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SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY, LAW DIVISION
DOCKET NO.

CIVIL ACTION

RICHARD A. BRUMMEL,
Plaintiff,

VS.

TOWNSHIP OF WAYNE, MAYOR AND
COUNCIL OF THE TOWNSHIP OF WAYNE,
CHAIRMAN AND ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF WAYNE
WAYNE, GRACE UNITED PRESBYTERIAN
CHURCH OF WAYNE,
Defendants.

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRIT AND
INJUNCTIVE RELIEF**

Richard A. Brummel, residing at 70 Wanaque Avenue, Pompton Lakes, N.J. 07442, says by way of complaint,

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Introduction

1. By this complaint and the accompanying order to show cause, legal memorandum and affidavit of emergent circumstances, Plaintiff requests, by way of a writ in lieu of prerogative, interim and permanent injunctive relief to prevent the destruction of a roughly three- (3-) acre parcel of forest-land in the Defendant Township of Wayne because of extensive misfeasance by Township Defendants related to the matter.
2. In addition, Plaintiff requests the Court: Appoint a Special Master to attempt to preserve

subject forest and to oversee and reform the open-space-protection practices of Defendant Township to bring the practices into compliance relevant laws; Vacate approvals of subdivision and use-variance by Defendant Zoning Board due to remarkable procedural error; Enjoin Defendant Mayor and Defendant Chairman from taking any further official actions with respect to open-space protection due to their bad-faith conduct; and Grant other related relief as described hereinafter and in the accompanying order to show cause, and in the Court's discretion.

3. Two recent newspaper articles set the context of this Complaint: “Wayne Church To Sell Land For Redevelopment Project”, *Wayne Today*, February 20, 2020 (*Exhibit 1A*) describes that the Defendant Church suffered financial distress, decided to sell a roughly three- (3) acre forested area for development, that neighbors and others opposed the plan, and that the Defendant Zoning Board ultimately approved the subdivision plan.
4. “Activist tries to save Wayne Church land”, *The Record*, March 5, 2020 (*Exhibit 1B*) describes how the Church (quietly) sought a rescue of its forest from the Township even *after* receiving permission to subdivide it, was rebuffed (in secret) by the Mayor, and that Plaintiff has been working to secure the forest's preservation.
5. The story of the failure to preserve the forest heretofore is in actuality far more tawdry.
6. This Complaint establishes that Defendant Township, by its Defendant officials and Board, repeatedly acted unlawfully to frustrate (a) the stated intent of Township law; (b) proper budget and accounting features; (c) the prescribed organizational structures and procedures designed to protect and preserve natural open space such as the treasured little forest at issue

here.

7. Plaintiff seeks injunctive relief in part to establish a 'cooling-off period' for a Special Master to revisit the a rescue of the forest at issue, while reforming those mechanisms and policies created by the Township's laws but violated by Defendants.
8. Additional relief is aimed at removing authority over open-space issues from the two Defendant officials who have acted against local ordinances designed to promote that environmental priority, *infra*.
9. The improprieties identified converge in the story of the failure to preserve the little “Grace Preakness Forest” at issue, but paradoxically the circumstances create an opportunity more broadly to repair the general malfunctioning in the Township's environmental stewardship.
10. Such reform, begun within the context of this ecologically-valuable but modest three- (3) acre forest, can produce untold benefit in bringing Township practice in conformity with the laws, so that impending challenges of a higher magnitude, like the coming 'redevelopment' of the wooded five-hundred (500) acre former Toys-R-Us campus (see, *Exhibit 3, news article*) is handled by officials and agencies genuinely ready to protect the environment.

The Parties

11. Plaintiff Richard A. Brummel, is resident of the Borough of Pompton Lakes, N.J., and is an environmental activist who frequently visits neighboring Defendant Township for work, shopping, activism, and recreation.
12. Plaintiff's home is about eight (8) miles and fifteen (15) minutes away by car from the forest at issue (see, *Exhibit 4, Google map*).

13. Plaintiff has made numerous visits to the forest and the surrounding neighborhood over the past two (2) months.

14. Plaintiff has 'standing to sue' to challenge the actions described herein, which threaten to cause the destruction of the subject forest, inasmuch as the New Jersey Environmental Rights Act ("N.J.E.R.A.") (*N.J.S. Title 2A:35A-1 et seq.*), establishes that "any person" may avail themselves of the courts to challenge unlawful acts that pollute, impair or destroy the environment, to wit:

"...[A]ny person may commence a civil action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction."

(New Jersey Statutes, Title 2A, Section 2A:35A-4 (B), emphasis added)

15. Defendant Township of Wayne ("the Township") is a body corporate and political organized under the laws of New Jersey. Its principal place of business is located at 475 Valley Road, Wayne, N.J. 07470.

16. Defendants Mayor and Council of the Township of Wayne ("Council") are collectively the municipal governing body of the Township. Their principal place of business is located at 475 Valley Road, Wayne, N.J. 07470.

17. Defendants Zoning Board of Adjustment ("Zoning Board") and its Chairman William Van Gieson ("the Chairman") is and are constituted pursuant to N.J.S. 40:55D-1 et seq., and Wayne Township Ordinances, Chapter 134, section 134-8 et seq. and have authority over among other things variances and subdivision. Their principal place of business is located at 475 Valley Road, Wayne, N.J. 07470.

18. Defendant Grace United Presbyterian Church is a religious institution whose church and property is located at 981 Preakness Avenue, Wayne, N.J. 07470. (The Church is joined because it has a stake in the proceedings.)

Count 1

A Special Master To Oversee Open-Space Protection Should Appointed Because Township Defendants Fail To Obey The Township's Own Environmental Laws

Overview

19. The Grace United Presbyterian Church of Wayne, with self-professed reluctance and due to financial distress, upon information and belief, has sought to sell part of its roughly five- (5) acre, wooded property, either to public-entities for preservation, or to private-developers for residential construction, as disclosed in communications from the Church's Pastor to the Defendant Mayor, *infra* (see, *Exhibit 2, Letter from Pastor of Defendant Church; Exhibit 5, Open Records disclosure by Township, "OPRA 20-316 WAYNE 003" covering relevant correspondence between Pastor and Mayor*).

20. The forest at issue, shown by satellite view in Exhibit 8, dubbed the "Grace-Preakness Forest" by its fans¹, is home to a family of deer (*Exhibit 9, photo by Plaintiff of deer at the forest in early March, 2020*) and other wildlife including hawks and foxes which Plaintiff

¹The name "Grace-Preakness Forest" is entirely unofficial, was essentially for publicity purposes, and references to that forest land hereinafter, by that name -- which is a combination of the log-time owner, the Grace United Presbyterian Church and its location Preakness Ave. -- should be considered as identical to identifying the land as that referenced in Zoning Board of Adjustment application "BOA-2020-004", and/or the Church's forest at 981 Preakness Ave., Wayne, N.J.

personally observed.

21. While seeking help public help to preserve the forest, the Church also applied to the Township for subdivision approval in preparation for a potential commercial sale, receiving final approval by the Zoning Board of Adjustment on February 18, 2020 (*Exhibit 7, Minutes, p. 2*).
22. The separate efforts to preserve the forest by the Church and by preservationists -- sometimes working at cross-purposes, as with the subdivision -- were stymied when the Mayor, the Township Council, and Zoning Board Chairman systematically frustrated the intent of Township law to protect open-space generally, and “mature woodlands”, such as the Church's forest, specifically, as described *infra*. (see, e.g. *Wayne Township Ordinances, Chapter 134, section 134-90.1*).
23. On February 26, 2020, days after the subdivision was approved in a rancorous process that pit the Church against its neighbors, Pastor Andrew Smith quietly sent the Mayor a desperate, 'last-ditch' email, entitled “*Grace United Presbyterian Church -- Open Space Purchase Inquiry*” (Exhibit 2, Exhibit 5, *id.*).
24. The Pastor described its predicament, insofar as the Church believed it to be “ethically preferable” to have the forest preserved rather than developed, but needed a sale one way or another (*id.*).
25. The Pastor also wrote that for a public-sale, the Church would discount its asking price by twenty-five (25) percent, dropping it from \$800,000 to \$600,000:

“*Grace United Presbyterian Church -- Open Space Purchase Inquiry*”

“While we are receiving and considering good offers from residential developers, at the urging of a few of our neighbors I'd also like to find out if the town has any open space preservation funds available. We're asking \$800k for the property and are considering serious offers over \$600k. I've spoken to folks at the county and state, and have been told categorically that this is not the sort of thing they would purchase. Is it a possibility at the town level?”

I'd value your thoughts and feedback on this since, if there's any way we can sell this property for a good price without destroying the (admittedly pretty small) wild space and alienating our existing neighbors, it would be ethically preferable to residential development.”

(Exhibit 2, Exhibit 5, id., emphasis added)

26. Three (3) business days later, on Monday, March 2, 2020, the Mayor replied secretly with a unilateral 'veto' of the request, writing:

*“Thank you for your email. I am going to agree with my counterparts at the county and state level² and agree that *this is not the type of project that we would use our Wayne Township open space fund to purchase.* I wish you and your congregation only the best in the future. Regards, Chris.”*

(Exhibit 5, OPRA disclosures, “OPRA 20-316 WAYNE 002”, emphasis added)

27. Acting unilaterally in secret, the Mayor had bypassed prescribed consultative channels (*infra*) for open-space protection, such as the Open Space Committee which was given the duty that it “shall make an initial determination of which parcels of land should be acquired” in open-space preservation matters (*Wayne Township Ordinances, Chapter 129, section 129-42(A)*).

28. The Mayor also bypassed the Township Environmental Commission. He furthermore

²While the Pastor had written that he consulted other government entities, there is no evidence the requests were formally made or with the requisite participation of the local government agencies in Wayne set up for that purpose and therefore should not have been given excess weight of authority, as the Mayor seemed too eager to do. (See Exhibit 2, Pastor's letter.)

ignored the goal of local law to protect natural open space, particularly “mature woodlands” and “natural features” (see, e.g. *Wayne Township Ordinances, Chapter 134, sections 134-90.1 and 134-90(A)*).

29. The Mayor's actions, and actions of the Defendant Council, are described further *infra*.

**Zoning Board Approval Tainted By Chairman's Erroneous Statement Of
'Standard Of Review'**

30. While it had sought assistance to preserve the forest, the Church also applied for permission to subdivide it into five residential-lots for a sale to a developer as an alternate outcome to raise money.

31. Defendant Zoning Board granted permission for a major subdivision and use-variance by a final, 'memorialization' vote on February 18, 2020, after earlier vote and contentious hearing, with opposition from neighbors and others, on January 21, 2020, (*Exhibit 10, Minutes of Zoning Board meetings of December 16, 2019, pp. 5-8; Exhibit 11, Minutes of January 21, 2020, pp. 2-4; Exhibit 7, Minutes of February 18, 2020, p. 2*).

32. During a hearing on January 21, 2020 at which approval would be granted, the Board heard from several neighbors and others opposing subdivision on environmental grounds related to wildlife, protection of natural open-space, as well as property-protection and property-value issues.

33. Comments from neighbor Barbara Wichot, whose property abuts the forest and who opposed the subdivision, is representative:

“There is a picture of Gow Road, the wetlands, and the flooding.... The habitat that [exists] here *it is the where the [deer] fawns are born every year*. We have

been here since 1982. The fawns have been here every single [year]. That is in their instinct, that is where they're born. That is their home. *There are also red fox, with her kits. This is her den. We have turkey. And we also have a [Red] hawk couple nesting.* ... They are protected under federal law and their habitat it would have to be determined how [it] could be disturbed....”

(Exhibit 12, official video of Zoning Board meeting, January 21, 2020, time-stamp 1:11:58)

34. Activist Ann Schnakenberg told the Board a preferable option was for the Township to help the Church preserve the property and “take advantage of (public) open-space money rather than going to the developer...take advantage of money that the taxpayers have paid,” (*Exhibit 12, id., at time-stamp 1:30:28*).
35. After the testimony, and just prior Board vote, Defendant Chairman launched into a five-(5) minute long overview (and rebuttal) of the testimony.
36. He articulated a “property rights” theory, among other things, and by his words and analysis presented the application as an innocuous exercise of the free-market which posed no challenge to the policies of the Township -- an assertion which was actually utterly false as a mater of law.
37. The Chairman said in part:

“We've listened to this application for what seems like a century.... *The comments about open space: I would match any other town* including Clifton by the way.... We have a little mountain called 'High Mountain' ... it is at least fifteen hundred acresAnd there was a Bard Owl and some kind of a newt that was saved. ... We buy up flood properties along the river left and right in this Town.... *I think we have one of the most extensive park systems in this town.... [W]e just built another beautiful complex. Again not open space with trees and animals running through it but we have open space for recreational activities....*To make it sound like if we don't preserve this five acres, boy we're really screwed in this town is not a very accurate description... *It's important to you because it's behind your homes.* I get it...*Property owners have property rights* ... [A] church that wants to take some of

their property *for whatever the reason and develop some of it*, as long as its done properly, I don't see any problem with that. *I'm a firm believer in people's property rights.*”

(Exhibit 12, id., at time-stamp 1:42:51, emphasis added)

38. The Chairman's statement was not part of any debate on the application, because no resolution was on the floor -- it was introduced after he spoke (*Exhibit 12, id., at time-stamp 1:48:01*). Rather, the Chairman was essentially 'charging' the Board with its mandate in review, using his administrative prerogative to address the Board after testimony concluded.
39. Indeed there was no debate and minimal discussion after the Chairman spoke, and the Board unanimously approved the application only ninety (90) seconds after the Chairman asked for a motion (*Exhibit 12, id., time-stamp 1:48:01*)
40. But the Chairman's statements essentially repudiated the actual mandate of his Board, which was: to “minimize[]” the loss of “mature woodlands” and “existing topography, hydrology, and geology”, “to the greatest extent possible”, and to preserve “natural features” of the land, to wit:

“The principles and objectives of this article shall be fostered, promoted, and achieved *to the greatest extent possible in the review and approval of any application* governed by this article³. The principles and objectives are as follows:

A. *Alterations to existing topography, hydrology, and geology shall be minimized.*

B. *Destruction of mature woodlands shall be minimized.*

C. *Stream corridors, pond shores, lake shores, and flood plains shall be protected*

³The article was directed at subdivision like the one before it: “This regulation is applicable to subdivisions and site plans. This regulation is also applicable to any building permit or grading permit where the improvement footprint is 500 square feet or greater.” (*Wayne Township Ordinances, Chapter 134, section 134-91.1(C)(1)(A)*).

from development.

D. Erosion and increased surface water runoff shall be minimized by avoiding development on steep slopes and avoiding excessive site clearing, grading and impervious surface.

....”

(Wayne Township Ordinances, Chapter 134, section 134-90.1, emphasis added)

41. The cited ordinance is part of “Article VI, Environmental Protection”, a sub-division of “Chapter 134, Land Development”. In other words the Township had specifically integrated environmental protection into the land-development rules knowing that it was development that posed the greatest challenge to the environment of the Township.

42. The environmental protection ordinance also states:

“The purpose of this article is to protect the health and safety of the community insofar as it relates to *the protection and the preservation of those natural features* including geology, hydrology, soils and vegetation considered as development constraints. It is of particular concern to maintaining ecological balance, a healthful environmental quality and protection of historic resources.”

(Wayne Township Ordinances, Chapter 134, section 134-91.1(A))

43. Notwithstanding the Chairman's statement, the Zoning Board was not charged with determining whether the Township could “match any other town” in open-space (i.e. could afford to lose forest lands), or had “the most extensive park system,” (*id.*), and thus did not need to worry about a 'small' woodland.

44. The Board was charged with *minimizing* “destruction” and “alteration”, “to the greatest extent possible”, with respect to subdivision and other land-use issues before it, *supra*.

45. At no time in his pre-vote 'charging' statement did the Chairman mention that emphatic

statutory-mandate to his Board that it “shall...to the greatest extent possible” assure that “Alterations to existing topography, hydrology, and geology shall be *minimized*” and that “Destruction of mature woodlands shall be *minimized*”, *supra*.

46. The Chairman's comments erroneously stated a 'standard of review' effectively *minimizing* the protection of the forest -- because the forest was (only) “five acres” and the Township had plenty of open-space, e.g. a one-thousand five-hundred (1,500) acre preserve, *supra* -- and thus presented a faulty and deceptive statement of the Board's mandate in reviewing such an application.

47. At the Zoning Board meeting of February 18, 2020, at which the Board took the 'memorialization' vote of the previously approved subdivision and use-variance⁴, Plaintiff filed written opposition requesting “reconsideration” of the prior vote (*Exhibit 13, Plaintiff written Statement*)⁵.

48. Plaintiff wrote “I believe the foregoing decisions [on subdivision etc.] ... are legally deficient and should be deferred and reconsidered,” (*Exhibit 13, id., p. 1*) Plaintiff cited (*id.*) the language in the Township's “Environmental Protection” ordinance (*infra*), which established a mandate for agencies reviewing land-use applications to preserve the “ecological balance” in the Township:

⁴Memorialization is the final zoning point which triggers the calendar-clock for legal procedures (see, *N.J.S. 40:55D-10(g)(2)*).

⁵Plaintiff arrived late, and filed the statement after the memorialization vote was held, but filed it anyway and described its contents on the well-established theory that votes by public bodies and agencies can be reconsidered or rescinded on proper notice and form. The Chairman heard Plaintiff's statement he was so filing, and told him he was “out of order”. Minutes do not reflect the exchange, but the video feed does.

“The purpose of this article is to protect the health, safety and public welfare of the Township of Wayne through the *protection and preservation of natural features* including geology, hydrology, soils, and vegetation in order to prevent erosion and flood damage and *maintain ecological balance and a healthful environmental quality.*”

(*Wayne Township Ordinances, Chapter 134, section 134-90, emphasis added*)

49. According to its Minutes, the Board did not then act on the request for reconsideration and the submission is not referenced (*Exhibit 7, Minutes, p. 6*)⁶.

Defendant Officials Ignore Principles And Agencies Established To Protect Open-Space in Wayne

50. Notwithstanding its summary rejection, the request by the Church to the Township for assistance in preserving the forest clearly fit within an extensive local statutory-framework, and stated legislative-intent of the Township to preserve natural open-space.
51. Unfortunately as noted, *supra*, the goal of preservation was not upheld by officials like the Mayor and Zoning Board Chairman, who were far more comfortable philosophizing about “property rights”, *supra*.
52. The statutory framework for conservation of natural open-space includes:
53. (1) The Township maintains millions of dollars in a “Trust Fund” established in 2003 for land-acquisition, which annually levies taxes on residents for the purpose of preserving 'open space', as well as recreational land, farms, and historical sites:

“There is hereby established a reserve in the General Capital Fund, which shall be

⁶The Board also omitted any reference to the submission, which Plaintiff filed with the clerk of the Board when he rose to address another application being considered.

known and designated as the 'Municipal Open Space, Recreation and Farmland and Historic Preservation Trust Fund'.”

(Wayne Township Ordinances, Chapter 129, section 129-36)

54. (See also, *Exhibit 19, Open Space (etc.) Trust Fund budget statement of 2019*)

55. (2) The Township ordinances mandate the establishment of an “Open Space Committee” in the same ordinance as the Trust Fund, with the “powers and duties” to identify and evaluate local lands should be acquired or otherwise protected from development:

“The Open Space Committee shall make an initial determination of which parcels of land should be acquired in fee and/or those parcels of land from which the Township should acquire development rights only.”

(Wayne Township Ordinances, Chapter 129, section 129-42 (A), emphasis added)

56. (3) The Township established an Environmental Commission whose mandate is to protect open- space, among other things:

“The Environmental Commission shall have power to study and make recommendations concerning open space preservation, water resources management, air pollution control, solid waste management, noise control, soil and landscape protection, environmental appearance, marine resources and protection of flora and fauna.”

(Wayne Township Ordinances, Chapter 134, section 134-20 (C), emphasis added; also repeated at Wayne Township Ordinances, Article 19, section 4-76 (C), emphasis added)

57. The Environmental Commission is also empowered by itself to *acquire land for preservation:*

“Acquisition by environmental commission. The Environmental Commission may, subject to the approval of the Municipal Council, acquire property, both real and personal, in the name of the Township, by gift, purchase, grant, bequest, devise or lease for any of its purposes and shall administer the same for such purpose, subject to the terms of the conveyance or gift. Such an acquisition may be to

acquire the fee or any lesser interest, development right, easement (including conservation easement), covenant or other contractual right (including a conveyance on conditions or with limitations or reversions) *as may be necessary to acquire, maintain, improve, protect or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas in the Township.*”

(Wayne Township Ordinances Chapter 134, section 134-20 (D), emphasis added)

58. The Mayor's failure to consult either of those bodies mandated and empowered to protect the environment and particularly protect natural open-space was an error of law, which sabotaged the future of the “Grace-Preakness Forest”.
59. Where the statute provide that the Open Space Committee “*shall make an initial determination*” on protecting land, the Mayor illegally usurped such “powers and duties” (*Wayne Township Ordinances, Chapter 129, section 129-42*) when he 'vetoed' the Pastor's request unilaterally and in secret on March 2nd.

Environmental-Conservation Principles Prescribed In Township Law

60. As noted *supra*, the Township held preservation of natural land a priority, stating in its “Environmental Conservation” ordinance that “*destruction of mature woodlands is to be minimized*”:

“*The principles and objectives of this article shall be fostered, promoted, and achieved to the greatest extent possible in the review and approval of any application governed by this article. The principles and objectives are as follows:*

- A. Alterations to existing *topography*, hydrology, and geology shall be *minimized*.
- B. Destruction of *mature woodlands* shall be *minimized*.
- C. Stream corridors, pond shores, lake shores, and flood plains shall be protected from development.

D. Erosion and *increased surface water runoff shall be minimized* by avoiding development on steep slopes and avoiding excessive site clearing, grading and impervious surface.

E. The risk to life and property shall be reduced by limiting further construction in flood plains and inappropriate development in upland drainage areas.”

(Wayne Township Ordinances, Chapter 134, section 134-90.1, “Principles”, emphasis added)

61. The “principles” cover a wide scope of development-activities, clearly encompassing including the subdivision application for the Church-forest:

“This regulation is applicable to subdivisions and site plans. This regulation is also applicable to any building permit or grading permit where the improvement footprint is 500 square feet or greater. A site grading plan will be required as part of any such application at the submission for subdivision, and at the submission for a building permit or grading permit.”

(Wayne Township Ordinances, Chapter 134, section 134-91.1(C)(1)(a) “Purpose, environmental factors; applicability; definitions”, emphasis added)

The Mayor Improperly 'Vetoed' Offer From Church

62. Despite that extensive framework established to evaluate and fund open-space protection, the Mayor dismissed the Church's offer of sale almost immediately (*supra*). There was no evident process of public or private consultation with the two agencies established to review issues of land-preservation -- the Environmental Commission or the (apparently non-existent) Open Space Committee -- nor the Township Council.
63. There is no indication on the Township web-pages for the Open Space Committee or the Environmental Commission that either agency met during the time period of the Church's request, nor at any time addressed or plans to address the issue of preserving the Church

forest, and no minutes or agendas for either agency are posted on the website.

64. Plaintiff in the course of this litigation will file an open records request for meeting-information for the two agencies with the Township covering the period from the date of the Pastor's request, February 26, 2020 to the present.

Township Council Effectively Endorses Misconduct Regarding Open-Space And Grace-Preakness Forest

65. On March 4, 2020, at the first meeting of the Wayne Township Council after the forest subdivision was approved, about a dozen supporters of preserving the forest, including Plaintiff, neighbors and others, urged the Council to assist the Church and buy the property (see, *Exhibit 14, Photo of preservation supporters at Council meeting*).
66. Plaintiff submitted written and oral testimony (*Exhibit 15, written statement; Exhibit 16, Disk with official video of Council meeting of March 4, 2020, at time-stamps 1:21:19 and 2:26:21*) in which he outlined the statutory-policy created by Wayne Township Ordinances to protect natural open-space, and the failures of the Township and officials to uphold the mandates to do so, to wit:

- (1) the Open Space Committee appeared to be non-functional inasmuch as its web-page on the Township website was essentially blank (*Exhibit 17*);
- (2) the Environmental Commission web-page listed no Minutes of meetings⁷ (*Exhibit 18*);
- (3) the accounting for the Open Space (etc.) Trust Fund was chronically defective in that

⁷In his written statement Plaintiff incorrectly stated also that there were no meetings or contact information listed either, but Plaintiff since located the information on the website under sub-menus.

numerous lines intended to provide an accounting of its 'actions to date' were left blank, and large sums of millions of dollars were routinely allocated the 'slush fund' type category "Other Expenses" (*Exhibit 19, Budget statements for budget years 2012-19*);

(4) the Mayor exceeded his authority in unilaterally 'rejecting' the Church request⁸.

(See, *Exhibit 15, Plaintiff's written testimony*)

67. Plaintiff told the Council it was a race to get the Church to defer any agreement to sell the forest, and Plaintiff urged it to pass a resolution telling the Church it was pursuing a rescue effort: "Right now it's a crisis. because the time element the Church is really considering an offer" (*Exhibit 16, Council meeting video of March 4, 2020, at time-stamp 1:22:45*)

68. And Plaintiff said:

"The bottom line is ... what I would really beg you, ask you to do, request is that you *pass a resolution that says we're going to look into this we want the Church to take a moment* and we're going to look into this."

(*Exhibit 16, Council meeting video of March 4, 2020, at time-stamp 1:25:20, emphasis added*)

69. Numerous others seeking Council assistance to intervene testified after Plaintiff, appealing for the protection wildlife and forests, among other issues.

70. For example, in her testimony of high school student Sevda Salman, 595 Valley Rd, Wayne, N.J., spoke of wildlife and habitat:

"I think that as a whole environmental issues are something that is really prevalent in the news right now. And we should () preserve what we have and consider how its going to impact () the wildlife and our environment as a whole...."

⁸Plaintiff does not at the moment recall when or how he first became aware that the Mayor had 'rejected' the Church's request for assistance.

(Exhibit 16, video at time-stamp 1:26:51)

71. College student Metin Salman, 595 Valley Rd., Wayne, N.J. testified regarding wildlife, deforestation, and open-space:

“I feel it's a very big ethical issue to destroy the wildlife because in Wayne we've been deforesting any kind of open space that we have. And I feel it's a very big concern that we should preserve any kind of forest we have because there is wildlife that lives there.”

(Exhibit 16, video at time-stamp 1:27:27).

72. About eight (8) other neighbors and concerned citizens and activists added extensive additional testimony on a range of topics, mostly centering on the need to preserve forest and habitat *(Exhibit 16 , video at time-stamp 1:26:52 to 1:48:06)*.
73. In response, several members of the Council spoke.
74. One member asked the Mayor to seek 'emergency funding' from a Passaic County fund he was skeptical existed *(Exhibit 16, video at time-stamp 1:50:25)*.
75. Another member supported that request *(Exhibit 16, video at time-stamp 1:53:58)*.
76. Other Council members defended the Township's open-space policies and demurred on the question of assistance *(Exhibit 16, video at time-stamp 1:49:31 to 2:04:29)*.

Mayor Rejects Need To Protect Natural Open-Space

77. In reply and defense of his policies and actions, Defendant Mayor Vergano spoke at the March 4 Council meeting after the environmental defenders spoke.
78. The Mayor said his priority in expending open-space funds and seeking grants was to develop recreational land, and buy out flood-plain property.

79. The Mayor endorsed a “property-rights” ideology regarding open-space and development, notwithstanding that the issue raised that evening was a rescue of the Church's forest which the Church itself had invited.

80. Mayor Vergano said:

“People pay taxes on their property....And under the State of New Jersey laws and under the United States Constitution they have a right to develop their property....If you prevent somebody from developing their property you are in effect taking that property and become responsible for it....It's five houses. Now granted it's in your neighborhood and I'm sure you don't want them. But we have 17,500 housing units in the Township now. This five is not going to have a big impact. I would much rather spend our open-space money on building recreational facilities for our children like we recently did and this Council supported on the Alps Road turf fields. Take a look at those. they're used every day of the week....That's the types of things that we look at....”

(Exhibit 16, video at time-stamp 2:16:22, emphasis added)

81. The Mayor also stated that “the last time we bought property was a while back”, and the land was near existing preserved space, where “people [could] park their cars, get out, and walk and enjoy the environment,” *(Exhibit 16, video at time-stamp 2:19:06)*.

82. The Council failed to entertain a resolution or other 'message' such as Plaintiff requested to express a plan or desire to assist the Church in preserving the forest: no Council member proposed it or made any reference to it, upon information and belief, nor did the Council take any similar or related action except as described *supra*.

Wayne's Open-Space Protection Boards Are Either Non-Functional or Failed to Act With Respect To The Forest

83. The two agencies designated to help preserve open-space appear to be largely non-functioning: the Open Space Committee and the Environmental Commission show no

evidence of activity on their Wayne web-pages (see, *Wayne Township Ordinances, Chapter 129, section 129-42 and Chapter 134, section 134-20 (C), respectively*).

84. The web-page for the Open Space Committee is blank, with the statement “Open Space Committee Updates Forthcoming”. The web-page lists no members, meeting documents, contact information, or even narrative of duties, Exhibit 17, screenshot of web-page.

85. There is no evidence the Open Space Committee has any members, despite the direction that the agency is “hereby established” in Wayne Ordinance, Chapter 129, section 129-39:

“Open Space Committee. There is hereby established an Open Space Committee which shall consist of nine members whose terms and powers are hereinafter set forth.”

(id.)

86. Furthermore, the Committee lists no activity, despite the mandate it has in statute to direct the protection of open space from development in the course of holding public meetings:

“The Open Space Committee shall make an *initial determination of which parcels of land should be acquired in fee and/or those parcels of land from which the Township should acquire development rights* only.

B.

The Open Space Committee shall submit to the Township Council a prioritized list of properties to be acquired and/or properties from which development rights should be acquired....

...

D.

The Open Space Committee shall hold public meetings, which public meetings shall be held in accordance with the Open Public Meetings Act, and the Committee shall give appropriate notification of said meetings.”

(Wayne Township Ordinances, Chapter 129, section 129-42, emphasis added)

87. There is no record on the website of any “initial determination”, “list of properties”, or “public meetings” *(id.)*.

88. The web-pages for neither agency carries Minutes or Agendas for any meeting whatsoever, which is the standard practice for other active “commissions” like the Economic Development Commission, on whose page there is clear link at the bottom “Economic Development Commission Agendas & Minutes” (*Exhibit 20*).
89. The Mayor made no reference to any deliberations of either agency with specific open-space duties when he discussed his 'rationale' for 'denying' the Pastor's request for assistance (see, *Exhibit 16, Video of Council meeting of March 4, 2020 at time-stamp ~2:14:50*).
90. The implication was clear, even after Plaintiff raised the issue in his written and oral statements, that the Mayor had acted alone, and sidestepped the agencies that were supposed to deliberate on open-space questions.

Defective Accounting For Open-Space Trust Fund

91. During his testimony on March 4th, Plaintiff told the Council that for years, the Open Space (etc.) Trust Fund's budget pages were incomplete, containing material omissions, and were thus defective (see, *Exhibit 15, Plaintiff's testimony, pp. 2-3; and Exhibit 19, budget statements for Open Space (etc.) Trust Fund, 2012-19*).
92. In addition to blank entries in spaces reporting cumulative activities, the trust fund accounting contains unexplained discrepancies with respect to the carry-over of 'reserve' funds' from year to year.

Blank Entries in Trust Fund Account

93. The current 2019 Trust Fund statement (see, *Exhibit 19, Open Space (etc.) Budget Page*,

2019, lower left side) contains the following self-evident defects:

(1) there are only blank entries for the lines: “Total Tax Collected to Date”; “Total Expended to Date”; “Total Acreage Preserved to date”; “Recreation Land Preserved in 2012 [sic]”; “Farmland Preserved in 2012 [sic]”; and,

(2) a non-specific 'slush fund' of \$3 million is listed as “Appropriated” for “Other Expenses” under “Development of Lands (etc.)” by far the largest “appropriated” amount in the statement.

94. Since 2008, when the current Mayor took office, only in the last seven (7) budget years -- 2012 through 2019 -- was the standard budget-accounting form made available as part of the reported “Adopted Budget” or “Final Budget” pdf.
95. In the budgets as provided for the years 2008 through 2011, there was *no accounting* in the adopted budget for activities of the Open Space (etc.) Trust Fund, so far as Plaintiff could ascertain by scrolling through the official, posted Final or Adopted budgets.
96. In the budgets where the Trust Fund report was included, in 2012 through 2019, accounting-data for cumulative activities of the Trust Fund was omitted without explanation, with the exception of the 2013 budget.
97. By contrast, the “Adopted Budget” from 2007⁹ (*Exhibit 28, 2007 Budget statement of Open Space (etc.) Trust Fund*), the last year prior to the Mayor's ascendancy, contains both the proper Open Space (etc.) reporting sheet, and entries for *all* the cumulative information: thus the budget statement reported “Total Tax Collected to date”: \$3,231,373; “Total Expended to date”: \$575,000¹⁰; “Total Acreage Preserved to date”: 37.10; “Recreation Land Preserved in

⁹2007 was the earliest year available on the website.

¹⁰The image carried on the website, Exhibit 20, was unclear and blurry, but the number appears to be as stated.

2006”: 10.22; and “Farmland Preserved in 2006”: N/A.

98. In other words, prior to the current Mayor's taking office, accounting for the Open Space (etc.) Trust Fund appears to have been far more coherent, reflecting a genuine effort to disclose accurately what the Fund was doing to preserve open-space.
99. By contrast, during the Mayor's term, the Open Space budget accounting was routinely incomplete, large sums were only vaguely accounted for, and certain reserve funds were seemingly inconsistent (*infra*).

Unaccounted For / Inconsistent Reserve Fund Carry-Over

100. The accounting for the “reserve funds” in the Trust budget statement shows inconsistent figures related to carry-over of reserve funds from one year to the next.
101. Plaintiff asked for clarification from the Township Budget Officer, and in a phone call she invited Plaintiff to email her the questions, but Plaintiff has received no reply to date, some two weeks later, having emailed her on February 27, 2020 (*Exhibit 21, Plaintiff's email, See, questions 2 and 8 (unnumbered) in Plaintiff's email*)
102. Discrepancies are shown in the Trust Fund budget statements, *Exhibit 19*:
- 2019: in the 2019 budget year, the Trust Fund shows \$2.4 million as “reserved” in 2018 appropriations, but \$2.78 million as reserve fund “revenues” for 2019;
- 2018: for 2018, the Fund shows \$2.95 million reserved in 2017 appropriations, but \$2.77 million as reserve fund revenues for 2018;
- 2017: for 2017, the Fund shows \$50,000 reserved in 2016 appropriations, but \$2.77 million as reserve fund revenues for 2017;
- 2016: for 2016, the Fund shows \$293,000 million reserved in 2015 appropriations, but \$523,000 as reserve fund revenues for 2016;

2015: 2015, the Fund shows \$947,000 reserved in 2014 appropriations, but \$535,000 as reserve fund revenues for 2017;

2014: for 2014, the Fund shows \$244,000 reserved in 2013 appropriations, but \$715,000 as reserve fund revenues for 2014.

2013: for 2013, the Fund shows \$441,000 reserved in 2012 appropriations, but \$0 as reserve fund revenues for 2014.

2012: for 2012, the Fund shows \$536,000 reserved in 2011 appropriations, but \$0 as reserve fund revenues for 2012.

103. Clearly the figures do not match from year to year, and an explanation is called for but not forthcoming.

**Mayor and Zoning Board Chairman Express Hostility to Mandated
Preservation of Natural Open-Space**

104. As noted, *supra*, both the Mayor and the Chairman of the Zoning Board, in addressing those advocating preservation of the Church forest, made no reference to the mandate of the Township to 'minimize' the loss of woodlands (see, *Wayne Township Ordinances, Chapter 134, section 134-90.1, "Principles"*).

105. As noted, both instead expressed strong support of recreational land as acceptable open-space, which the Zoning Chairman described as "not open space with trees and animals running through it" (see, *Exhibit 12, video of Zoning Board meeting of January 21, 2020, at time-stamp 1:42:51, et seq.*).

106. Both officials postured aggressively for "property rights" as a firm ideological position, *supra*, even as the Chairman's board was poised to vote on a subdivision that would destroy the type of woodland whose destruction was to "minimized" (*Wayne Township Ordinances, Chapter 134, section 134-90.1*), and even as the Council was being asked to uphold its laws to

protect natural open space.

107. Thus, the two Township officials with arguably the most direct influence and power over land-use regulation have espoused public positions that essentially conflict with adopted official principles of environmental-protection as established by Township law.

108. In his public acts, the Mayor not only took a position of malign neglect with respect to protection of the Grace-Preakness Forest, for example, but the Mayor embraced the destruction of even large-scale forest-land.

109. Recently, the Mayor stood in the center of a “ground-breaking” ceremony (*Exhibit 26, industry-magazine article*) for yet another shopping center on Hamburg Turnpike, this one being where a verdant fifteen-acre forest (*Exhibit 27, Before-and-After photos by Plaintiff*) was levelled in about October, 2019, with little if any public notice or evident effort to prevent it by Wayne officials, despite their mandate to avoid “destruction of mature woodlands” (*id., Wayne Township Ordinances, Chapter 134, section 134-91.1*).

110. The project was facilitated, upon information and belief, by a decision of the Township or County to agree to a new traffic pattern -- which would be the type of official act intended by Township law to be constrained to protect such woodlands. Furthermore, almost with certainty, a site-plan was required from the Township, again exactly the official act meant to trigger protections of “mature woodlands” (*Wayne Township Ordinances, Chapter 134, section 90.1 (goals) and Section 34-91.1 (applicability)*).

111. Plaintiff had noticed the forest because it had a 'for sale' sign scarcely days before it was destroyed (*Exhibit 27, photos*). Later, Plaintiff had stood by the destroyed “Ullman Forest”

and held a sign condemning the destruction, unaware that the Mayor was at some other recent time 'celebrating' the destructive acts.

112. Thus in both acts of malign neglect -- e.g. failing to create an Open Space Committee, omitting important Trust Fund benchmark-data -- and in overt acts like unilaterally vetoing help for the Church-forest and celebrating the destructive conduct of a developer, the Mayor works at cross-purposes to the statutory directives, *supra*, emphatically to protect natural-lands.

113. Notably in the Mayor's first budget, in 2008, he established a \$14 million six- (6) year capital budget for 'parks and recreation' of which none was for open-space *per se* (*Exhibit 22, sheet 40c-3 from 2008 "Final Budget"*), while the only discernible open-space related appropriations were about \$250,000 for Green Trust debt service (*Exhibit 23, 'Sheet 27' from 2008 "Final Budget"*).

114. As noted further, in that budget, as officially posted online, there was not even a statement regarding the Open Space (etc.) Trust Fund.

**Mayor Ignores Request for Emergency Meeting of Environmental Commission
To Rescue Grace-Preakness Forest**

115. Recognizing the 'environmental-emergency' facing the future of the Church-forest after the Mayor's 'veto' on March 2, 2020 of the Pastor's request for help in the email of February 27 (*Exhibits 2 and 5*), and the Township Council's refusal on March 4 to pass a resolution to affirm its interest, Plaintiff on March 5, 2020, sent an urgent request to the Mayor, (by an email form on the Township website, followed up by a personal visit to his office) asking that

he convene an “emergency meeting” of the Township Environmental Commission to consider a plan to save the forest (*Exhibit 24*, ¹¹).

116. Plaintiff wrote:

“Dear Mayor Vergano:

By this email I am hereby asking you hereby to convene *an emergency session of the Wayne Environmental Commission this Monday, March 9, 2020, or as soon thereafter next week as possible, immediately and urgently to consider the Township's policy options and hopefully to create a plan to rescue the Grace United Presbyterian Church's 3-acre forest* which issue was comprehensively addressed at last night's Council meeting by members and a large contingent of the public seeking the Township's help in preventing development of the forest site.

As the environmental organizer of the effort to save the forest but not a resident of Wayne, I make this request with the participation of Barbara Wichot, 86 Gow Rd. who has spearheaded the community effort to save the forest.

An emergency meeting is urgent because, as you know, the Church is considering developers' offers for the forest and may agree to destroy it -- against their own 'ethical preference'. This information was clearly communicated to you in last weeks email to you from the Church's Pastor which you read out last night to the Council.

The Church can likely be persuaded to delay any irremediable commitment to development if the Township makes it clear that the it is working to preserve it.”

(Exhibit 24, id., emphasis added)

117. Plaintiff also contacted, cc'd, and received a reply from Councilwoman Fran Ritter, listed as the “Council liaison” to the Environmental Commission, whereby Plaintiff urged her to facilitate such a meeting.

¹¹Please note: Exhibit 24 carries the verbatim text of the email, upon information and belief, but the 'email' itself was cut and pasted into the Wayne website email 'form' addressed to the Mayor, in the online page dedicated to communications with the Mayor and other officials.

118. Plaintiff cc'd Councilman Al Sadowski also, but received no reply.
119. Upon information and belief, the resident who co-requested the emergency meeting, Barbara Wichot, received no reply from either member of the Council, nor the Mayor.
120. Plaintiff has to date received no response from the Mayor, or any other party, as to any emergency meeting of the Environmental Commission, despite being told in person by the Mayor's aide on March 6th that he was indeed in receipt of the email.

Church-Attorney Says Church Now Has “Signed Contract”

121. On March 7th, Plaintiff was told by Michael Rubin, identified as the Church's land-use attorney, “I have a signed contract” to sell the Church's forest land².
122. Plaintiff urged Mr. Rubin to communicate to the Church that Plaintiff was still seeking funding, that organizations had told him funding was available, and that Plaintiff hoped that if the Township came up with a rescue plan the Church could prevail on its contractual partner to rescind any such contract.
123. Mr. Rubin was non-committal, and he criticized the forest supporters as being “asleep at the wheel” for not having come up with a plan to buy the land during the years-long period the Church had it for sale. Plaintiff replied that the attorney was asking a lot from layman-neighbors.
124. A 'For Sale' sign for the forest-land remains in front of the Church, as of March 16, 2020,

¹²Mr. Rubin was at his car outside the Town Hall where Plaintiff and others were demonstrating with signs to advocate Township preservation of the forest.

when Plaintiff and others sought to communicate to the congregation that the deer in the forest and other wildlife there wished not to lose their 'home'.

125. Plaintiff on March 13, 2020 obtained from the Wayne Township assessor's office a printout showing that the Church was the sole owner of the property (Exhibit 25).

126. Plaintiff has had no further contact with the Pastor or attorney Rubin, or any other official of the Church.

Urgency Of Halting Potential Forest-Cutting Operation

127. While destruction of the Grace-Preakness Forest has not yet commenced, upon information and belief, as of the date of this Complaint, the removal of even dozens of mature trees, as is planned, upon information and belief (*see*, Exhibit 1, news article).

128. The clearing work can occur very rapidly, as fast as one working-day, with tree-removal equipment currently in use, in Plaintiff's experience¹³.

129. Whether or not the Church still owns the forest at issue, or whether the Assessor report (*Exhibit 25, supra*) simply has not caught up with recent developments, whoever owns the property can theoretically obtain necessary permits to cut down trees.

130. Inasmuch as the Defendants have an incentive to 'moot' the issues being raised by this case, e.g. by removing trees, there is the clear danger that they could work together to expedite forest-clearing work in the absence of, or prior to, the filing of this Complaint and the

¹³Plaintiff was an environmental activist on Long Island from about 2013 to 2017, and Plaintiff observed several forests being destroyed with the type of rapidity noted, for example the RXR/ Ritz-Carleton and the DealerTrack forest-clearing in North Hills in 2013 or 2014 and/or the clearing for Country Pointe Plainview in 2016.

imposition of injunctive relief.

131. Furthermore, the less the Defendants know about the legal action prior to injunctive relief being imposed the less likely they can act contrary to Plaintiff's requested remedies.

132. For those reasons it is essential that (1) this relief be sought *ex parte*; and (2) that the relief be issued on an emergency interim basis, at least with respect to protecting the forest from destruction or damage, as the accompanying order to show cause seeks.

133. By reason of the facts set forth above, the various Township Defendants are in violation of multiple local ordinances with respect to the protection of natural open-space, such as imperiled "Grace-Preakness Forest", to wit:

134. (1) *Invalid Subdivision Vote*: Wayne Township Ordinances, Chapter 134, section 134-90.1 et seq. establish that in reviewing land-use applications, the Zoning Board shall utilize as its standard of review that the protection of "mature woodlands" -- like "the Grace-Preakness Forest" -- shall be pursued "to the greatest extent possible".

135. But notwithstanding the law, in preparing to vote on the Church's application to subdivide the "Grace-Preakness Forest", the Board was instructed by its Chairman that "property rights" were paramount, that the Township had ample open-space, that the relatively small woodland at issue was not significant, and that there was 'no problem' in vastly altering the "difficult" terrain at issue. Meanwhile, the Chairman said nothing about the actual priority assigned by local law specifically to protecting such "mature woodlands" and natural topography.

136. The instructions to the Board by its Chairman were willfully false, and led the Board to ignore and violate its lawful mandate, and thus its decisions as cited are invalid as a matter of

law;

137. (2) *Failure To Constitute Open Space Committee*: Wayne Township Ordinances, Chapter 129, sections 129-39 to 129-42, mandate that the Township shall maintain an Open Space Committee and employ it to evaluate proposals for open-space protection such as the protection of “the Grace-Preakness Forest”.

138. But there is no evidence that in the three (3) business days that elapsed from the request for protection by the Pastor to its rejection by the Mayor that there was any meeting of the Open Space Committee, nor is there any evidence on the Township comprehensive and expansive website that the Open Space Committee even exists, or has any members, any agendas, meetings or Minutes.

139. Those omissions are inconsistent with the law, and led to a negative result for the forest that was the direct product of a failure to follow the law.

140. (3) *Environmental Commission Dereliction*: Wayne Ordinance Chapter 134, section 134-20, establishes that the Township shall employ its Environmental Commission to evaluate issues of open-space protection, such as that raised with respect to “the Grace-Preakness Forest”, but there is no evidence that in the three (3) business days that elapsed from the request for protection by the Pastor to its rejection by the Mayor there was any meeting of the Commission;

141. Those omissions are inconsistent with the law, and led to a negative result for the forest that was the direct product of a failure to follow the law;

142. (4) *Open Space Budget Discrepancies*: The Township is mandated by the State, upon

information and belief, to maintain budget documents that are complete and accurate pursuant to N.J.S. 40A:1.1 et seq. (general requirements for local budgets).

143. But instead, the budget statements for the Defendant Township's Open Space (etc.) Trust Fund routinely, year after year, contained material omissions, and the reserve-fund accounting lacked consistency.

144. Those omissions are inconsistent with the law, and led to a negative result for the forest that was the direct product of a failure to produce transparent and accountable land-protection trust fund budget reports.

145. Consistent with the requirements of the New Jersey Environmental Rights Act, N.J.S. Section 2A:35A-4, the violations of law identified are likely to continue, and furthermore, the ordinances and laws identified are “designed to prevent or minimize pollution, impairment or destruction of the environment” (*id.*).

WHEREFORE.

Plaintiff respectfully prays that the Court grant the following relief:

- a. DECLARE that the Township is in violation of the laws cited;
- b. APPOINT a Special Master to oversee and reform open-space protection consistent with local law, and direct such Special Master to:
 - (1) Properly constitute the Wayne Township Open Space Committee;
 - (2) Refer the Pastor's request for assistance to the Open Space Committee and the Environmental Commission and assure its proper consideration;
 - (3) Reconsider the current year 2020 requests for funding to the Passaic County Open Space

Committee, and consider a late substitution, with leave of the County in consideration of special circumstances, a request for aid to protect “Grace-Preakness Forest” as a replacement for one or both presently-filed grant applications (which relate to developed, recreational facilities not natural open-space, upon information and belief)¹⁴;and

(4) Review and reform the Zoning Board such that its work complies with its mandate under Wayne Township Ordinances, Chapter 134, section 134-90, et seq.; and

(5) Such other work on reform as the Court and Special Master deem necessary, in consultation with concerned parties.

c. ORDER such additional relief as the Court deems just and equitable.

Count 2

Immediate Restraint On Destruction Of The Forest Is Warranted Because of Willful Misconduct By Township Defendants

146. The allegations set forth in the previous paragraphs are incorporated by reference as set forth in full.

147. As a direct consequence of the errors, omissions, misfeasance and negligence described and documented, *supra*, the Township continues to undergo officially-sanctioned environmental damage which Township law is designed to prevent, and consequently the threat is very real in the present case¹⁵.

¹⁴It is Plaintiff's understanding that the deadline for County open-space grant applications was Friday, March 13, 2020, and that the Defendant Mayor requested assistance with *lighting* and *parking facilities*, not open-space preservation.

¹⁵In or about September, 2019, an entire rich woodland of the type alluded to in Wayne Township Ordinances,

148. The actions and omissions described *supra* are leading inexorably and possibly imminently to the devastation of the Grace-Preakness Forest, notwithstanding the direction in local ordinance that “mature woodlands” and “existing topography”, like this forest, be protected “*to the greatest extent possible,*” (Wayne Township Ordinances, Chapter 134, section 134-90.1).

149. The clear violations of local ordinance designed to protect open-space by the Defendant officials ideologically opposed to them warrants an interim temporary stay to protect the Grace-Preakness Forest, before or concurrent with the work of the Special Master (*supra*) to institute proper procedures and oversight to preserve the forest, as well as more general reforms.

150. Plaintiff also requests, *infra*, that the Court vacate the subdivision approval by the Zoning Board inasmuch as the Chairman improperly tainted the vote by his false statements of policy. Invalidating the subdivision may also prevent issuance of permits to clear and grade the land and cut down trees, but relief is requested here as well as it relates to other unlawful acts.

151. Such substantial judicial intervention is justified because of the extensive willful improper acts of the Township and its officials.

152. By reason of the facts set forth above, the Township is in violation of various local

Chapter 34, section 34-90.1, *supra*, was summarily destroyed on Hamburg Tpk. near Valley Rd., and the Mayor was photographed participating in the 'ground-breaking' (See Exhibit 26, media photo) which was, upon information and belief, facilitated by a decision of the Township or County to agree to a new traffic pattern, the type of official act intended to be constrained to protect such woodlands. Almost with certainty, upon information and belief, a site-plan was required from the Township, exactly the official act meant to trigger protections of “mature woodlands” in Chapter 134, *id.*, and Section 34-91.1 (applicability).

ordinances with respect to the protection of natural open-space, such as imperiled “Grace-Preakness Forest”, to wit:

153. (1) *Failure to Constitute the Open Space Committee*: The apparent absence of the Open Space Committee despite its establishment by local law (*supra*) renders the Open Space (etc.) Trust Fund largely unaccountable to the public, and furthermore prevents proper evaluation and action by duly appointed officials with respect to urgent, compelling proposals for open-space preservation, such as the one the Mayor received from the Church Pastor for the forest at issue here (*Exhibit 2, Pastor's letter and Exhibit 5, OPRA disclosure supra*).
154. The apparent failure to constitute the Open Space Committee is evidently attributable to negligence of the Mayor and the Township Council;
155. The absence violates Wayne Township Ordinances, Chapter 129, section 129-39 et seq.
156. (2) *Failure to Consult the Environmental Commission and Open Space Committee with Church Request*: The evident failure of the Mayor to transmit the Pastor's request for help (*supra*) to the Environmental Commission for formal consideration improperly denied the public another chance to have the Pastor's request systematically reviewed in public and duly considered by those with a specific mandate “to study and make recommendations concerning open space preservation... soil and landscape protection, environmental appearance...and protection of flora and fauna,” (*Wayne Township Ordinances, Chapter 134, section 134-20 (C); also Article 19, section 4-76 (C)*).
157. Furthermore the Open Space Committee was not consulted about the Pastor's request because the Committee apparently *does not exist*, and was thus unable to discharge its

established “powers and duties” with respect to the Grace-Preakness Forest, including that the Committee -- not the Mayor -- “shall make an initial determination of which parcels of land should be acquired” (Wayne Township Ordinances, Chapter 129, section 129-42(A)).

158. The failures described violate the law, specifically Wayne Township Ordinances, Chapter 129, section 129-42(A), and Chapter 134, section 134-20(C).

159. (3) *Improprieties in Open Space (etc.) Trust Fund*: The errors and omissions in the Open Space (etc.) Trust Fund budget accounting -- blank spaces for cumulative reporting, and inconsistent 'reserve' figures (*supra*) -- meant that the Trust Fund lacked the type of accountability and transparency that would push its administrators -- and the 'AWOL' Open Space Committee -- toward more responsive open-space protection, such as endorsing and promoting the Pastor's request;

160. Such accounting issues violate general duties of local budgeting as established in N.J.S. 40A:1.1 et seq., general budget requirements for municipalities.

161. (4) *Improper Ideological Taint to Actions of Senior Officials*: The ideological posturing of the Mayor and the Chairman of the Zoning Board with respect to “property rights” -- instead environmental-preservation -- in their consideration of the Church's forest, and also their expressed preference for developed recreational 'open-space' to the apparent exclusion or even awareness of the statutory direction that, e.g. “*Destruction of mature woodlands shall be minimized*”, (Wayne Township Ordinances, Chapter 134, section 134-90.1 (B), *emphasis added*), led to improper acts by both Defendants (a) with respect to the subdivision and use-variance application before the Zoning Board, and (b) with respect to the Pastor's request to

the Mayor.

162. (This issue is further elaborated in another Count, *infra*, seeking an order removing of the Mayor and Zoning Board Chairman from issues related to open-space protection or development.)

163. The Chairman and the Mayor betrayed their statutory duties to “minimize[]” the “destruction of mature woodlands” (*id.*), “to control the indiscriminate, uncontrolled and excess destruction, removal and culling of trees upon lots and tracts of land within the Township” (Wayne Township Ordinances, Chapter 134, section 134-91.1(A)), respectively), to protect “natural features” in the environment, to consult the Open Space Committee for “initial” determination of land preservation, etc., as recounted, because, simply put, the Defendants had other ideas.

164. As a result, the Zoning Board approved the subdivision absent the Board having a proper understanding of its statutory mandate, because the Chairman misled it, and the Mayor summarily dismissed the Church's request without lawful, proper referrals and public deliberation.

165. Both acts were violations of local ordinance.

166. (5) *Negligence by Council to Rectify Identified Deficiencies*: The Township Council, was apprised of a litany of errors, including (*see, supra*, Plaintiff's written and oral testimony of March 4, 2020, Exhibits 15 and 16): (a) the failure of the Mayor properly to consult with the environmental protection and review agencies -- the Open Space Committee and the Environmental Commission -- about the Pastor's request; (b) blank spaces in the Open Space

(etc.) Trust Fund accounting and inconsistent accounting for 'reserve' funds; the (c) failure of the Mayor and Zoning Board to heed the statutory direction to “control” the loss of trees and woodland in the Township (*id.*); and (d) the absence of a statutorily-established Open Space Committee, etc.

167. Yet despite Plaintiff's request that it pass a resolution addressed to the Church to rectify the errors, the Council failed to take any effective action to intervene in the effort to protect the Church forest, except that one Councilman directed the Mayor to consult the County for 'emergency funding', which both appeared to signal was a fool's errand (*supra*).

168. By its inaction the Council effectively endorsed the illegality and error by the Mayor, Zoning Board Chairman, and Zoning Board.

169. Taken together, the errors, omissions, misfeasance and neglect sabotaged the Church's 'last-ditch' request, and effectively forced the Church to continue to seek -- and possibly conclude -- a destructive alternative sale even though it violated their self-stated 'ethical preference).

170. This Court is justified by the extensive pattern of illegality in issuing restraint¹⁶ to protect the “Grace-Preakness Forest” and to prevent an irreversible outcome -- any tree removals, or other damages -- that would contravene local policy (viz. conservation of mature woodlands “to the greatest extent possible”, Wayne Township Ordinances Chapter 134, section 134-90.1).

171. Such an order should essentially impose a 'cooling-off period' while a Special Master (or

¹⁶The emergency interim restraint is requested in the form of the accompanying order to show cause, as supported by a legal memorandum.

other responsible parties) can pursue remedies compatible with local land-protection policy, (*supra*).

WHEREFORE,

Plaintiff respectfully requests that the Court grant the following relief:

- a. DECLARE that the Township violated the laws as cited;
- b. DECLARE that the pattern of violations amounts to an abdication of its lawful mandates to protect natural open space, mature woodlands, natural features of the land, ecological balance, and flora and fauna, etc.;
- c. ENJOIN Defendant Township from issuing any permits, or other official permission, for any party to deforest or otherwise damage the “Grace-Preakness Forest” until the Special Master has taken all reasonable efforts to rescue the forest, and the Court consents, on notice to Plaintiff, or until reasonable efforts have otherwise been undertaken consistent with the laws of the Township, and the Court consents, on notice to Plaintiff;
- d. ORDER that the Township rescind any such permits that have been issued;
- e. ORDER the Township to immediately communicate such actions to any party connected to the property;
- f. ORDER at the Defendant Church not take any action to clear or damage the forest at issue until the issues of preservation have been fully reviewed and acted upon as appropriate by the Special Master, and the Court's consent on notice to Plaintiff; and
- g. ORDER the Church and the Township, together or separately, to promptly notify Plaintiff and the Court whether any developer or other party has taken ownership or is acting on anyone's

behalf with respect to the clearance or destruction of the forest at issue, now or during the pendency of this matter, that they may be joined and subjected to any restraint imposed by the Court; and

h. ORDER such additional relief as the Court deems just and equitable.

Count 3

The Mayor And Zoning Board Chairman Should Barred From Open-Space Issues Due To Misconduct

172. The allegations set forth in the previous paragraphs are incorporated by reference as set forth in full.

173. In consideration of the facts and law documented and described *supra*, Plaintiff requests that this Court issue an order enjoining the Mayor and the Chairman of the Zoning Board from participating in any official activities related to the protection, preservation, or development of open-space.

174. This broad remedy is justified because both officials have demonstrated contempt for the laws of the Township with respect to the protection and preservation of natural open-space, particularly the clear and emphatic statutory direction to officials that “mature woodlands”, “trees”, and “natural features” should be protected, to wit:

“...[T]o the greatest extent possible in the review and approval of any application governed by this article...[a]lterations to existing topography, hydrology, and geology shall be minimized (and) [d]estruction of mature woodlands shall be minimized.”

(Wayne Township Ordinances, Chapter 134, section 134-90.)

175. And:

“[T]he purpose of this article shall be to control the indiscriminate, uncontrolled and excess destruction, removal and culling of trees upon lots and tracts of land within the Township....”

(Wayne Township Ordinances, Chapter 134, section 134-91.1)

176. And:

“The purpose of this article is to protect the health and safety of the community insofar as it relates to the protection and the preservation of those natural features including geology, hydrology, soils and vegetation considered as development constraints. It is of particular concern to maintaining ecological balance, a healthful environmental quality and protection of historic resources.”

(Wayne Township Ordinances, Chapter 134, section 134-91.1(A))

177. The remedy is further warranted by the actions of the Mayor and Chairman, as documented, *supra*:

178. (1) By their actions (and in the Mayor's case omissions) in which they improperly promoted and facilitated the (potential) destruction of the Grace-Preakness Forest in contravention of statutory policy, in particular with respect to “mature woodlands”, “natural features”, etc. (*supra*);

179. (2) By their public statements emphasizing “property rights” incompatible with their public mandate to protect open-space and “those natural features including geology, hydrology, soils and vegetation considered as development constraints,” and to *control and regulate* the activities of developers and others who would otherwise cause “irreparable harm to the environment to the detriment of this community” (*Wayne Township Ordinances, Chapter 134, section 134-91.1*); and further,

180. (3) By their emphasis on the development of 'recreational facilities' that by their inherent character result in the destruction of “natural features”, “woodlands” and “existing topography, hydrology, and geology” which are supposed to be protected “to the greatest extent possible” (*Wayne Township Ordinances, Chapter 134, section 134-90.1, and section 134-91.1*) in regulatory activities and land-development in general.
181. Mayor Vergano publicly stated, *supra*, that he was unsupportive of restraints on land-use and development that would interfere with “property rights,” that he preferred to build high-traffic playgrounds and athletic fields instead of protecting natural open-space, and that he saw no public value in preserving the three- (3) acres of 'mature woodlands' at issue, notwithstanding that all three positions are antithetical to Wayne law and established 'policy'.
182. The Mayor told the Council and public at the March 4 Council meeting: “If you prevent somebody from developing their property *you are in effect taking that property...*” (*Exhibit 16, Video of Council meeting of March 4, 2020, at time-stamp 2:16:45*)
183. The Mayor shoe-horned his ideological defense of “property rights” into the discussion even though it was the Church, as owner of the property, that had requested assistance in preserving their woodland.
184. But such a statement also served to defend the decision of the Zoning Board which had also acted under the injunction of its leader to defend “property rights” instead of protecting a “mature woodland[]” “to the maximum extent possible” (*Wayne Township Ordinances, Chapter 134, section 134-90.1*).
185. Echoing the Mayor, the Zoning Board Chairman made a similar statement essentially

dismissing any public-policy interest in protecting natural open-space, notwithstanding clear legal duty to in fact protect it “to the maximum extent possible” (*id.*).

186. By his own words, the Chairman effectively dismissed any interest in, or need for, protecting natural open-space as “mature woodlands” or “existing topography, hydrology, and geology” by him and his Board, despite his statutory duty to do so.

187. He also mistook the creation of man-made recreational facilities for natural open-space -- i.e. “natural features including geology, hydrology, soils and vegetation” (*Wayne Township Ordinances, Chapter 34, section 34-90.1*), and thus essentially abdicated -- and distorted -- any role for or duty of the Board in environmental protection.

188. The Chairman's own words -- and actions -- supply clear admission, as do the Mayor's, that neither man is cognizant of, supportive of, or intends to enforce the land-protection principles that are clearly and emphatically stated in the laws of the Township, as cited, *supra*.

189. In addition, the Mayor's failure to refer the Church's heart-felt request for help -- a preservation effort which actually comported with the Township's statutory environmental-protection goals -- either to the Environmental Commission, or to a duly constituted Open Space Committee, but instead summarily and secretly 'vetoing' the request provides ample evidence that the Mayor *cannot* properly discharge his environmental-protection duty with respect to open-space protection.

WHEREFORE,

Plaintiff respectfully requests that the Court grant the following relief:

a. ORDER: That the Defendant Mayor and the Defendant Chairman of the Zoning Board are

barred from performing or directing others to perform any official acts with respect to the protection or development of open-space in the Township;

b. ORDER: that such relief remain in effect until the Court is satisfied, upon notice to Plaintiff, that Defendants will comply with the law, receive education as to the demands of the relevant laws, or agree to recuse themselves permanently from open-space issues; and

c. ORDER: such additional relief as the Court deems just and equitable.

Count 4

Subdivision Approval Should Be Vacated Because The Chairman of The Zoning Board Tainted Its Vote By His Erroneous And Prejudicial Statement Of The 'Standard of Review'

190. The allegations set forth in the previous paragraphs are incorporated by reference as set forth in full.

191. The Zoning Board's vote on the major subdivision of the Grace-Preakness Forest, and the 'memorialization' thereof, finalized February 18, 2020, was tainted and rendered unlawful because the Chairman misstated and misrepresented the 'standard of review' for the Church's subdivision, and the decision therefore should be vacated.

192. Immediately prior to the vote on subdivision of January 21, 2020, Chairman Van Gieson gave a five (5) minute statement that amounted to a rebuttal of the extensive testimony in opposition to the subdivision, which the Chairman said “seemed like a century” (*Exhibit 12, 1:42:51*), and a 'charge' to the Board to employ criteria that ran counter to both the character of the testimony and, more importantly, to *the statutory mandate of the Board*.

193. Despite the extensive testimony about issues of open-space and wildlife protection (*Exhibit 12, Official video of Zoning Board meeting of January 21, 2020, at time-stamp 1:11:51, 1:36:27, et seq.*), the Chairman told the Board and public that the Township already had “open-space” that “would match any other town” (*id.*, at *time-stamp 1:43:58*), and that “*Property owners have property rights ... a church that wants to take some of their property... and develop some of it, as long as its done properly, I don't see any problem with that,*” (*id.*, at *time-stamp 1:46:34*).
194. The Chairman failed in any way to acknowledge, and his statements effectively repudiated, the statutory mandate of his Board to protect “mature woodland” and minimize “alterations” of natural features, while promoting “ecological balance”, (*supra*).
195. The Chairman endorsed essentially the unfettered exercise of “property rights” (*supra*), failing in any way to acknowledge that his Board had the statutory-duty to protect the environment, and to use its power to *limit development* -- that is, to limit the exercise of such “property rights” -- such that “to the greatest extent possible”, “destruction of mature woodlands” such as the one at issue is “minimized”, and the agencies should “protect” “those natural features including geology, hydrology, soils and vegetation considered as development constraints” (*Wayne Township Ordinances, Chapter 134, section 134-90.1; and section 134-91.1(A)*).
196. Beyond the protection of “mature woodlands”, the Board's mandate to protect the general natural character of the land (*Wayne Township Ordinances, Chapter 134, section 134-90.1 (A)*) was also distorted and misrepresented by its Chairman.

197. The public in its testimony was emphatically telling the Board that the impact of the proposed subdivision would indeed alter “existing topography, hydrology, and geology” (*id.*) as well as destroying “mature woodlands” (see, *testimony, Exhibit 12, Video, at time-stamp 1:04:17 et seq.*).

198. With respect to the minimizing “alterations to existing topography, hydrology, and geology” required by law, the Chairman's own statement indicates he well understood that extensive alteration would need to be made, a far cry from the statutory instruction that such work “shall be minimized” (*Wayne Township Ordinances, Chapter 134, section 134-90.1(A)*).

Said the Chairman:

“[A]s Mr. Rubin indicated, *it is a difficult site, it is a sensitive site*, but that doesn't mean it can't be built...Drive up to Viskaya ... take a look at some of the homes that ...have been built up on ...off of cliffs up there. Things can be engineered properly and built properly.

(*Exhibit 12, Video, at time-stamp 1:43:40*)

199. Clearly the Chairman understood the substantial “alterations” required, but instead of stating the statutory issues clearly raised (*supra*), he said essentially it was of no concern to the Board, trivializing it, suggesting no consideration for the Board on this issue except for technical challenges -- like building on a cliff -- an issue he minimized because “things can be engineered properly and built properly,” (*id.*).

200. Had the Chairman accurately stated statutory-policy of the Township, instead of reciting his own 'free-market' ideology and effectively denying the established principles, the Board might well have taken a different vote on the application.

201. The potential of a different outcome is clearly present, inasmuch as the issues raised by

the public and the application fit so clearly into the statutory language the Board was supposed to uphold: it was a “mature woodland” that was small but large enough to host families of wildlife like deer and foxes; and further it had “topography, hydrology, and geology” that would have to be massively altered to build five houses there.

202. It is axiomatic that the Chairman of a Board preparing for a sensitive, controversial vote on a matter explicitly and emphatically addressed in statute should be reminding his members of the statute which calls for protection of the ecology at issue (*supra*), and at very least *not* directing his and their attention directly opposite such statute, i.e. trumpeting the primacy of “property rights”, adequate open-space, and the inconsequential size of the forest (*supra*).

203. When such an intuitive standard of official conduct is violated, as it was violated by the Chairman, the subsequent official action of the Board is fatally tainted, and must be set aside in order to uphold the principle that laws mean something, and public officials have a duty to uphold those laws, not to contradict and sabotage them, as the Chairman did.

204. (Re Timeliness: The time to challenge a Zoning Board decision is forty-five (45) days from the publication of the final memorialization vote. That vote occurred on February 18, 2020 and even if the publication occurred the same night, the time to file a challenge would not expire until April 12, 2020, as yet almost a month away, and therefore this challenge is timely (N.J.S. Title 40, section 40:55D-10(g)(2)).)

205. By reason of the facts set forth in the foregoing paragraphs, the Zoning Board and its Chairman violated the duties set out in Wayne Township Ordinances, Chapter 134, sections 134-90.1, 134-91.1, in particular, prescribing the legal standards under which the applications

for subdivision and use-variance with respect to Grace-Preakness Forest should have been reviewed, and the vote was rendered void inasmuch as it was predicated on a misstatement of the law by the Chairman, which was not corrected prior to the vote, which took place almost immediately afterward.

WHEREFORE,

Plaintiff respectfully requests that the Court grant the following relief:

- a. DECLARE that the Zoning Board Chairman improperly tainted the approval vote for the Grace-Preakness Forest by his misstatement of putative law and policy;
- b. ORDER that the approval of the subdivision at the Defendant Church's forest, known upon information and belief as BOA-2020-004, be vacated;
- c. ORDER that a Special Master conform policy of the Zoning Board with local law; and
- d. ORDER such additional relief as the Court deems just and equitable.

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: Pompton Lakes, N.J.
March 20, 2020



RICHARD A. BRUMMEL, Plaintiff *pro se*

EXHIBITS

- Exhibit 1A -- News article on sale of Church forest in “*Wayne Today*” (USA Today Network), February 20, 2020, p.1
- Exhibit 1B -- News article on follow-up of Church forest sale in “*The Record*” (USA Today Network), March 5, 2020, p. 2L
- Exhibit 2 -- Email letter from Pastor to Mayor
- Exhibit 3 -- News article “CBRE completes sale of Toys R Us headquarters campus in Wayne”, Real Estate - NJ, March 18, 2019 (at: <https://re-nj.com/cbre-completes-sale-of-toys-r-us-headquarters-campus-in-wayne/> [viewed 3-16-20])
- Exhibit 4 -- Google Maps depiction of distance from Plaintiff's home to the “Grace-Preakness Forest”
- Exhibit 5 -- Package of correspondence between Pastor and Mayor concerning Grace-Preakness Forest disclosed per OPRA request
- Exhibit 6 -- Minutes, Zoning Board meeting of September 3, 2019
- Exhibit 7 -- Minutes, Zoning Board meeting of February 18, 2020
- Exhibit 8 -- Google satellite view of forest, annotated for clarity
- Exhibit 9 -- Photo of family of deer in Grace-Preakness Forest, by Plaintiff , March, 2020
- Exhibit 10 -- Minutes, Zoning Board meeting of December 16, 2019
- Exhibit 11 -- Minutes, Zoning Board meeting of January 21, 2020
- Exhibit 12 -- Disk with official video of Zoning Board of Adjustment meeting of January 21, 2020, Downloaded from Wayne Township website, March 12, 2020
- Exhibit 13 -- Plaintiff written Statement to Zoning Board of February 18, 2020
- Exhibit 14 -- Photo by Plaintiff of forest supporters at Wayne Township Council meeting March 4, 2020
- Exhibit 15 -- Plaintiff's written Statement to Council, March 4, 2020
- Exhibit 16 -- Disk with official video of Township Council meeting of March 4, 2020, Downloaded from Wayne Township website March 12, 2020
- Exhibit 17 -- Open Space Committee web-page, “<https://www.waynetownship.com/open-space-committee.html>” [viewed March 12, 2020]
- Exhibit 18 -- Environmental Commission main web-page, “<https://www.waynetownship.com/env-commission.html>” [viewed March 16, 2020]
- Exhibit 19 -- Budget statements of Wayne Municipal Open Space, Recreation, and Farmland and Historic Preservation Trust Fund, 2012-19, as carried on the Township website as part of the Final or Adopted Budget
- Exhibit 20 -- Web-page Economic Development Commission, “<https://www.waynetownship.com/edc.html>” [viewed March 12, 2020]
- Exhibit 21 -- Plaintiff's Email to Heather McNamara, Budget Officer of Wayne, February 27, 2020
- Exhibit 22 -- Township Budget 2008, sheet 40c-3, Parks and Recreation Capital Program 2008-13 [Downloaded from Township website March 14, 2020]

- Exhibit 23 -- Township Budget 2008, sheet 27, Current Fund - Appropriations
[Downloaded from Township website March 14, 2020]
- Exhibit 24 -- Text prior to pasting into Township web-form of Plaintiff request to Mayor for emergency meeting of Environmental Commission, March 5, 2020
- Exhibit 25 -- Official Township Assessor's statement of ownership of the Church land and forest, obtained by Plaintiff from Town Hall on March 13, 2020
- Exhibit 26 -- Photo of Mayor at 'ground-breaking' at former "Ullman Forest", in Real Estate NJ magazine, January 3, 2020 online entry, from online download March 11, 2020
- Exhibit 27 -- Photos of "Ullman Forest" pre- and and post-destruction, fall 2019
- Exhibit 28 -- 2007 Budget statement of Open Space (etc.) Trust Fund