

MEMORANDUM

To: ROBERT DAVIDSON, TOWNSHIP ADMINISTRATOR
From: JOSEPH J. ROTOLO, ESQ.
Date: APRIL 20, 2018
Subject: ALLIED DEVELOPERS

Dear Bob:

In accordance with your request, I reviewed my file in connection with the Allied Developers matter and I enclose herewith a copy of Settlement Agreement dated March 22, 2013 together with copies of other, related, correspondence and memos.

If you have any further questions, please feel free to give me a call.

Thank you.

cc: Township Committee

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 22nd day of March, 2013 by and between Allied Developers, LLC (hereinafter "Allied") having principal offices at 24 Donald Place, in the Borough of Waldwick, County of Bergen, State of New Jersey and the Township of Rochelle Park Zoning Board of Adjustment (hereinafter "Township Board") having principal offices located at 151 West Passaic Street, in the Township of Rochelle Park, County of Bergen, State of New Jersey and the Township of Rochelle Park, a Municipal Corporation of the State of New Jersey, with offices located at 151 West Passaic Street, in the Township of Rochelle Park, County of Bergen and State of New Jersey (hereinafter "Township"). Allied, the Township Board and the Township may be referred to herein as a "Party" and, together, the "Parties."

PRELIMINARY STATEMENT

In March of 2011, Allied filed an application before the then joint Planning Board/Zoning Board of Adjustment for the Township of Rochelle Park for the construction of a double sided, back-to-back, LED digital, single pole, outdoor advertising sign on the New York Susquehanna Western Railroad Co. Right of Way known as Block 110.01, Lots 2 and 3 adjacent to the southbound and northbound sides of Route 17 (the northbound application hereafter referred to as the "Route 17 Application" and the sign itself hereafter "Route 17 Sign"). In or about November, 2011, the Township reestablished the Zoning Board of Adjustment for the Township of Rochelle Park. In March of 2012, Allied filed a second application with the Zoning Board of Adjustment for the construction of a double sided, back-to-back, LED digital, single pole, outdoor advertising sign on the New York Susquehanna Western Railroad Co. Right of Way known as Block 110.01, Lot 1 adjacent to the westbound side of Route 80 (the application hereafter the "Route 80 Application" and the sign hereafter the "Route 80 Sign"). In or about April, 2012, Allied amended its Route 17 Application to withdraw its application as it pertained to the billboard proposed for Route 17 southbound. Allied sought to proceed with its application to erect a billboard on Route 17 northbound. Both applications (Route 17 northbound and Route 80) were consolidated and heard before the Zoning Board of Adjustment. Site plan approval and various use and bulk variance relief was required. The matters were heard on May 3, 2012, June 7, 2012, July 5, 2012, August 2, 2012 and September 6, 2012 (the "Hearings").

At the September 6, 2012 hearing, the Township Board denied both applications.

On October 11, 2012, Allied filed a Complaint in Lieu of Prerogative Writs, entitled Allied Developers, LLC v. the Township of Rochelle Park Zoning Board of Adjustment and the Township of Rochelle Park (the "Township") which, *inter alia*, challenged the Township Board's denial of the Applications and further challenged the constitutionality of the Township's ordinance as it pertained to billboards. Said Action (Docket No. BER-L-7874-12) is currently pending before the Honorable Joseph S. Conte, J.S.C. in the Law Division, Superior Court of New Jersey (Bergen County) (the "Action"). This Agreement, adopted pursuant to the case of Whispering Woods v. Middletown Township, 220 N.J. Super. 161 (Law Div. 1987), sets forth

the understanding and agreement of the Parties with respect to the resolution of the Action subject to final and unappealable municipal and related approvals.

SETTLEMENT TERMS

1. The Township Board agrees to amend its initial decision denying the Route 17 and Route 80 Applications. This will be memorialized in the form of an amended approval by the Township Board, whereby Allied will be granted approval of its Route 17 and Route 80 Applications including all use variances, height variances, bulk variances, preliminary and final site plan approval and all other necessary associated municipal approvals for the erection of the described outdoor advertising signs ("Approvals"), conditioned upon and subject to the terms of this Settlement Agreement.

2. As a condition of the Approvals, Allied will make a total of three, eight-second "turns" (a "turn" being one change of copy for a period of eight seconds within a 64 second cycle) available to the Township as follows: one turn on each of the two sign faces on the proposed Route 17 location (a total of two turns), and one turn on either of the two sign faces on the proposed Route 80 location, the face for Route 80 location turn, per the Township's choice. The Township will be able to use these "turns" first and foremost, for any public service announcements. If that type of use for the three turns are not necessary, then the use shall be for any lawful purpose, including but not limited to, advertising on behalf of the Township, emergency notices and for private advertisers as a monetizing opportunity for the Township. In the event these turns are sold but are ultimately required for emergency uses, the Township will be given the opportunity to, on an emergency basis, use these turns for said emergency purposes.

3. Allied agrees to pay real estate taxes on each of the two (2) outdoor advertising structures. It is anticipated that the assessed value for the same as determined by the tax assessor will be equal to the cost of erecting each sign with subsequent consideration for depreciation all as set forth in the NJ Department of the Treasury directives for such assessments, provided however such depreciated value shall be no less than \$100,000 per sign.

4. In the event that the State or County exercises its right of eminent domain for the proposed road widening of Route 17 in Rochelle Park, Allied will join in any lawsuit as an interested party, and in addition, Allied will pledge an amount of \$50,000.00 to the Township for use in its defense of said lawsuit.

5. In the event that the State or County is successful in exercising its right of eminent domain for the proposed road widening of Route 17 in Rochelle Park, Allied will be permitted to re-locate the Route 17 billboard directly perpendicular to the Route 17 roadway, or otherwise as necessary, which relocation shall be subject to any and all applicable state, county and/or municipal approvals.

6. Allied agrees that it will maintain the high standards of maintenance testified to at the Hearings and any repairs needed will be promptly attended to.

7. At all times the use and operation of the Route 17 Sign and Route 80 Sign shall be in accordance with the conditions of the Approvals and the Roadside Sign Control and Outdoor Advertising Act, as contained in N.J.S.A. 27:5-5 et seq., as well as all other applicable Federal, State, County and local regulations, statutes, or laws relating to outdoor advertising.

8. Allied agrees to reduce the impact of lighting of the Route 17 Sign in the event that it becomes necessary to protect the rights of surrounding Rochelle Park property owners, in accordance with industry standards.

9. As testified to at the hearings, Allied will post a bond in the sum of \$20,000 for the express purpose of having dedicated funds available for the planting of trees, in addition to the landscaping shown on the approved Site Plan, to further screen the Signs from nearby properties insofar as is practical.

10. This Settlement Agreement and/or Approvals shall be implemented in strict accordance with the plans submitted and approved with revisions to comport with the recommendations of the Township Engineer and other professionals stated in their respective reports, unless otherwise modified during the course of the hearings, included but not limited to the reports of Job and Job Consulting Engineers dated, as to both applications, dated; May 3, 2012, December 8, 2011, June 7, 2012, July 3, 2012, July 5, 2012, April 14, 2011, July 19, 2011, July 27, 2011, and May 24, 2012.

11. The within Approvals are subject to the site plans being deemed "completed" by the Township Engineer, which review shall not be unreasonably delayed.

12. These Approvals are expressly subject to and conditioned upon said site plans being reviewed and approved by the Township Engineer, prior to any building permits being issued, which review shall not be unreasonably delayed.

13. These approvals are subject to receipt of all necessary governmental approvals, if required. If any governmental agency requires any substantial changes to the plans, as determined by the Township Engineer, the Township Board reserves the right to review and approve of such additional changes. No building permits shall be issued until authorized by the Township Engineer.

14. Allied shall post all fees and deposits as required by the Township Code, including any outstanding deficiencies in any escrow accounts. Payment of all fees, costs and escrows due or which shall become due are to be paid within twenty (20) days of said request by the Board Secretary.

15. Certificate of taxes paid to date of approvals, unless otherwise exempt.

16. All representations made under oath by Allied or its representatives shall be deemed conditions of these Approvals and any representations by Allied or its representatives contrary to the representations made before the Township Board shall be deemed a violation of these Approvals.

17. The action of the Township Board in approving this application shall not relieve Allied of responsibility for any damages caused by this project nor does the Board of Adjustment, Township of Rochelle Park or its reviewing professionals and agencies accept any responsibility for the structural design for the proposed improvements or any damages which may be caused by the development.

18. Allied shall enter into a Developer's Agreement with the Township, if required, to be prepared by the Board Attorney, detailing the nature and scope of the work to be constructed incident to the site plans and which shall incorporate the conditions of approval set forth herein.

19. Pursuant to *Section 185-49* of the Code of the Township of Rochelle Park, Allied shall be responsible for all professional fees incurred as a result of this application, including but not limited to, the fees of the Township Engineer and Board Attorney.

20. Allied shall comply with all applicable laws and regulations of the State of New Jersey, County of Bergen and the Township of Rochelle Park, including but not limited to *Section 185-142* (Nonresidential Development Fees); *Section 185-143(B)* (Affordable Housing Development Fee) and *Section 185-144* (Collection of Fees) of the Land Use and Development Regulations for the Township of Rochelle Park.

21. Allied shall provide regular maintenance of its billboards and related equipment as determined by the Township Engineer and/or Zoning Officer.

22. Prior to the issuance of building permits, Allied or its licensed professional engineer shall certify in writing as follows: "This is to certify that the plans for which a building permit is being sought are the same plans which have been approved by the Township of Rochelle Park Zoning Board of Adjustment."

23. Allied shall comply with all requirements and directives of the Township of Rochelle Park Police and Fire Departments, if applicable.

24. Allied shall comply with any and all building code requirements of the State of New Jersey and/or Township of Rochelle Park, in accordance with the approvals granted herein.

25. The variance(s) granted herein shall expire in accord with the provisions of *Section 185-26* of the Zoning Ordinance, as amended, which time period shall run from the end date contemplated in Paragraph #28 set forth herein.

26. Allied shall cause to be published a notice of the final decision of the Zoning Board of Adjustment as set forth herein in accord with the provisions of *Section 185-38* of the Zoning Ordinance.

27. It is agreed that the terms hereof shall become a part of the Approvals and shall be memorialized by separate resolution, and shall be enforceable in a court of competent jurisdiction by injunction or otherwise.

28. The Parties agree that the Action shall not be dismissed until the Agreement is voted upon, the Township Board grants the Approvals and all applicable appeals and appeal periods have been exhausted. Once the Approvals are final and unappealable and a construction permit has been granted for each of the locations, Allied shall dismiss the Action with prejudice against the Township and the Township Board. In further consideration of the above, Allied, on its own behalf and for its heirs, legal representatives, agents, attorneys, personal representatives, successors and assigns, the Township and the Township Board, on behalf of its legal representatives, agents, attorneys, personal representatives, successors and assigns, covenant not to sue and expressly release each other, from any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, agreements, promises, damages, judgments, executions, claims and demands of any nature whatsoever arising at law or in equity, may have had, may now have or may have in the future, both known and unknown, against the other, arising from the claims and defenses set forth in the Action.

29. The Parties shall execute any such other and further documents, as may be necessary, to effectuate the agreed upon terms set forth herein.

30. The within settled matter shall become a matter of public record, and shall be considered and voted upon at a public hearing after due notice pursuant to the Municipal Land Use Law, and the Rochelle Park Zoning Ordinance is given by Allied, at which time the public may ask questions about or comment upon the settlement, the Agreement as well as any new evidence presented as set forth in Whispering Woods v. Middletown Township, *supra*.

31. This Agreement constitutes the entire agreement between the Parties, and no other promises or agreements shall be binding unless signed by all Parties. All prior representations regarding this Agreement are expressly disclaimed by all parties unless incorporated in this Agreement.

32. If any of the conditions of the Approvals as set forth herein are found to be void, invalid, or unenforceable, said condition shall be severed from the remaining provisions and clauses which shall remain in full force and effect.

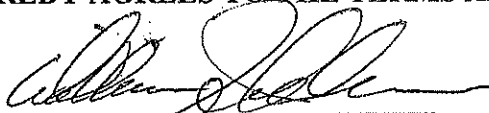
33. The Parties affirm that the terms set forth herein are the product of negotiation and agree that it shall not be construed against either party on the basis of sole authorship.

THEREFORE, and expressly intending to be legally bound, the Parties have executed this Agreement as of the date first written above either individually or through their duly authorized designees.

34. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, legal representatives, administrators, successors, and assigns.

THEREFORE, and expressly intending to be legally bound, the Parties have executed this Agreement as of the date first written above either individually or through their duly authorized designees.

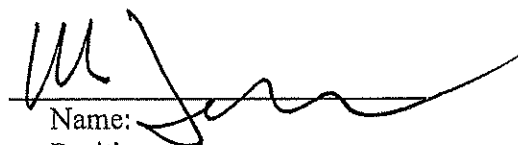
**THE TOWNSHIP OF ROCHELLE PARK ZONING BOARD OF ADJUSTMENT
HEREBY AGREES TO THE TERMS AND CONDITIONS NOTED ABOVE.**

By: 
Name: WILLIAM COLEMAN
Position: CHAIRMAN
Dated:

**THE TOWNSHIP OF ROCHELLE PARK
HEREBY AGREES TO THE TERMS AND CONDITIONS NOTED ABOVE.**

By: 
Name: JOSEPH SCARPA
Position: MAYOR
Dated: 3-22-19

**ALLIED DEVELOPERS, LLC
HEREBY AGREES TO THE TERMS AND CONDITIONS NOTED ABOVE.**

By: 
Name:
Position:
Dated:

RESOLUTION APPROVING SETTLEMENT
AND AUTHORIZING THE EXECUTION OF A SETTLEMENT
AGREEMENT BY THE ZONING BOARD OF ADJUSTMENT FOR THE
TOWNSHIP OF ROCHELLE PARK
I/M/O ALLIED DEVELOPERS, LLC v. ZONING BOARD OF
ADJUSTMENT OF THE TWP. OF ROCHELLE PARK, ET. AL.
DOCKET # BER-L-7874-12
BLOCK 110.01, LOT: 1 and Block 110.01, LOTS 2 & 3

OFFERED BY: Coleman SECONDED BY: Sheehan

WHEREAS, ALLIED DEVELOPERS, LLC had made application to the Zoning Board of Adjustment of the Township of Rochelle Park (hereinafter referred to as the "Board") seeking to erect a billboard located in the Industrial B District on the northbound side of Route 17 (hereinafter referred to as the "Route 17 Application") and to erect a billboard located in the Business A District adjacent to Route 80 westbound (hereinafter referred to as the "Route 80 Application").

WHEREAS, the Board on September 6, 2012 entertained a motion to approve the application for a "use variance", pursuant to N.J.S.A. 40:55D-70(d)(1), and from the provisions of Sections 185-134(E), 185-138(A); 185-138(J) and 185-138(N) of the Zoning Ordinance to construct a double-sided billboard on Lot 1, Block 110.01 ("Route 80 Application"). The motion failed by a roll-call vote of three (3) to three (3). The Board also entertained a motion to approve the application for a "use variance", pursuant to N.J.S.A. 40:55D-70(d)(1), and from the provisions of

Sections 185-134(E), 185-138(A); 185-138(J) and 185-138(N) of the Zoning Ordinance to construct a double-sided billboard on Lots 2 and 3, Block 110.01 ("Route 17 Application"). The motion failed by a roll-call vote of two (2) to four (4).

WHEREAS, ALLIED DEVELOPERS, LLC has filed suit against the Board and the Township of Rochelle Park in the Superior Court of New Jersey, Law Division, Bergen County (Docket # BER-L-7874-12), challenging the decision of the Board and the constitutionality of the Township ordinance as it pertains to billboards.

WHEREAS, the Board voted on February 7, 2013, in closed session, to tentatively approve, a proposed settlement of this matter, as set forth more fully in in a proposed Settlement Agreement, a true copy of which is annexed hereto and made a part hereof as Exhibit "A" and to place this matter on its public agenda for March 7, 2013, for public consideration and formal approval, upon notice, in accord with the holding of the Court in *Whispering Woods v. Middleton TP.*, 220 N.J. Super., 161 (Law Div. 1987). The motion was approved by a vote of six (6) to zero (0).

WHEREAS, this matter was set down for public hearing on March 7, 2013 before the Zoning Board of Adjustment, having been duly noticed in accord with the *Municipal Land Use Law*, (N.J.S.A. 40:55D-1, et. seq.).

WHEREAS, the Board having considered the terms of the proposed Settlement Agreement and having opened the hearing to the public for discussion, entertained a motion to approve the settlement of this matter upon the terms of the Settlement Agreement, a copy of which is annexed hereto and made a part hereof as Exhibit "A" and to authorized the Chairman to execute said Settlement Agreement on behalf of the Board. The motion carried by a vote of 6 to 0 .

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Rochelle Park:

1. The Board agrees to the settlement of this matter in accord with the terms of a Settlement Agreement, a true copy of which is annexed hereto and made a part hereof as Exhibit "A";

2. In accord with Paragraph #1 of the Settlement Agreement, Allied is hereby granted approval of its Route 17 and Route 80 Applications, including all use variances, height variances, bulk variances, preliminary and final site plan approval and all necessary associated municipal approvals for the erection of the described outdoor advertising signs ("Approvals"), conditioned upon and subject to the terms of the Settlement Agreement annexed hereto, which Approvals shall be deemed "Variances" and will accordingly run with the land and be binding upon any and all successors in interest to Allied, and/or purchasers of said outdoor advertising signs, their successors and assigns.

3. The Chairman is hereby authorized to execute the Original Settlement Agreement on behalf of the Board;

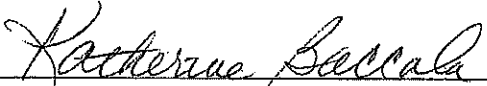
4. In accord with Paragraph #28 of the Settlement Agreement, the Board Attorney is hereby authorized to execute a Stipulation of Dismissal, with prejudice on behalf of the Board;

5. The Plaintiff/Applicant shall cause to be published a notice of the final decision of the Zoning Board of Adjustment as set forth herein in accord with the provisions of Section 185-38 of the Zoning Ordinance.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Zoning Board of Adjustment are hereby authorized to affix their signatures to this resolution. This resolution is a memorializing resolution, memorializing the action taken by the Zoning Board of Adjustment at the meeting held on March 7, 2013.

ADOPTED: March 7, 2013

ATTESTED:


KATHERINE BACCALA, SECRETARY
Zoning Board of Adjustment,
Township of Rochelle Park


WILLIAM COLEMAN, CHAIRMAN
Zoning Board of Adjustment,
Township of Rochelle Park

The foregoing is a true copy of a resolution adopted by the Zoning Board of Adjustment of the Township of Rochelle Park on March 7, 2013.

Dated: March 7, 2013

Katherine Baccala
KATHERINE BACCALA
Board Secretary
Zoning Board of Adjustment,
Township of Rochelle Park

TOWNSHIP OF ROCHELLE PARK

Joe Rotolo

RESOLUTION NO. 2013-50

A RESOLUTION – AUTHORIZING SETTLEMENT OF LITIGATION

	MOVED	SECONDED	AYES	NAYS	ABSENT	ABSTAIN	
							I hereby certify that the above Resolution was
							duly adopted by the Township Committee of the
COMM. OUELLETTE		✓	✓				Township of Rochelle Park at a meeting held
COMM. KAZIMIR			✓				On February 20 , 2013
COMM. KOVALCIK			✓				
COMM. VALENZUELA	✓		✓				
MAYOR SCARPA			✓				
							<i>Viggo DeNiro</i> Municipal Clerk

WHEREAS, ALLIED DEVELOPERS, LLC made an application to the Zoning Board of Adjustment of the Township of Rochelle Park seeking to erect two (2) billboards, one on the northbound side of Route 17 and the other in the area adjacent to Route 80 westbound; and

WHEREAS, after a hearing, a motion was made before the Zoning Board to approve the resolution, however, the motion failed since the roll call vote was three (3) in favor and three (3) against; and

WHEREAS, as a result of that vote, the application was denied; and

WHEREAS, ALLIED, thereafter, filed a lawsuit in the Superior Court of New Jersey seeking to reverse the action of the Board and also seeking approval of the application; and

WHEREAS, the Township of Rochelle Park was a named Defendant in that litigation and ALLIED, as part of their position in the litigation, alleged that the Township's billboard ordinance was void and unconstitutional; and

WHEREAS, the Zoning Board of Adjustment has now considered and tentatively approved a settlement of the litigation based upon the terms, conditions and obligations set forth on the enclosed Settlement Agreement; and

WHEREAS, since the Township is also a Defendant to the litigation, the proposed settlement must be approved by the Township Committee; and

WHEREAS, in addition to the foregoing legal obligation, there are certain obligations on behalf of **ALLIED** that directly affect the Township and provides substantial benefits to the Township in terms of taxation and other payments to the Municipality; and

WHEREAS, the Township Committee has considered the terms of the settlement and believe that it is in the best interest of the Municipality to approve the same.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Rochelle Park, County of Bergen and State of New Jersey, as follows:

1. The settlement of the litigation entitled "*Allied Developers, LLC -vs- the Township of Rochelle Park*" BER-L-7874-12 be and is hereby authorized.
2. The settlement shall be on the terms, conditions and obligations set forth on the enclosed Settlement Agreement.
3. The Township Attorney is hereby authorized and directed to execute a Settlement Agreement in the form annexed hereto.
4. Allied Developers, LLC shall also execute a Developer's Agreement to be prepared by the Zoning Board attorney and approved by the Township Attorney and Township Engineer which will incorporate the terms of the settlement as well as any other necessary and relevant terms and obligations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Township Clerk be and she is hereby authorized and directed to forward certified copies of the within Resolution to the Township Attorney, the Zoning Board Attorney, the Township of Rochelle Park Zoning Board, the Township Engineer, the Township Building Department and the Law Firm of Price, Meese, Shulman and D'Arminio, Attn: Louis L. D'Arminio, Esq.

Attest:



Virginia De Maria
Municipal Clerk

TOWNSHIP OF ROCHELLE PARK

RESOLUTION NO. 2013-50

A RESOLUTION – AUTHORIZING SETTLEMENT OF LITIGATION

	MOVED	SECONDED	AYES	NAYS	ABSENT	ABSTAIN	
							I hereby certify that the above Resolution was
COMM. OUELLETTE		✓	✓				duly adopted by the Township Committee of the
COMM. KAZIMIR			✓				Township of Rochelle Park at a meeting held
COMM. KOVALCIK			✓				On February 20 , 2013
COMM. VALENZUELA	✓		✓				
MAYOR SCARPA			✓				
							 Municipal Clerk

WHEREAS, ALLIED DEVELOPERS, LLC made an application to the Zoning Board of Adjustment of the Township of Rochelle Park seeking to erect two (2) billboards, one on the northbound side of Route 17 and the other in the area adjacent to Route 80 westbound; and

WHEREAS, after a hearing, a motion was made before the Zoning Board to approve the resolution, however, the motion failed since the roll call vote was three (3) in favor and three (3) against; and

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WHEREAS, the Zoning Board of Adjustment has now considered and tentatively approved a settlement of the litigation based upon the terms, conditions and obligations set forth on the enclosed Settlement Agreement; and

WHEREAS, since the Township is also a Defendant to the litigation, the proposed settlement must be approved by the Township Committee; and

WHEREAS, in addition to the foregoing legal obligation, there are certain obligations on behalf of **ALLIED** that directly affect the Township and provides substantial benefits to the Township in terms of taxation and other payments to the Municipality; and

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2. The settlement shall be on the terms, conditions and obligations set forth on the enclosed Settlement Agreement.
3. The Township Attorney is hereby authorized and directed to execute a Settlement Agreement in the form annexed hereto.
4. Allied Developers, LLC shall also execute a Developer's Agreement to be prepared by the Zoning Board attorney and approved by the Township Attorney and Township Engineer which will incorporate the terms of the settlement as well as any other necessary and relevant terms and obligations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Township Clerk be and she is hereby authorized and directed to forward certified copies of the within Resolution to the Township Attorney, the Zoning Board Attorney, the Township of Rochelle Park Zoning Board, the Township Engineer, the Township Building Department and the Law Firm of Price, Meese, Shulman and D'Arminio, Attn: Louis L. D'Arminio, Esq.

Attest:



Virginia De Maria
Municipal Clerk