

CLEARY GIACOBBE ALFIERI JACOBS, LLC

Attorneys at Law

169 Ramapo Valley Road

Upper Level - Suite 105

Oakland, New Jersey 07436

Telephone: (973)845-6700

Facsimile: (201)644-7601

Attorneys for Defendant, The Township of Mahwah

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHRISTOPHER S. PORRINO,
ATTORNEY GENERAL OF NEW
JERSEY, CRAIG SASHIHARA,
DIRECTOR OF THE NEW JERSEY
DIVISION ON CIVIL RIGHTS,
AND BOB MARTIN, COMMISSIONER
OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Plaintiffs,

V.

TOWNSHIP OF MAHWAH AND
MAHWAH TOWNSHIP COUNCIL

Defendants.

CIVIL ACTION NO: 2:17-cv-11988-JMV-
JBC

**ANSWER, JURY DEMAND, SEPARATE
DEFENSES, AND CERTIFICATIONS**

Defendant, The Township of Mahwah, (hereinafter referred to as "Defendant" or "Township"), with offices located at Richard J. Martel Municipal Building Complex, 475 Corporate Dr. Mahwah, NJ 07430 by way of Answer to the Complaint filed by the Plaintiffs, Christopher S. Porrino, Attorneys General of New Jersey, Craig Sashihara, Director of the New Jersey Division on Civil Rights, and Bob Martin, Commissioner of the Department of Environmental Protection, (hereinafter referred to collectively as "Plaintiffs"), says as follows:

As to INTRODUCTION

1. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Complaint, but rather leaves Plaintiffs to their proofs.

2. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs.

3. All, but one, of the allegations contained in Paragraph 3 are directed towards third persons, namely members of the public, and therefore Defendant makes no response to those allegations. As to the remainder of the allegations concerning Defendant's actions, it is denied that Defendant took any unlawful actions to remove the eruv, and/or which were designed to prevent and discourage use of the public parks located in the Township by Orthodox Jews.

4. Defendant denies that the Township took any of the steps cited in Paragraph 4 in response to any alleged fear of "infiltration of the Township by Orthodox Jews."

5. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of

Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs as to the results of the Attorney General's investigation and findings.

6. Defendant denies that the Township of Mahwah has violated the Constitution of the United States, the Constitution of the State of New Jersey, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 (the "LAD"), the New Jersey Green Acres Land Acquisition and Recreational Opportunities Act, N.J.S.A. 18:8A-35 to -54 (the "Green Acres Act"); and potentially other state and federal laws governing civil rights and nondiscriminatory land use.

7. Defendant is without sufficient knowledge or information upon which to form an opinion or belief as to the truth or falsity of the allegations contained in paragraph 7 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs as to whether they are entitled to the relief they seek.

As to JURISDICTION AND PARTIES

8. Paragraph 8 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

9. Paragraph 9 of the Complaint does not contain any factual allegations but consists of legal conclusions and

therefore Defendant is under no any obligation to admit or deny same.

10. Paragraph 10 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

11. Paragraph 11 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

12. Admitted.

13. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of Plaintiffs' Complaint, but rather leaves Plaintiffs to their proofs with respect to the Attorney General's purpose in bringing this action.

As to FACTUAL ALLEGATIONS

Eruv Association and Placement of Lechis

14. The allegations contained in Paragraph 14 are not directed at the Township but are directed towards third persons, namely the Bergen Rockland Eruv Association and/or their agents, and the Orange and Rockland Utilities, and therefore Defendant makes no response to those allegations in Paragraph 14.

15. The allegations contained in Paragraph 15 are not directed at the Township but are directed towards third persons, namely the Bergen Rockland Eruv Association and/or their agents, and the Orange and Rockland Utilities, and therefore Defendant makes no response to the allegations in Paragraph 15.

16. Admitted.

17. Admitted.

18. Denied since the Township's form of government requires a majority vote of the Council in order for it to be bound by any agreement with a third party.

19. Admitted.

20. Admitted to the extent that an invoice was provided to the Bergen Rockland Eruv Association for police supervision services, and as to the remainder of the allegations in Paragraph 20 Defendant is without sufficient knowledge and information to form a belief as to the truth of those allegations, but instead leaves Plaintiffs to their proofs.

ORDINANCE 1806

21. Admitted.

22. Paragraph 22 of the Complaint does not contain any factual allegations but consists of legal conclusions and therefore Defendant is under no obligation to admit or deny same.

23. Plaintiffs are left to their proofs as to the allegations in Paragraph 23 of the Complaint as the project agreements and acquisition grant contracts referenced therein "speak for themselves."

24. Admitted.

25. Admitted.

26. The allegations contained in Paragraph 26 are not directed at the Township but are directed towards an individual member of co-Defendant the Township Council, who is separately being represented, and therefore Defendant makes no response to the allegations in Paragraph 26.

27. The allegations contained in Paragraph 27 are not directed at the Township but are directed towards co-Defendant the Township Council who is separately being represented, and concern third parties, namely unidentified residents over whom the Township has no control, and therefore Defendant makes no response to the allegations in Paragraph 27.

28. The allegations contained in Paragraph 28 are not directed at the Township but are directed towards co-Defendant the Township Council who is separately being represented, and concern third parties, namely unidentified residents over whom the Township has no control, and therefore Defendant makes no response to the allegations in Paragraph 28.

29. The majority of the allegations contained in Paragraph 29 are not directed at the Township, but are directed at third persons, namely unidentified "Mahwah residents" over whom the Township has no control, and therefore Defendant makes no response to those allegations contained in Paragraph 29. Defendant admits only that the Township police had received some phone calls from residents concerning the utilization of the parks, and as to the remainder of the allegations in Paragraph 29, Plaintiffs are left to their proofs.

30. Defendant denies that the Township enacted Ordinance 1806 to target orthodox Jews, and denies that any Orthodox Jews suffered any injury with respect to the use of any parks located in the Township. **Further, Ordinance 1806 was repealed in its entirety on December 28, 2017.**

31. The allegations contained in Paragraph 31 are not directed at the Township but are directed towards third persons, namely an unidentified "Mahwah resident," over whom the Defendant has no control, and a member of co-Defendant the Township Council, who is separately being represented, and therefore Defendant makes no response to the allegations in Paragraph 31.

32. The allegations contained in Paragraph 32 are not directed at the Township but are directed towards the private actions of third persons, namely unidentified "Mahwah

residents," and/or their postings on private social medial forums and platforms over which the Township does not exercise any control, and therefore Defendant makes no response to the allegations in Paragraph 32.

Discovery and Reaction to Lechis

33. The allegations contained in Paragraph 33 are not directed at the Township but are directed towards third persons, namely "Brett Coplin," and a member of co-Defendant the Township Council, who is being separately represented, and therefore Defendant makes no response to the allegations in Paragraph 33.

34. The allegations contained in Paragraph 34 are not directed at the Township but are directed towards the private actions of third persons, namely unidentified "Mahwah residents," over whom the Township has no control, and therefore Defendant makes no response to the allegations in Paragraph 34.

35. The allegations contained in Paragraph 35 are not directed at the Township but are directed towards the private actions of third persons, namely unidentified "individuals supporting the petition" on a private website and/or platform over which the Township does not exercise any control, and therefore makes no response to the allegations in Paragraph 35.

36. The allegations contained in Paragraph 36 are not directed at the Township but are directed towards the private actions of third persons, namely unidentified "Township

residents," on private social media forums and platforms over which the Township does not exercise any control, and therefore Defendant makes no response to the allegations in Paragraph 36.

37. The allegations contained in Paragraph 37 are not directed at the Township but are directed towards a member of co-Defendant the Township Council, who is being separately represented, and therefore Defendant makes no response to the allegations in Paragraph 37.

38. To the extent that the allegations in Paragraph 38 are directed at the Township, Defendant denies that it attempted "to disguise the discriminatory nature of comments being made" in the manner as alleged in Paragraph 38. Officials did appropriately note that comments regarding religion would be inappropriate. Otherwise denied.

39. The allegations contained in Paragraph 39 are not directed at the Township but are directed towards the private action of third persons, namely unidentified "members of the public," over which Defendant does not have any control and therefore Defendant makes no response to the allegations in Paragraph 39.

SIGN ORDINANCE

40. Paragraph 40 of the Complaint does not contain any factual allegations but consists of legal conclusions and

therefore Defendant is under no obligation to admit or deny same.

41. Plaintiffs are left to their proofs as to the allegations in Paragraph 41 of the Complaint as the July 21, 2017 letter sent from Michael J. Kelly, Administrative Officer for Mahwah's Department of Land Use and Property Maintenance, and any response from the Eruv Association "speaks for itself."

42. Plaintiffs are left to their proofs as to the allegations in Paragraph 42 as the proposed Ordinance 1812 is neutral on its face, and "speaks for itself."

43. Defendant denies Plaintiffs' characterization of the Township's intent with respect to co-Defendant Township Council's proposed Ordinance 1812 as the Ordinance was never enacted, and did not expressly prohibit placement of lechis on utility poles.

44. The allegations contained in Paragraph 44 are not directed at the Township but are directed towards members of co-Defendant the Township Council, who is being separately represented, and therefore Defendant makes no response to those allegations in Paragraph 44.

45. Defendant admits that no summonses have been issued by the Township for violation of its sign ordinance, including to the Bergen Rockland Eruv Association, and as to the remainder of the allegations, it is denied that the lechis were being singled

out with the introduction of proposed Ordinance 1812 for removal from utility poles. Further, proposed Ordinance 1812 was never enacted.

46. Defendant admits that there have been instances of vandalism and that they have been investigated by the Township Police. Further, this investigation has since been completed with an arrest and it was determined that the incident did not constitute a hate crime.

47. The allegations contained in Paragraph 47 are not directed at the Township but are directed towards co-Defendant the Township Council, who is being separately represented, and therefore Defendant makes no response to the allegations in Paragraph 47.

As to COUNT I

48. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

49. Admitted in part and denied in part. Defendant admits that Ordinance 1806 was enacted on or about June 29, 2017, but deny the remainder of the allegations in Paragraph 49 of the Complaint since 1806 was never enforced.

50. It is denied that the Township's enforcement efforts of Ordinance 1806 were targeted at preventing Orthodox Jews from using the Township's public parks. Furthermore, Ordinance 1806

was never enforced by the Township in accordance with the Directive received from Bergen County Prosecutor Gurbir S. Grewal.

51. Denied since **summonses were never issued, and Ordinance 1806 since been repealed in its entirety on December 28, 2017.**

52. Denied since Ordinance 1806 has since been repealed in its entirety on December 29, 2017.

As to COUNT II

53. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

54. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

55. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

56. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

As to COUNT III

57. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

58. Paragraph 58 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

59. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

60. Paragraph 60 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

61. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

As to COUNT IV

62. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

63. Paragraph 60 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

64. Denied.

65. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

66. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

67. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

As to COUNT V

68. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

69. Paragraph 69 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

70. Defendant denies Plaintiff's characterization of N.J.S.A. 13:8A-51, and N.J.A.C. 7:36-25.10(d), as neither of those prohibit total "restrictions on residency or as otherwise may be in violation of the LAD." Rather, N.J.A.C. 7:36-25.10(d) expressly states: "A local government unit or nonprofit shall not enter into exclusive use agreements or allow discriminatory scheduling of the use of the funded parkland or its recreation and conservation facilities based on residency

or otherwise in violation of the Law Against Discrimination, N.J.S.A. 10:51 et seq., or other applicable law." N.J.S.A. 13:8A-51, likewise, expressly requires approval of the commissioner for any restrictions on the basis of residency. **Further, summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

71. Denied.

72. Denied.

73. Admitted that Ordinance 1806 was enacted on June 29, 2017, and that said Ordinance "speaks for itself."

74. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

As to COUNT VI

75. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

76. Plaintiffs are left to their proofs as to the allegations in Paragraph 76 of the Complaint as the contracts with the State of Jersey referenced therein "speak for themselves."

77. Denied since **summonses were never issued, and Ordinance 1806 was repealed in its entirety on December 28, 2017.**

78. Denied. Pursuant to N.J.A.C. 7:36-9.1(j) and (k) and N.J.A.C. 7:36-14.1(j) and (k), the State is entitled to initiate suit for injunctive relief or to seek specific enforcement, but said regulations do not expressly authorize institution of a lawsuit for repayment of all Green Acres funding that Defendant has received.

As to COUNT VII

79. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

80. Denied since no actual summonses were ever issued to anyone for the placement of lechis on utility poles in the Township. Furthermore, proposed Ordinance 1812 was never enacted.

81. Paragraph 81 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 81 contains any factual allegations directed toward the Township, they are denied.

82. Denied since no actual summonses were ever issued to anyone for the placement of lechis on utility poles in the Township, and proposed Ordinance 1812 was never enacted.

As to COUNT VIII

83. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

84. Denied since summonses were never issued.

85. Denied since summonses were never issued.

86. Paragraph 86 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 86 contains any factual allegations directed toward the Township, they are denied since no summonses were issued; and proposed Ordinance 1812 was never enacted.

87. Paragraph 87 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 87 contains any factual allegations directed toward the Township, they are denied since no summonses were issued.

88. Denied since no summonses were ever issued, and proposed Ordinance 1812 was never enacted.

As to COUNT IX

89. Defendant repeats each of its responses to the foregoing allegations and incorporates same herein as though set forth at length.

90. Paragraph 90 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same.

91. Denied, since no summonses were issued, and proposed Ordinance 1812 was never enacted.

92. Denied, since no summonses were issued, and proposed Ordinance 1812 was never enacted.

93. Paragraph 93 consists solely of a legal conclusion, and therefore Defendant is under no obligation to admit or deny same. To the extent that Paragraph 93 contains any factual allegations directed toward the Township, they are denied since no summonses were issued and proposed Ordinance 1812 was never enacted.

94. Denied.

As to DEMAND FOR RELIEF

Wherefore, it is denied that Plaintiffs are entitled to any of the relief and/or penalties prayed for in the Complaint.

SEPARATE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted. Thus, the Complaint may be subject to a dismissal pursuant to F.R.C.P. 12(b)(6) or (c).
2. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

3. Plaintiffs' claims for declaratory, injunctive, and civil monetary penalties are barred because they have been rendered moot with the repeal of the ordinances upon which their claims are based.
4. Plaintiffs do not have standing to bring a claim for violations of the LAD, the First and Fourteenth Amendments of the United States Constitution, or the Civil Rights Act on behalf of persons who are not residents of the State of New Jersey.
5. Any and/or all actions taken by Defendant were for legitimate, non-discriminatory reasons unrelated to any person's religion.
6. At no time did Defendant act with discriminatory intent towards Orthodox Jews.
7. Defendant breached no legal duty owed to Plaintiffs or to the residents of New Jersey whom the Attorney General of the State of New Jersey is authorized to represent.
8. All acts of the Defendant were at all times performed in good faith, without malice and without intent to violate any religious group's rights.
9. Plaintiffs failed to exhaust all available internal, contractual, and/or administrative remedies.
10. Plaintiffs are not entitled to repayment of Green Acres funds from the Township pursuant to either N.J.A.C. 7:36-

9.1(j) (k) and N.J.A.C. 7:36-14.1(j) and (k), but only to injunctive relief or specific performance.

11. Defendants assert herein all defenses and immunities available to them under the Civil Rights Act of 1871 for Plaintiff's federal causes of action.
12. Defendants are immune from all claims arising out of their legislative decisions pursuant to the holding in Bogan v. Scott-Harris, 523 U.S. 44(1998).
13. Defendants are immune from claims pursuant to 42 U.S.C. §1983 and their other federal statutory law and state civil rights claims that are based upon their discretionary actions pursuant to the qualified or good faith immunity provided by Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), and Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1277 (3d Cir. 1994), and further immune from liability for their good faith belief that their conduct was lawful. Good v. Pumpkin County, 891 F.2d. 1087, 1092 (3rd Cir. 1989).
14. Plaintiff's constitutional claims against the Township must fail as a matter of law since Plaintiff cannot prove a constitutional deprivation resulting from an official custom or policy or procedure under 42 U.S.C. §1983. Monell v. Dept. of Social Services, 436 U.S. 658, 691-94 (1978).

15. Plaintiffs are not entitled to an award of attorneys' fees under the LAD, 42 U.S.C. §1988, or the Civil Rights Act as Defendants' actions did not discriminate against any protected group of persons; nor did their actions violate the constitutional rights of any persons.
16. Defendant reserves the right to raise additional separate defenses, the existence of which may arise out of the discovery in this action.

WHEREFORE, Defendant demands judgment dismissing the Plaintiffs' Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

JURY DEMAND

Defendant demands a trial by jury on all issues so triable.

CLEARY GIACOBBE ALFIERI JACOBS LLC
Attorneys for Defendant, Township of
Mahwah

By: /s/ Ruby Kumar-Thompson
Ruby Kumar-Thompson, Esq.

Dated: March 27, 2018

CERTIFICATION

In accordance with Loc. Civ. R. 11.2, I, Ruby Kumar-Thompson, Esq., attorney for The Township of Mahwah, hereby certify that according to Plaintiffs' Complaint the matter in controversy in the above-captioned civil action is related to Bergen Rockland Eruv Association, et al. v. Township of Mahwah, Civil Action No. 2:17-cv-06054-JMV-CLW, which matter settled on or about January 31, 2018.

I further certify that the foregoing pleading has been electronically filed and served within the time period provided under the Federal Court Rules and/or by consent of the parties.

Pursuant to 28 U.S.C. §1764(s), I declare under punishment of perjury, 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.

CLEARY GIACOBBE ALFIERI JACOBS LLC
Attorneys for Defendant, Township
of Mahwah

By: /s/ Ruby Kumar-Thompson
Ruby Kumar-Thompson, Esq.

Dated: March 27, 2018

CERTIFICATION OF ELECTRONIC SERVICE

I, Ruby Kumar-Thompson, Esq., hereby certify that a copy of the within Answer, was e-filed with the Clerk of the United States District Court, District of New Jersey and as such was simultaneously served upon the Attorneys of record for all other Parties, via e-filing/PACER.

CLEARY GIACOBBE ALFIERI JACOBS LLC
Attorneys for Defendant, Township
of Mahwah

By: /s/ Ruby Kumar-Thompson
Ruby Kumar-Thompson, Esq.

Dated: March 27, 2018