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BERGEN PASSAIC LTACH, LLC,

Plaintiff,

v.

CITY OF HACKENSACK ZONING BOARD
OF ADJUSTMENT AND CITY OF
HACKENSACK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION
DOCKET NO. BER-L-8293-12

Civil Action

SUMMONS

From the State of New Jersey

To the Defendant(s) Named Above: **CITY OF HACKENSACK**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the [Clerk of the Superior Court] Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information State) if you want the court to hear your defense.

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

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: November 19, 2012

/s/ Jennifer M. Perez

Name of Defendant to be Served:

CITY OF HACKENSACK
City of Hackensack Municipal Building
65 Central Avenue
Hackensack, New Jersey

FILED

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DEPUTY CLERK

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SUPERIOR COURT OF NEW JERSEY
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COMPLAINT IN LIEU OF
PREROGATIVE WRITS

Plaintiff, Bergen Passaic LTACH, LLC, with offices located at 433 Hackensack Avenue,
New Jersey, by way of complaint against the defendants, says:

THE PARTIES

1. Plaintiff, Bergen Passaic LTACH, LLC (the "Applicant") is the owner of certain contiguous properties located in the City of Hackensack ("Hackensack"), Bergen County, New Jersey, designated as Block 344, Lots 3, 4, 5 and 14 on the City of Hackensack Tax Map (the "Site").

2. Defendant, City of Hackensack Zoning Board of Adjustment (the "Board") is upon information and belief, a division of the City of Hackensack Government with offices at the City of Hackensack Municipal Building, 65 Central Avenue, Hackensack, New Jersey, duly appointed and authorized to review development applications under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL").

3. Defendant, City of Hackensack ("City") is upon information and belief, a public entity

with offices at the City of Hackensack, City Hall, 65 Central Avenue, Hackensack, New Jersey.

THE PROPERTY

4. The Site comprises four lots in Hackensack. Combined together, the Site is a "through lot" having lot frontage on Prospect Avenue and Summit Avenue. The Site is located between Golf Place and Berry Street to the north.

5. The Site has a total lot area of 50,000 square feet with 150 feet of lot frontage along Summit Avenue and 100 feet of lot frontage along Prospect Avenue. Measured from the Prospect Avenue frontage, the depth is 400 feet. The lot is generally rectangular in dimension, but the westerly half of the Site is wider.

6. The Site ranges from an elevation 85 feet toward the middle of the Site to an elevation 81 feet at the northeasterly corner of the Site at Prospect Avenue and an elevation 76 feet at the northwesterly corner of the Site at Summit Avenue. The slope at the Site is approximately 2% grade.

7. Block 344, Lots 3, 4 and 5 containing 30,000 total square feet are located in the City's R-75 one family residential district. Block 344, Lot 14 containing 20,000 square feet is located on the westerly side of Prospect Avenue in the R-3 high density multi-family residential district.

8. Existing development at each of the four lots comprising the Site consists of 2 ½ story frame residential structures. Lots 3, 5 and 14 in Block 344 have detached garages at the rear of their parcels. Each lot has a driveway, with lot 4 having a backyard area paved with asphalt and lot 14 having a large gravel area in its rear area.

THE PROPOSED DEVELOPMENT

9. The proposed development replaces the existing structures with a long term acute care hospital ("LTACH"). Within the R-3 portion of the Site, the Applicant originally proposed a 24-story building inclusive of long term acute care facilities with a dialysis unit, and an adult medical daycare ("Project").

10. As originally proposed, the LTACH would consist of 144 beds of long term acute care hospital beds, a dialysis unit with 84 seats or stations and a medical adult daycare facility with room for 250 participants.

11. Over the course of twenty (23) meetings, in response to comments from the Board, and its consultants in the community, the Applicant made material revisions to the originally submitted plans including:

- a. Reducing the number of stories of the LTACH building from twenty-four (24) to nineteen (19);
- b. Reducing the height of the building from 276 feet 6 inches to 227 feet 0 inches;
- c. Reducing the number of LTACH beds from 144 to 120;
- d. Reducing the number of dialysis seats from 84 to 63;
- e. Reducing the number of adult day care slots from 250 to 180; and
- f. Increasing the number of parking spaces from 405 to 417.

12. Based on a study conducted by New Jersey with hospital associations and others, it was determined that there was a need for roughly 900 LTACH beds throughout New Jersey. There are currently 250 LTACH beds operating throughout New Jersey. In order to qualify as LTACH, the average stay for all patients must be at least 25 days or greater. The Applicant secured a certificate

of need for the proposed LTACH portion of the project.

13. Patients that require an LTACH in contrast to an acute care center have already had procedures performed and have been diagnosed. These patients, however, are not stable enough to be discharged to their current residence, i.e., nursing home, assisted living facility or independent living facility. Instead, these patients require continual monitoring or twenty-four hour physician attention, nursing attention and other related services. These types of services are generally not provided at an acute care hospital nor are they fully provided at Hackensack University Medical Center.

14. During the preliminary review and investigation of the feasibility of the Project, the Applicant consulted with acute care hospitals in the area to obtain assignment of their beds and support to develop an LTACH. The consensus of medical facilities and medical professionals in the area confirmed the overwhelming need for an LTACH in the Hackensack area.

15. The Applicant considered the demographics in the location of the Project. New Jersey is the most densely populated state in the U.S. and Bergen County is the most populated county in the New Jersey. In addition, a large concentration of people in Bergen County are located in the southern part of the County and the Hackensack area. Approximately 13.5 percent of the people in Bergen County are 65 and older and it is anticipated by 2014 that the percentage of people over the age of 65 will increase to 16 percent, thereby translating to 150,000 people over the age of 65. Within a three mile radius of the Site, there are 38,000 people who are over the age of 65 years and older and this number will increase over the next five years. The professional team working with the Applicant determined that current available 846 slots in existing adult day care centers is insufficient to support the adult population needing adult medical daycare in Bergen County and more specifically Hackensack.

16. In the proposed building, the dialysis unit would be located toward the upper part of the building. Approximately, one third of LTACH patients require dialysis three times a week and the remainder of the dialysis patients are from the community including, nursing homes, assisted living facilities or elsewhere. The proposed dialysis center would operate 6 days a week and include 3 treatment times a day from 6:00 a.m. to 5:30 p.m. There are 6 dialysis centers in Bergen County, which operate at or near capacity without any room for additional intake of patients. Therefore, there is a dire need for another dialysis center in Bergen County.

17. The type of adult medical daycare proposed is known as the "medical model," which differs from other daycare centers that focus on the social model. The medical model would provide medical care to citizens who would otherwise need to go into an institution. A portion of Medicaid reimbursement and part of the Medicaid eligibility includes costs of transportation. Therefore, a majority of participants transported would be picked up by a facility vehicle; thereby reducing the amount of private vehicles accessing the Site.

18. The Applicant's architect spent over three years designing the Project and conducted studies of the three medical disciplines contained within the building. The building and main entry, including the arrival section is designed to face Prospect Avenue, which is the principal address. The Project also entailed a park on the western portion facing Summit Avenue that is open to patients, staff and the public. The main access to the garage is from Prospect Avenue and contains two ramps. There is a 22-foot wide ramp descending underneath street level and into the garage. This ramp is larger and designed to accommodate ambulances and small to midsize delivery trucks.

19. There is also a minor truck service alley, which is 10 feet wide. In order to accommodate the Board's concerns, the Applicant removed various services, other than a compactor and oxygen tank located in the northerly property line.

20. The Applicant's engineer conducted the necessary drainage studies and storm water management studies. The Applicant's plan complied with each of the requirements for storm water management including, water quality, rate of runoff, and volume of runoff on the Site.

21. The Applicant's engineer also prepared and presented to the Board a traffic assessment study. The assessment concluded:

that the redevelopment of this Site for multi-purpose medical facility is of negligible impact on traffic operations at the studied intersection. The conclusion is based on the structure of the work force, the employee shifts, the operations of various medical programs within the facility and the mandated requirement set forth in the applicable state statutes for these types of uses.

22. The Applicant's Planner established that the Project is consistent with surrounding land uses. The West 7-story multi-family building is immediately adjacent to the Site on Prospect Avenue. The 17-story Baridge House multi-family building is located further south of the Site and at the corner of Prospect Avenue and Golf Place. These establishments are located in the R-3 district east of the Site along Prospect Avenue. This area also consists of several high-rise buildings, including the 18-story Prospect Towers multi-family building, the 13-story World Plaza multi-family buildings, and the 13-story Carlyle multi-family building. In addition to multi-family residential buildings at least 7 stories in height, the Prospect Heights Care Center, an 8-story nursing home is located to the east of the Site. The development along Summit Avenue is comprised of single-family residential dwellings. Some of the residences in the area include medical professional offices, which are located in the R-75 district. The Applicant's Planner also established that many of the existing multi-family developments located within proximity of the Site also contain some form of non-

residential use, including doctor and surgical facilities, as well as commercial restaurant operations.

THE APPLICATION PROCESS

23. The preliminary and final site plan application, use variance and bulk variance application (collectively hereinafter referred to as the "Application") was submitted to the City of Hackensack on June 12, 2008.

24. A use variance under and pursuant to N.J.S.A. 40:55D-70(d)(1) was requested to permit the construction of a long term acute care hospital, dialysis center and an adult medical daycare center. The facility is located in the R-3 zone and the below ground parking garage is located in the R-75 zone. The total building coverage is approximately 12.7%. The Applicant objected to the Board's calculation of lot coverage, which included the below grade coverage of the parking garage. Irrespective of the Applicant's contention that the underground parking structure should not be calculated in the proposed lot coverage, the Applicant sought the necessary variances to comply with the Board's proposed calculations of lot coverage. The Applicant sought "c" bulk variances for the project to allow a minimum lot of 100 feet in the R-3 district where 125 feet is required, to allow maximum height ratio for a side yard where 4:1 is allowed and 19:1 is permitted, to allow maximum lot coverage for the R-3 district of 40.5% coverage proposed where 30% use permitted, to permit a buffer zone of 6 feet where 0 feet is proposed to the edge of the R-3 district, to permit a driveway width of 10 feet for 2-way traffic where 18-22 feet is required, to permit paving within a side yard setback, to provide 18.5 feet for a back up where 22 feet is required, to permit a 0 foot sign setback where 35 feet is required, and to permit a sign size area of 108 square feet where 12 square feet is permitted.

25. The Applicant was also directed to seek a variance from the total required number of parking spaces. The Board and City determined the required parking for the Project was 608 parking

spaces with the Applicant proposing 417 parking spaces. The Applicant argued that the imposition of parking demand of 608 spaces is not supported by a reasonable interpretation of the City's ordinances, but sought the variance as directed by the Board.

26. At the time of submission of the Application, the Applicant was represented by Boswell Engineering ("Boswell").

27. In or around April 2009, the Applicant was informed by representatives of Boswell and the City that they were in discussions to represent the City and that they would no longer continue to be the engineers for the Project as a conflict could exist.

28. At the time the Applicant was advised that the original project engineer could no longer work on the project, Boswell had worked on the project for more than one year and it had issued three separate reports: site plan drawings, traffic impact study, and storm water management report.

29. The Board Engineer had deemed the Application complete on November 4, 2008. Yet in bad faith, neither the City nor representatives of the Board advised the Applicant that Boswell would no longer be able to serve as the Applicant's engineer of record, even though it was fully aware on April 2009 or prior to that time that the City intended to retain Boswell.

30. The City and the Board possessed the malicious intent to usurp the Applicant's reliance on Boswell's favorable expert reports, including recommendations and conclusions in support of approval of the Site plan.

31. As a result of the dilatory tactics of the City and Board, the Applicant was forced to retain new engineering professionals and incurred significant expenses from switching engineers mid-stream in the Application process.

32. Despite the fact that the Application had been submitted on June 12, 2008 and the

Board Engineer had deemed the Application complete on November 4, 2008, incredibly, the first hearing for the Application did not take place until more than 5 months later on April 15, 2009.

33. The Board engaged in bad faith by unnecessarily prolonging the scheduling of hearings, in an attempt to dissuade the Applicant from proceeding with its Application.

34. Over the course of 41 months, the Applicant endured a total of 23 meetings. Of the 23 total meetings held, only 3 meetings were regular meetings of the Board. The remaining 20 meetings were all "special meetings."

35. Unlike regular meetings, the City imposes on the Applicant a fee of \$3,000.00 for each "special meeting." The Applicant was required to pay to the City \$59,000.00 in "special meeting" fees. The Applicant's counsel has made OPRA requests of the City for the basis upon which the \$3,000.00 "special meeting" fee was determined by the City, which was denied on October 10, 2012. A copy of the Applicant's counsel's request is attached hereto as Exhibit A. A copy of the City's response is attached hereto as Exhibit B.

36. The Applicant was required to pay for a variance application and escrow fees to the City in the amount of \$148,700.00.

37. The Board's Planning Consulting firm, Neglia Engineering, charged excessive fees representing time charged for numerous individuals merely to review the Application. Many of Neglia's time entries were redundant and were designed to increase the Applicant's costs for continuing with the application process and to encourage the Applicant to withdraw its application.

38. Despite repeated requests, the Applicant was not provided timely copies of invoices or vouchers for any charges made against the substantial escrow posted by the Applicant in violation of N.J.S.A. 40:55D-53.2.

39. In fact, notwithstanding the City's failure to provide the Applicant with copies of

invoices or vouchers in a timely manner, the City continued to harass the Applicant for additional escrow fees throughout the proceedings and even after the conclusion of the hearings demanded additional escrows, in order to prepare the Resolution of denial notwithstanding that that the Resolution took in excess of nine (9) months to complete.

40. The protracted delays associated with the issuance of the Resolution are yet another example of the Board's bad faith conduct during the course of the application process.

CREDIBLE TESTIMONY BY APPLICANT'S EXPERTS

41. The Applicant provided competent credible testimony from Richard Pineles, the operator of the proposed LTACH, Michael Szerbaty, a licensed Architect, Charles Thomas, Jr., a licensed Engineer, Eric Keller, a licensed Traffic Engineer and Joseph Burgis, a licensed Land Use Planner.

42. The Applicant provided sufficient testimony from these experts and supporting documentation to provide the requisite proofs required establishing the Applicant's entitlement to the grant of the use variance, preliminary and final site plan approval, as well as the bulk variances deemed to be required by the Board.

BOARD'S BAD FAITH CONDUCT DURING HEARINGS

43. Throughout many of the twenty-three (23) hearings, the Applicant was required to endure and pay for, solely for the benefit of objectors to the application and the Board's pandering to these objectors.

44. Throughout the course of the hearings, the Board and the City conspired against the Applicant, as evidenced in the record of proceedings, which are laced with bias and prejudicial comments and rulings by the Board.

45. Based solely on the political elections and an opposing political slate that wholly

rejected and opposed the Application, on April 15, 2009, the Mayor and certain council members were asked for the right or were invited to make public statements on the record before any proofs or testimony were entered into the record.

46. The April 15, 2009 meeting was used as a well orchestrated campaign stop for the candidates to advance their campaigns two weeks prior to the elections.

47. The opposing candidates were also present at the April 15, 2009 hearing and handed out brochures opposing the Application at the commencement of the hearing and throughout the proceedings that night.

48. The City and Board's allowance to use the April 15, 2009 meeting as a venue for political campaigning is improper and unjust and unequivocally prejudiced the Applicant.

49. In fact, such political uproar and campaigning defies the very rights that all applicants are entitled in the submission of its application before any Zoning Board of Adjustment, i.e., a right to present its testimony and proofs before a fair and impartial tribunal.

50. The members of the Councilmen and Mayor who spoke vehemently objected to the Application and unfairly tainted the record at the onset of the proceedings to the detriment of the Applicant.

51. The statements of the Mayor and Council Members implored the Board to deny the Application and in essence the explicit message to the Board and the Public was to deny the Application by any means necessary.

Mayor Michael Melfi stated: "What I would ask of the Board to please take the consideration of these residents that are here seriously. We had an opportunity to share some thoughts with them and hear their concerns, and they have some very serious

concerns. When considering this application, we need to ensure the impact that a facility like this and a building like this will have on the quality of life, not only in this specific neighborhood, but in the overall City and its effect it will have on the people traveling through the City. So, I ask you to please consider their concerns and make sure you hear as many of them, and get full testimony from all of the witnesses. Thank you very much.”

Councilman Jorge Menneses stated: “Every day I have to go through Summit Avenue and go to my office in Secaucus. It takes me 20 minutes to a half an hour to cross that section the way it is now. Spring Valley to Essex Street. Just bear in mind what can happen when we get a twenty-four (24) story building with all of the traffic it is going to bring. So, again, we want you to consider all of the testimony and all of the comments from the residents of Hackensack because this is something that shouldn’t happen here. Thank you.”

Councilwoman Karen Sasso stated in pertinent part: “It is a pleasure to see all of you this evening. I would like to reiterate, three and a half years we worked very hard to address responsible development in the City of Hackensack. **And I never thought I would be standing here before you, but then again, I never**

thought we would have to worry about a 24-foot story tower on Prospect Avenue.

I also urge you to pay close attention to our residents, as well as extract as much testimony as possible from the witnesses **and push for the best outcome that we can hope for from you.**

Thank you.”

52. The objections raised by the Council members and Mayor were made in their official capacities of the City. Even though the Defendants had already conspired to reject the Application, the Council members and Mayor engaged in further dilatory conduct to ensure that the Board did not back down from the intended course of prejudicial rulings and denial of the Application, i.e., conspiracy to deny the Application.

53. These objections were placed on the record prior to the submission of any proofs or testimony and unjustly and improperly persuaded the Board to conduct the hearings in a prejudicial manner, thereby failing to fulfill its quasi-judicial role during the proceedings.

54. The statements made by the City at the onset of the hearing set the stage and forum for protracted and prejudicial conduct and rulings by the Board.

55. Throughout the course of the hearings, the City also engaged in political interference in a quasi-judicial process, thereby causing tainted rulings and overall resistance and harassment by the Board. For example, on January 20, 2011, the City Attorney, Joseph Zisa, stated to the Record newspaper:

He has been keeping a close eye on the hearings . . . and the project is inappropriate for the site. The expanding of this use into Summit Avenue, either below ground or above ground, is a very dangerous precedent.

56. The Board upheld this deceptive scheme against the Application by succumbing to the City's political pressures and engaging in calculated and manipulative conduct to slant the expert testimony that supported the Application, even including the Board's Experts who rendered favorable conclusions in support of the Project. This political conspiracy and ill will vendetta to deny the Application ranged from interviewing the Applicant's engineer to create a conflict of interest to blatant attempts to disregard and reject the Board's own experts testimony, as well as forcing the Board's planner to change his original findings and conclusions to reject the Application, all with the intent to deceive and reject any favorable or objective analysis in support of the Application.

57. This politically charged conspiracy between the Board and the City resulted in injustice and deprived the Applicant an opportunity to a fair and just hearing on the merits of its testimony and submission of proofs.

58. Throughout the course of the hearings, the Board continually permitted objectors, objector's counsel and objector witnesses to proffer unqualified net opinions in connection with any purported alleged proofs.

59. The Board allowed objectors to badger and harass witnesses during the hearings, over the objection of the Applicant's counsel.

60. The Board also improperly and prejudicially allowed testimony of unqualified and unlicensed expert.

61. One of the objector's witnesses, Stan Lacz, P.P. offered himself to the Board as a licensed Architect, Engineer and Planner.

62. On cross examination by the Applicant's counsel, it was determined that Mr. Lacz' Engineering and Planning licenses had expired in the State of New Jersey due to non-payment of annual fees. Despite the fact that no testimony was proffered by Mr. Lacz to the Board to confirm

that his licenses were reinstated by the State of New Jersey, the Board, nonetheless, accepted his testimony from his appearances at initial hearings. In a subsequent hearing on July 26, 2011, even though his planning license had still not been reinstated, the Applicant's counsel was advised on the night of the hearing to cross-examine Mr. Lacz, as a planner. This prejudicial ruling was contradictory to the Board's previous ruling.

63. In the Board's resolution, Mr. Lacz is deemed to be a "credible" witness even though he opined, inter alia, that the Project would require 53 bulk variances and even though the Board's own resolution identifies only 12 bulk variances required for the Project.

64. During the course of the hearing, the Board's conduct repeatedly and unequivocally illustrated a pattern of bias and prejudice against the Application and in favor of the Public and members of the City Council that appointed the Board.

65. Any testimony, findings or proofs that supported the approval of the Application were circumvented by the Board through its prejudicial rulings and further refuted by the Board's Planner, Gregory Polyniak pursuant to the prejudicial advisement and/or political or pressures from the City and Board.

66. The Board did not act in an objective fashion or satisfy its obligations as a quasi-judicial forum and in order to find a way to reject its own expert testimony, it forced Mr. Polyniak to appear at the end of hearings in attempt to skew and disavow the findings and conclusions of the Board's retained traffic expert, Frank Miskovich, as well as the Applicant's traffic consultant, Eric Keller of Omland Engineering ("Omland").

67. The Omland assessment was based upon traffic and pedestrian volumes being collected at four (4) major intersections to the site:

1. Prospect Avenue with Central Avenue;

2. Prospect Avenue with Passaic Street;
3. Summit Avenue with Central Avenue; and
4. Summit Avenue with Passaic Street.

68. The Omland traffic assessment study also conducted turning movement counts and established trip generation based on staffing, patient and visitor activity associated with each of the proposed three (3) uses (LTACH, Dialysis Unit and Adult Day Care).

69. The Omland engineering study also analyzed the parking for the facility at peak demand periods at 82% capacity. The Board's engineer, Mr. Miskovich, admitted during the hearings that the methodology utilized by Mr. Keller was an acceptable methodology for projecting trip distribution and trip generation for the project and concluded that at peak demand periods the garage would be at 84% capacity, which is only 2 % greater than the capacity calculation generated by Omland.

70. During cross-examination, Mr. Miskovich acknowledged various errors and incorrect assumptions contained in his report, including references to a "retail building" rather than a medical building, identification of the wrong city, wrong county and even the wrong conclusion.

71. Mr. Miskovich further admitted during the proceedings that the methodology employed by his firm, utilizing a Synchro Sim Trak Methodology had certain shortcomings with respect to the program and trip distribution modeling.

72. The Applicant's traffic consultant, Eric Keller, proposed certain mitigation, at the Applicant's expense, in his report including:

1. Modification of the Green Time allocation at the intersection of Summit Avenue and Passaic Street.
2. The introduction of Advanced Green Phases for the south

bound approach of Summit Avenue and the east bound approach of Central Avenue.

3. The addition of exclusive left turn lanes along Central Avenue.

73. Despite the fact that the proposed mitigation would alter the conclusions and findings, Mr. Miskovich acknowledged that his review of the Applicant's traffic assessment did not include or consider mitigations as proposed by the Applicant.

74. When further questioned as to his disregard to assess the proposed mitigation, Mr. Miskovich was unable to provide any justifiable reason or explanation on this issue.

75. Even though Mr. Miskovich did not consider the proposed mitigation in his calculations, he did admit certain qualifiers and factual predicates that were favorable to the Applicant.

76. Mr. Miskovich acknowledged in his report that a simulation of Central Avenue was with one lane traffic only, but acknowledged that the Central Avenue corridor was wide enough for two (2) lanes and could accommodate the mitigation proposed by the Applicant.

77. With respect to the parking requirement for the Project, Mr. Miskovich agreed with the Applicant's traffic consultant that since Hospitals may also provide dialysis one could conclude that the Applicant and dialysis center should be covered under the Hospital requirement for parking rather than as two (2) distinct uses.

78. Mr. Miskovich acknowledged that the Applicant's traffic consultant utilized a parking capacity analysis based upon the facility at 100% capacity of all three programs, the LTACH, Adult Medical Day Care and Dialysis Center, i.e., every bed filled, every slot utilized during the shifts for dialysis and every slot for Adult Medical Day Care filled, yet acknowledged that the facility would

not operate at 100% capacity at all times.

79. Some of Mr. Miskovich's ultimate findings and conclusions were very similar to the Applicant's Traffic Expert, Mr. Keller of Omland and/or contained minimal differentials and could justify a favorable recommendation of the approval of the proposed Site.

80. Ultimately, because the Board did not wish to accept the generally positive findings of their own traffic expert, Mr. Miskovich, they conspired with their planner, Mr. Polyniak to refute the findings of both the Applicant's traffic expert, Eric Keller and the Board's own traffic expert, Mr. Miskovich. This, notwithstanding the fact that Mr. Polyniak is not a licensed traffic engineer.

81. In fact, Mr. Polyniak attempted to refute the traffic analysis and conclusions rendered by Mr. Miskovich and Mr. Keller, without the (1) consultation of a traffic expert, (2) performance of his own traffic analysis, (3) utilization of any counts or counters in the roadway, or (4) creation of a SIM system simulation program.

82. During the September 15, 2011 hearing, when Mr. Polyniak was asked to explain his reasoning and justification for his conclusion that an additional 204 cars added to the am peak with 6,000 cars on four intersections constitutes a detrimental effect on the roadways, he was unable to provide a sufficient response to support his conclusion and repeatedly attempted to deflect this line of questioning.

83. A review of the line of questioning on the traffic analysis and underlying premises on ancillary issues and assessments further illustrates that Mr. Polyniak's conclusions and findings were not based on credible testimony nor supported by factual predicates. Instead, his findings and conclusions were rampant with illogical and unjustified reasoning and a myriad of bias and prejudicial conclusions on the feasibility of the Site and related requirements and findings against the Applicant. His new found conclusions were in contravention to his previous findings and rulings.

84. The Board resolution found the traffic and parking testimony of the Board's Planner, Gregory Polyniak to be credible. Yet, it is clear from the record that Mr. Polyniak changed his earlier positions of noting positive aspects of the project to his final conclusions supporting denial of the application clearly to support the Board's predisposition to deny the application and cater to the public and political opposition to the project. Thus, for example, in Mr. Polyniak's first report of September 18, 2009, he stated:

"Both the extent of landscaping throughout the site, especially the garden area, will present a positive aesthetic effect on Summit Avenue side of the site."

85. Mr. Polyniak further found in his September 18, 2009 report:

"The arrangement of the buildings within the R-3 district and the garden area within the R-75 district is an appropriate arrangement."

86. On cross examination by the Applicant's counsel, Mr. Polyniak could offer no explanation as to why in his subsequent testimony, he was critical of the proposed park on Summit Avenue side of the Site or the orientation of the buildings proposed by the Applicant.

87. Mr. Polyniak, also dramatically changed his position with respect to the manner in which the use variance under N.J.S.A. 40:55d-70(d)(1) should be considered. In his September 18, 2009 report he stated:

"All should be considered within a single (d)(1) use variance for a long term acute care hospital with a dialysis center and an adult medical day care."

88. Yet, after nearly two years of hearings and revisions to his reports to the Board,

wherein he maintained that the project be considered a single use for purposes of considering the Applicant's use variance application, Mr. Polyniak, abruptly and without justification changed his position dramatically noting:

"When you look at it as a whole, they are three integral uses that are really separated from one another. In taking a look at it and reviewing the testimony in the transcripts it's my opinion they are three separate uses."

89. The only thing Mr. Polyniak agreed to was that each of the uses constituted an inherently beneficial use.

90. During the course of the proceedings, the Board and the Board Attorney issued evidentiary rulings and demands placed upon the Applicant for additional information and analysis not required under the MLUL. These rulings and demands were conducted in bad faith and the Board's conduct throughout the hearings equated to an apparatus to interfere and unequivocally taint the Applicant's presentation of the facts and circumstances surrounding the pivotal issues, conclusions and testimony during the application process.

91. The City and the Board engaged in a political scheme to deny the Applicant a fair and just forum to present its Application and likewise the opportunity to have an impartial and objective fact-finder and decision maker.

92. Members of the Board had a duty and obligation to recuse themselves from the proceedings if in fact they could not act in an impartial way and were predisposed to reject the application.

93. On September 15, 2011, the Board even attempted to have Board member, Larry Eisen, participate in the proceedings that evening, even though he testified as an objector in the

proceedings. Mr. Eisen was purportedly present to create a quorum to conduct the meeting and also voted on the approval of the transcript from the previous meeting. The Applicant's counsel argued that Mr. Eisen needed to be recused and could not be on the dais or be included in the quorum, since was recused from this matter.

94. The City and Board's conduct during the course of the Application shocks the conscious of the public in that it offends the inherent and quasi-judicial capacity that the Board is charged to follow pursuant to the MLUL.

95. On January 19, 2012, the Board voted to deny the Application and issued a resolution, eight months later on September 20, 2012.

96. On September 25, 2012, the Board's Notice of Decision denying the Application was published.

FIRST COUNT

(Improper Imposition of Application Fees and Other Improper Demands Made by the Board During the Application)

97. The Applicant repeats and re-alleges each of the allegations of Paragraphs 1 through 96 as though fully set forth at length herein.

98. The Board and City demanded from the Applicant, special meeting and escrow fees totaling \$207,700.00. In direct violation of N.J.S.A. 40:55D-53.2, neither the Board nor the City provided the Applicant with timely copies of invoices or vouchers for services rendered to the Board and City professionals. The City has also failed to respond to the Applicant's OPRA requests demanding a basis upon which the City charged the Applicant the sum of \$3,000.00 for each special meeting.

99. The Board demanded throughout the public hearings, the Applicant's production of expert witnesses work product notes in violation of the Applicant's due process rights and in an attempt to discredit the legitimacy of the Application and ultimate findings and conclusions of the Applicant's experts.

100. The Board demanded that the Applicant produce documentation far in advance of any public hearing, but allowed the Board experts and objector experts to produce documents and discuss such evidence, without prior notice to the Applicant in violation of the Applicant's due process rights.

101. The Board in violation of N.J.S.A. 40:55D-10.g has failed, refused and neglected to adopt a memorializing resolution within forty-five (45) days of the conclusion of the Application.

102. Despite determining the Application complete on November 4, 2008, the Board and City failed, refused or neglected to commence public hearings on the Application until five (5)

months later.

Wherefore, Plaintiff, Bergen Passaic LTACH, LLC demands judgment against the Defendant City of Hackensack Zoning Board of Adjustment and Defendant City of Hackensack, as follows:

- a. Reversing and vacating the Board's denial of site plan approval and variance relief;
- b. Approving Plaintiff's site plan application, including the requested use variance and other bulk variances;
- c. Compelling the refund to Plaintiff of overcharges for all development fees demanded by Defendant City and Defendant Board;
- d. Awarding Plaintiff costs of suit; and
- e. Granting Plaintiff such other and further relief as the court in its discretion deems equitable.

SECOND COUNT

(Improper Denial of Site Plan Approval, Use Variance, and Bulk Variance Relief)

103. The Applicant repeats and realleges each of the allegations of Paragraphs 1 through 102 as though fully set forth at length herein.

104. The Applicant presented competent, credible testimony and documentation to establish its entitlement to the use variance under N.J.S.A. 40:55D-70 (d)(1) and "c" dimensional variances under N.J.S.A. 40:55d-70.c.

105. As to each variance sought, the Applicant presented credible evidence to establish the statutory criteria, both positive and negative were met.

106. The Board's denial of the Application for site plan approval, use variance and bulk

variance relief is arbitrary capricious and unreasonable, against the weight of evidence and in violation of the MLUL.

Wherefore, Plaintiff Bergen Passaic LTACH, LLC demands judgment against the Defendant City of Hackensack Zoning Board of Adjustment as follows:

- a. Reversing and vacating the Board's denial of site plan approval, use variance and bulk variance relief;
- b. Approving the Plaintiff's site plan application, including the requested use variance and bulk variances;
- c. Awarding Plaintiff costs of suit; and
- d. Granting Plaintiff such other and further relief as the court in its discretion deems equitable.

THIRD COUNT
(Improper Standard of Review)

107. The Applicant repeats and re-alleges each of the allegations of Paragraphs 1 through 106 as though fully set forth at length herein.

108. The Board was pre-disposed against the Application, even prior to commencement of its application. This predisposition is evidenced by the long delays between the Board engineers determination that the application was deemed complete on November 4, 2008 and the scheduling of the first hearing on the application five months after the completion of the application.

109. The protracted and unjustified delays in commencing the hearings presented the objectors with an unfair advantage over the Applicant and allowed the objectors to fully mobilize their opposition to the application.

110. The Board failed to serve in the capacity of an objective finder of fact, or in a quasi-

judicial capacity but, rather assumed the role of an objector of the Application.

111. Notwithstanding that the Application was for an inherently beneficial use recognized as an inherently beneficial use by each of the Applicant's experts as well as the Board's own experts, the Board abrogated its obligations under the MLUL, as well as the judicially established standards set forth under the case of Sica v. Wall Twp. and the four part test for the negative criteria that must be met.

112. The Board resolution which found that "the applicant was unwilling to accept various conditions that may have mitigated some of the detriments," is contrary to the material modifications to the plan agreed to by the Applicant, as well as mitigation proposed on surrounding roadway networks. These material amendments and mitigation included:

1. Reducing the number of stories from twenty-four (24) to nineteen (19).
2. Reducing the height of the building from 276 feet 6 inches to 227 feet.
3. Reducing the number of LTACH beds from 144 to 120.
4. Reducing the number of dialysis seats from 84 to 63.
5. Reducing the number of Adult Day Care Slots from 250 to 180.
6. Increasing the number of parking spaces from 405 to 417.
7. Implementation of the modification of the green time allocation at the intersection of Summit Avenue and Passaic Street.
8. The introduction of advance green phases for the south bound approach of Summit Avenue and the east bound approach of Central Avenue.
9. The addition of exclusive left turn lanes along Central Avenue.
10. The imposition of staff arriving at different shift times to stagger arrivals/departures to minimize impact on local circulation.

11. The utilization of patients vans that carry ten (10) passengers.
12. A significant number of patients are dropped off and picked up.
13. The R-75 portion of the Site is to be developed with a passive open space park.
14. Elimination of tractor trailers for food delivery in order to utilize smaller trucks which could access the loading bays in the subsurface garage.
15. Increase the height of the Summit Avenue car access to the subsurface garage.

All of the foregoing complies with the Sica requirement that any potential detrimental impact be addressed by the Board through "reasonable conditions". In contrast, the Board ignored each of the foregoing as a "reasonable condition" agreed to by the Applicant, instead, acted in an arbitrary, capricious and unreasonable manner in applying the Sica balancing of positive and negative criteria for the inherently beneficial use.

113. The Board's conduct in connection with the review of the Application was arbitrary, capricious and unreasonable and in violation of the MLUL.

Wherefore, Plaintiff Bergen Passaic LTACH, LLC demands judgment against the Defendant City of Hackensack Board of Adjustment as follows:

- a. Reversing and vacating the Board's denial of site plan approval and variance relief;
- b. Approving Plaintiff's site plan application, including the requested use variance and other bulk variances;
- c. Awarding Plaintiff costs of suit; and
- d. Granting Plaintiff such other and further relief as the court in its discretion

deems equitable.

FOURTH COUNT
(Breach of Duty)

114. The Applicant repeats and re-alleges each of the allegations of Paragraphs 1 through 113 as though fully set forth at length herein.

115. Members of the Board owe a duty to all applicants to oversee and facilitate the application process and render decisions in an objective and fair manner.

116. If members of the Board are predisposed to rejecting an application or possess certain biases and prejudicial feelings towards an applicant or particular project, they owe a duty to applicants to recuse themselves, in order to provide applicants with an objective forum for the presentation of its application before a Zoning Board of Adjustment.

117. The Hearing Transcripts and Resolution are replete with prejudicial and unjust statements, rulings, credibility findings, and unsupported demands and modifications.

118. The members of the Board acted in a prejudicial and bias manner during the course of the hearings on the Application.

119. The members of the Board denied the Application based on prejudicial and bias predispositions.

120. The Board's conduct denied the Applicant the opportunity to present its Application in a neutral and objective forum and defied the dictates of the inherent fairness and impartiality that the Applicant was entitled to during the course of its submission of proofs and supporting expert testimony.

121. The Board's prejudicial and bias conduct, included, but is not limited to the following examples:

- (i) The Board allowed the Mayor and Council members to use the hearings as a political forum and make statements against the approval of the Application prior to the presentation of any proofs or testimony. The City elections were to be held less than two weeks after these statements were made at the public hearing on the Application. Despite the Applicant's counsel's objection, the Board and Board's Attorney allowed these highly prejudicial and politically charged statements to be made by the Mayor and Council members in their official elected capacities and outside the ordinary order of proceedings, i.e., objectors are allowed to testify after the presentation of the Applicant's initial expert testimony and submission of proofs.
- (ii) The Board Chairman permitted an objector attorney to question and harass the Applicant's owner operator, Richard Pineles, on cross examination as to a traffic study that had not yet been presented.
- (iii) The Board, at the request of an objector attorney, directed that the Applicant produce the engagement

letter with its traffic consultant Omland Engineering.

- (iv) The Board applied different standards to the Applicant's production of expert reports as opposed to those prepared by objector experts or the Board's experts. For example, the Board's traffic consultant, Mr. Miskovich, was permitted to commence testifying even though he had not produced his report until the night of the hearing nor did he produce any backup documentation or visual simulations which he relied upon.
- (v) The Board and the Board's planner Mr. Polyniak demanded the Applicant provide a geotechnical study for the purpose of determining how the Applicant would design footings and foundations for the project despite the fact that such a geotechnical study is only required from an applicant prior to the issuance of building permits.
- (vi) The Board and the Board's planner, Mr. Polyniak demanded that the Applicant specifically provide a construction phasing plan and report during the pendency of the hearing. The Applicant argued the ordinances of the City of Hackensack established hours under which any construction on the Site could

occur and that the developer's agreement would also govern any type of construction activities on the property.

- (vii) The Board demanded, in order to satisfy the requests of an objector attorney, that the Applicant cause its traffic engineer, Eric Keller to produce all of his notes generated with respect to the production of the reports submitted to the Board.
- (viii) The Board Chairman allowed objector attorneys multiple opportunities to cross-examine the Applicant's witnesses in areas of testimony which had been concluded months earlier.
- (ix) The Board Chairman allowed objector attorneys to question, Eric Keller, the Applicant's traffic consultant on purported parking issues at a separate facility operated by Mr. Pineles known as Prospect Heights notwithstanding the fact that Prospect Heights was not the subject of the Application.
- (x) The Board Chairman inappropriately lead its expert, Mr. Miskovich, when he attempted to identify the shortcomings and problems associated with the traffic simulation that it performed.

122. The Board's bias and ill willed feelings and/or political influences from the City

resulted in the Board's failure to serve in the capacity of an objective finder of fact, or in a quasi-judicial capacity in accordance with the MLUL.

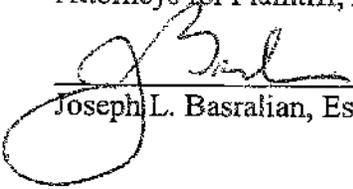
123. The Board breached its duty during the course of the proceedings on the application, thereby causing the Applicant damages.

Wherefore, Plaintiff Bergen Passaic LTACH, LLC demands judgment against the Defendant City of Hackensack Zoning Board of Adjustment as follows:

- a. Reversing and vacating the Board's denial of site plan approval, use variance and bulk variance relief;
- b. Approving the Plaintiff's site plan application, including the requested use variance and bulk variances;
- c. Awarding Plaintiff costs incurred relating to the submission of the Application, including all expert fees, special meeting fees, attorney's fees and all related fees and costs; and
- d. Granting Plaintiff such other and further relief as the court in its discretion deems equitable.

**WINNE, BANTA, HETHERINGTON,
BASRALIAN & KAHN, P.C.**

Attorneys for Plaintiff, Bergen Passaic LTACH, LLC



Joseph L. Basralian, Esq.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Joseph L. Basralian, Esq. as trial counsel in this matter.

CERTIFICATION PURSUANT TO RULE 1:38-7

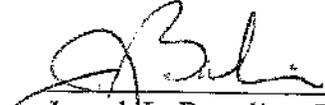
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that the matter in controversy is not the subject of any other civil action or arbitration proceeding, nor are any other civil actions or arbitration proceedings contemplated. I certify that there are no other parties who should be joined in the action. I recognize the continuing obligation to file and serve all parties and the Court with an amended Certification if there is a change in the facts set forth in this Certification.

The transcripts of the agency proceedings have been ordered.

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.



Joseph L. Basralian, Esq.
Attorney for Plaintiff,
Bergen Passaic LTACH, LLC

Dated: November 7, 2012

EXHIBIT "A"



DEBRA HECK, RMC/CMC
CITY CLERK

CITY OF HACKENSACK

65 Central Avenue
P.O. Box 608
HACKENSACK, N.J. 07602-0608
(201) 646-3940
Fax: (201) 457-1466
www.hackensack.org

CITY COUNCIL

MICHAEL R. MELFI, MAYOR
MARLIN G. TOWNES, DEPUTY MAYOR
KAREN K. SASSO
JORGE E. MENESES
JOHN P. LABROSSE, JR.

October 10, 2012

Joseph Basralian, Esq.
21 Main Street
Hackensack, NJ 07601

Dear Mr. Basralian:

I am in receipt of your recent Open Public Records Request, a copy of which is attached.

Please be advised that your request seeks information or asks questions and does not identify specific government records. As such, your request is an invalid OPRA request and is denied. When a request is "complex" because it fails to specifically identify the documents sought, then that request is not "encompassed" by OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166, 180 (App. Div. 2007). A proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. See Bent v. Stafford Police Department, 381 N.J.Super. 30, 37 (App. Div. 2005). Custodians are not required to conduct research or create new records in response to an OPRA request.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the City of Hackensack to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,

Debra Heck, RMC/CMC
City Clerk



CITY OF HACKENSACK

OPEN PUBLIC RECORDS ACT REQUEST FORM

65 Central Avenue, Hackensack, NJ 07601

phone (201)646-3940 fax (201)457-1466

dheck@hackensack.org

Debra Heck, City Clerk



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information - Please Print

First Name Joseph MI L. Last Name Basralian, Esq.

E-mail Address klutz@winnebanta.com

Mailing Address 21 Main Street, Suite 101, P.O. Box 647

City Hackensack State NJ Zip 07601

Telephone (201) 487-3800 FAX (201) 487-8529

Preferred Delivery: Pick Up US Mail On-Site Inspect Fax E-mail

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [Signature] Date September 27, 2012

Payment Information

Maximum Authorization Cost 100.00

Select Payment Method

Cash Check Money Order

Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, etc) - actual cost of material
Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Attached is a list of the Special Meetings conducted by the Zoning Board of Adjustment in the matter of the application of Bergen Passaic LTACH, LLC ("LTACH"). LTACH paid \$3,000.00 as required by Hackensack Ordinance, which aggregated \$60,000.00 for twenty (20) special meetings. This OPRA request is for the following information:

1. The name of each Board of Adjustment member who was paid a fee for each Special Meeting attended by such member and the date of each meeting such member attended.
2. The name and amount of each payment by the City to the Board Attorney, Engineer, Planner, short hand reporter and City employees who attended each Special Meeting.

(cont'd on separate page)

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filled - Closed _____

Partial - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			

Custodian Signature _____

Date _____

3. Minutes of all Council work sessions and public meetings at which Ordinance No. 13-2006 was discussed.
4. The names and addresses of all applicants to the Zoning Board of Adjustment and Planning Board who paid the Special Meeting fee for the years 2008, 2009, 2010 and 2011, and the number of meetings for each of the foregoing.

1/1/11

ATTACHMENT A

LTACH SPECIAL MEETING DATES

- May 14, 2009
- June 25, 2009
- July 22, 2009
- September 23, 2009
- December 10, 2009
- January 7, 2010
- February 23, 2010
- April 29, 2010
- May 27, 2010
- June 23, 2010
- July 28, 2010
- August 25, 2010
- October 27, 2010
- November 30, 2010
- January 20, 2011
- March 3, 2011
- July 26, 2011
- September 15, 2011
- October 26, 2011

EXHIBIT "B"



CITY OF HACKENSACK

OPEN PUBLIC RECORDS ACT REQUEST FORM

65 Central Avenue, Hackensack, NJ 07601
phone (201)646-3940 fax (201)457-1466
dheck@hackensack.org
Debra Heck, City Clerk



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor information - Please Print

First Name Joseph MI L. Last Name Basralian, Esq.
 E-mail Address klutz@winnebanta.com
 Mailing Address 21 Main Street, Suite 101, P.O. Box 647
 City Hackensack State NJ Zip 07601
 Telephone (201) 487-3800 FAX (201) 487-8529
 Preferred Delivery: Pick Up US Mail On-Site Inspect Fax E-mail

Payment Information

Maximum Authorization Cost \$100.00
 Select Payment Method
 Cash Check Money Order
 Fees: Letter size pages - \$0.05 per page
 Legal size pages - \$0.07 per page
 Other materials (CD, DVD, etc) - actual cost of material
 Delivery: Delivery / postage fees additional depending upon delivery type.
 Extras: Special service charge dependent upon request.

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [Signature] Date September 27, 2012

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- The name and amount of each payment by the City to the Board Attorney, Engineer, Planner, short hand reporter and City employees who attended each Special Meeting.

(cont'd on separate page)

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____
 Deposit Date _____

AGENCY USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
 Denied - Closed _____
 Filled - Closed _____
 Partial - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost
Tracking #	_____	Total _____
Rec'd Date	_____	Deposit _____
Ready Date	_____	Balance Due _____
Total Pages	_____	Balance Paid _____
Records Provided		
Custodian Signature _____		Date _____

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4. The names and addresses of all applicants to the Zoning Board of Adjustment and Planning Board who paid the Special Meeting fee for the years 2008, 2009, 2010 and 2011, and the number of meetings for each of the foregoing.

LTACH SPECIAL MEETING DATES

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- October 27, 2010
- November 30, 2010
- January 20, 2011
- March 3, 2011
- July 26, 2011
- September 15, 2011
- October 26, 2011

Appendix XII-B1



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule 4:5-1*
**Pleading will be rejected for filing, under *Rule 1:5-6(c)*,
if information above the black bar is not completed
or attorney's signature is not affixed**

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY / PRO SE NAME Joseph L. Basralian	TELEPHONE NUMBER (201) 487-3800	COUNTY OF VENUE Bergen
FIRM NAME (if applicable) Winne, Banta, Hetherington, Basralian & Kahn, P.C.	DOCKET NUMBER (when available) BER-L- 8243-12	
OFFICE ADDRESS Court Plaza South 21 Main Street, Suite 101 Hackensack, NJ 07601	DOCUMENT TYPE Complaint in Lieu of Prerogative Writ	
NAME OF PARTY (e.g., John Doe, Plaintiff) Bergen Passaic LTACH, LLC	CAPTION Bergen Passaic LTACH, LLC vs. City of Hackensack Zoning Board of Adjustment and City of Hackensack.	
CASE TYPE NUMBER (See reverse side for listing) 701	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	

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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS
---	--

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? YES NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION

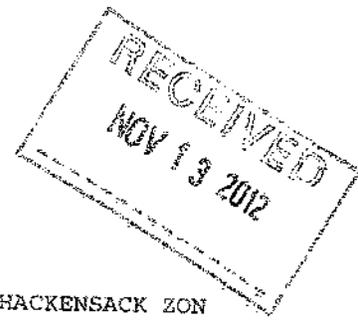
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE?

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)*.

ATTORNEY SIGNATURE: *Joseph L. Basralian*

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

TRACK ASSIGNMENT NOTICE



COURT TELEPHONE NO. (201) 527-2600
COURT HOURS

DATE: NOVEMBER 08, 2012
RE: BERGEN PASSAIC LTACH LLC VS CITY OF HACKENSACK ZON
DOCKET: BER L -008293 12

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

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

THE MANAGING JUDGE ASSIGNED IS: HON ALEXANDER H. CARVER

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

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

ATTENTION:

ATT: JOSEPH L. BASRALIAN
WINNE BANTA HETHERINGTON&B & K
COURT PLAZA SOUTH
21 MAIN STREET
HACKENSACK NJ 07602

JUBLECO