</u> , 196 N.J. 502, 517 (2008)	1
<u>Marinelli v. Township of Lopatcong</u> (N.J. Super. App. Div. 2012)	7
<u>Offutt V. United States</u> , 348 U.S. 11, 14 (1954)	1
<u>State v. A.T.C.</u> , 239 N.J. 450, 467 (2019)	4
<u>State v. Deutsch</u> , 34 NJ. 190, 206 (1961)	1
<u>State v. Hannah</u> (N.J. Super. App. Div. 2012)	6
<u>State v. McCabe</u> , 201 N.J. 34, 43 (2010)	2
<u>State v. Tucker</u> , 264 NJ. Super. 549, 554 (App. Div. 1993)	1

STATUTES

<u>N.J.S.A. 47:1A-1 et seq.</u>	3
---	---

RULES

<u>RPC 1.9</u>	5
<u>Rule 1:12-1</u>	1
<u>Rule 1:12-1(g)</u>	6
<u>Rule 1:12-2</u>	1
<u>Rule 1:21-1</u>	2

OTHER AUTHORITIES

<u>Canon 1</u>	5
<u>Canon 2</u>	2
<u>Canon 3(C)(1)</u>	5
<u>N.J. Const. art. III, ¶ 1</u>	4

PRELIMINARY STATEMENT

Nothing is more integral to our judicial system than the impartiality of judges. Both the federal and state constitutions are committed to the principle that judges must be scrupulously impartial in the cases that they hear. To that end, and for the reasons discussed below, this motion respectfully requests that Judge Thomas C. Miller recuse himself from this matter.

LEGAL STANDARD

Because all litigations should proceed without suspicion, New Jersey holds its judges to an exacting standard where the appearance of bias alone is sufficient to warrant disqualification. State v. Deutsch, 34 N.J. 190, 206 (1961) (quoting Offutt v. United States, 348 U.S. 11, 14 (1954)), see also State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993). Disqualification is governed by Rule 1:12-1 which addresses bias as a reason for recusal and includes in part(g) "when there is any reason which might preclude a fair and unbiased hearing and judgment or which might reasonably lead counsel or the parties to believe so." See Ferren v. City of Sea Isle, 243 N.J. Super. 522, 526 (App. Div. 1990) Rule 1:12-2 specifically allows any party on motion to seek disqualification of a Judge, but such motion should be filed before trial or argument. A party seeking recusal need not "prove actual prejudice on the part of the court to establish an appearance of impropriety, an objective reasonable belief that the proceedings were unfair is sufficient." DeNike v. Cupo, 196 N.J. 502, 517 (2008).

ARGUMENT

POINT 1: THE JUDGE'S VIEW ON GOVERNMENT LITIGANTS MANIFEST AN APPEARANCE OF PARTIALITY, REQUIRING RECUSAL

Plaintiff believes Judge Miller, as former Somerset County Counsel for nearly 20-years,¹ staunchly opposes non-government litigants who attempt to exercise their rights against public entities. A cursory review of Judge Miller's former clients shows that Judge Miller advocated strictly for public bodies.^{2,3,4} This history alone warrants Judge Miller's disqualification. See Rule 1:21-1, cmt. ("a judge formerly employed by a governmental agency ... should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association."); see also Code of Judicial Conduct Canon 2, cmt. ("A judge must avoid all impropriety and appearance of impropriety"); Canon 3(C)(1) of the Code of Judicial Conduct similarly requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned. These court rules "are designed to address actual conflicts and bias as well as the appearance of impropriety." State v. McCabe, 201 N.J. 34, 43 (2010).

There can be no question that Judge Miller's long-term loyalty to government clients has affected how he adjudicates cases where a party is a public body. To illustrate, on October

¹ Kelly/Messenger-Gazette, Michael J. "Cooper in Line for Somerset County Counsel." NJ, May 17, 2011. https://www.nj.com/messenger-gazette/2011/05/cooper_in_line_for_somerset_county_counsel.html.

² Kelly/Messenger-Gazette, Michael J. "Cooper in Line for Somerset County Counsel." nj, May 17, 2011. https://www.nj.com/messenger-gazette/2011/05/cooper_in_line_for_somerset_county_counsel.html.

³ CourtListener. "Kovalcik v. Somerset County, 21 A.3d 1142, 206 N.J. 581 – CourtListener.Com." Accessed August 24, 2021. <https://www.courtlistener.com/opinion/2559175/kovalcik-v-somerset-county/>.

⁴ "Superior Court Judge Thomas C. Miller Named Assignment Judge of Somerset/Hunterdon/Warren Vicinage," n.d., 2.

21, 2015, in a Preliminary Decision where plaintiffs were four municipalities, Judge Miller wrote:

The municipalities, as governmental entities, are Certainly "**encumbered**" by *statutory requirements* created by the requirements of the *Open Public Records Act* and the *Open Public Meeting[s] Act* as well as other related Statutes that ensure that they act in a manner that "*squares all corners*". Certainly the objectors, both profit and non-profit, do not have these *impediments*. The opposition's seeming *callousness* with regards to those issues demonstrates a lack of understanding of the manner in which a public body acts and how those processes differ from a private body.⁵

(emphasis added)

Note how Judge Miller describes the *Open Public Records Act*, the *Open Public Meetings Act*, and *other related Statutes* that exist to ensure the government's compliance with the law. N.J.S.A. 47:1A-1 et seq. He describes these *statutory requirements* as *impediments* that have *encumbered* municipalities by ensuring that they act lawfully. This language demonstrates Judge Miller's disdain for laws that protect the public's participation in government and access to government records. Note also how he describes the four municipalities with reverence but describes their opponents as callous and ignorant of the workings of public bodies. This rationale is reminiscent of Alexander Pope, an 18th century poet whose poem *An Essay⁶ on Man* vindicates the ways of God by arguing that the workings of God are beyond human understanding and should not be questioned. But public bodies are neither infallible nor above the law. They consist of fallible men and women who are not gods. Judges are bound to follow the law. No Judge should ever interpret a law as more

⁵ See page 17, ¶1, Preliminary Decision on Motion Extending Time to Obtain Expert Report and Entry of Case Management Order #2, October 21, 2015. Last accessed: August 22, 2021. Available at: <https://frenchtownboro.com/download/documents/LTR-FROM-JUDGE-MILLER-W-PRELIMINARY-DECISION-A0872060x9D7D2.pdf>

⁶ Foundation, Poetry. "*An Essay on Man: Epistle I by Alexander Pope*." Poetry Foundation, August 23, 2021. <https://www.poetryfoundation.org/>. <https://www.poetryfoundation.org/poems/44899/an-essay-on-man-epistle-i>.

favorable to one party than another. As such, Judge Miller's repudiation of laws he regards as *impediments* is a blatant departure from the rule of law.

For the above reasons and those discussed below, Plaintiff submits that under any objective analysis, Judge Miller's prior work as an attorney and his views on public bodies warrant recusal. Therefore Plaintiff respectfully requests that Judge Miller disqualify himself. Therefore, Plaintiff respectfully requests that Judge Miller disqualify himself.

POINT 2: JUDGE MILLER'S DECISIONMAKING IS POLITICIZED AND REQUIRES RECUSAL

A. Judge Miller's conduct during the Warren County Re-Organization Meeting on January 2, 2021 is ground for recusal.

The New Jersey Constitution prescribes the separation of powers among the three branches of government:

The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

(N.J. Const. art. III, ¶ 1.)(State v. A.T.C., 239 N.J. 450, 467 (2019))

In accordance with our federal and state constitutions, the impartiality of judges depends on their independence. But this requires judges to be free from influence from the other branches of government. With this in mind a video of Judge Miller can be seen having what appears to be an *ex parte* conversation with Warren County Prosecutor, James L. Pfeiffer, Esq., before the start of the Warren County Re-Organization Meeting on January 2, 2021.⁷ See Exhibit 1. Among other things, Judge Miller can be heard informing Mr. Pfeiffer

⁷ NJ, Warren County. County of Warren NJ Reorganization Meeting, 2020. <https://vimeo.com/493821672>.

about a phone call he received regarding what appears to be a legal matter. Later, approximately 53 minutes into the video, Judge Miller can be heard saying, **"we hope to keep that great working relationship that the County has with the judiciary."**

Plaintiff submits that Judge Miller's actions are an effrontery to our system of checks and balances and violate Article III, ¶ 1 of our state constitution and the Code of Judicial Conduct, Canon 1.

As the fundamental purpose of our three branches of government is to safeguard the rule of law, Plaintiff therefore respectfully requests that Judge Miller disqualify himself.

B. Judge Miller's History with Government Defendants or their Municipal Attorneys calls RPC 1.9 into question and requires recusal

Despite the high probability of a RPC 1.9 violation, Plaintiff is unaware if any former clients of Judge Miller include any Defendant or their law firm and whether any "same or substantially related" facts exist that might call RPC 1.9 into question. However, the New Jersey Supreme Courts' rejection of the mere "appearance of impropriety" only applies to the disqualification of law firms. City of Atlantic City v. Trupos, 201 N.J. 447 (2010). Additionally, Canon 3(C)(1) states in relevant part:

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding; [or]
- (b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it[.]

See State v. Hannah (N.J. Super. App. Div. 2012)(attached herewith as **Exhibit 2** pursuant to Rule 1:36-3)

Taken together, Plaintiff asserts that Points 1 and 2 above present more than a mere appearance of impropriety and warrant recusal. See Chandok v. Chandok, 406 N.J. Super. 595, 604 (App. Div. 2009)(stating that it is unnecessary to prove actual prejudice on the part of the court, but rather the mere appearance of bias may require disqualification so long as the belief of unfairness is "objectively reasonable."); see also Rule 1:12-1(g) instructing judges to avoid sitting in any matter "when there is any . . . reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

C. Many of the Events during the Warren County Re-Organization Meeting on January 2, 2021 establish an appearance of impropriety and are grounds for recusal.

In addition to the above and in further support of Judge Miller's recusal, Plaintiff submits the following facts that occurred during the Warren County Re-Organization Meeting on January 2, 2021 that establish an appearance of impropriety:

1. An estimated \$66,000.00 contract from the Board of County Commissioners was awarded to the Law Firm Lavery, Selvaggi, Abromitis & Cohen, P.C. Plaintiff notes that in this case, the Defendants' municipal attorney is Michael B. Lavery, Esq.⁸ from said law firm. This is the same law firm that defended a matter before Judge Miller. The "winners", the Township of Lopatcong and then-mayor, Douglas J.

⁸ "Michael B. Lavery, *Lavery, Selvaggi, Abromitis & Cohen, P.C.*" Accessed August 24, 2021. <https://www.lsaclaw.com/lawyer/michael-lavery>.

Steinhardt, a politician^{9,10,11} and former general counsel to the New Jersey Republican State Committee, were all clients of the Law Firm Lavery, Selvaggi, Abromitis & Cohen, P.C. See Marinelli v. Township of Lopatcong (N.J. Super. App. Div. 2012)(attached herewith as **Exhibit 3** pursuant to Rule 1:36-3)

2. The Law Firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC, was awarded contracts totalling an estimated \$282,500. Here Plaintiff notes that Douglas J. Steinhardt, is a partner in said law firm. He is also the ex-mayor of the Township of Lopatcong and defendant in the aforementioned litigation, where Judge Miller dismissed conflict of interest allegations against him.¹²
3. During the Re-Organization meeting, Commissioner Deputy Director, Jason J. Sarnoski, announced the renovation of "Courtroom 1" and added, "I'm sure Judge Miller will enjoy the courtroom." On January 14, 2021, the Board of County Commissioners approved the bidding for extensive upgrades to Courtroom 1. The upgrades are estimated to cost about \$1 million.¹³

Given the ties between Mr. Steinhardt, Mr. Lavery, Mr. Pfeiffer, the Commissioners, and Judge Miller, as well as the partisan politics discussed in the Commissioner's Re-Organization Meeting, Plaintiff believes that the above events establish an appearance of impropriety.

⁹ "Doug Steinhardt, pro-Trump NJ GOP Leader, Enters 2021 Governor's Race." Accessed August 24, 2021. <https://www.northjersey.com/story/news/politics/elections/2020/12/11/doug-steinhardt-pro-trump-nj-gop-leader-enters-2021-nj-governor-race/3893174001/>.

¹⁰ "N.J. Republican Chair Touts His Support of Trump as He Enters Race to Take on Murphy - N.J. Com." Accessed August 24, 2021. <https://www.nj.com/politics/2020/12/nj-republican-chair-touts-his-support-of-trump-as-he-enters-race-to-take-on-murphy.html>.

¹¹ "Steinhardt out, Five Days after Capitol Riot - POLITICO." Accessed August 24, 2021. <https://www.politico.com/newsletters/new-jersey-playbook/2021/01/12/steinhardt-out-after-tying-himself-to-trump-491365>.

¹² "Lopatcong Township Passes Law Permitting Paving Companies like One with Ties to Mayor's Law Firm - Lehighvalleylive.Com." Accessed August 24, 2021. https://www.lehighvalleylive.com/phillipsburg/2011/07/lopatcong_township_passes_asph.html.

¹³ WRNJ Radio. "Warren County's Historic Courthouse Will Have Its Original Courtroom Renovated This Year," January 14, 2021. <https://wrnjradio.com/warren-countys-historic-courthouse-will-have-its-original-courtroom-renovated-this-year/>.

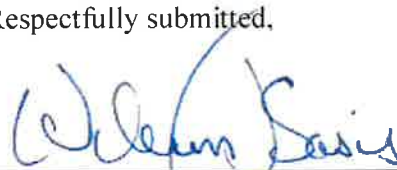
CONCLUSION

In light of the above, it is indisputable that an objective analysis of the facts presented herein would reasonably call into question the Honorable Thomas C. Miller's impartiality. One of the foundational underpinnings of our judicial system is equality under the law. Plaintiff will be deprived of this constitutional guarantee should his case be heard by a judge who has most likely already deemed the Defendants, the winning party.

Respectfully submitted,

Dated: August 24, 2021

By:


WILLIAM N. SOSIS

CERTIFICATION

I hereby certify that the foregoing statements made by me are true to the best of my information, knowledge and belief. I am aware that if any of the foregoing statements made by me are knowingly false, I am subject to punishment.

Dated: August 24, 2021

By:


WILLIAM N. SOSIS

Exhibit 1

EXHIBIT 1



Exhibit 2

STATE OF NEW JERSEY, Plaintiff-Respondent,
v.
WILBERT HANNAH, Defendant-Appellant.

DOCKET NO. A-5099-09T4

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

Submitted May 2, 2012

Decided July 16, 2012

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

Before Judges Cuff and Waugh.

On appeal from the Superior Court of New Jersey, Law Division,
Hudson County, Indictment No. 93-08-1826.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique
Moyle, Designated Counsel, on the brief).

Edward J. DeFazio, Hudson County Prosecutor, attorney for respondent
(Erin Campbell, Assistant Prosecutor, on the brief).

PER CURIAM

Page 2

Defendant appeals from the denial of his motion for a new trial¹ based on allegedly withheld exculpatory evidence. A jury found defendant guilty of two counts of felony murder, two counts of armed robbery, and one count of possession of a handgun for an unlawful purpose. He is serving consecutive life terms with thirty-year parole disqualifiers. We affirmed defendant's conviction and sentence on direct appeal, State v. Hannah, No. A-5022-94 (App. Div. December 11, 1997); the Supreme Court denied certification, 153 N.J. 217 (1998). Defendant's first petition for post-conviction relief (PCR) was denied; we remanded for an evidentiary hearing. State v. Hannah, No. A-6424-99 (App. Div. Jan. 31), certif. denied, 174 N.J. 41 (2002). Following an evidentiary hearing, the petition was denied; we affirmed. State v. Hannah, No. A-6379-01 (App. Div. Nov. 7, 2003), certif. denied, 178 N.J. 453 (2004). Defendant filed a motion for new trial based on newly discovered evidence. The motion was denied; defendant appealed, and the matter was remanded for an evidentiary hearing to determine whether a Brady² violation occurred. State v. Hannah, No. A-3788-07 (App. Div.

Page 3

June 19, 2009). Following the evidentiary hearing, the judge found the State did not withhold exculpatory evidence and denied the motion. Defendant also filed a motion for recusal. The judge denied this motion and defendant appeals from both orders. We reverse the order denying defendant's motion for recusal and remand for a new evidentiary hearing.

The conviction arises from the shooting of two drugs dealers by two men in Jersey City. The jury found that defendant and William LaCue lured Luis Flores and Angel Salazar to Jersey City under the pretense that defendant and LaCue wanted to purchase a large quantity of heroin for distribution by them. When Flores and Salazar arrived in Jersey City, two men entered their car, shot them and took the heroin. When arrested, LaCue implicated defendant, who was arrested, indicted, and eventually convicted of two counts of felony murder, among other charges.

Defendant has insisted throughout these proceedings that another person, referred to variously as Maurice Thomas, Mo-T, and Big Mo-T, was the second man in the car with LaCue. As developed more completely in the evidentiary hearing conducted to address defendant's first PCR petition, defendant admitted he was in the vicinity when Flores and Salazar were shot and killed. He has consistently maintained, however, that Mo-T was

Page 4

the second shooter, and the State withheld evidence from him at trial that placed Mo-T in the victim's car.

Defendant filed a request in 2007 for the discovery provided to his defense attorney prior to his 1993 trial. On receipt, defendant discovered a six-page supplementary report dated June 8, 1993, prepared by Lieutenant Charles Lee Redd (Redd Report), of the Hudson County Prosecutor's Office. Redd related that a pager found at the scene of the shooting was traced to a person known as Rabb. Defendant is known as Rabb. According to the Redd Report, when an officer paged the number, Mo-T, not defendant, responded. Arguing that the Redd Report had not been provided to him or his attorney prior to his 1993 trial and insisting that this evidence established Mo-T was LaCue's companion, defendant filed a motion for a new trial.

At the conclusion of the new-trial evidentiary hearing, defendant argued the judge should recuse himself because he was the Hudson County Prosecutor from 1997-2002. During that time, this court rendered its opinion on defendant's direct appeal, defendant filed a PCR petition, and this court reversed the denial of the first PCR and remanded for an

evidentiary hearing. During the time the judge served as county prosecutor, the evidentiary hearing was conducted and the petition was denied,

Page 5

and defendant filed a notice of appeal. When we affirmed denial of the first PCR, Judge Theemling was no longer prosecutor.

On appeal, defendant raises the following arguments:

POINT ONE

THE PCR II JUDGE SHOULD HAVE RECUSED HIMSELF FROM DECIDING WHETHER THE HUDSON COUNTY PROSECUTOR'S OFFICE VIOLATED BRADY V. MARYLAND, 373 U.S. 83 (1963), BECAUSE HE WAS FORMERLY THE HUDSON COUNTY PROSECUTOR.

POINT TWO

THE STATE VIOLATED BRADY V. MARYLAND, 373 U.S. 83 (1963).

POINT THREE

IN THE ALTERNATIVE, DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE FOR FAILING TO USE LT. REDD'S REPORT AT TRIAL OR ON APPEAL.

A recusal determination rests with the trial court's discretion. State v. McCabe, 201 N.J. 34, 45 (2010); State v. Marshall, 148 N.J. 89, 275-76 (citations omitted), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997); Jadlowski v. Owens-Corning Fiberglas Corp., 2 83 N.J. Super. 199, 221 (App. Div. 1995) ("The trial judge is in as good a position as any to evaluate a claim that an action has the appearance of impropriety."), cert. denied, 143 N.J. 326 (1996), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997). On appeal, this court will assume the trial judge applies his or her "conscious exercise of good will and mature judgment to

Page 6

decide" a recusal motion. Magill v. Casel, 238 N.J. Super. 57, 63-64 (App. Div. 1990). Nevertheless, "judges are not free to err on the side of caution; it is improper for a court to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court." Marshall, *supra*, 148 N.J. at 276; *see Johnson v. Johnson*, 204 N.J. 529, 551 (2010).

Judges also have a duty to "avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and

impartiality of the Judiciary." DeNike v. Cupo, 196 N.J. 502, 507 (2008).
 "'Fundamental to any consideration of possible judicial disqualification is a showing of prejudice or potential bias.'" Marshall, supra, 148 N.J. at 276 (quoting State v. Flowers, 109 N.J. Super. 309, 312 (App. Div. 1970)).

This general duty is encompassed in the New Jersey Code of Judicial Conduct. Canon 2 provides, in relevant part, that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," and consequently "must avoid all impropriety and appearance of impropriety." Additionally, Canon 3(C)(1) states in relevant part:

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned,

Page 7

including but not limited to instances where:
 (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding; [or]
 (b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it[.]

Lawyers representing the government, such as prosecutors, are not automatically associated with other lawyers in that agency. Commentary to Canon 3C(1)(b). Rather, "a judge formerly employed by a governmental agency . . . should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association." Ibid.

N.J.S.A. 2A:15-49 requires disqualification of a judge in specific situations, including when the judge "[h]as been attorney of record or counsel for a party to such action" pending before the judge.³ Rule 1:12-1 incorporates N.J.S.A. 2A:15-49, but "goes further than the statute and requires

Page 8

disqualification 'when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which reasonably might lead counsel or the parties to believe so.'" State v. McCann, 391 N.J. Super. 542, 550 (App. Div. 2007) (quoting Rule 1:12-1(f)). The moving party need not

"prove actual prejudice on the part of the court"; rather, "the mere appearance of bias may require disqualification" so long as "the belief that the proceedings were unfair [is] objectively reasonable." Marshall, supra, 148 N.J. at 279 (citing R. 1:12-1(f)). Taken as a whole, these rules "are designed to address actual conflicts and bias as well as the appearance of impropriety." McCabe, supra, 201 N.J. at 43. Hence, the proper question on appeal is whether "a reasonable, fully informed person [would] have doubts about the judge's impartiality[.]" DeNike, supra, 196 N.J. at 517.

N.J.S.A. 2A:15-50 authorizes the challenged judge to personally decide the motion or appoint three disinterested persons to do so.⁴ The moving party may submit evidence or raise good faith questions concerning recusal, and the judge may respond. Magill, supra, 238 N.J. Super. at 64. Although generally straightforward, "difficult problems arise in those

Page 9

rare cases in which the ground argued for recusal is bias or other incapacity to sit fairly." Ibid. Accordingly, the "challenged judge who hears the motion should painstakingly set forth the objective and subjective bases for the ultimate decision." Id. at 65.

In State v. McNamara, the trial judge was First Assistant Prosecutor when the indictment against defendant was returned. 212 N.J. Super. 102, 108 (App. Div. 1986), certif. denied, 108 N.J. 210 (1987). The judge denied the defendant's motion for recusal. Ibid. In affirming, this court held the Supreme Court's administrative directive governing recusal of judges who served in government positions requires that, "[e]xcept in extraordinary circumstances, a judge should disqualify himself in a criminal matter which was pending in his office when he was the prosecutor or county public defender, whether or not he actively participated in the investigation, prosecution or defense of the case, or had actual knowledge of it . . . ha[d] the full force and effect of law." Id. at 108-10 (quoting Disqualification of Judges in Criminal Matters, Administrative Directive (Sept. 19, 1983), available at http://www.judiciary.state.nj.us/directive/personnel/dir_sep_19_83.pdf). Recusal of the county prosecutor is required because, having acted "as the prior head of [the] office, the judge

Page 10

would have had the overall responsibility for the conduct of the case." Id. at 108 (quoting Disqualification of Judges in Criminal Matters, supra). In distinguishing between the county prosecutor and the first assistant prosecutor, this court found the directive only required mandatory recusal

for the former, even though the latter position "has supervisory responsibility over all trial attorneys[.]" Id. at 109.

In contrast, the Supreme Court in State v. Harris, 181 N.J. 391, 511 (2004), held the PCR judge was not required to disqualify himself even though he was the acting county prosecutor at the time an indictment was returned against the defendant because the judge lacked "any personal recollection of the prosecution or supervision of the unrelated indictment that issued twenty-five years earlier." (Emphasis added). Additionally, "someone else's initials after his signature demonstrate[d] that he did not sign the indictment or personally prosecute the matter." Ibid. It found the, "at most, mere ministerial involvement by the 'Acting County Prosecutor'" was "not the sort of personal involvement that compels disqualification. Nor does that remote, unrelated indictment establish reason for questioning the judge's impartiality pursuant to Canon 3(c)(1)." Ibid. (Emphasis added). Additionally, the September 19, 1983 Administrative Directive

Page 11

did not mandate recusal where the PCR judge lacked "personal recollection of such personal involvement and the indictment support[ed] the judge's assertion that he did not sign the document; someone signed the document in his name." Ibid. Hence, "[g]iven the PCR court's marginal, if any, participation in the unrelated indictment, and its remoteness," the defendant failed to "establish[] that reason existed that 'might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so,' in violation of Rule 1:12-1." Ibid. Compare State v. Hill, 110 N.J. Super. 370, 374-75 (App. Div. 1970), where the trial judge, who was formerly the assistant prosecutor, was not disqualified from presiding at the criminal trial of a defendant whose file had been pending in the prosecutor's office during the judge's employment, but the judge as an assistant prosecutor had no knowledge of the matter; and, State v. Tucker, 264 N.J. Super. 549, 555 (App. Div. 1993), certif. denied, 135 N.J. 468 (1994), which reversed the defendant's conviction because the judge, who previously served as assistant prosecutor and had presented evidence against the defendant to a grand jury, should have recused himself in a subsequent yet unrelated trial against the same defendant.

Page 12

Here, the trial occurred in September and October 1994. Defendant filed a notice of appeal in 1995; the Attorney General assumed responsibility for the direct appeal. Hannah, A-5022-94, supra. Judge Theemling was appointed County Prosecutor in 1997. Defendant filed his first PCR in 1998,

which was denied by order dated June 28, 2000. As the county prosecutor, Judge Theemling was the attorney of record. The Attorney General assumed responsibility for the appeal from the denial of the first PCR. This court ordered an evidentiary hearing, Hannah, A-6424-99, supra, which was conducted in April 2002. An assistant prosecutor represented the State at this hearing; Judge Theemling was the attorney of record. The Attorney General assumed responsibility for the appeal from the second denial of defendant's first PCR. Hannah, A-6379-01, supra. By that time, Judge Theemling was no longer the Hudson County Prosecutor.

The alleged Brady violation that is the focus of the new trial motion occurred at least four years before Judge Theemling was appointed the Hudson County Prosecutor. There is nothing in the record to support a finding that the judge had any direct involvement with this matter, specifically the first PCR and the evidentiary hearing for the first PCR, as the Hudson County Prosecutor. On the other hand, Judge Theemling was the attorney

Page 13

of record and long-standing guidelines and case law direct that a judge should disqualify himself in a criminal matter which was pending in his office when he was the prosecutor. Active participation or actual knowledge of the matter are irrelevant because the county prosecutor appears as the attorney of record. Disqualification is required to dispel any hint of impartiality. To be sure, Judge Theemling was not the county prosecutor when the grand jury returned the indictment or the matter was tried. Yet, Judge Theemling was not confronted with an unrelated indictment, as in Harris. Rather, the matter of State v. Hannah has been an active matter in the Hudson County Prosecutor's Office on a virtually continuous basis since 1993, and certainly during 1997-2002, when the judge appeared as attorney of record in opposition to defendant's first PCR.

We, therefore, hold that the judge should have recused himself from this evidentiary hearing. We reverse and remand for an evidentiary hearing before a different judge.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

Notes:

¹ Although styled as a motion for a new trial, the record contains various references to the proceeding as post-conviction relief.

² Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

³ Although the pertinent Rule and Cannon "are not perfectly consistent with each other, . . . this court and the [] Supreme Court have dealt with the rule and statute together and have applied the statute without apparent difficulty." Magill, supra, 238 N.J. Super. at 62.

⁴ Although Rule 1:12-1 is silent, it does not prohibit this action. Magill, supra, 238 N.J. Super. at 64.

EXHIBIT 3

No Shepard's Signal™

As of: August 19, 2021 1:01 PM Z

Marinelli v. Township of Lopatcong

Superior Court of New Jersey, Appellate Division

March 28, 2017. Argued; April 18, 2017. Decided

DOCKET NO. A-5124-13T3, A-3132-14T3

Reporter

2017 N.J. Super. Unpub. LEXIS 949 *; 2017 WL 1382217

ENZO MARINELLI, YOLA MARINELLI, JOHN JAMES and GENA JAMES, Plaintiffs, and PRECAST MANUFACTURING COMPANY, L.L.C. and GPF LEASING, L.L.C., Plaintiffs/Intervenor-Appellants, v. **TOWNSHIP OF LOPATCONG, TOWNSHIP OF LOPATCONG** MAYOR and COUNCIL, and **TOWNSHIP OF LOPATCONG** PLANNING BOARD, Defendants-Respondents. ENZO MARINELLI, YOLA MARINELLI, JOHN JAMES and GENA JAMES, Plaintiffs, and PRECAST MANUFACTURING COMPANY, L.L.C. and GPF LEASING, L.L.C., Plaintiffs/Intervenors-Appellants, v. **TOWNSHIP OF LOPATCONG, TOWNSHIP OF LOPATCONG** PLANNING BOARD and 189 STRYKERS ROAD ASSOCIATES, L.L.C., Defendants-Respondents. CHRISTIE VICTOR, FRANCIS VICTOR, DAVID CORRADO, JAYNE CORRADO, JEFF WACHELKA, ARTUR KUSNIERCZAK, MALGORZATA KUSNIERCZAK, MARGUERITE PURCELLI, MARGARET TAYLOR and LISA ANN CORREA, Plaintiffs-Appellants, and PRECAST MANUFACTURING COMPANY, LLC and GPF LEASING, L.L.C., Plaintiffs/Intervenors-Appellants, v. **TOWNSHIP OF LOPATCONG** PLANNING BOARD and 189 STRYKERS ROAD ASSOCIATES, L.L.C., Defendants-Respondents.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY [RULE 1:36-3](#) FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from Superior Court of New Jersey, Law Division, Warren County, Docket Nos. L-374-11, L-517-11, L-32-12 and L-290-12.

Core Terms

ordinance, zone, notice, **asphalt**, manufacturing, intervenors', planning board, facilities, master plan, municipality, Planning, purposes, proposed ordinance,

zoning ordinance, governing body, permitted use, newspaper, concrete, public body, photovoltaic, solar, **Township**, site plan, hearings, public notice, complied, invalid, conditional use, regulations, provisions

Counsel: Ronald D. Cucchiaro argued the cause for appellants (Weiner Law Group, L.L.P., attorneys, Mr. Cucchiaro, on the briefs in A-5124-13 and A-3132-14; John P. Miller, on the brief in A-5124-13).

Lawrence P. Cohen and John F. Casey argued the cause for respondents (Lavery, Selvaggi, Abromitis & Cohen, P.C., attorneys for respondents **Township of Lopatcong** and **Township of Lopatcong** Mayor and Council in A-5124-13 and A-3132-14; Chiesa, Shahinian & Giantomasi and Law Offices of Robert S. Dowd, Jr., L.L.C., attorneys for respondent 189 Strykers Road Associates, L.L.C. in A-3132-14; Mr. Cohen, Mr. Casey, James F. Moscagiuri, and Robert S. Dowd, Jr., on the joint brief).

John M. Carbone argued the cause for respondent **Township of Lopatcong** Planning Board (Carbone and Faasse, attorneys, join in the brief of respondents **Township of Lopatcong, Township of Lopatcong** Mayor and Council, and 189 Strykers Road Associates, L.L.C. in A-5124-13; Mr. Carbone, on the brief in A-3132-14).

Judges: Before Judges Yannotti, Fasciale and Gilson.

Opinion

PER CURIAM

Precast Manufacturing Company, L.L.C. (Precast) [*2] and GPF Leasing (GPF) (intervenors) appeal from an order upholding defendant **Township of Lopatcong's** adoption of two zoning ordinances. Ordinances 11-07 and 2011-15 allowed **asphalt** manufacturing as a conditional use in the southern portion of the research, office, and manufacturing zone (ROM zone south); and

designated solar photovoltaic facilities as a permitted use in the Township's research, office, and manufacturing zone (ROM zone), and as an accessory use in the ROM zone and the highway business zone (HB zone).

For purposes of this opinion, we have consolidated intervenors' appeal and ten other plaintiffs' (the other plaintiffs) appeal from an order upholding defendant Township of Lopatcong Planning Board's approval of an application by defendant 189 Strykers Road Associates, L.L.C. (189 Strykers) seeking to construct and operate an asphalt manufacturing plant in Lopatcong.

We affirm both appeals.

I.

Lopatcong underwent sustained residential development for decades. As a result, it focused on developing its commercial and industrial areas. Its Planning Board renamed the industrial zone as a "ROM" zone, which it divided into three non-contiguous sections. The ROM zone south comprised [*3] the largest of these sections, and was most suitable for industrial development due to its proximity to Route 22 and I-78. Lopatcong then engaged in various improvement projects in the ROM zone south, including the area through which Strykers Road traveled.

Before 189 Strykers expressed an interest in developing an asphalt plant on 189 Strykers Road, Lopatcong considered an amendment to its zoning ordinances. It did so in response to legislation mandating renewable energy facilities (such as solar and photovoltaic facilities) as permitted uses in industrial zones. As a result, Lopatcong reviewed proposed ordinance 11-07 to allow renewable energy facilities. The Council then passed ordinance 11-07.

Enzo and Yola Marinelli, and John and Gena James, Lopatcong residents (the individual plaintiffs), filed a complaint in lieu of prerogative writs against Lopatcong, its Mayor and Council, and Planning Board (defendants). They challenged ordinance 11-07 on several grounds. They argued primarily that defendants had violated the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163; the ordinance amounted to spot zoning; and the ordinance adoption process was tainted by the Mayor's economic ties with an owner [*4] of 189 Strykers.

Lopatcong responded by considering proposed

ordinance 2011-15. The Planning Board reviewed the proposed ordinance and issued minutes memorializing its comments. The Council considered the comments and sought additional input from the Planning Board. Thereafter, the Council adopted ordinance 2011-15. The individual plaintiffs then filed a complaint in lieu of prerogative writs challenging the adoption of ordinance 2011-15, in which the intervenors joined.

Meanwhile, 189 Strykers had filed an application with the Planning Board for preliminary and final site plan and subdivision approval for its operation of an asphalt plant under ordinance 11-07. 189 Strykers also filed a substantially similar application after the Council adopted ordinance 2011-15. The Planning Board conducted seven public hearings, heard testimony from thirteen witnesses, including ten experts, and unanimously approved the application.

The individual plaintiffs then filed a complaint challenging the Planning Board's approval of 189 Stryker's site plan applications. The intervenors also intervened in that action, and the other plaintiffs filed a separate complaint challenging the Planning Board's site [*5] plan approvals. The court consolidated these two complaints pertaining to the site plan challenges, and then consolidated them with the other two complaints the individual plaintiffs had filed challenging the enactment of both ordinances.

A judge conducted a bench trial as to the validity of the ordinances. He then dismissed the allegations against the Mayor, and found that prior to the adoption of the ordinances, asphalt manufacturing was a permitted use in the ROM zone; the ordinances did not significantly change the ROM zone; the Township complied with the MLUL provisions; and the ordinance did not violate any MLUL requirements. In his 118-page written opinion, the judge rejected the contentions raised by the individual plaintiffs and upheld the ordinances. Thereafter, the individual plaintiffs dismissed with prejudice their claims as to the ordinances.

A different judge then conducted a bench trial addressing allegations that the Planning Board arbitrarily approved the site plan applications. That judge also rendered a thorough opinion. After rejecting all contentions that the approvals were unreasonable, the judge dismissed the complaints as to the site plan approvals with prejudice. [*6]

On appeal from the order upholding Lopatcong's adoption of the zoning ordinances, intervenors argue the court erred by finding that (1) the operation of an

asphalt plant was a pre-existing permitted use, and Lopatcong issued adequate notice to nearby property owners even though it was not obligated to do so; (2) Lopatcong complied with the MLUL public notice requirements; (3) the Planning Board correctly submitted a consistency report to the Council; (4) ordinance 2011-15 complied with the MLUL uniformity requirement; (5) ordinance 2011-15 furthered the goals and purposes of the MLUL; (6) ordinance 2011-15 did not constitute spot zoning; and (7) the Mayor did not have a conflict of interest with regard to the ordinances.

On the appeal from the order upholding the Planning Board's approval of an application by 189 Strykers, intervenors contend that the Planning Board failed to provide notice of the hearings on the applications in accordance with the MLUL and the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21; imposed arbitrary limits on the public's participation in the application hearings; allowed 189 Strykers to revise its storm water management plan and private road design after the Planning Board [*7] approved the application; and delegated decision-making authority to its engineer. They further contend that the Mayor's alleged conflict of interest tainted the approvals, and that the court erred in ordering no remedial action for the claimed errors.

II.

We begin by addressing intervenors' appeal as to the enactment of the ordinances.

When reviewing a trial court's decision regarding the validity of a local board's determination, "we are bound by the same standards as was the trial court." Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 562, 849 A.2d 1117 (App. Div. 2004). Courts must give deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious, or unreasonable. Id. at 560, 849 A.2d 1117. A board's actions must be based on substantial evidence. Cell S. of N.J. v. Zoning Bd. of Adjustment, 172 N.J. 75, 89, 796 A.2d 247 (2002). Courts review de novo local boards' determinations on questions of law. Wilson v. Brick Tp. Zoning Bd. of Adjustment, 405 N.J. Super. 189, 197, 963 A.2d 1208 (App. Div. 2009).

A.

There is substantial evidence in the record to support the judge's finding that the operation of an asphalt plant was a pre-existing permitted use in the ROM zone.

Chapter 243 of the Township zoning code regulated

the ROM zone prior to the adoption of ordinances 11-07 and 2011-15. Section 243-75 of the code permitted in pertinent part "[f]abrication of products made of metal, wood, paper, cement or concrete"; business and [*8] professional offices; and "[s]cientific, engineering and/or research laboratories." Section 243-64.2 allowed accessory uses, such as outdoor bulk storage, which Section 243-64.2(a) defined as "the stockpiling or warehousing of vehicles, merchandise, materials and machinery outside the enclosed confines of a building, including but not limited to sand, gravel, dirt, asphalt, lumber, pipes, plumbing supplies, metal, concrete, insulation, construction equipment, construction vehicles, construction materials, storage trailers and containers."

At trial, Lopatcong's Planner George Ritter testified that he and the Planning Board had always considered asphalt manufacturing a permitted use under Section 243-75. He explained that ordinances 11-07 and 2011-15 did not change this, but rather, allowed for additional regulations by changing asphalt manufacturing to a conditional use. While acknowledging that asphalt manufacturing was not included in the Section 243-75 list of permitted uses, Ritter said that the list was not intended to be exhaustive or exclusive. The judge found that Ritter's trial testimony was credible.

Ritter also testified that asphalt manufacturing was essentially the same as concrete manufacturing, the difference being the type of binding agent used. [*9] In the case of concrete, the binding agent was Portland cement, and in the case of asphalt, the binding agent was a petroleum product called bituminous. Ritter stressed that no one had disputed concrete manufacturing was a permitted use under Section 243-75. Indeed, Precast had been manufacturing concrete for years on property located across the street from 189 Strykers Road, and Lopatcong never required it to obtain a variance to do so.

According to the court, Lopatcong "rightly classified" asphalt manufacturing and photovoltaic facilities as "industrial uses," which were permissible in the ROM zone under the original zoning ordinance. For the twelve years that Ritter served as Lopatcong's Planner, he "always considered" asphalt and concrete manufacturing to be permitted uses within the ROM zone. The court found that the only differences between concrete and asphalt were the binding agents and the temperature at which the two materials were created, and according to Ritter, these distinctions were immaterial for purposes of zoning. Although the court

recognized that the ordinances said asphalt and concrete manufacturing had not been a permitted use in the Township. the judge accepted Ritter's testimony [*10] that his office erroneously included this language.

We reject intervenors' argument raised for the first time that the ordinances substantially changed the character of the ROM zone by permitting solar photovoltaic facilities and by allowing non-stop production of asphalt. The evidence established that asphalt manufacturing and solar photovoltaic facilities were industrial uses, which Lopatcong allowed in the ROM zone. Furthermore, the State had declared solar energy facilities inherently beneficial uses suitable for inclusion in industrial zones. See N.J.S.A. 40:55D-4 (identifying solar or photovoltaic energy facilities as inherently beneficial uses); N.J.S.A. 40:55D-66.11 (stating "[a] renewable energy facility on a parcel or parcels of land comprising 20 or more contiguous acres that are owned by the same person or entity shall be a permitted use within every industrial district of a municipality").

Thus, whether such facilities previously existed in the ROM zone was insignificant: the Legislature had determined their suitability for industrial zones. Additionally, no evidence supported intervenors' contention that asphalt manufacturing changed the zone through its constant operations. As the court found, under the former [*11] version of the ordinance, nearby businesses operated throughout the night. Asphalt manufacturing was no different.

We conclude that intervenors' argument as to providing notice to nearby property owners is without sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(1)(E)*. We add that Lopatcong is not required to establish when boundary lines of certain nearby properties changed, or that the registered agents of the companies in fact shared the notices. Pursuant to N.J.S.A. 40:55D-12(b), service upon a company's agent was sufficient.

B.

Intervenors contend that the public notices of proposed ordinances 11-07 and 2011-15 were defective because they failed to summarize the nature of the changes proposed by the ordinances, as required by N.J.S.A. 40:49-2.1; and the ordinances' passages were defective because they did not contain a summary of the ordinances' purposes, but merely listed the ordinances by title. The court found that the public notices complied with the MLUL because the titles of the adopted

ordinances sufficiently described their "basic elements," including the permitted uses in their locations. We see no error here.

N.J.S.A. 40:49-2 sets forth the general rule as to notice of proposed and adopted land use ordinances. N.J.S.A. 40:49-2.1(a) provides [*12] an alternative form of notice for ordinances that are "in length, six or more octavo pages of ordinary print[.]" Accord Rockaway Shoprite Assocs., Inc. v. City of Linden, 424 N.J. Super. 337, 344, 37 A.3d 1143 (App. Div. 2011), certif. denied, 209 N.J. 233, 36 A.3d 1064 (2012). Both statutes require a municipality to provide public notice in a newspaper of a proposed ordinance. N.J.S.A. 40:49-2(a); N.J.S.A. 40:49-2.1. Under N.J.S.A. 40:49-2(a), the notice must include the full text of the proposed ordinance or include its title and a summary. N.J.S.A. 40:49-2.1(a) allows for "a brief summary of the main objectives or provisions of" the proposed ordinance in lieu of the entire text when the proposed ordinance is six or more pages in length.

Upon passage of an ordinance, N.J.S.A. 40:49-2(d) requires the "ordinance, or the title, or the title and a summary" to be published "at least once in a newspaper circulating in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality[.]" N.J.S.A. 40:49-2.1 has the same requirement for lengthy ordinances. "Upon passage of any such ordinance, notice of passage or approval shall be published in accordance with subsection d. of [N.J.S.A.] 40:49-2." N.J.S.A. 40:49-2.1.

Lopatcong published notice of ordinance 11-07 in The Star-Gazette. The notice stated that Lopatcong adopted an ordinance amending Chapter 243 adding (1) asphalt and concrete manufacturing facilities [*13] as conditional uses in the ROM zone south of the Norfolk southern railroad; (2) solar photovoltaic facilities as a permitted principal use in the ROM zone; and (3) solar photovoltaic facilities as an accessory use in the ROM zone and in the HB zone south of the Norfolk southern railroad. The notice stated that the ordinance was available for inspection at the municipal clerk's office. Lopatcong published notice in The Express Times that it had adopted ordinance 2011-15. The notice provided the same information as the notice for ordinance 11-07.

These notices complied with N.J.S.A. 40:49-2(a), as they included titles of the ordinances. Upon their passage, Lopatcong published notice by title of the ordinances in accordance with N.J.S.A. 40:49-2(d), which does not require a summary in addition to the title.

C.

Intervenors contend that Lopatcong did not comply with the MLUL consistency report requirement and failed to follow the proper procedure for adopting an ordinance that was inconsistent with the master plan.

The court found that Ritter's consistency report complied with the MLUL and detailed the ways in which ordinance 2011-15 was substantially consistent with the goals, policy, and uses set forth in the master plan. As [*14] Ritter explained, the master plan encouraged "greater flexibility in the type and size of industrial activities" within the ROM zone to encourage business development and offset the costs associated with residential development. Consistent with the master plan's goal to encourage attractive commercial development, the ordinance provided for setbacks and landscaping to "mitigate visual and noise impacts." Additionally, Ritter explained that the uses permitted by ordinance 2011-15 were consistent with existing uses in the ROM zone and would not change the character of the zone. The court underscored that professional planner Elizabeth McKenzie concurred with Ritter's conclusions.

The court also noted the Planning Board's contention that asphalt manufacturing was previously a permitted use in the ROM zone and that the Planning Board had always understood that use to be consistent with the master plan. Lopatcong enacted the ordinances to better control the use by changing its designation from a permitted to a conditional use. That the master plan did not specifically list asphalt manufacturing as an authorized use in the ROM zone was insignificant because the master plan did not constitute [*15] an exhaustive list of specific uses. Similarly, as the court explained, the master plan's silence on solar photovoltaic facilities did not establish that they were inconsistent with the ROM zone. The Legislature had declared them inherently beneficial uses appropriate for industrial zones.

Because the ordinance was consistent with the master plan, the court found that the Council did not have to comply with the procedure set forth in N.J.S.A. 40:55D-64. However, the court found that even if that statute applied, the ordinances were valid because the Council adopted the ordinance by a majority vote and the preamble of the ordinance provided the rationale.

Pursuant to N.J.S.A. 40:55D-64, "[p]rior to the hearing on adoption of a zoning ordinance, or any amendments

thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board" in accordance with N.J.S.A. 40:55D-26. N.J.S.A. 40:55D-26 requires the planning board to draft and transmit to the governing body a report on a proposed ordinance that identifies any provisions in the ordinance that are inconsistent with the municipality's master plan and include recommendations. Willoughby v. Planning Bd. of Twp. of Deptford, 326 N.J. Super. 158, 162, 740 A.2d 1097 (App. Div. 1999). N.J.S.A. 40:55D-26 provides:

Prior to the adoption of a development regulation, revision, or amendment thereto, the [*16] planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation.

N.J.S.A. 40:55D-62(a) authorizes a governing body to adopt an ordinance that is inconsistent with the master plan, so long as the majority of the governing body votes to approve the ordinance and the majority places its rationale in a resolution and on the record. Under N.J.S.A. 40:55D-62(a):

The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element [*17] and the housing plan element of a master plan, and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements; provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the

2017 N.J. Super. Unpub. LEXIS 949, *17

housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance[.]

Neither N.J.S.A. 40:55D-62(a), nor any other section of the MLUL, defines "substantially consistent." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 383, 658 A.2d 1230 (1995). Thus, one should apply the plain meaning of those terms. Id. at 384, 658 A.2d 1230. As the Court explained in Manalapan Realty, L.P.:

Substantial means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," *The Compact Oxford English Dictionary* 1947 (2d ed. 1993), or, "having real existence, not imaginary[;] firmly based, a substantial argument." *The [18] New Lexicon Webster's Dictionary of the English Language* 987 (1987). Thus, the concept of "substantially consistent" permits some inconsistency, provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan.

[*Ibid.* (alterations in original).]

A planning board's finding that a proposed ordinance is consistent with a master plan "is entitled to deference and great weight." Id. at 383, 658 A.2d 1230.

Intervenors argue that the evidence did not clearly establish that Ritter submitted a consistency report to the Planning Board prior to its referral of ordinance 2011-15 to the Council. Further, they claim that although Ritter's report identified solar photovoltaic facilities as inconsistent uses, the Planning Board failed to recognize this.

The Planning Board minutes show it considered a consistency report drafted by Ritter, and then voted to refer the matter to the Council. The Board forwarded to the Council a consistency report that Ritter apparently updated in light of the hearing. In that report, Ritter detailed the ways in which the proposed ordinance was consistent with the master plan.

After the Council removed a Strykers Road requirement from the [*19] proposed ordinance, it referred the matter to the Planning Board, and at the Planning Board's request, Ritter updated his consistency report to reflect the change. Thus, even if the Board did not

initially have a written report at one of the hearings, it had one at a later hearing at which it approved the ordinance.

Intervenors argue that because proposed ordinance 2011-15 was inconsistent with the master plan, Lopatcong had to comply with the procedure set forth in N.J.S.A. 40:55D-62 to lawfully adopt the ordinance. That statute, they claim, required the Council to adopt a resolution setting forth its rationale for approving the ordinance. They claim that ordinance 2011-15 is invalid because the Council failed to do this.

As the court found, the ordinance was consistent with the master plan, thus Lopatcong did not have to follow the procedure set forth in N.J.S.A. 40:55D-62.

D.

Intervenors contend that ordinance 2011-15 violated the MLUL uniformity standard because it authorized asphalt manufacturing in only one part of the ROM zone without a reasonable explanation for not allowing it in other parts of the ROM zone.

The court found that the ROM zone regulations, including ordinance 2011-15, did not offend the MLUL uniformity [*20] provision because the variations within the zone were rationally related to the characteristics of the land. In comparison to the northern and western ROM zones, the southern ROM zone was larger in size and was located near major highways. It also had newly constructed access to the highways through Strykers Road, which the Township had improved in order to attract industrial development in the area. Access to sewers was also limited. Thus, the court concluded that restricting asphalt and concrete manufacturing to the ROM zone south was justified by the characteristics of the area.

The court also noted that the MLUL's definition of conditional use recognized that "locational standards" for a particular property may vary within a zone. That definition defined conditional use as

a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.

[N.J.S.A. 40:55D-3.]

The MLUL uniformity provision provides:

2017 N.J. Super. Unpub. LEXIS 949, *20

The zoning ordinance shall be drawn with reasonable consideration to [*21] the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including planned unit development, planned unit residential development and cluster development, but the regulations in one district may differ from those in other districts.

[N.J.S.A. 40:55D-62(a).]

The uniformity provision is rooted in notions of due process and equal protection of law. *Rumson Estates, Inc. v. Mayor & Council of Fair Haven*, 177 N.J. 338, 357, 828 A.2d 317 (2003). It was intended to assure "potentially hostile landowners that all property which was similarly situated would be treated alike." *Ibid.* (quoting Robert M. Anderson, *American Law of Zoning*, § 5.22 at 333-34 (2d ed. 1977)).

The statute does not require complete uniformity within a zone. *Id.* at 357-58, 828 A.2d 317. A municipality may make distinctions within a zone so long as the classifications are reasonable and not arbitrary or unduly discriminatory. *Id.* at 358, 828 A.2d 317. "Constitutional uniformity and equality requires that classification be founded in real and not feigned differences having to do with the purpose for which the classes are formed." *Id.* at 359, 828 A.2d 317 (quoting *Roselle v. Wright*, 21 N.J. 400, 410, 122 A.2d 506 (1956)).

To promote industrial development [*22] and generate tax revenue, *Lopatcong* authorized *asphalt* manufacturing in the southern portion of the ROM zone because that part of the zone was best suited for the use based on its characteristics. The court's findings were supported by the evidence and were not arbitrary or capricious. *Riggs v. Long Beach*, 109 N.J. 601, 610-11, 538 A.2d 808 (1988).

E.

Intervenors contend that the ordinances were invalid because they did not advance any of the MLUL purposes set forth in *N.J.S.A. 40:55D-2*. They argue that *asphalt* manufacturing is not related to solar photovoltaic facilities, which are an inherently beneficial use of land, and allege that *Lopatcong* included *asphalt* manufacturing in the ordinance to confuse or mislead the public.

The judge found that ordinance 2011-15 furthered the purposes of the MLUL because it improved *Lopatcong's* land use scheme and encouraged appropriate and responsible commercial and industrial growth near roadways suitable for such development. This, in turn, promoted fiscal balance, a stable tax base and employment opportunities, which were all consistent with the MLUL goals. No credible evidence supported intervenors' claim that *Lopatcong* intended to mislead or confuse the public.

To be valid, a zoning ordinance must advance at least one of [*23] the MLUL purposes set forth in *N.J.S.A. 40:55D-2, Manalapan Realty, L.P., supra*, 140 N.J. at 380, 558 A.2d 1230. At the time, those purposes were as follows:

- a. To encourage . . . the appropriate use or development of all lands . . . in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;
- d. To ensure that the development . . . does not conflict with the development and general welfare of neighboring [lands];
- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds . . . ;
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while [*24] discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;

2017 N.J. Super. Unpub. LEXIS 949, *24

k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;

l. To encourage senior citizen community housing construction;

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

n. To promote utilization of renewable energy resources;

o. To promote the maximum practicable recovery and recycling of recyclable materials . . . through . . . planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling [*25] programs; and

p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites.

[N.J.S.A. 40:55D-2.]

Here, ordinance 2011-15 promoted commercial and industrial growth near major roadways, encouraged fiscal balance, a stable tax base and job creation, and allowed for renewable energy resource centers, all of which were consistent with the purposes set forth in N.J.S.A. 40:55D-2(a), (q), (h), (i), (k), (m) and (n). No credible evidence established any basis to find an improper motive or bad faith on part of Lopatcong. Although it is true that solar photovoltaic facilities — an inherently beneficial land use — is generally different from asphalt manufacturing plants, the two uses were correctly characterized as industrial uses. Thus, they shared a common land use, which the ordinance addressed.

F.

The court correctly rejected intervenors' contention that the ordinance amounted to spot zoning. The term "spot zoning" refers [*26] to a zoning ordinance that "benefit[s] particular private interests rather than the collective interests of the community." Taxpayers Ass'n

of Weymouth Twp. v. Weymouth Township, 80 N.J. 6, 18, 364 A.2d 1016 (1976), cert. denied, 430 U.S. 977, 97 S. Ct. 1672, 52 L. Ed. 2d 373 (1977). If, in assessing a spot-zoning challenge, a court finds that an ordinance "serves two purposes — one lawful and one unlawful — a court should not inquire into which purpose the municipality intended the ordinance to serve." Gallo v. Mayor & Twp. Council of Lawrence Twp., 328 N.J. Super. 117, 127, 744 A.2d 1219 (App. Div. 2000). The lawful purpose will suffice to validate the ordinance. *Ibid.* Similarly, "[a]n ordinance enacted to advance the general welfare by means of a comprehensive plan is unobjectionable even if the ordinance was initially proposed by private parties and these parties are in fact its ultimate beneficiaries." *Ibid.* (alteration in original) (quoting Taxpayers Ass'n of Weymouth Twp., *supra*, 80 N.J. at 18, 364 A.2d 1016).

The ordinance did not benefit one property owner, but rather, Lopatcong as a whole. Since at least 1989, Lopatcong had been encouraging development in the ROM zone, and the ordinance furthered that purpose. As the court found, at least six other parcels within the ROM zone south met the requirements for the conditional use of an asphalt or concrete facility. Thus, the ordinances did not single out one piece of property. Further, because asphalt and concrete manufacturing had been permitted uses [*27] in the ROM zone prior to the ordinances' adoption, Lopatcong did not create the use to benefit one land owner.

G.

Intervenors contend that ordinance 2011-15 is invalid as tainted by the Mayor's alleged conflict of interest. They claim that the Mayor was a partner in a law firm with the brother of an owner of 189 Strykers, and that this at least created an appearance of impropriety that rendered the ordinance invalid.

A public official may not participate "in judicial or quasi-judicial proceedings in which the official has a conflicting interest that may interfere with the impartial performance of his [or her] duties as a member of the public body." Wyzykowski v. Rizas, 132 N.J. 509, 523, 626 A.2d 406 (1993) (quoting Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen, 251 N.J. Super. 566, 568, 598 A.2d 1232 (App. Div. 1991)). Whether a conflict existed depends on the facts of the situation. *Ibid.* "The question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." *Ibid.* (quoting Van Itallie v. Franklin Lakes, 28 N.J. 258, 268, 146 A.2d 111 (1958)). As the

2017 N.J. Super. Unpub. LEXIS 949, *27

Court explained in Wyzykowski:

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and [*28] women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for as Justice Holmes has said, "Universal distrust creates universal incompetency." Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913); [see also] Ward v. Scott (II), 16 N.J. 16, 105 A.2d 851 (1954).

[*Id.* at 523-24, 626 A.2d 406 (quoting Van Itellie, *supra*, 28 N.J. at 269, 146 A.2d 111).]

The court rejected intervenors' conflict of interest challenge as unsupported by credible evidence. The judge stated emphatically that "[t]here is simply no evidence to support the [intervenors'] claims [of a conflict] other than surmise, shadow and speculation." Furthermore, the Mayor recused himself from voting on ordinance 2011-15.

We conclude that intervenors' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

III.

We now turn to the appeal pertaining to the Planning [*29] Board's approval of the site plans.

A.

We see no error as to the notice provided under the MLUL. Pursuant to N.J.S.A. 40:55D-10(a), a "municipal agency shall hold a hearing on each application for development[.]" Notice of the hearing

shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to subsection 7.1 of this act, an identification of the property proposed for development by street address, if any, or by

reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection 6b.

[N.J.S.A. 40:55D-11.]

To comply with N.J.S.A. 40:55D-11, the notice must "fairly apprise[]" those who may be affected by the development of the nature of the plan "so that they may make an informed determination as to whether they should participate in the hearing or, at the least, look more closely at the plans and other documents on file." Pond Run Watershed Ass'n v. Twp. of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 351, 937 A.2d 334 (App. Div. 2008) (emphasis omitted) (quoting Perlmart of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super. 234, 237-38, 684 A.2d 1005 (App. Div. 1996)). The notice must "accurately identify[] the type of use or activity proposed by the [land use] applicant in laymen's terms, rather than the technical zoning [*30] term for that use . . . [.]" *Id.* at 352, 937 A.2d 334 (second and third alterations in original) (quoting Perlmart of Lacey, *supra*, 295 N.J. Super. at 239, 684 A.2d 1005).

Proper notice is a jurisdictional requirement to a planning board's exercise of authority. *Id.* at 350, 937 A.2d 334. "A board's decision regarding a question of law, such as whether it has jurisdiction over a matter, is subject to de novo review by the courts and thus is afforded no deference." *Ibid.*

Intervenors contend that because 189 Strykers intended to use Lot 6.05 for storm water discharge, and because Lots 6.02 and 6.05 used a private driveway for access to Strykers Road, the notice of the hearings had to include those properties as part of the development. The final resolution granting site plan approvals, however, confirmed that the private road was, in fact, not a separate lot. The resolution granted "approval to subdivide the tract into two (2) parcels" with a "34 foot wide access road" that would service the parcels. It did not define the road as a separate parcel or lot.

Moreover, the court found that the storm water management plan made no significant change to the flow of water on the property. No credible evidence established that storm water runoff was a significant concern for the property. The property was [*31] not located in a flood zone and had no protected wetlands, buffers, or wildlife. Thus, the likelihood that nearby

2017 N.J. Super. Unpub. LEXIS 949, *31

property owners would be concerned with the construction, so as to require MLUL notice, was virtually nonexistent.

Finally, we see no merit in intervenors' contention that the notice should have included the resource recycling facility as a separate conditional use in the ROM zone. As the court found, the resource recycling facility was not separate from the asphalt manufacturing plant, but rather was part of the asphalt manufacturing process. The notice advised that the applicant sought site plan approval "to permit the construction and operation of an asphalt manufacturing facility." Thus, the notice adequately advised nearby property owners of the nature of the proceeding.

B.

We reject intervenors' contention that Lopatcong violated the OPMA, and that the court erred in ordering no action to remedy the alleged violations. They claim that the Planning Board failed to publish notice of its meetings in two New Jersey newspapers; used an out-of-state newspaper to effectuate notice; and did not include an agenda in the notices of hearings dated February 23, February 29, March [*32] 1 and March 5, 2012. They also argue that the court erred in finding that the MLUL notice helped cure the purported OPMA errors, and in finding that the OPMA notice errors did not warrant remedial action.

The OPMA is premised on the right of New Jersey citizens to "have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon." N.J.S.A. 10:4-7; see also Polillo v. Deane, 74 N.J. 562, 570-71, 379 A.2d 211 (1977) (explaining that the OPMA helps prevent corruption and furthers the ideal that the government is of and for the people). The statute makes exceptions to the rule "where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion." Polillo, supra, 74 N.J. at 572, 379 A.2d 211 (quoting N.J.S.A. 10:4-7). "[T]he statute should be 'liberally construed in order to accomplish its purpose and the public policy of this State.'" McGovern v. Rutgers, 211 N.J. 94, 99-100, 47 A.3d 724 (2012) (quoting N.J.S.A. 10:4-21); accord Burnett v. Gloucester Cty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 233, 976 A.2d 444 (App. Div. 2009) (holding that "the Act must be liberally construed in favor of openness").

The OPMA provides that "no public body shall hold a

meeting unless adequate notice thereof has been provided to the public." N.J.S.A. 10:4-9(a). A "public body" includes any board, council, or group of people authorized [*33] to "perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person[.]" N.J.S.A. 10:4-8(a). "Meeting" refers to "any gathering . . . attended by, or open to, all of the members of a public body, held with the intent . . . to discuss or act as a unit upon the specific public business of that body." N.J.S.A. 10:4-8(b). "Public business" refers to "all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business." N.J.S.A. 10:4-8(c).

The OPMA defines "adequate notice" as

written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegraphed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public [*34] body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the public body and (3) filed with the clerk of the municipality

[N.J.S.A. 10:4-8(d)]

N.J.S.A. 10:4-9(a) provides that "no public body shall hold a meeting unless adequate notice thereof has been provided to the public[.]" unless one of the exceptions in subsection (b) applies

y. Subsection (b) provides exceptions "[u]pon the affirmative vote of three quarters of the members present" if four conditions are met. Subsections (b)(1) and (2) require the matter is urgent and important and the meeting is limited to those matters of urgency and importance only. N.J.S.A. 10:4-9(b)(1) and (2). The

2017 N.J. Super. Unpub. LEXIS 949, *34

provisions in [subsection \(b\)\(3\)](#) and [\(b\)\(4\)](#) require:

(3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in the public place . . . and also by notifying the two newspapers . . . by telephone, telegram, or by delivering a written notice of same to such newspapers; and

(4) either (a) the public body could not reasonably have foreseen the need for [*35] such meeting at a time when adequate notice could have been provided; or (b) although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.

[\[N.J.S.A. 10:4-9\(b\)\(3\) and \(4\).\]](#)

[N.J.S.A. 10:4-15\(a\)](#) provides that "[a]ny action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court." The statute includes an exception where the governing body gave "advance published notice of at least 48 hours" in accordance with another law. [N.J.S.A. 10:4-15\(a\)](#).¹ "[S]trict adherence to the letter of the law is required in considering whether a violation of the Act has occurred." [Polillo, supra, 74 N.J. at 578, 379 A.2d 211](#). However, not every violation of the OPMA requires reversal of the government action that resulted from an inadequately noticed meeting. [Id. at 579, 379 A.2d 211](#).

In [Liebeskind v. Mayor & Municipal Council of Bayonne, 265 N.J. Super. 389, 394-95, 627 A.2d 677 \(App. Div. 1993\)](#), the court explained that

invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Act. [AQN Assoc., Inc. v. Florence, 248 N.J. Super. 597, 614-15, 591 A.2d 995 \(App. Div.\), cert. den\[ied\], 126 N.J. 385, 599 A.2d 162 \(1991\)](#). [Polillo, supra, 74 N.J. 562, 379 A.2d 211](#) [], expressly permits discretion in the fashioning of remedies for technical violations of the Act which do not result from bad faith motives and [*36] which do not undermine the fundamental purposes of the [OPMA.]

Thus, while the OPMA requires strict compliance, whether a governing body substantially complied with the requirements "carries some weight on the question

of remedy and relief." [Polillo, supra, 74 N.J. at 579, 379 A.2d 211](#).

In fixing a remedy, courts are afforded "maximum flexibility" based on "the nature, quality and effect of the noncompliance." *Ibid.* They should consider whether: the public had any notice of the meeting; members of the public attended the meeting; evidence was presented at the meeting; and any significant decision was made as a result of the meeting. [Id. at 579-80, 379 A.2d 211](#). Where the court finds a lack of bad faith and only technical noncompliance with the OPMA, it may affirm the government action and order future compliance with the OPMA. [Liebeskind, supra, 265 N.J. Super. at 394-95, 627 A.2d 677](#).

Here, the court found that [Lopatcong](#) failed to provide forty-eight-hours advance notice in two newspapers for the February 29, March 1, and March 5, 2012, meetings. Notice of these meetings appeared only in The Express Times. The court noted that Margaret Beth Dilts, the [township](#) clerk, custodian of records, and secretary on land use for the Planning Board, notified The Star Gazette of the hearings on the following dates: February [*37] 23 for the February 29 hearing; February 27 for the March 1 hearing; and March 2 for the March 5 hearing. However, the notifications were untimely for purposes of The Star Gazette's weekly publication deadlines.

The court found, however, that [Lopatcong](#) did not intentionally attempt to conceal the hearings from the public and underscored that the MLUL notice provided details on the nature of the hearings. Based on the [Polillo](#) and [Liebeskind](#) decisions, the court concluded that the [Township](#) substantially complied with the OPMA, and that the lack of notice in two newspapers did not warrant invalidation of the Board's decisions. The press regularly reported on the contents of the hearings, and the public attendance at the hearings was high.

Further, notice of the meetings appeared in The Express Times, which the court found was widely distributed in the area, and numerous press articles show that the application and Board proceedings were not kept secret. As we stated in [Liebeskind](#), "invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Act." [supra, 265 N.J. Super. at 394, 627 A.2d 677](#). The violations in this case did not offend the basic purposes of the OPMA. [*38]

As to the out-of-state newspaper, the court found that

¹ Intervenor's refer to this as "the last proviso" clause.

2017 N.J. Super. Unpub. LEXIS 949, *38

publishing in The Express Times "ma[de] some sense" because it was the newspaper most likely to inform the public at large of the Township's actions. Thus, publication in that paper furthered the purpose of the OPMA. Even if the Township erred in publishing notice in an out-of-state paper, which it did not, the error would not be a basis to invalidate the Board's action because, as the court found, the Board did not act in bad faith and its actions furthered the purpose of the OPMA.

We likewise conclude there is no merit to intervenors' contention that remedial action was necessary as a result of Lopatcong's failure to include an agenda in the notices for the February 23, February 29, March 1, and March 5, 2012, hearings. Any such errors were insufficient to void the Planning Board's action. The judge stated, "[e]veryone knew what this hearing was going to be about." No evidence established a bad faith attempt to conceal the nature of the hearing, and the MLUL notice contained "so much" more detail than simply listing the application in the agenda.

Intervenors argue that the court erred in finding that the Board's MLUL notice fell within the "last [*39] proviso clause" of N.J.S.A. 10:4-15(a), which provides that an action taken in violation of the OPMA is voidable unless the governing body provided at least forty-eight hours' notice of the hearing in accordance with another law. As explained in County of Monmouth v. Snyder-Westerlind Corp., 156 N.J. Super. 188, 193, 383 A.2d 740 (App. Div.), cert. denied, 77 N.J. 473, 391 A.2d 488 (1978), "the purpose of the clause was to avoid duplication of notice in instances such as the adoption of ordinances which, by their own procedure, require published notice before consideration." We conclude that the judge correctly determined that any purported OPMA violations did not warrant invalidation of the Planning Board's decisions.

C.

Intervenors contend the Planning Board delegated approval power to its engineer by providing in the May 23, 2012 resolution that if the applicant was unable to obtain an easement to install the drainage pipe, it could draft an alternative storm water management plan, so long as the Planning Board's engineer approved the plan. They claim that the storm water management plan was an essential element of the development; thus, the change to it should have been presented to the Planning Board for a decision after a public hearing. Additionally, they maintain that the engineer decided that the driveway on 189 Strykers's [*40] property should be a private road.

The court found that the Planning Board, not the engineer, made the decision to have the driveway remain a private access road to avoid the cost of maintenance to Lopatcong. N.J.S.A. 40:55D-24 of the MLUL provides that in considering an application for subdivision or site plan approval, a planning board "may employ . . . experts, and other staff and services as it may deem necessary." N.J.S.A. 40:55D-24; see also Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Bd., 420 N.J. Super. 193, 205, 19 A.3d 1036 (App. Div.), cert. denied, 208 N.J. 598, 34 A.3d 780 (2011) (finding proper a board's decision to have its professional consultant review a revised plan to determine whether it complied with testimony given at a hearing).

The Board agreed with its engineer that to save costs, 189 Strykers should maintain the road as private. The final decision was made by the Board. With respect to the storm water management plan, 189 Strykers submitted it to the Board for review by the Board and its professionals. At the hearings, 189 Strykers's engineer Kevin Smith testified to the nature of the plan, explaining that he was confident he could draft an alternative plan if 189 Strykers was unable to secure an easement to install the drainage pipe.

We conclude that intervenors' remaining arguments are without sufficient merit to warrant [*41] discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

End of Document

CERTIFICATION OF FILING AND SERVICE

I certify that on the date below I caused this document and all attachments to be delivered to the following persons via Electronic filing (*eCourts*) and email:

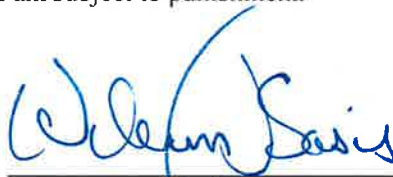
HON. THOMAS C. MILLER, A.J.S.C.
20 North Bridge Street
Somerville, NJ 08876
VIA E-COURTS

TOWNSHIP OF MANSFIELD COMMITTEE
100 Port Murray Road
Port Murray, New Jersey 07865
Email: info@mansfieldtownship-nj.gov
VIA E-COURTS

DENA HREBENAK,
Municipal Clerk of the Township of Mansfield
100 Port Murray Road
Port Murray, New Jersey 07865
Email: dhrebenak@mansfieldtownship-nj.gov
VIA E-COURTS

I further 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: August 24 , 2021



William N. Sosis
Plaintiff Pro Se
Tel: (201) 655-6400
Fax: (201) 781-7855
Email: Bill@SosisLaw.com

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Wednesday, September 1, 2021 10:22 AM
To: Liam B. McManus
Subject: Fw: NJ eCourts DISCOVERY EXTENSION STIPULATION Notification - Civil Case WRN-L-000298-21

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: eCourtsCivilDoNotReply.mailbox@njcourts.gov
Sent: Monday, August 30, 2021 6:04 PM
To: BILL@SOSISLAW.COM ; WILLIAM.N.SOSIS@GMAIL.COM ; Dena Hrebenak ; Dena Hrebenak
Subject: NJ eCourts DISCOVERY EXTENSION STIPULATION Notification - Civil Case WRN-L-000298-21
SUPERIOR COURT OF NEW JERSEY - eCOURTS

The following was filed by SOSIS, WILLIAM, N on 08/30/2021 at 6:04 PM:

Plaintiff Name: WILLIAM N SOSIS
Defendant Name: DENA HREBENAK, TOWNSHIP OF MANSFIELD COMMITTEE
Case Caption: SOSIS VS MANSFIELD TOWNSHIP COMMITTEE ET AL
Case Number: [WRN-L-000298-21](#)
Docket Text: DISCOVERY EXTENSION STIPULATION submitted by SOSIS, WILLIAM, N of SOSIS LAW, LLC on behalf of WILLIAM N SOSIS against DENA HREBENAK, TOWNSHIP OF MANSFIELD COMMITTEE
Transaction ID: [LCV20212011747](#)

Notice has been electronically mailed to:

Plaintiff Attorney	WILLIAM N SOSIS	BILL@SOSISLAW.COM WILLIAM.N.SOSIS@GMAIL.COM
Defendant	DENA HREBENAK	DHREBENAK@MANSFIELDTOWNSHIP-NJ.GOV
Defendant	TOWNSHIP OF MANSFIELD COMMITTEE	INFO@MANSFIELDTOWNSHIP-NJ.GOV

Notice was not electronically mailed to:

[Login](#) to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey - Civil Part.

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

Calendar - Mansfield Township

Township of Mansfield 100 Port Murray Road Port Murray, NJ 07865 Phone: (908) 689-6151 Fax:
(908) 689-2840
mansfieldtownship-nj.gov

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Liam McManus
Sent: Monday, September 20, 2021 9:58 AM
To: Dena Hrebenak
Subject: Sosis Requests for documents
Good Morning Dena

③

Thanks,
Liam McManus
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
Direct Dial (908) 878-0116
Mobile Number (908) 878-0116
Fax (908) 488-1109
lmcmamus@floriolaw.com
www.floriolaw.com

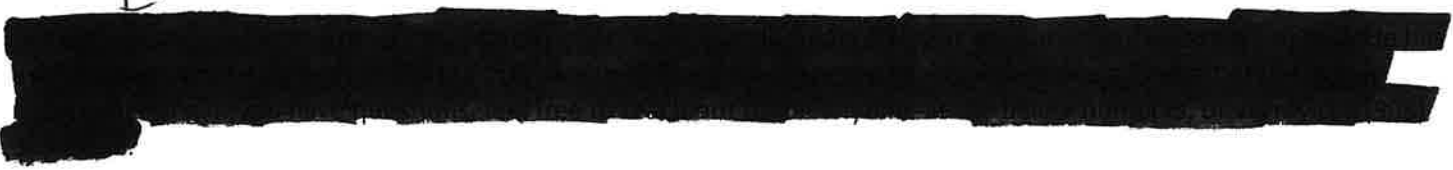
FLORIO
PERRUCCI

CAPELLI
TIPTON &
TAYLOR LLC

Township Clerk

From: Liam B. McManus <lmcmamus@floriolaw.com>
Sent: Tuesday, September 21, 2021 11:14 AM
To: 'dhrebenak@mansfieldtownship-nj.gov'
Cc: mlavery; Douglas Steinhardt; 'Glasser, Gabrielle G'
Subject: Sosis v. Mansfield Settlement offer WRN-298-21
Attachments: 20210921-SettlementOffer-Docket No. WRN-L-000298-21-rev.1.1.pdf

Dena, (4.)



Liam McManus
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
Direct Dial (908) 878-0116
Main Number (908) 454-8300
Fax (908) 454-5390
lmcmamus@floriolaw.com
www.floriolaw.com



STEINHARDT
CAPPELLI
TIPTON &
TAYLOR LLC

WILLIAM N. SOSIS

WILLIAM N. SOSIS@GMAIL.COM

15 BRANTWOOD TERRACE
MANSFIELD TOWNSHIP, NEW JERSEY 07840

TELEPHONE (201) 345-3095

FAX (201) 781-7855

September 21, 2021

VIA EMAIL ONLY

LIAM B. MCMANUS, ESQ. (lmcmanus@floriolaw.com)
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, New Jersey 08865

RE: Sosis v. Township of Mansfield Committee, *et al.*
Docket No. WRN-L-000298-21

Dear Mr. Mcmanus:

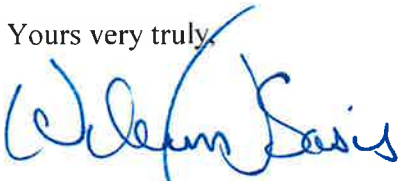
In an effort to resolve this matter amicably I am attaching a settlement proposal for your clients' consideration.

CONFIDENTIALITY WAIVER

This letter constitutes a NON-CONFIDENTIAL offer of settlement and compromise. Plaintiff waives his protection under New Jersey Rule of Evidence 408. As such, this letter shall be admissible into evidence in any judicial proceeding. Additionally, this offer does not constitute a waiver, surrender or abandonment, express or implied, of any rights or entitlements to which the Plaintiff may have in this matter. Acceptance of any part or aspect of this proposal does not constitute a binding or enforceable agreement between the parties until a written agreement is prepared and signed by both parties.

Please let me know your clients' position on this offer on or before Thursday, September 24, 2021, after which time I will assume that we will be proceeding with this matter.

Yours very truly,



William N. Sosis

WILLIAM N. SOSIS (#100032014)

15 Brantwood Terrace

Hackettstown, New Jersey 07840

Tel: (201) 655-6400

Fax: (201) 781-7855

Email: Bill@SosisLaw.com

Plaintiff Pro Se.

WILLIAM N. SOSIS

Plaintiff,

v.

TOWNSHIP OF MANSFIELD COMMITTEE
and DENA HREBENAK, in her official
capacity as Township Clerk for the Township of
Mansfield,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY

DOCKET NO.: L-000298-21

Civil Action

CONSENT ORDER

THIS MATTER having been opened to the Court by way of Consent Order by the parties, William N. Sosis, Esq., Plaintiff, and Liam B. Mcmanus, Esq., Esq., attorney for the Defendants, Township of Mansfield Committee and Clerk Dena Hrebenak, and the parties having mutually agreed that in the interest of settling this matter without incurring the time and expense of litigation and trial, the parties are willing to enter into an agreement resolving the allegations contained in Plaintiff's complaint; and good cause having been shown;

IT IS ON THIS _____ day of _____, 2021, **ORDERED** as follows:

1. Defendants, going forward, shall post and publish an annual schedule of the regular meetings within seven (7) days of the annual reorganization meeting.
2. Defendants, going forward, shall post and publish within seven (7) days any revision to the time, date, location, and, to the extent known, the agenda of any regular, special or rescheduled meeting.
3. Defendants, going forward, shall make their agenda available for public inspection no less than forty-eight (48) hours prior to each public meeting by electronically publishing said agenda to their public website (<https://mansfieldtownship-nj.gov>)

4. Defendants, going forward, shall make the minutes from all public meetings "promptly available" prior to the next scheduled public meeting by electronically publishing said minutes to their public website (<https://mansfieldtownship-nj.gov>)
5. Defendants agree to pay Plaintiff, \$625 within 20 days of its receipt of a fully executed copy of this Consent Judgement, to reimburse Plaintiff for his costs of suit.

Honorable Thomas C. Miller, A.J.S.C.

We hereby consent to the form and entry of the within Consent Order.

WILLIAM N. SOSIS, ESQ.
15 Brantwood Terrace
Hackettstown, New Jersey 07840
Plaintiff Pro Se

LIAM B. MCMANUS, ESQ.
Florio Perrucci Steinhardt Cappelli
Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, New Jersey 08865
*Attorney for the Defendants, Township
of Mansfield Committee and Clerk
Dena Hrebenak*

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Wednesday, September 22, 2021 12:34 PM
To: Liam B. McManus
Subject: Re: Sosis Requests for documents
Attachments: 20200616-01-OPRA-Brantwood Terrace Extension.pdf; 20210406_Ltr2Mansfield_TownWebsite (2).pdf; Audio Link.pdf; Campbell letter Sosis 917.pdf; Cannabis email.pdf; Docket L 000298 21.pdf; Motion to recuse.pdf; OPMA Sosis 992020.pdf; OPMA Sosis letter 992020.pdf; OPRA 15 Brantwood Terrace.pdf; OPRA 1783 Route 57 original.pdf; OPRA 1783 Route 57 reminder 2.pdf; OPRA 1783 route 57 reminder.pdf; OPRA 1783 route 57 request and construction response.pdf; OPRA 1783 route 57 response 2.pdf; OPRA 1783 route 57 response.pdf; OPRA 1783 route 57.pdf; OPRA 2020-124 1.pdf; OPRA 2020-124 982020.pdf; OPRA 2020-124 original.pdf; OPRA 2020-124 reminder.pdf; OPRA 2020-124.pdf; OPRA audio 2020-124 982020.pdf; OPRA audio recordings 992020.pdf; OPRA audio recordings of meetings original.pdf; OPRA Brantwood Extension original.pdf; OPRA Brantwood Extension.pdf; OPRA Brantwood.pdf; OPRA Mt Bethel Church.pdf; OPRA Planet Network 2020124.pdf; OPRA reminder Planet Networks.pdf; OPRA September 13.pdf; OPRA September 17.pdf; PFAS Contamination Drinking Water email (1).pdf; PFAS Contamination Drinking Water letter (1).pdf; PFAS Contamination Drinking Water letter.pdf; PFAS Contamination Drinking Water.pdf; Public Notice 2020.pdf; Public Notice 2021 (1).pdf; Public Notice 2021.pdf; Sosis 3.5 Letter to Committee.pdf; Sosis 1783 Route 57.pdf; Sosis Adequate Notice Requirements.pdf; Sosis Cannabis.pdf; Sosis Letter 2018-02 9232020.pdf; Sosis letter 2018-02.pdf; Sosis Letter 2020-124 Planet Network.pdf; Sosis Letter 2020124.pdf; Sosis letter attached to email Planet Network.pdf; Sosis letter to Committee Planet Network.pdf; Sosis OPRA 2020-124.pdf; Sosis OPRA 2020124.pdf; Sosis OPRA August 11 docs and audio.pdf; Sosis OPRA Cannabis 7.7.pdf; Sosis OPRA Cannabis request reminder.pdf; Sosis OPRA Cannabis.pdf; Sosis OPRA Executive Session original.pdf; Sosis OPRA Executive Session.pdf; Sosis OPRA July 14 audio (2).pdf; Sosis OPRA July 14 audio original request.pdf; Sosis OPRA July 14 audio.pdf; Sosis OPRA July 28.pdf; Sosis OPRA legal service original.pdf; Sosis OPRA Legal Service Public Records.pdf; Sosis OPRA Litigation Agreement original.pdf; Sosis OPRA Litigation Agreements 9.21 (2).pdf; Sosis OPRA Litigation Agreements 9.21.pdf; Sosis OPRA Machine OPRA Planet Networks.pdf; Sosis OPRA meeting audio July 14.pdf; Sosis OPRA meeting audio.pdf; Sosis OPRA public notice (2).pdf; Sosis OPRA Public Notice.pdf; Sosis OPRA request Ord 2021-11 Cannanbis.pdf; Sosis Public Notice 2021 (2).pdf; Sosis website errors.pdf

5

<https://mansfieldtownship-nj.gov/index.php/mansfield-calendar>

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Thursday, September 30, 2021 3:12 PM
To: Liam B. McManus
Subject: Re: Discovery Responses
Attachments: Scan0090.pdf

6

[REDACTED]

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Liam McManus
Sent: Thursday, September 30, 2021 10:36 AM
To: Dena Hrebenak
Subject: Discovery Responses

Dena,

[REDACTED]

Liam McManus
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
Direct Dial (908) 878-0116
Main Number (908) 454-8300
Fax (908) 454-5390
lmcmamus@floriolaw.com
www.floriolaw.com

CERTIFICATION

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.

I hereby certify that the copies of the documents annexed hereto are exact copies of the entire document or documents; that the existence of other documents are unknown to me; and if such become later known or available, I shall serve them promptly upon the propounding party.

A handwritten signature in cursive script, appearing to read "Dana Chabanel", is written over a horizontal line.

Dated: September 30, 2021

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to this request. I further certify that as of this date, to the best of my knowledge and information, the production is complete and accurate based on () my personal knowledge or () information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. The following is a list of the identity and source of knowledge of those who provided information to me:

SIGNED



PRINT



DATED: September 30, 2021

Township Clerk

From: Dena Hrebenak <dhrebenak@mansfieldtownship-nj.gov>
Sent: Monday, January 24, 2022 10:56 AM
To: Liam B. McManus; mlavery
Subject: Re: Sosis v Mansfield

4

[REDACTED]

Dena Hrebenak, RMC, CMR
Township of Mansfield
100 Port Murray Road
Port Murray, NJ 07865
(908) 689-6151 x 128

From: Liam McManus
Sent: Friday, January 21, 2022 3:32 PM
To: Dena Hrebenak ; mlavery
Subject: Sosis v Mansfield

[REDACTED]

Thanks,
Liam McManus
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
Direct Dial (908) 878-0116
Main Number (908) 454-8300
Fax (908) 454-5390
lmcmamus@floriolaw.com
www.floriolaw.com



STEINHARDT
CAPPELLI
TIPTON &
TAYLOR LLC

STATEMENT OF CONFIDENTIALITY: The information contained in this transmission including any attached documentation is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC immediately by replying to this e-mail. Please delete all copies of this message and any attachments immediately.

