ELECTRONICALLY FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,

PLAINTIFFS

v.

TOWNSHIP OF MAHWAH, RAMAPO HUNT & POLO CLUB ASSOCIATION, INC., GERALDINE ENTRUP, THOMAS MULVEY, JOHN and JANE DOES 1-14, JOHN DOE ENTITIES 1 and 2.

DEFENDANTS.

Case No.2:18-cv-09228-CCC-JBC

CIVIL ACTION

NOTICE OF MOTION TO DISMISS THE COMPLAINT IN LIEU OF FILING AN ANSWER

Before: Hon. Claire C. Cecchi, U.S.D.J. Motion date: September 4, 2018

TO: Valeria A. Gheorghiu, Esq.
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Attorneys for Plaintiffs

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ON NOTICE TO:

Arthur N. Chagaris, Esq.
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50 Chestnut Ridge Road
PO Box 244
Montvale, New Jersey 07645-0244
Attorneys for Defendant Ramapo Hunt and Polo Club Association, Inc.

Counsel:

PLEASE TAKE NOTICE that on September 4, 2018, at 9:00 a.m. in the

forenoon, or as soon thereafter as counsel may be heard, Defendants Township

of Mahwah, Geraldine Entrup, and Thomas Mulvey (hereinafter collectively

referred to as "Defendants"), will move before the before the Honorable District

Court Judge Claire C. Cecchi, U.S.D.J. at the United States District Court for

the District of New Jersey, Martin Luther King, Jr. Federal Building & U.S.

Courthouse, 50 Walnut Street, Newark, New Jersey 07102 for an Order pursuant

to Fed. R. Civ. P. 12(b)(1) or (b)(6), dismissing Plaintiffs' Complaint with prejudice.

PLEASE TAKE FURTHER NOTICE that in support of the aforementioned

motion to dismiss, Defendants shall rely upon the accompanying brief,

Certification of Counsel, and Exhibits, and that a proposed form of Order is also

being submitted herewith.

Respectfully submitted,

CLEARY GIACOBBE ALFIERI JACOBS, LLC

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Attorneys for Defendants Township of Mahwah,

Geraldine Entrup, and Thomas Mulvey

By: s/ Ruby Kumar-Thompson

RUBY KUMAR-THOMPSON, ESQ.

Dated: July 18, 2018

2

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,

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PLAINTIFFS

CIVIL ACTION

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CERTIFICATION OF ELECTRONIC
SERVICE FOR DEFENDANTS'
MOTION TO DISMISS THE
COMPLAINT IN LIEU OF FILING
AN ANSWER

DEFENDANTS.

I, Ruby Kumar-Thompson, Esq., a Partner at the law firm of Cleary Giacobbe Alfieri and Jacobs, LLC, hereby certify that on this 18th day of July, 2018, a copy of the **DEFENDANTS' NOTICE MOTION TO DISMISS THE COMPLAINT IN LIEU OF FILING AN ANSWER, BRIEF, CERTIFICATION, AND EXHIBITS in support thereof** has been served via electronic filing to all counsel of record to all of the parties; and that a courtesy copy of said papers is this day being submitted to the managing judge assigned to hear this matter as follows:

Hon. Claire C. Cecchi, U.S.D.J. MLK, Jr. Federal Building and U.S. Courthouse 50 Walnut Street Newark, New Jersey 07102

CLEARY GIACOBBE ALFIERI JACOBS, LLC

169 Ramapo Valley Road, Upper Level-105 Oakland, New Jersey 07436 Phone: (973) 845-6700 Attorneys for Defendants Township of Mahwah, Geraldine Entrup, and Thomas Mulvey

By: <u>s/ Ruby Kumar-Thompson</u>

RUBY KUMAR-THOMPSON, ESQ.

Dated: July 18, 2018

RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,

PLAINTIFFS

v.

TOWNSHIP OF MAHWAH, RAMAPO HUNT & POLO CLUB ASSOCIATION, INC., GERALDINE ENTRUP, THOMAS MULVEY, JOHN and JANE DOES 1-14, JOHN DOE ENTITIES 1 and 2,

DEFENDANTS.

U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Case No. 2:18-cv-09228-CCC-JBC
CIVIL ACTION

ORDER GRANTING MOTION TO DISMISS THE COMPLAINT

THIS MATTER having been opened to the Court by Cleary Giacobbe Alfieri Jacobs, L.L.C. as attorneys for Township of Mahwah, Geraldine Entrup, and Thomas Mulvey (the "Defendants"), pursuant to Fed. R. Civ. P. 12(b)(1) and b(6) for an Order dismissing the Complaint with prejudice against these Defendants, and the Court having, pursuant to F.R.C.P. 78 considered the arguments and papers submitted by the parties:

IT IS	on this	day of	. 2018.
II 10	סוונו ווט כ	uav OI	. 2010.

ORDERED that Defendants Township of Mahwah, Geraldine Entrup, and Thomas Mulvey motion to dismiss is granted, and the Complaint is dismissed with prejudice in its entirety.

Hon. Claire C. Cecchi, U.S.D.J.

ELECTRONICALLY FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,

PLAINTIFFS

v.

TOWNSHIP OF MAHWAH, RAMAPO HUNT & POLO CLUB ASSOCIATION, INC., GERALDINE ENTRUP, THOMAS MULVEY, JOHN and JANE DOES 1-14, JOHN DOE ENTITIES 1 and 2,

DEFENDANTS.

Case No.2:18-cv-09228-CCC-JBC

CIVIL ACTION

Before: Hon. Claire C. Cecchi, U.S.D.J.

Motion date: August 20, 2018

BRIEF IN SUPPORT OF DEFENDANTS TOWNSHIP OF MAHWAH, GERALDINE ENTRUP, AND THOMAS MULVEY'S MOTION TO DISMISS

CLEARY GIACOBBE ALFIERI JACOBS, LLC

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Geraldine Entrup, and Thomas Mulvey

Of Counsel and on the Brief: Ruby Kumar-Thompson, Esq.

On the Brief: Scott A. Sears, Esq.

TABLE OF CONTENTS

Page(s)			
PRELIMINARY STATEMENT			
PROCEDURAL HISTORY			
STATEMENT OF FACTS			
LEGAL STANDARD			
LEGAL ARGUMENT			
POINT I			
THIS COURT DOES NOT HAVE JURISDICTION OVER PLAINTIFFS' CLAIMS CHALLENGING APPLICATION OF THE TOWNSHIP'S ZONING ORDINANCES AS THEY ARE NOT YET RIPE DUE TO PLAINTIFFS' FAILURE TO SUBMIT EVEN ONE MEANINGFUL APPLICATION FOR A FINAL DETERMINATION			
POINT II			
PLAINTIFFS ARE BARRED BY THE DOCTRINE OF RES JUDICATA FROM CHALLENGING THE REVOCATION OF THE 2012 PERMIT PERMITTING CONSTRUCTION OF A LONG HOUSE			
POINT III			
PLAINTIFFS' CLAIMS CHALLENGING THE REVOCATION OF THE 2012 PERMIT PERMITTING CONSTRUCTION OF A LONG HOUSE FOR RELIGIOUS PRAYER AND CULTURAL ASSEMBLY ARE BARRED BY THE YOUNGER DOCTRINE			
CONCLUSION			

TABLE OF AUTHORITIES

Page(s) **Cases** Addiction Specialists, Inc. v. Township of Hampton, 411 F.3d 399 (3d Cir. Burford v. Sun Oil Co., 319 U.S. 315 (1943).......32 cf. Rezem Family Associates L.P. v. Borough of Millstone, 423 N.J. Super. 103 Colorado River Water Conservation District v. United States, 424 U.S. 800 Congregation Anshei Roosevelt v. Planning and Zoning Bd. Of Borough of CoreStates Bank, N.A. v. Huls America, Inc., 176 F.3d 187 (3d Cir. 1999) 26 Coventry Square, Inc. v. Westwood Board of Adjustment, 138 N.J. 285 (1994)22 General Motors v. City of Linden, 143 N.J. 336 (1996), certif. denied 519 U.S. 816 (1996)..... 18 House of Fire Christian Church v. Zoning Board of Adjustment of the City of In the Matter of Estate of Gabrellian, 372 N.J. Super, 432 (App. Div. 2004)29, 30 ISP Envtl. Servs., Inc. v. City of Linden, Civ. No. 05-4249, 2007 WL 1302995, Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 Macedonian Orthodox Church 269 N.J. Super. 562 (App. Div. 1994)23 Mack Auto Imports, Inc. v. Jaguar Cars, Inc., 244 N.J. Super. 254 (App. Div. New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 Nubenco Enterprises, Inc. v. Inversiones Barberena, S.A., 963 F. Supp. 353 Palazzolo v. Rhode Island, 533 U.S. 606 (2001)......11

Phila. Fed'n of Teachers v. Ridge, 150 F.3d 319 (3d Cir. 1998)	13
Phillips v. Cnty of Alleghany, 515 F.3d 224 (3d Cir. 2008)	12
Railroad Comm'n of Texas v. Pullman, 312 U.S. 496 (1941)	32
Schall v. Joyce, 885 F.2d 101 (3d Cir. 1989)	35
Semeric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582 (3d Cir	r.
1998)	16
Sheridan v. NGK Metals Corp., 609 F.3d 239 (3d Cir. 2010)	
<u>Simoni v. Luciani</u> , 872 F.Supp.2d 382 (D.N.J. 2012)2	
Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Board of Adjustment, 153	
309 (1998)	23
St. Joseph's Korean Catholic Church v. The Zoning Board of the Borough of	
Rockleigh, et al., 2006 WL 1320089 (N.J. App. Div. 2006)	
<u>State v. Cameron</u> , 100 <u>N.J.</u> 586	
Stern v. Halligan, 158 F.3d 729 (3d Cir. 1998)	
Taylor Inv., Ltd. v. Upper Darby Township, 983 F.2d 1285, n.7 (3d Cir. 1993)	
<u>Taylor Inv., Ltd. V. Upper Darby Twp.</u> , 983 F.2d 1285 (3d Cir. 1993)	
<u>Taylor v. Sturgell</u> , 553 U.S. 880 (2008)	
<u>Velasquez v. Franz</u> , 123 N.J. 498 (1991)	
Watkins v. Resorts International Hotel, 124 N.J. 398 (1991)	
Williams v. Red Bank Board of Education, 662 F.2d 1008 (3d Cir. 1981)	
Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City,	
U.S. 172 (1985)	
10011gc1 v. 11a1115, 401 0.5. 57 (1971)	5, 50
Statutes	
28 U.S.C. §2201	. 13
20 0.0.0. 32201	10
42 U.S.C. §1983	, 16
<u>N.J.S.A.</u> 40:49-5	17
N 1 0 1 40 55D 0	20
<u>N.J.S.A</u> . 40:55D-3	20
<u>N.J.S.A.</u> 40:55D-70	22
10.0.0.A. +0.00D-70	44
<u>N.J.S.A.</u> 40:55D-70b	20
<u>N.J.S.A.</u> 40:55D-73	22
Rules	
Rule 12(b)(1)	11
12(0)(1)	,, 11
Rule 12(b)(6)	11

PRELIMINARY STATEMENT

This Motion to Dismiss is filed on behalf of Defendants Township of Mahwah, Thomas Mulvey, Property and Maintenance Inspector and Geraldine Multrup, (collectively referred to as the "Defendants").

Plaintiffs Ramapough Mountain Indians, Inc. and Ramapough Lenape Nation (hereinafter referred to as "Plaintiffs" or "RMI") claim in this action that their right to gather and pray on property located at 95 Halifax Road in Mahwah, New Jersey has been infringed by the Township's efforts to enforce its zoning ordinances. More specifically, Plaintiffs complain about the demand from Geraldine Entrup in a letter dated April 24, 2018 to cease and desist from engaging in open prayer and threatening removal of their "alter and prayer circle," and about the issuance of "daily" summonses signed by Thomas Mulvey seeking fines for Plaintiff's failure to obtain a permit for open air prayer, stone alter and prayer circle (see ECF no. 1, ¶¶7, 12, 61, 65, and 66 of the Complaint)¹ They also make reference in the Complaint to the September 5, 2017 revocation of a 2012 zoning permit which allegedly recognized Plaintiffs' use of masked poles and gatherings for religious use (see ECF no. 1, ¶¶13 and 43, 64G of the Complaint).²

¹ While Plaintiffs complain that Mahwah is imposing cumulative crippling fines against them, in the amount of \$12,500 per day totaling \$480,000 as of May 14, 2018 (see paragraph 9 of the Complaint), there is no proof that any fines have been imposed on Plaintiffs to date, as the summonses are still awaiting adjudication in the Mahwah Municipal Court.

² As set forth more fully in the brief, the 2012 permit was issued unilaterally by the former zoning officer and, contrary to Plaintiff's assertions, was not a zoning permit but merely a permit permitting the construction of a longhouse that was erroneously granted in the absence of an application to the Zoning Board of Adjustment for a variance for religious use.

Plaintiffs' claims for declaratory judgment and injunctive relief pursuant to the First and Fourteenth Amendments, RLUIPA, and United Nations, Organization of American States Treaties, that are based upon the aforementioned actions by the Township to enforce its local land use ordinances must be dismissed because in order to challenge a land use decision, the governmental entity being challenged must be given the opportunity to make a final decision on the matter under Article III's "case or controversy" requirement. Since Plaintiffs have never submitted even a single meaningful application to the Township so as to be permitted to have large gatherings (religious, cultural or otherwise) on the property located at 95 Halifax Road, and never even attempted to obtain a permit for erection of any structures on the land, as required under the Township's ordinances and New Jersey Municipal Land Use Laws, because the Property is located in a Conservation Zone, their claims are not yet ripe. Accordingly, Plaintiffs cannot establish that they have suffered an actual concrete injury in the matter at bar, and as a result, do not currently have standing to have their claims adjudicated by the Federal District Court.

Likewise, any claim that is based upon the Township's revocation of the 2012 permit in the fall of 2017 must also be dismissed since Plaintiffs filed an appeal of the Township's revocation decision to the Superior Court of New Jersey, and which appeal was then subsequently dismissed by Plaintiffs with prejudice on May 1, 2018. In New Jersey, a voluntary dismissal with prejudice has the same effect as if the case were fully adjudicated before a judge and a jury. As such, Plaintiffs are precluded from resurrecting their claims based upon the

revocation of their 2012 permit in the District Court under the Full Faith and Credit Clause of the United States Constitution.

PROCEDURAL HISTORY

Plaintiffs filed the instant Complaint in the United States District Court of New Jersey on May 14, 2018 (see ECF no. 1). In Count One Plaintiffs assert a claim under the First Amendment of the United States Constitution for alleged violation of their right to free exercise of religion based upon alleged "threats" and imposition of coercive fines to prevent Ramapough and allies from coming onto the land for religious purposes. In Count Two Plaintiffs assert a claim under the First Amendment of the United States Constitution for alleged violation of their right to "peaceably assemble" for, not only religious purposes, but also for recreation, education, hunting, fishing, and other cultural reasons based upon the same threats and imposition of fines as alleged in Count One. In Count Three Plaintiffs assert a claim under the Fourteenth Amendment of the Constitution for alleged violation of their right to substantive due process due to their interest in the property located at 95 Halifax Road, which they allege has been infringed upon through issuance of discriminatory stop orders by Geraldine Entrup and Thomas Mulvey (see ECF no. 1, ¶¶84-88). In Count Four Plaintiffs assert a claim under the Fourteenth Amendment of the Constitution for alleged violation of their right to procedural due process based upon Geraldine Entrup and Thomas Mulvey's actions to issue orders and summonses designed to stop Plaintiffs' assembly and prayer. Additionally, Plaintiff's Procedural Due Process claim is also based upon the revocation of a 2012 permit, which Plaintiffs allege

was done without notice or hearing. In Counts Five through Eight, Plaintiffs assert a claim under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc, et seq. alleging religious discrimination, disparate treatment, and a substantial burden on their religious exercise through the total exclusion of religious assemblies within their jurisdiction due to the imposition of a land use ordinance and based upon the same enforcement actions upon which their First Amendment claims are based. Count Nine of the Complaint asserts a claim pursuant to neither federal law or State law but instead relies upon "international instruments" administered by the United Nations and the Organization of American States. Count Ten of the Complaint asserts a claim for nuisance against Co-Defendant, the Polo Club only. Count Eleven asserts a claim for declaratory relief prohibiting the Township of Mahwah from issuing any summonses for violation of its municipal land use ordinances, voiding the imposition of fines assessed against Plaintiffs by the Township, and declaring that there is a right to assemble and engage in open prayer at 95 Halifax Road, irrespective of the Township's zoning ordinances and what is required under the State's Municipal Land Use laws.

On June 7, 2018, Plaintiffs filed a motion for a temporary restraining order and a preliminary injunction against the Township seeking to stay the issuance of summonses against Plaintiffs by the Township for failure to obtain a zoning permit in violation of Township Ordinance 24:11.2C, failure to obtain site plan approval in violation of Township Ordinance 22-3.2d, and locating a structure on the property without prior approval Township Ordinance 24-6.1 (see ECF no.

12-3, at page ID numbers 121 through 125). Plaintiffs' Motion for a temporary restraining order was accompanied by several exhibits and a proposed order enjoining the Township from "actual enforcement, self-help, or imposing cumulative fines" for the purpose of prohibiting prayer and assembly on the property or from directly or indirectly forcing the demolition of Ramapough's Stone Alter and Prayer Circle located on the property; staying the Municipal Court proceedings with respect to the summonses being received by Plaintiffs for violations of the Township's zoning ordinances; enjoining Defendants from pursuing injunctive relief against Plaintiffs in the pending New Jersey Superior Court actions in the vicinage of Bergen County, New Jersey; and to enjoin Defendants from issuing further summonses to Plaintiffs related to assembly, open prayer or related to the Stone Alter or from attempting to enforce any Order or Judgment arising from the municipal court's unfavorable adjudication of said summonses and/or imposition of fines on Plaintiffs. Plaintiffs' motion for temporary restraining order and preliminary injunction was denied by the District Court sua sponte on June 11, 2018 under the Younger doctrine's principles of equity, comity and federalism (ECF Doc. No. 15). Defendants now move this Court for a dismissal of Plaintiff's Complaint for lack of subject matter jurisdiction and/or failure to state a claim.

STATEMENT OF FACTS

Plaintiffs are comprised of members who are allegedly descendants of the original people of the Ramapo Mountains, principally of Munsee descent from the Lenape people (see ECF no. 1, Complaint, ¶5). Three sites located in the

Township of Mahwah allegedly hold particular importance to Plaintiffs: the mouth of the Ramapo and Mahwah rivers, Ramapo Pass, and the area around 95 Halifax Road ("Sweet Water") (see Complaint, ¶¶21-23). In 1984, the Township adopted a Zoning Map, which designated Sweet Water as a C-80 Conservation Zone (see ECF No. 1, Complaint, paragraphs 32). Mahwah amended its zoning ordinances in June 1987 to designate Sweet Water as a C-200 Conservation Zone (see ECF No. 1, Complaint, ¶34)

Plaintiffs allegedly acquired rights to 95 Halifax Road located in the C200 Zone through a deed granted to them from Mr. Charles Elmes in 1995 (see ECF no. 1, Complaint ¶35). It was not until October 2016, however, that Plaintiffs began to have "meetings" to establish the Split Rock Sweetwater Prayer Site at 95 Halifax Road (hereinafter the "Property") (see ECF no. 1, Complaint, ¶44). The C-200 Conservation Zone expressly permits the following uses only: Public Open Space for purposes of hiking, horseback riding, wildlife preserves, arboretums, botanical gardens, historical edifices, woodland areas, hunting and fishing facilities, other similar uses; Agricultural uses, farms, subject to Section 24:6.1a, Single-family detached residences with 200,000 square feet minimum lots. (see Exhibit A, Township of Mahwah's Schedule of District Use Regulations). It does not expressly permit open prayer or cultural assembly, nor does it expressly prohibit open prayer or cultural assembly. Thus, under New Jersey Municipal Land Use Law, Plaintiffs are required to submit an application to the Board for a permit and/or variance for any non-conforming uses and structures on the property. See e.g., N.J.S.A. 40:55D-3; and N.J.S.A. 40:55D-70D-2; and see Ord.

24-6.1(e). However, no such application was submitted by Plaintiffs to the local Board prior to October 2016.

In December 2016, the Township issued notice to Plaintiffs that their activities on the property were in violation of the Township's zoning ordinances (see Exhibit B, Complaint dated October 27, 2017, BER-L-7435-17, filed by Plaintiffs in the New Jersey State Superior Court). On April 6, 2017, Plaintiffs submitted an application for a zoning permit related to the use of their property and for the construction of several permanent structures on the Property (see Exhibit C, Permit application dated April 6, 2017).

On April 13, 2017, the Township Engineer denied the application on the basis that it was requesting a non-conforming use that was not permitted in the C200 zone. Therefore, Plaintiffs were informed that they would have to submit an application for a variance to the Zoning Board of Adjustment. (see Exhibit D, Letter from Michael Kelly dated April 13, 2017).

On or about June 12, 2017, an application for a use variance was submitted by Plaintiffs due to a proposed expansion of their use of the property as a place for worship, educational and cultural gatherings for large groups of persons, to watch movies for approximately 100 persons and to construct a pipeline for drinking water, as well as a mini-Lenape village on the Property to include wigwams, elevated cooking shack, food storage structure, bathing facilities, etc. (see Exhibit E, letter with application dated June 12, 2017, and Exhibit F, addendum to variance application). Subsequently, a hearing was scheduled to take place on September 20, 2017, however, Plaintiffs inexplicably

withdrew the application for a use variance before any hearings could take place (see Exhibit G, letter dated August 21, 2017 from RMI). Thus, the Zoning Board of Adjustment dismissed the Use Variance Application without ever rendering a decision on same (see Exhibit H, Resolution dated November 1, 2017).

On or about September 15, 2017, the Township's Engineer revoked the permit issued on or about January 25, 2012 for the construction of a Long house on the Property as having been erroneously granted by the former Zoning Official, and furthermore advised Plaintiffs of their right to appeal the decision to the local Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-72. (see ECF no. 1, Complaint, ¶13; and see Exhibit I, letter dated September 15, 2017 from Michael Kelly)

Contrary to Plaintiff's assertions in the Complaint (paragraph 64c), the 2012 Permit gave approval for the construction of a Long House on the Property for prayer and community/cultural assembly as per the DEP (see <u>Exhibit J</u>, "Zoning permit" dated January 25, 2012). It did not grant Plaintiffs a permit or a variance for the large group gatherings and other activities that Plaintiffs have been conducting on the property or for the construction of any other structures on the Property; nor could it since Plaintiffs had not submitted an application to the Board to request a variance prior thereto (see <u>Exhibit I</u>, letter dated September 15, 2017).

Prior to filing the instant action in federal court, Plaintiffs filed an appeal of the Zoning Officer's decision on September 15, 2017 to rescind the 2012 permit (see ECF no. 1, Complaint, ¶64G; see also Exhibit B, Complaint dated

October 27, 2017, BER-L-7435-17). The appeal was not, however, filed with the Board of Adjustment in accordance with New Jersey's Municipal Land Use Law at N.J.S.A. 40:55D-72, but rather was filed with the New Jersey Superior Court in Bergen County, New Jersey as an action in Lieu of Prerogative Writ, pursuant to New Jersey Court Rule 4:69-1, et seq. (Id). In the Superior Court Complaint, Plaintiffs raised the very same facts and claims for due process violations and for an injunction as they have pled in the current Complaint to challenge the revocation of their 2012 permit. (Id). In state court, the Township moved to dismiss Plaintiff's Complaint as untimely and for the failure to exhaust administrative remedies on or about January 31, 2018 (see Exhibit K, Letter brief in support of Township's motion to dismiss Plaintiff's "appeal"). To avoid a dismissal by the Court of their Complaint, Plaintiffs agreed at oral argument on the Township's Motion to Dismiss to voluntarily dismiss the Complaint with prejudice (see Exhibit L, Superior Court Transcript dated April 27, 2018). Thus, Plaintiffs appeal of the zoning officer's revocation of their 2012 permit was dismissed by the Superior Court with prejudice on May 1, 2018 (see Exhibit M, Order dated May 1, 2018).

In addition, Plaintiffs apparently have raised the same issues in another Superior Court action that was brought by the Township against Plaintiffs for injunctive relief under Docket Number BER-L-003189-17. The Answer filed by Plaintiffs clearly raises the very same issues that are being raised affirmatively in the matter at bar, including the issue of whether the Township's efforts to enforce its zoning ordinances by issuing summonses constitutes a substantial

burden on the exercise of religion, allegedly in violation of RLUIPA (see <u>Exhibit</u> N, Answer and Fourth Affirmative Defense dated June 15, 2017).

Plaintiffs entered into a settlement of the aforementioned Superior Court case (BER-L-3189-17) pending against them in February 2018, and said settlement was placed on the record before the Honorable Superior Court Judge Lisa Perez-Friscia on February 28, 2018 (see Exhibit O, Transcript of Settlement Hearing dated February 28, 2018). Plaintiffs, however failed to approve and execute a written agreement memorializing the settlement (see Exhibit P, Declaration of Chief Dwayne Perry dated June 2,2018, paragraph 52, previously attached to Plaintiffs; motion for a TRO at ECF Document 12-5).

After Plaintiffs failed to approve and execute a written agreement memorializing the settlement placed on the record in Superior Court, the Township resumed issuing summonses to Plaintiffs for the continuing violations that were listed in the notice of abatement from Geraldine Entrup dated January 17, 2018 (see ECF No. 1, 64J; and 65; see also Exhibit Q, letter dated January 17, 2018 from Geraldine Entrup, and Exhibit R, letter dated April 24, 2018 from Geraldine Entrup). Plaintiffs were further advised that for each summonses issued assessing fines on a daily basis for the alleged zoning violations that they would need to appear in Municipal Court to defend against the summonses (see Exhibit S, letters and summonses issued since April 25, 2018 previously annexed to Plaintiff's Motion for a temporary restraining order and preliminary injunction at ECF doc. 12-3 and -4). To date, there has been no disposition on

those summonses by the Municipal Court and thus, no amount of fines is presently owed and payable by Plaintiffs to anyone.

LEGAL STANDARD

"[I]t is well settled that procedural issues such as standing, mootness and ripeness are to be determined prior to any substantive analysis" on a motion to dismiss pursuant to Rule 12(b)(1) or Rule 12(b)(6). ISP Envtl. Servs., Inc. v. City of Linden, Civ. No. 05-4249, 2007 WL 1302995, at *7 n.1 (D.N.J. May 3, 2007) (citing Palazzolo v. Rhode Island, 533 U.S. 606 (2001); Hurley v. Columbia Cas. Co., 976 F. Supp. 268, 272 (D. Del. 1997); Barmo v. Reno, 899 F. Supp. 1375, 1379 (E.D. Pa. 1995)). Indeed, the Third Circuit has considered ripeness issues in reviewing both a motion for failure to state a claim and motion for subject matter jurisdiction. See County Concrete v. Roxbury, 442 F.3d 158, 163-64 (3d Cir. 2006) (reviewing ripeness decisions in appeal from Rule 12(b)(6) dismissal); and see Stern v. Halligan, 158 F.3d 729, 734 (3d Cir. 1998) (noting that satisfaction of the finality rule in land use matters implicates a federal court's Article III subject matter jurisdiction).

Generally, in reviewing a motion to dismiss on the pleadings, the court "accept[s] all factual allegations as true, construe[s] the complaint in the light most favorable to the plaintiff, and determine[s] whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. Cnty of Alleghany, 515 F.3d 224, 233 (3d Cir. 2008) (citation and quotations omitted). However, in considering whether to dismiss for unripeness, since it is essentially

a jurisdictional inquiry, a court is not limited to the face of the pleadings in deciding such a motion but may also inquire by affidavits or otherwise into facts as they exist. Taylor Inv., Ltd. v. Upper Darby Township, 983 F.2d 1285, 1290 n.7 (3d Cir. 1993) (holding that unripe claims should ordinarily be disposed of on a motion to dismiss, not summary judgment). Rather, the court may dismiss the claim if it finds after a review of the existing facts that either Article III or other prudential limitations on the exercise of judicial authority require this court to avoid entangling themselves in abstract disagreements or otherwise where principles of comity and federalism dictate restraint. Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99 (1977); see also Phila. Fed'n of Teachers v. Ridge, 150 F.3d 319, 323 (3d Cir. 1998); and Younger v. Harris, 401 U.S. 37 (1971).

LEGAL ARGUMENT

POINT I

THIS COURT DOES NOT HAVE JURISDICTION OVER PLAINTIFFS' CLAIMS CHALLENGING APPLICATION OF THE TOWNSHIP'S ZONING ORDINANCES AS THEY ARE NOT YET RIPE DUE TO PLAINTIFFS' FAILURE TO SUBMIT EVEN ONE MEANINGFUL APPLICATION FOR A FINAL DETERMINATION

In the matter at bar Plaintiffs assert claims pursuant to RLUIPA and for alleged violations of the Free Exercise Clause and Freedom of Association clauses of the First Amendment, Substantive and Procedural Due Process Clause of the First and Fourteenth Amendments, and the United Nations Organization of American States Treaties. Plaintiffs also seek injunctive relief by bringing a claim

for declaratory judgment pursuant to 28 <u>U.S.C.</u> §2201. The gravamen of Plaintiffs' claims against the Township of Mahwah, Geraldine Entrup and Thomas Mulvey is based entirely upon their actions to enforce the Township's zoning ordinances through the revocation of a 2012 zoning permit on September 5, 2017, and the issuance of "daily" summonses seeking fines for zoning violations due to the structures and activities on the subject property located at 95 Halifax Road since March 29, 2018 (see Paragraphs 13, 61, 65 and 66 of the Complaint). Plaintiffs' claims however are based upon facts which do not demonstrate a justiciable case or controversy over which this Court would have subject matter jurisdiction.

Article III of the United States Constitution confers subject matter jurisdiction upon a federal court only for matters involving an actual "case or controversy." Essential to determining whether a justiciable case or controversy exists is whether the person has suffered an "injury in fact." <u>Lujan v. Defenders of Wildlife</u>, 504 U.S. 555, 560 (1992). In order to demonstrate an "injury in fact." Plaintiff cannot allege an injury which is merely abstract, but Plaintiff must allege an injury to a legally cognizable protected interest, <u>which is both concrete and particularized</u>. <u>Lujan</u>, 504 U.S. at 560 (emphasis added). If an injury is too abstract or not actual or imminent, then it is not sufficient to confer jurisdiction on a federal court under Article III. <u>Id</u>. This is known as the ripeness doctrine. <u>County Concrete Corp. v. Twp. of Roxbury, supra,</u> 442 F.3d at 164 (internal citations and quotation marks omitted) (stating that, the ripeness doctrine serves to determine "whether a party has brought an action prematurely and counsels

abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine.").

As it pertains to claims involving the application of local zoning ordinances, Article III's ripeness requirement has been articulated by the Supreme Court to apply to disputes arising therefrom, in holding that a takings claim "is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of [those] regulations to the property at issue." Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186 (1985). As the Supreme Court explained, applying such a rule of finality to challenges involving the application of zoning laws by a municipality is necessary, because the finality requirement of the ripeness inquiry directly addresses "whether the initial decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." Id. at 193.

The rule of finality first articulated in <u>Williamson Cty Reg'l Planning Comm'n</u>, <u>supra</u>, is not limited to takings claims, but has subsequently been expanded by our courts to other types of constitutional claims challenging a governmental land use decision, including Free Exercise Claims, Due Process claims, Equal Protection claims, and RLUIPA claims. <u>See Congregation Anshei Roosevelt v. Planning and Zoning Bd. Of Borough of Roosevelt</u>, 338 Fed. Appx. 214, 217 & fn. 4 (3d Cir. 2009) (*citing Taylor Inv.*, Ltd. V. Upper Darby Twp., 983 F.2d 1285 (3d Cir. 1993) and <u>Murphy v. New Milford Zoning Comm'n</u>, 402 F.3d 342, 347 (2d Cir. 2005)). The rationale behind expansion of the finality rule is

due to the fact that land-use decisions concern a myriad of unique localized interests and to the surrounding community; as such, it is the local authorities who are in a better position than the courts to assess the burdens and benefits of those varying interests. Semeric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 598 (3d Cir. 1998). If those interests were ignored, then absent a concrete injury, a land use dispute will improperly convert the federal court from a court authorized to review constitutional violations under Article III into a "super land use board of appeal." Id.

The Third Circuit has explained that that the finality requirement of the ripeness inquiry: "(1) aids in the development of a full record; (2) provides the court with knowledge as to how a regulation will be applied to a particular property; (3) may obviate the need for the court to decide constitutional disputes if a local authority provides the relief sought; and (4) shows the judiciary's appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution." Congregation Anshei, 338 Fed. Appx. at 217 (citing Murphy, 402 F.3d at 348) (internal citations omitted).

Thus, in order for a constitutional challenge to a land use decision to rise to the level of a justiciable case or controversy under Article III's ripeness requirement, a local land use board must first be given a meaningful opportunity to arrive at a definitive final decision with respect to the application of its zoning regulations to the plaintiff's proposed use of the property. Id at 219 (holding that plaintiffs' claims under RLUIPA were not ripe until they submitted an application for a use variance and received a final determination from the Board as to

whether the Yeshiva would be permitted on the property). Accord. House of Fire Christian Church v. Zoning Board of Adjustment of the City of Clifton, 379 N.J. Super. 526 (App. Div. 2005) (remanding claim under RLUIPA that applying for a conditional use variance constitutes a "substantial burden" on the exercise of religion for a full record). cf. Rezem Family Associates L.P. v. Borough of Millstone, 423 N.J. Super. 103 (App. Div. 2015) (holding that the failure to challenge a zoning decision through an action in lieu of prerogative writ would bar a claim for deprivation of civil rights pursuant to 42 U.S.C. §1983 under principles of finality and ripeness that are applied by the United States Supreme Court to land use cases).

Accordingly, in order for Plaintiffs in the matter at bar to have standing to proceed with their constitutional and religious discrimination claims under RLUIPA, the Court must first determine whether an immediate injury has been sustained as the result of Plaintiffs' allegations and second, the Court must determine whether further development of the factual record would result in improvements in the administration of justice. <u>Id.</u> at 219; <u>see also General Motors v. City of Linden</u>, 143 N.J. 336, 350 (1996), <u>certif. denied</u> 519 U.S. 816 (1996) (holding that Section 1983 is not a general tort statute and cannot be used to award relief when state law otherwise provides for an adequate remedy).

To determine whether Plaintiffs have suffered an immediate injury requires Plaintiffs to establish that there has been a definitive final decision reached by the Township of Mahwah with respect to the application of the Township's Ordinances to Plaintiffs' use of the property at Halifax Road. The issuance of summonses alone

for violations of Mahwah's zoning ordinances does not establish that the Township of Mahwah has arrived at any final determination as to whether the manner in which the property is being used by Plaintiffs violates Mahwah's zoning ordinances. The Township of Mahwah is authorized to prescribe penalties for violation of ordinances it may have authority to pass pursuant to N.J.S.A. 40:49-5. Pursuant to Mahwah Township Ordinances, in order for any of the prescribed penalties to actually be imposed, the person must be convicted in municipal court of the alleged zoning violations. See Township Ord. Section 24:11-5. Thus, the only person who has the authority to actually impose fines upon Plaintiffs based upon a complaint made for their alleged violation of the Township's Zoning Ordinances is a municipal See Ord. Section 1-5. Thus, contrary to Plaintiff's claims that court judge. "crippling fines" are being assessed against them through the issuance of a 30-day notice to abate the violations and issuance of "daily summonses" since March 27, 2018, no such fines have been imposed upon them yet. Furthermore, Plaintiffs do not allege that the Township has erected any physical barriers on the property or have actually engaged in self-help to remove any of the structures that remain on the property, and therefore, the issuance of summonses alone have not prevented them from continuing to use the property while adjudication of those summonses remain pending. Indeed, Plaintiffs admit that, even though Plaintiffs started receiving summonses on April 24, 2018, they have continued to use the property for cultural and religious gatherings thereafter, most recently on May 4, 2018 (see ECF no. 1, Complaint at ¶63).

It is also clear that development of a full record would aid the District Court in determining whether Plaintiff's constitutional rights have been violated. This is because it cannot be disputed that Plaintiff's proposed use and erection of structures on the property since October 2016 are subject to the Zoning Ordinances of the Township of Mahwah. According to the Township's Zoning Ordinances, [a]ny use not specifically designated as a principal permitted use, an accessory use or a conditional use is specifically prohibited from any zone district in the Township. Ord. Section 24-4.3. Here, the property at issue is located in Mahwah's C200 Conservation Zone. The only uses permitted in the C200 Zone are public open space, farms, and single family detached residences with 200,000 sq. ft. minimum lots. Religious and cultural gatherings are not a permitted use, and permitted accessory uses do not include the structures that are presently located on the land.C-200 Conservation Zone.

Furthermore, according to the Ordinance governing the Township's Conservation Zone, it states that same "is designated to be consistent within the special and unique character of the land," and subject to several requirements "designed to assure that the natural assets of the community such as the wooded slopes of the Ramapo Mountains and the water recharge areas of the Ramapo River are not disturbed and that potentially dangerous natural occurrences such as flooding and erosion are not aggravated." Ord. Section 24-6.1(e). Furthermore, the Ordinance makes clear that for any use or development on the property an application is to be made by setting certain restrictions and requiring an environmental impact report to accompany any application for development,

including major subdivision applications, site plan approval, use variance request or any other action requiring a permit or approval from the Township. Id. Additionally, the Ordinance expressly prohibits, amongst other things, any development that would require it to be served by a public sanitary sewer system of any size or any facilities which is dependent upon linkage with the Northwest Bergen County Sewer Authority or any similar sewer system. Id.

Moreover, as the Property is also located near a river, and is thus in a flood hazard zone, it may also be subject to additional regulations. See <u>Ord</u>. Section 24-6.1(h). There are also regulations governing accessory structures that need to be considered for the structures that Plaintiffs have placed on the property without prior approval from the Township. <u>See Ord</u>. Section 24-6.8. Thus, it is clear that all of these regulations unique to the Property at issue would require a full factual record before the Court may determine that application of these regulations imposes a "substantial burden" on the exercise of Plaintiffs' religion in violation of RLUIPA and the First Amendment. As it stands now, no details about the extent and manner of Plaintiffs' future proposed use is presently known, and therefore, no determination can be made with respect to whether Plaintiffs' proposed use of the property can coincide with the unique characteristics of the C-200 zone and flood plain.

In fact, under the land use statutory scheme in New Jersey, it is the local Board of Adjustment that is tasked with the final authority to interpret a zoning ordinance, not the courts. See N.J.S.A. 40:55D-70b. Moreover, it should be noted that a Board of Adjustment is also authorized to permit certain uses in

a particular zoning district that are not expressly permitted, but only if certain conditions pursuant to N.J.S.A. 40:55D-3 are met. The Municipal Land Use Law ("MLUL") defines the term conditional use as: "[a] use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon issuance of an authorization therefore by the planning board." N.J.S.A. 40:55D-3. As per the MLUL definition, the conditional use is not a prohibited use, but a permitted one. See Coventry Square, Inc. v. Westwood Board of Adjustment, 138 N.J. 285, 293 (1994). In other words, a conditional use is different from a use permitted as of right because it is a use that presents special problems relating to traffic patterns, street access, parking, water conservation, and the like for which it must satisfy certain conditions in order to assure its functional and physical compatibility with the entire district and its appropriate integration within the particular zoning district. Id. at 294. Here, Plaintiffs withdrew their application for a variance and never submitted a site plan for approval and therefore, the Board was deprived of any ability to address the special problems inherent in all conditional uses, as well as those that may be unique to the Property at issue.

Indeed, the fact that a conditional use is an inherently beneficial one such as a church and thereby subjects it to a lesser standard for variance approval, does not eliminate the applicant's burden to prove that the grant of the variance for religious use will not impair the intent of the zoning plan and corresponding ordinances. See Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Board of

Adjustment, 153 N.J. 309, 323 (1998); Accord. State v. Cameron, 100 N.J. 586, 600 (holding that a zoning regulation can attempt to regulate those uses that are genuinely incompatible with the character of a residential zone by minimizing congestion, noise, constant activity, overcrowding and parking). Thus, even an inherently beneficial use such as a church may be subject to certain conditions pursuant to a municipality's ordinance when the size of the proposed house of worship implicates the same considerations another building of the same size would also have. See Macedonian Orthodox Church 269 N.J. Super. 562, 569 (App. Div. 1994) (rejecting plaintiff's claim that it was unconstitutional for a house of worship to reapply for a conditional use variance given the substantial increase in the size of the building proposed); and Accord. St. Joseph's Korean Catholic Church v. The Zoning Board of the Borough of Rockleigh, et al., 2006 WL 1320089 (N.J. App. Div. 2006) (holding that the Borough did not violate RLUIPA when denying a use variance to a church in the business zone because churches were permitted to be located in other zones of the Borough as a conditional use).

Furthermore, when a zoning board considers a variance or special permit application, or interprets a local zoning ordinance, an applicant is entitled to a final determination of his claim, usually within a statutorily mandated time period. N.J.S.A. 40:55D-73 (imposing a 120-day period within which the board must render decisions). In making that determination, the zoning board must apply settled legal principles to the facts presented by the applicant. N.J.S.A. 40:55D-70 (providing that no variance shall be granted "without a showing that

such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance"). Additionally, the board must afford notice to interested parties (usually neighbors who own land within a specified distance from the applicant's parcel such as Co-Defendant Ramapo Hunt and Polo Club) and must conduct a public hearing at which <u>all</u> parties have an opportunity to present and rebut evidence. <u>Id.</u> Here, no hearings at all were conducted due to Plaintiffs' withdrawal of their use variance application, and thus, the Board never made any final determination as to whether the use, religious, cultural, or otherwise, could be permitted on the property, at the very least, as a permitted conditional use.

For all of the foregoing reasons, it is clear that Plaintiffs have not presented a cognizable injury for adjudication in this matter and as such their claims under RLUIPA, equal protection, due process, and religious discrimination are not ripe, since Plaintiffs failed to give the Township any meaningful opportunity to render a final decision as to whether the nature and extent of their use of the Property at issue definitively precludes them from the C200 Conservation Zone. Thus, the Complaint must be dismissed for the failure to state a claim and/or for lack of subject matter jurisdiction.

POINT II

PLAINTIFFS ARE BARRED BY THE DOCTRINE OF RES JUDICATA FROM CHALLENGING THE REVOCATION OF THE 2012 PERMIT PERMITTING CONSTRUCTION OF A LONG HOUSE

Res judicata encompasses two preclusion concepts: (i) issue preclusion, which forecloses litigation of a litigated and decided matter; and (ii) claim preclusion, which bars litigation of a matter that has never been litigated but which should have been presented in a prior suit. See Simoni v. Luciani, 872 F.Supp.2d 382, 387-388 (D.N.J. 2012). The doctrine of claim preclusion "require[s] a plaintiff to present all claims arising out [of] the same occurrence in a single suit." Id. at 389-390.

Claim preclusion "gives dispositive effect to a prior judgment if a particular issue, although not litigated, *could have been raised* in the earlier proceeding. A claim that could have been raised in prior litigation must be dismissed as precluded provided: (1) a final judgment on the merits in a prior suit involving; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action." <u>CoreStates Bank, N.A. v. Huls America, Inc.</u>, 176 F.3d 187, 194 (3d Cir. 1999).

The courts take a broad view in deciding whether two suits are based on the same "cause of action," and look to whether there is an "essential similarity of the underlying events giving rise to the various legal claims." <u>CoreStates</u>, 176 F.3d at 194. "[T]he focus is on facts rather than legal theories." <u>Davis v. Wells Fargo</u>, 824 F.3d 333, 342 (3d Cir. 2016). Therefore, "[i]t is not dispositive that a plaintiff asserts a different theory of recovery or seeks different relief in the two actions." <u>Blunt v. Lower Merion Sch. Dist.</u>, 767 F.3d 247, 277 (3d Cir. 2014). Moreover, the fact that the second action may allege new events "does not compel a different result. A claim extinguished by res judicata 'includes all rights of the

plaintiff to remedies against the defendant with respect to all or any part of the transaction, *or series of connected transactions*, out of which the action arose." Blunt, 767 F.3d at 277. This approach reflects the "present trend ... of requiring that a plaintiff present in one suit all the claims for relief that he may have arising out of the same transaction or occurrence." Duhaney v. Attorney General of U.S., 621 F.3d 340, 348 (3d Cir. 2010).

Moreover, the prior adjudication "is conclusive in a subsequent action between the parties, whether on the same or a different claim." <u>B & B Hardware</u>, <u>Inc. v. Hargis Indus., Inc.</u>, 135 S.Ct. 1293, 1303 (2015). <u>See also Taylor v. Sturgell</u>, 553 U.S. 880, 892 (2008) (under the doctrine of claim preclusion, a final judgment forecloses successive litigation of the same claim, whether or not relitigation of the claim raises the same issues as the earlier suit).

Similar to the doctrines of collateral estoppel and res judicata, New Jersey's entire controversy doctrine requires "all parties with a material interest, one that can affect or be affected by the judicial outcome of a legal controversy" to raise all aspects of that controversy in a single proceeding. Nubenco Enterprises, Inc. v. Inversiones Barberena, S.A., 963 F. Supp. 353, 364 (D.N.J. 1997) (quoting Ditrolio v. Antiles, M.D., 142 N.J. 253, 267 (1995)). Accord. Olds v. Donnelly, 150 N.J. 424, 431 (1997) (holding that the entire controversy doctrine seeks to assure that all aspects of a legal dispute occur in a single lawsuit). But, unlike the doctrines of collateral estoppel and res judicata, the central consideration of the entire controversy doctrine is not whether there is commonality of issues, but whether the distinct claims arise from interrelated

facts which form part of a single larger controversy. Ditrolio, supra at 271. The fact that different relief is sought on the successive claims by a party or a person who should have been joined in the first suit is of no moment to the determination of whether the entire controversy doctrine will be triggered. Id. at 272. Rather it is the commonality of facts and not the commonality of issues, parties, or remedies that defines the scope of the controversy and implicates the mandatory joinder requirements of the entire controversy doctrine. (emphasis added). Thus, if a defendant is required after a final judgment or settlement to likely be engaged in additional litigation to conclusively dispose of their liability in a subsequent lawsuit that derives from the same transaction or series of transaction involved in the prior suit, the entire controversy doctrine will operate to bar claims that could have been raised in the prior proceeding by that party or person who should have (and could have) been joined in the suit. Ditrolio, supra at 268. The Third Circuit has consistently held that the "entire controversy doctrine applies to bar claims in a federal-court when there was a previous state-court action involving the same transaction." Bennun v. Rutgers State Univ., 941 F.2d 154, 163 (3d Cir. 1991).

A judgment of involuntary dismissal or a dismissal with prejudice, no matter how obtained, constitutes an adjudication on the merits in favor of the dismissed party "as fully and completely as if the order had been entered after trial." In the Matter of Estate of Gabrellian, 372 N.J. Super. 432, 447 (App. Div. 2004), quoting Velasquez v. Franz, 123 N.J. 498, 507 (1991); see also Mack Auto Imports, Inc. v. Jaguar Cars, Inc., 244 N.J. Super. 254, 259 (App. Div. 1990). As

such, a dismissal with prejudice following settlement of a claim can have preclusive effect under the equitable doctrines of res judicata, collateral estoppel, judicial estoppel, and the entire controversy doctrine, which all effectively act to bar re-litigation of claims or issues that were raised or which could have been raised in prior litigation. In the matter of Estate of Gabrellian, supra, at 447 (precluding a subsequent claim involving the same issue of intent underlying a prior judicial proceeding which had been dismissed with prejudice as the result of a settlement). The rationale underlying these preclusive doctrines against persons or their privities from raising the same claims, issues, and facts necessary to support their newly asserted claims are identical, and essentially recognizes that fairness to the defendant and sound judicial administration require a definite end to litigation. See Watkins v. Resorts International Hotel, 124 N.J. 398, 412-13 (1991).

The instant matter arises out of the same underlying events, with the same parties, as the case brought by Plaintiff Ramapough Mountain Indians Inc. ("RMI") against the Township in Ramapough Mountain Indians Inc. v. Michael Kelly and Township of Mahwah, Docket No. BER-L-7345-17 (Law Div. 2017). In that case, RMI challenged the Township's 2017 decision to revoke the 2012 Zoning Permit. RMI relied upon the 2012 Zoning Permit. RMI requested the Bergen County Superior Court to declare the revocation of the 2012 Zoning Permit null and void, and enjoin the Township from interfering with RMI's right to conduct prayer and community cultural assembly; create a prayer circle; and build and use a Long House. Following the Township's Motion to Dismiss, RMI

voluntarily dismissed its Complaint, with prejudice. On May 1, 2018, the Court Ordered RMI's Complaint "dismissed with prejudice and without costs" (emphasis added).

In this case as well, Plaintiffs are challenging the summonses issued by the Township for zoning violations following the Township's revocation of the 2012 Zoning Permit. As a result of the revocation, the Township has issued summonses to Plaintiffs for using the land for open air prayer, having a stone altar, and a prayer circle, as well as other structures. The addition of the Ramapough Lenape Nation, Ramapo Hunt & Polo Club Association, Inc., Geraldine Entrup, and Thomas Mulvey as parties in the instant matter does not avoid claim preclusion. See Sheridan v. NGK Metals Corp., 609 F.3d 239, 261 (3d Cir. 2010) ("Same parties" requirement of claim preclusion was satisfied in community resident's second action against pre-1986 owner of beryllium plant, even though there were additional parties in resident's second action against plant, where resident and plant were parties in both actions). And though the legal theories upon which Plaintiffs seek relief are different than those in the Bergen County case, the underlying facts and relief sought are substantially the same: An Order enjoining the Township from issuing fines and seeking removal of structures for violation of the Township's Zoning Ordinance. Therefore, Plaintiffs' Complaint must be dismissed because it is barred by res judicata and the entire controversy doctrine.

POINT III

PLAINTIFFS' CLAIMS CHALLENGING THE REVOCATION OF THE 2012 PERMIT PERMITTING CONSTRUCTION OF A LONG HOUSE FOR

RELIGIOUS PRAYER AND CULTURAL ASSEMBLY ARE BARRED BY THE YOUNGER DOCTRINE

Federal courts have recognized several circumstances under which it is justiciably preferable not to exercise jurisdiction over a constitutional claim. Those circumstances to which abstention is applied are: 1) to avoid deciding a federal constitutional question when the case may be disposed on questions of state law, Railroad Comm'n of Texas v. Pullman, 312 U.S. 496 (1941); to avoid needless conflict with the administration by a state of its own affairs, Burford v. Sun Oil Co., 319 U.S. 315 (1943); to avoid duplicative litigation, Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976); and to refrain from hearing constitutional challenges to state action in which the federal action is regarded as an improper intrusion on the right of the state to enforce its own laws in its courts pursuant to Younger v. Harris, 401 U.S. 37 (1971).

The Supreme Court in <u>Younger</u> established a principle whereby federal courts are required to abstain from exercising jurisdiction over a federal claim when federal adjudication would disrupt an ongoing state criminal proceeding. Since that decision, this "highly important" principle has been extended to civil proceedings as well as to state statutory administrative proceedings. <u>Moore v. Sims</u>, 442 U.S. 415 (1979); and <u>Williams v. Red Bank Board of Education</u>, 662 F.2d 1008, 1017 (3d Cir. 1981) (noting that the <u>Younger</u> abstention doctrine is rooted in the notion of "comity") (overruled on other grounds as recognized in <u>Schall v. Joyce</u>, 885 F.2d 101, 108 (3d Cir. 1989)).

For example, in <u>Pappas v. Twp. of Galloway</u>, 565 F. Supp. 2d 581 (D.N.J. 2008), the Pinelands Commission commenced litigation against the plaintiff in New Jersey state court in 2001, after the Commission discovered that the plaintiff had apparently conducted unauthorized development on freshwater wetlands in violation of the Pinelands Protection Act, <u>N.J.S.A.</u> 13:18A–1 to–58, and the Comprehensive Management Plan, <u>N.J.S.A.</u> 7:50–1 to–10:16. In 2003, the court granted the Pinelands Commission's motion for summary judgment, The Commission Director denied the plaintiff's application for a waiver, and on May 11, 2007, the Commission upheld the denial of the plaintiff's waiver request. The plaintiff has appealed the Commission's resolution denying his waiver request to the Superior Court of New Jersey, Appellate Division, which was pending when the plaintiff filed the Federal Court action on September 17, 2017.

The Federal Court granted the defendants' motion to dismiss based upon the <u>Younger</u> abstention doctrine since the state court action was ongoing. The Federal Court explained, based upon <u>Addiction Specialists</u>, <u>Inc. v. Township of Hampton</u>, 411 F.3d 399, 408 (3d Cir. 2005), that the Federal Court may abstain under <u>Younger</u> where: "(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims." <u>Id.</u> In that case, both actions revolved around whether the Pinelands Commission acted lawfully in denying the plaintiff's request for a waiver from New Jersey laws proscribing construction on freshwater wetlands. The state proceedings implicate important state interests since "zoning and land use

issues are of traditional significance to states," and "[a]s such, it may often be appropriate to invoke abstention to avoid deciding land use cases in federal court." Id. at 588 (quoting Addiction Specialists, supra at 409). Regarding the last prong, the plaintiff failed to meet his burden of demonstrating that he did not have an adequate opportunity to raise the federal claims in state court. "The Supreme Court has held that the burden on this point rests on the federal plaintiff to show that state procedural law barred presentation of its claims." Id. at 589-90 (quoting Schall v. Joyce, 885 F.2d 101, 107 (3d Cir. 1989)). Since all three (3) prongs were satisfied, the Federal Court held that the Younger abstention doctrine was appropriate in that case.

Likewise, in <u>Burford</u>, <u>supra</u>, 319 U.S. at 332-334 the Supreme Court stated that a federal court should refuse to exercise its jurisdiction in a manner that would interfere with a state's efforts efforts to regulate an area of law in which state interests predominate and in which adequate and timely state review of the regulatory scheme is available. The test for application of the Burford Doctrine was later articulated by the Supreme Court in <u>New Orleans Public Service</u>, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 361 (1989) as follows: Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would

be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." (quoting <u>Colorado River</u>, <u>supra</u>, 424 U.S. at 814).

In the matter at bar, it is clear that the Younger abstention doctrine is appropriate to be applied to Plaintiff RMI's claims in the Complaint. RMI's claims in the Complaint represent nothing more than pleading RMI's affirmative defenses in Township of Mahwah v. Ramapough Mountain Indians, Inc., Docket No. BER-L-3189-17 (Law Div. 2017) as violations in the instant matter. In that case, RMI asserted that the Township was enforcing its Zoning Ordinance "in bad faith solely for the purposes of harassment and religious discrimination in contravention of the Religious Land Use and Institutionalized Persons Act." This Bergen County case is in essence still pending since the Parties never executed the draft settlement agreement upon which settlement the Court relied upon to dismiss the case without prejudice, and therefore the instant matter represents a premature challenge to matters that are currently the subject of an ongoing matter in Bergen County Superior Court. Furthermore, this case implicates a predominant and important state interest since it challenges enforcement of the Township's zoning ordinances to a unique parcel of land which is expressly designated for conservation and as Green Acres Open Space. See Addiction Specialists, supra at 409. Last, Plaintiffs will not be able to meet their burden of demonstrating that their federal claims could not be brought in state court, especially because Plaintiffs presented these federal claims as affirmative defenses in the Bergen County matter, and then affirmatively prevented those

claims from being adjudicated in state court by agreeing to a settlement in court, but then refusing to finalize said settlement.

Thus, in the absence of any decision by the Bergen County Superior Court as to the propriety of the constitutional claims presented as a defense to the relief sought by the Township as to the activities being conducted on land within its borders, it is appropriate for this court to abstain from adjudicating Plaintiffs' claims in the instant matter under Younger. Furthermore, due to the important local issues that have long ago been presented by the Township to be adjudicated by the state court in the first instance, and since adjudication of those local interests may render Plaintiff's constitutional claims moot if the issues are decided in their favor, then <u>Burford</u> and even <u>Pullman</u> abstention may also be appropriate. <u>See Williams</u>, <u>supra</u> at 1023, n15 (discussing Pullman abstention doctrine and finding no reason to distinguish same for purposes of applying Younger abstention through deference to a state court on issues of state law, which may render a decision of the federal claims unnecessary).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Township Defendants are entitled to a dismissal of Plaintiffs' Complaint as a matter of law.

CLEARY GIACOBBE ALFIERI JACOBS, LLC Attorneys for Defendants Township of Mahwah, Geraldine Entrup and Thomas Mulvey

July 18, 2018

<u>/s Ruby Kumar-Thompson</u> Ruby Kumar-Thompson, Esq.

EXHIBIT A

SCHEDULE OF DISTRICT USE REGULATIONS TOWNSHIP OF MAHWAH

Zone Permitted Principal Uses Permitted Accessory Uses Conditional Uses C-200 1. Public open space, 1. Private garages Conservation including hiking, horse subject to subsection (see subsecback riding, wildlife 24-6.8, paragraph a. tion 24-6.1, preserves, aboretums, 2. Swimming pools paragraph e) botanical gardens, subject to subsection historical edifices, wood-24-6.8, paragraph b. land areas, hunting and 3. Signs. fishings facilities, other 4. Off-street parking similar uses. subject to the Mahwah 2. Agricultural uses, farms, Township Site Plan subject to subsection 24-Ordinance. 6.1, paragraph a. 5. Accessory uses 3. Single-family detached customarily incidental residences, with 200,000 to a permitted princisq. ft. minimum lots. pal use. 4. Municipal facilities. R-80 1. Single-family detached 1. Any C-80 Zone permit-Singledwellings. ted accessory use sub-Family 2. Agricultural uses, farms ject to the same condi-Residential subject to sub-section 24tions as prescribed 6.1, para-graph a. therein. 2. Home occupations. 3. Churches, other places of worship including parish houses, Sun-day school buildings, other buildings, other similar uses, subject to subsection 24-6.1, paragraph c. 4. Public day schools, not operated for profit. 5. Public parks, playgrounds, libraries, firehouses, not-for-profit volunteer ambu-lance or volunteer first aid facilities. R-40 1. Any R-80 Zone permit-ted 1. Any R-80 Zone permit-Singleprincipal use under the ted accessory use under the same Family same conditions as Residential prescribed therein. conditions as prescribed therein. R-20 1. Any R-40 Zone permit-ted 1. Any R-40 Zone permit-Singleprincipal use under the ted accessory use Family same conditions as under the same Residential prescribed therein.

(Ord. #1036, §III) R-10 Single-

Residential

Family

R-15

Single-

- Family Residential
- R-5 Single-Family Residential
- 1. Any R-20 Zone permit-ted 1. Any R-20 Zone permitprincipal use under the same conditions as prescribed therein.

principal use under the

same conditions as

prescribed therein.

1. Any R-10 Zone permit-ted 1. principal use under the same conditions as prescribed therein.

- conditions as prescribed therein.
- 1. Any R-20 Zone permit-ted 1. Any R-20 Zone permitted accessory use under the same conditions as prescribed therein.
 - ted accessory use under the same conditions as prescribed therein.
 - Any R-10 Zone permitted accessory use under the same conditions as prescribed therein.

1. Essential services subject to subsection 24-6.9, paragraph b.

- 1. Essential services subject to subsection 26-6.9, paragraph b.
- 2. Community buildings, social clubs, lodges, fraternal organizations, subject to subsection 24-6.1, paragraph c.
- 3. Private day school not operated for profit.

- 1. Any R-80 Zone conditional use subject to the same conditions as prescribed therein.
- 1. Any R-40 Zone conditional use subject to the same conditions as prescribed therein.
- 1. Any R-20 Zone conditional use subject to the same conditions as prescribed therein.
- 1. Any R-20 Zone conditional use subject to the same conditions as prescribed therein.
- 1. Any R-10 Zone conditional use subject to the same conditions as prescribed therein.
- 2. Nursing homes subject to subsection 24-6.5.

EXHIBIT B

Aaron Kleinbaum (Attorney ID 002681991) Raghu Murthy (Attorney ID 006042008) Eastern Environmental Law Center 50 Park Place, Suite 1025, Newark, NJ 07102 973.424.1166 akleinbaum@easternenvironmental.org

Thomas Williams, Esq. (Attorney ID 009361973) TWW Law Professional Association 220 Franklin Turnpike, Mahwah, NJ 07430 201.529.4420 twwesq@optonline.net

Attorneys for Plaintiff, Ramapough Mountain Indians Inc.

RAMAPOUGH MOUNTAIN INDIANS INC. Plaintiff,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - BERGEN COUNTY DOCKET #
vs.	CIVIL ACTION
MICHAEL KELLY and TOWNSHIP OF MAHWAH	COMPLAINT FOR DECLARATORY JUDGMENT AND IN LIEU OF PREROGATIVE WRITS
Defendants.	

Plaintiff, Ramapough Mountain Indians Inc. (the "Ramapoughs"), through counsel and by way of Complaint against Defendants, the Township of Mahwah and Michael Kelly, alleges as follows:

PREAMBLE

This is an action in lieu of prerogative writs pursuant to R.
 4:69-1, seeking to invalidate Defendants' illegal attempt in
 September 2017 to rescind the Ramapoughs' right to use the

property in question for prayer and community cultural assembly.

THE PROPERTY

2. This action concerns a fourteen-acre property named "Sweet Water," located at Block 1, Lot 131, 95 Halifax Road in Mahwah Township. Sweet Water is part of the Ramapoughs' ancestral land. In the present day, the Ramapoughs reacquired title to Sweet Water in July 1995.

THE PARTIES

- 3. Plaintiff, Ramapough Mountain Indians Inc., is a nonprofit organization headquartered at 189 Stag Hill Rd, Mahwah, NJ 07430. This organization's mission is to provide social and economic services to the people of New Jersey and New York, especially the Ramapough Mountain Indians. The Ramapoughs are a sovereign entity, recognized by the State of New Jersey and the National Congress of American Indians, a congress of sovereign indigenous nations in the United States.
- Defendant, the Township of Mahwah, is a municipality lying within the County of Bergen, with officers located at 475
 Corporate Drive in Mahwah.
- 5. Defendant Mr. Michael J. Kelly, P.E. is the Administrative
 Officer in charge of the Township's Department of Land Use

- and Property Maintenance. That Department is also located at 475 Corporate Drive in Mahwah, and uses P.O. Box 733.
- 6. The Township of Mahwah and Mr. Kelly are hereinafter referred to collectively as "Defendants."

JURISDICTION & VENUE

- 7. This Court has jurisdiction over the Township, as a municipality within Bergen County, New Jersey.
- 8. This Court has jurisdiction over Mr. Kelly, as an employee of the Township.
- 9. Venue is proper under R. 4:3-2(a)(1), as this action concerns real property located within Bergen County, New Jersey.

HISTORY OF THE RAMAPOUGH MOUNTAIN INDIANS IN NEW JERSEY

- 10. The Ramapoughs are descended from the original people of Manhattan and the Ramapo Valley.
- 11. The Ramapoughs are one of the only Indian Tribes in the entire country that managed to stay on their ancestral homeland.
- 12. Three pieces of these ancestral lands hold particular importance to the Ramapoughs. The first is the mouth of the Ramapo and Mahwah Rivers, where the Ramapoughs have welcomed people with shared ceremonies for millennia.

- 13. The second is the Ramapo Pass, where the Ramapo River passes through the Ramapo Mountains. In the winter of 1799-1780, the Ramapoughs welcomed George Washington to use the Ramapo Pass to shelter five hundred Continental Army soldiers. Since then, the Ramapoughs have been known as Keepers of the Pass.
- 14. The third is Sweet Water, a sacred site of immense importance to the Ramapoughs. The Ramapoughs have conducted prayer and community cultural assembly for decades, if not centuries. In the Ramapoughs' native language, the word "Ramapo" actually means "sweet water." Sweet Water is located on the west side of the confluence of the Ramapo River and Halifax Creek, 95 Halifax Road in Mahwah.
- 15. In about 1849, Sweet Water and the lands surrounding it
 were incorporated into the Township of Mahwah. The
 Township took its name from the word in the Ramapoughs'
 native language meaning "meeting place."
- 16. Over the next 167 years, the Ramapoughs coexisted with the residents and officials of Mahwah Township.
- 17.In 1979, Assemblyman Walter Kemp and then-AssemblymanW. Cary Edwards introduced an Assembly Concurrent

- Resolution, to recognize the Ramapough Mountain Indians as an Indian Tribe.
- 18. The Concurrent Resolution passed the Assembly and Senate unanimously, and was filed with the Secretary of State in January 1980. The Concurrent Resolution states "[t]hat the Ramapough Mountain People of the Ramapough mountains of Bergen and Passaic counties, descendants of the Iroquois and Algonquin nations, are hereby designated by the State of New Jersey as the Ramapough Indians."
- 19. Attorney General Edwards's intention in introducing the

 Concurrent Resolution was "to provide the Ramapough tribe
 with recognition by the State of New Jersey." Attorney
 General Edwards provided a Certification concerning the
 Concurrent Resolution in July 2007. Attorney General
 Edwards further certifies that the assemblymen and Senators
 that voted for the Concurrent Resolution "clearly understood
 that the resolution was intended to bestow the Ramapough
 with official State recognition." Attorney General Edwards
 recalls media coverage after passage of the Concurrent
 Resolution, explaining that "the Senate had 'answered' the
 Ramapough's desire 'for official designation as a tribe..."

PRAYER AND COMMUNITY CULTURAL ASSEMBLY AT SWEET WATER

- 20. Elders among the Ramapoughs recall witnessing religious and ceremonial use of Sweet Water and the area surrounding Sweet Water, going back more than five decades.
- 21. During that time, the Ramapoughs have used Sweet Water for many important religious ceremonies, including the Tobacco Ceremony, the Pipe Ceremony, the Water Ceremonies, sweat lodges, weddings, and scattering ashes of departed tribal members into the Ramapo River.
- 22. The Ramapoughs conduct religious ceremonies at least twice a month in the warmer months, and slightly less often during the winter. The Ramapoughs schedule regular sweat lodge sessions throughout the year.
- 23. In the late 1970s, Charles Elmes acquired title to Sweet Water and all the surrounding lands.
- 24. Soon after the acquisition, Mr. Elmes met with several
 Ramapoughs, including Ronald Redbone Van Dunk, who was
 the Chief of the Ramapoughs at that time. Chief Redbone
 explained to Mr. Elmes that the Ramapoughs had used Sweet
 Water for prayer, community cultural assembly, hunting, and

¹ Chief Redbone passed away in April 2001.

- fishing for decades, if not centuries. Mr. Elmes allowed the Ramapoughs to continue using Sweet Water.
- 25.In 1984, the Township adopted a Zoning Map, which designated Sweet Water as a C-80 Conservation Zone.
- 26. The Ramapoughs continued to openly use the property for prayer and community cultural assembly, in open view of Township officials and police officers.
- 27.In June 1987, the Township amended the Zoning Ordinance to designate Sweet Water as a C-200 Conservation Zone.
- 28. Again, the Ramapoughs continued to use the property for prayer and community cultural assembly, in open view of the Township.
- 29. In July 1995, Mr. Elmes transferred title to Sweet Water to Ramapough Mountain Indians Inc.
- 30. The Ramapoughs, now as owners of the property, continued to use the property for prayer and community cultural assembly, in open view of the Township.
- 31. Over ten years ago, Bergen County authorities placed signs on the roads leading to Sweet Water, identifying the property as "Ceremonial" land.
- 32. In the fall of 2011, the Ramapoughs laid down a few logs in a rectangle at Sweet Water, as symbolic representation of a

- Long House. A Long House is a place of worship, similar to a church, synagogue or mosque.
- 33. In October 2011, Township officials visited Sweet Water and issued a Complaint to the Ramapoughs, alleging that the construction of a Long House required a Zoning Permit.
- 34. On December 12, 2011, the Ramapoughs submitted an application to the Township for a Zoning Permit. The application stated that the "present use" of Sweet Water at that time was "prayer and community cultural assembly." The application further stated that the Ramapoughs sought Township acknowledgement that the continuation of that use comported with the Zoning Ordinance. Finally, the application sought Township approval to build a Long House at Sweet Water.
- 35. On January 25, 2012, the Township Zoning Official, Gary Montroy, issued a Zoning Permit to the Ramapoughs. The January 2012 Zoning Permit acknowledged that prayer and community cultural assembly at Sweet Water was permitted under the Zoning Ordinance. The Zoning Permit also approved building and use of a Long House.
- 36. Subsequent to issuance of the January 2012 Zoning Permit, the Township recommended the dismissal of the October 2011

Complaint. In an April 2012 email to the Ramapoughs' attorney, the Township Administrator explained that the issuance of the January 2012 Zoning Permit resolved the violation:

I have discussed this item with Thomas Mulvey who is the Township Property Maintenance and Zoning Enforcement Officer. Mr. Mulvey issued the complaint in this case. The subject matter of the complaint was performing construction prior to obtaining a zoning permit. Since a zoning permit has been subsequently obtained, Mr. Mulvey believes that compliance with the ordinance requirement has been achieved. Thus, he is recommending to the municipal prosecutor and the Court that the pending complaint be dismissed.

- 37.In reliance on the Zoning Permit and the dismissal of the
 October 2011 Complaint, the Ramapoughs continued
 conducting prayer and community cultural assembly at Sweet
 Water.
- 38.In 2013, the Ramapoughs installed several logs vertically in the ground, in a circle, to create a prayer circle. The Ramapoughs placed the remaining logs horizontally between the already-installed vertical logs, using a track excavator.
- 39. The Township Zoning Inspector, Thomas Mulvey, visited

 Sweet Water and determined that none of these activities

 violated the Zoning Ordinance.

- 40. In reliance on Mr. Mulvey's letter, the Ramapoughs continued to use the prayer circle.
- 41. From that point to December 2016, the Ramapoughs continued to use Sweet Water for prayer and community cultural assembly, in open view of the Township.

DECEMBER 2016: HARASSMENT BY THE TOWNSHIP BEGINS

- 42. In December 2016, the Township issued a Complaint to the Ramapoughs, alleging that the Ramapoughs needed a Zoning Permit for its use of Sweet Water: ignoring the fact that the Ramapoughs clearly already held a Zoning Permit allowing prayer and community cultural assembly. The Complaint threatened that if the Ramapoughs continued prayer and community cultural assembly at Sweet Water, they would incur \$1,250 in penalties, six months of jail time, and another six months of community service.
- 43. On January 2017, the Ramapoughs met with the Township to attempt to address the Township's concerns. The Township demanded that the Ramapoughs prepare, at great cost and effort, another Zoning Permit application.
- 44. On April 6, 2017, the Ramapoughs submitted the Zoning Permit application demanded by the Township.

- 45.On April 13th, the Township denied the Ramapoughs' application. In direct contradiction to the January 2012

 Zoning Permit, the April 13th denial stated that the Zoning

 Ordinance did not allow prayer and community cultural assembly at Sweet Water. The denial gave no explanation of the contradiction. The denial made a new demand: that the Ramapoughs submit applications for a Site Plan Approval and a Use Variance to the Zoning Board.
- 46.A Use Variance is only necessary for uses that violate the Zoning Ordinance; therefore the Township's demand for a Use Variance was in direct contradiction to the Township's previous acknowledgment, in the January 2012 Zoning Permit, that the Zoning Ordinance allowed prayer and community cultural assembly at Sweet Water.
- 47. Nevertheless, again, at great cost, the Ramapoughs retained a planner to prepare the documents demanded by the Township, and submitted them in June 2017. The Ramapoughs also requested a partial waiver of the associated fees, owing to Ramapough Mountain Indians Inc.'s status as a nonprofit religious organization.
- 48. On June 28, 2017, the Township sent a letter listing the deficiencies in the application. The Township also denied the

- Ramapoughs' application for a fee waiver, with no explanation whatsoever.
- 49. In August 2017, the Ramapo Hunt & Polo Club Association

 Inc. (the "Polo Club") filed a motion that it would oppose the

 Use Variance application.
- 50. On August 22, 2017, Charles Rabolli, Jr., Chairman of the Zoning Board of Adjustment sent the Ramapoughs a letter, scheduling a hearing on the use variance application on September 20th. The letter demanded that the Ramapoughs provide all the documents outstanding from the use variance application, a proposed witness list for the hearing with a proffer of the anticipated testimony, and opposition to the Polo Club's motion, all within twelve business days (by September 10th). The letter finally stated that no extension of that time would be granted.
- 51. At that point, the Ramapoughs withdrew the application.
- 52.On September 15, 2017, Township Administrative Officer

 Michael Kelly issued a letter purporting to "rescind" the

 January 2012 Zoning Permit.

COUNT ONE

(Mr. Kelly's September 15, 2017 is ultra vires.)

- 53. Only the Zoning Board of Adjustment has the power to modify or reverse a Zoning Permit. N.J.S.A. 40:55D-70(a) and N.J.S.A. 40:55D-72.
- 54. "Any power expressly authorized by [the Municipal Land Use Law] to be exercised by "the Zoning Board of Adjustment "shall not be exercised by any other body", including the Administrative Officer: in this case, Mr. Kelly. N.J.S.A. 40:55D-20.
- 55.Mr. Kelly's illegal attempt to usurp the Board of Adjustment's authority, through the September 15th letter, forced the Ramapoughs to incur the time and expense of bringing this lawsuit.

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring Mr. Kelly's September 15, 2017 letter to be null, void, and of no effect;
- B. Enjoining Defendants from interfering with the January 2012 Zoning Permit, except through the processes detailed in N.J.S.A. 40:55D-70(a) and -72;
- C. Awarding to Plaintiff the costs of suit and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

COUNT TWO

(Mr. Kelly's September 15th letter violates the Ramapoughs' Right to Due Process.)

- 56. The Ramapoughs have a Constitutional right to prior due process before the January 2012 Zoning Permit is rescinded.
- 57. The Ramapoughs also have a statutory right to prior due process, before the January 2012 Zoning Permit is rescinded.

 N.J.S.A. 40:55D-10.
- 58. Defendants' illegal attempt to rescind the January 2012

 Zoning Permit violates the Ramapoughs' Constitutional and statutory right to due process, and has forced the Ramapoughs to incur the expenses of bringing this lawsuit.

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring Mr. Kelly's September 15, 2017 letter to be null, void, and of no effect;
- B. Enjoining Defendants from interfering with the January 2012 Zoning Permit, except through the processes detailed in N.J.S.A. 40:55D-70(a) and -72;
- C. Awarding to Plaintiff the costs of suit and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

COUNT THREE

- (Mr. Kelly's September 15th letter is wrong as a matter of law, arbitrary, and capricious.)
- 59. The January 2012 Zoning Permit was based on a correct decision that the Zoning Ordinance allows the Ramapoughs to conduct prayer and community cultural assembly at Sweet Water.
- 60. Defendants' arguments to the contrary in the September 2017 letter are wrong as a matter of law, arbitrary, and capricious.

 Defendants' adoption of these incorrect and illogical arguments has forced the Ramapoughs to incur the time and expense of bringing this lawsuit.

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring Mr. Kelly's September 15, 2017 letter to be null, void, and of no effect;
- B. Enjoining Defendants from interfering with the January 2012 Zoning Permit, except through the processes detailed in N.J.S.A. 40:55D-70(a) and -72;
- C. Awarding to Plaintiff the costs of suit and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

COUNT FOUR

(The Township is estopped from interfering with the January 2012 Zoning Permit.)

- 61. The Ramapoughs have openly conducted prayer and community cultural assembly at Sweet Water for decades, if not centuries.
- 62. The Township has always been fully aware of the Ramapoughs' use of Sweet Water for prayer and community cultural assembly.
- 63. Every time Township officials drive to Sweet Water, they pass signs erected by Bergen County marking Sweet Water as "Ceremonial Land."
- 64. The Township has repeatedly asked the New Jersey

 Department of Environmental Protection ("NJDEP") whether
 the Ramapoughs' activities conform to New Jersey
 environmental law, and NJDEP has always confirmed that
 they do.
- 65. The Township's longstanding knowledge of the Ramapoughs' use of Sweet Water for prayer and community cultural assembly constitutes tacit approval.
- 66. In January 2012, the Township made that approval explicit.

- 67. The Ramapoughs have relied on the Township's tacit and explicit approval to continue prayer and community cultural assembly at Sweet Water, to incur expenditures on this use, and to invite the Ramapoughs' allies to Sweet Water to join in prayer and community cultural assembly.
- 68. Under the equitable principle of estoppel, the Township is prohibited from withdrawing its longstanding tacit and explicit approval.

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring Mr. Kelly's September 15, 2017 letter to be null, void, and of no effect;
- B. Enjoining Defendants from interfering with the January 2012 Zoning Permit, except through the processes detailed in N.J.S.A. 40:55D-70(a) and -72;
- C. Awarding to Plaintiff the costs of suit and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

Respectfully submitted,

Date: 10.27.17

/s/ Raghu Murthy

Aaron Kleinbaum
Raghu Murthy
Eastern Environmental Law
Center
Thomas Williams
Attorneys for Defendant,
Ramapough Mountain
Indians Inc.

EXHIBIT C

ZONING PERMIT IS REQUIRED PRIOR TO CONSTRUCTION OR ALTERATION OF ANY BUILDING OR STRUCTURE, (INCLUDING SIGNS, SHEDS, FENCES, ETC.) OR PORTION THEREOF AND PRIOR TO THE USE OR CHANGE IN USE OF A BUILDING OR LAND IN THE TOWNSHIP OF MAHWAH. CONSTRUCTION PERMITS CANNOT BE ISSUED UNTIL ZONING APPROVAL IS RECEIVED.

APPLICATION FOR ZONING PERMIT TOWNSHIP OF MAHWAH 475 CORPORATE DRIVE MAHWAH, NJ 07430



			LCD14:4MG	E TOHING! W	
APPLICANT NAME: Ramapough Mountain Indians Inc.					
PHONE NUMBER: _			F)		
ADDRESS OF APPLI	CANT: 95 Halifax R	oad, Mahwah N	IJ 07430		
	IF DIFFERENT):			representation of the contract	
ADDRESS OF OWNE		•			
BLOCK: 1	LOT: 131	ZONE:	C-200	<u>~</u>	
ADDRESS OF PREMI	ISES FOR ZONING PERMI	T: 95 Halifax Road,	Mahwah NJ 07430	0.	
PRESENT USE: Op	en Space				
PROPOSED USE: PU	ublic Assembly for	Religious and C	ultural Purpose	S	
education and advocacy cultural assemblies. Environmental conservations area. Furth resources in the Ramaporady trainings and thistoric indigenous structure. Mountains and the Ram	IL. THE ACTIVITY TO BE use will include teepees; tents at In addition, the Lunaape with atton activities will focus on proper the Lunaape will be conducted in actures (teepees, and longhous apo Lunaape people as well as to bacco ceremonies, water cere	ill use the temporary and p eserving the water and nat note environmental educat I threat posed by pipeline on the tents, teepees, and off e) will be used for educatio their cultural and religious	emanent structures for ural features onsite and t ion and conservation of v onstruction. Environme her structures several tim n about the history of the s practices. Ramapo Lun	religious and the water ental nes a month. e Ramapo	
NEW CONSTRUCTIO	N: ADDITION: TURE: X SHED: X	alteration: generator:	GARAGE: SIGN:		
J William					

CALLED BEEN A

SETBACKS (EXISTING) (FEET): FRONT: 143.6' REAR: 383.5' SIDE: 33.6' SIDE: 330.3' TOTAL SIDE: 363.9'
SETBACKS (PROPOSED) (FEET): SIDE: 50.0' SIDE: 330.3' TOTAL SIDE: 380.3'
EXISTING LOT COVERAGE: 0.38 %* EXISTING IMPROVED LOT COVERAGE: 0.93 %* PROPOSED LOT COVERAGE: 0.38 %* PROPOSED IMPROVED LOT COVERAGE: 0.93 %* (after project built)
* Attach sheet showing calculations/computations for Lot Coverage and Improved Lot Coverage. Instructions are attached.
STREET FRONTAGE: 1384.83' (FEET) LOT DEPTH: 831.60' (FEET)
PROPOSED STRUCTURE HEIGHT: 15 (FEET) NO. OF STORIES: 1
HAS AN APPLICATION EVER BEEN MADE TO THE BOARD OF ADJUSTMENT? IF SO, STATE WHEN AND WHAT FOR:
(NOTE: ZONING FEES WAIVED FOR APPLICANTS THAT HAVE RECEIVED BOARD OF ADJUSTMENT APPROVAL.) APPLICATION MUST BE ACCOMPANIED BY ONE (1) COPY OF A TRUE AND ACCURATE PLOT PLAN WITH DETAILS. THE PLOT PLAN WILL OUTLINE ALL EXISTING AND PROPOSED IMPROVEMENTS AS WELL AS DELINEATE ALL SETBACKS AND PROPERTY LINES (FRONT, SIDE AND REAR DIMENSIONS IN FEET). SITE PLAN ONLY: TITLE: Layout and Dimensioning Plan PREPARED BY: Houser Engineering I SWEAR THAT THE ABOVE APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY
KNOWLEDGE
DATE SUBMITTED: 4/6/17 X LUAIN CLEY (APPLICANT'S SIGNATURE)
(OWNER'S SIGNATURE) (IF DIFFERENT THAN APPLICANT)
APPROVED: DENIED:
ZONING OFFICER: /hi////// DATE: 4//3/17
* SEE LETTER DATED 4/13/17
Page 2 Revised 03/08/16

are the first time the contract the contract the contract the contract of the

INSTRUCTIONS FOR OBTAINING A ZONING PERMIT

- I. THERE IS A \$50,00 PER APPLICATION FEE FOR FENCES OR SHEDS OF ONE HUNDRED TWENTY (120) SQUARE FEET OR LESS. ALL OTHER APPLICATIONS ARE \$100.00 EACH. NOTE: NO ZONING PERMITS WILL BE ISSUED UNLESS ALL REQUISITE INFORMATION IS RECEIVED BY PLANNING/ZONING OFFICE. CASH OR CHECKS ARE ACCEPTED. PLEASE MAKE CHECKS PAYABLE TO TOWNSHIP OF MAHWAH.
- 2. COMPLETE ATTACHED ZONING APPLICATION IN FULL, MAKING SURE THAT YOU HAVE FILLED IN YOUR NAME, CURRENT ADDRESS AND PHONE NUMBER WHERE YOU CAN BE REACHED DURING THE DAY, BLOCK, LOT, LOCATION AND ZONE PROPERTY IS LOCATED IN. A ZONING MAP IS POSTED OUTSIDE THE ZONING OFFICE IF YOU ARE UNSURE OF THE ZONE YOUR PROPERTY IS LOCATED IN.
- 3. FOR CONSTRUCTION OF AN ACCESSORY STRUCTURE, INDICATE ON A SITE PLAN WHAT YOU PROPOSE TO CONSTRUCT, ITS HEIGHT AND COVERAGE INFORMATION AND THE DISTANCE FROM THE PRINICIPLE STRUCTURE WHERE APPLICABLE. THIS APPLIES TO ALL ACCESSORY STRUCTURES (LE. GARAGES, SHEDS, ETC.) AND CONSTRUCTION OF POOLS. FENCES-SKETCH ON A SITE PLAN WHERE THE FENCE IS PROPOSED TO BE LOCATED. SHOW HEIGHT AND TYPE. FOR ACCESSORY STRUCTURES PLEASE MAKE SURE THAT YOU VERIFY THE PROPOSED HEIGHT ON THE SITE PLAN ITSELF BY PROVIDING PROPOSED FINISHED GRADE ELEVATIONS AT THE FOUR CORNERS OF THE STRUCTURE. ALSO, PROVIDE THE PROPOSED ELEVATION TO THE MEAN OF THE PROPOSED HIPPED OR GABLED ROOF OR TO THE ROOF BEAMS OF A FLAT ROOF.
- 4. PLEASE VERIFY THE IMPROVED AND LOT COVERAGE CALCULATIONS BY PROVIDING, EITHER ON THE SITE PLAN SUBMISSION OR ON AN ATTACHED SHEET OF PAPER, THE EXISTING FOOTPRINT OF THE HOUSE 0.0 SQUARE FEET, SHEDS = 2015.7 SQUARE FEET, POOL = 0.0 SQUARE FEET, ETC. SHOW HOW YOU ARRIVED AT THESE CALCULATIONS. INCOMPLETE APPLICATIONS THAT DO NOT SHOW THESE CALCULATIONS WILL BE DENIED AND WILL DELAY THE REVIEW PROCESS.
- 5. FOR ADDITIONS OR CONSTRUCTION OF NEW HOMES THAT CONTAIN BASEMENTS, THE APPLICANT MUST DEMONSTRATE ON THE SITE PLAN SUBMISSION THAT AT LEAST HALF OF THE PROPOSED BASEMENT IS AT LEAST 6 FEET BELOW FINISHED GRADE, OTHERWISE IT WILL BE CONSIDERED A STORY. MUST SUBMIT ELEVATION OF PROPOSED BASEMENT FLOOR, PROPOSED FIRST FLOOR ELEVATION AND ELEVATIONS AT PROPOSED FOUR (4) CORNERS OF NEW STRUCTURE.
- 6. INGROUND SWIMMING POOLS MUST INDICATE PROPOSED POOL COPING ELEVATIONS AND EXISTING TOPOGRAPHY AT NEAREST PROPERTY LINES. IF AN AS-BUILT IS NOT AVAILABLE, YOU MAY CHOOSE A BENCHMARK FIGURE AND DO PROJECTIONS. IF REGRADING THE PROPERTY, APPLICANT MUST SHOW NEW CONTOUR LINES AND EXISTING & PROPOSED GRADES IN THE VICINITY OF THE POOL PLEASE DEPICT POOL ON SURVEY SHOWING DISTANCES TO LOT LINES AND LOT COVERAGE/IMPROVED LOT COVERAGE CALCULATIONS.
- A PLOT PLAN (SURVEY) SEALED BY A LICENSED ENGINEERING OR LAND SURVEYOR IS REQUIRED UPON SUBMISSION FOR NEW CONSTRUCTION OF ANY RESIDENTIAL, COMMERCIAL OR INDUSTRIAL BUILDING.
- ALLOW TWENTY (20) DAYS FOR THE COMPLETION OF ALL PERMITS (BUILDING AND ZONING).

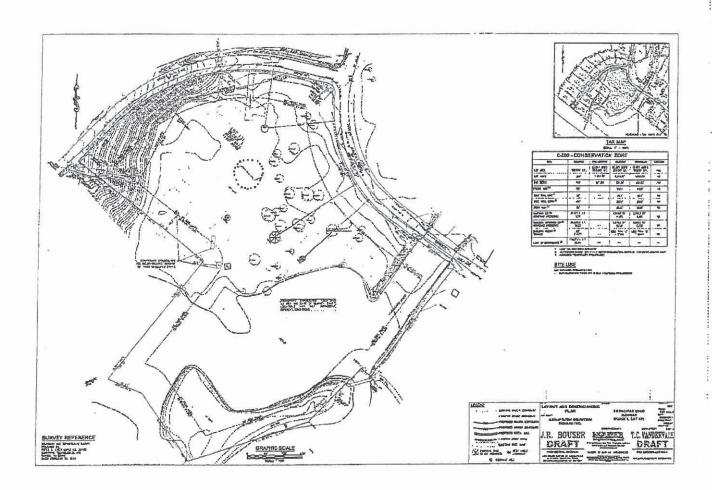


EXHIBIT D



Township Of Mahwah

Municipal Offices: 475 Corporate Drive P.O. Box 733 • Mahwali, NJ 07430 Tel 201-529-5757 • Fax 201-512-0537

Property Maintenance x 246

Zoning/Planning Board x 245

VIA E-MAIL AND VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 13, 2017

Thomas W. Williams, Esq. TWW Law Professional Association 220 Franklin Turnpike Mahwah, New Jersey 07430

Re:

Ramapo Mountain Indians Inc. Review of Zoning Application 95 Halifax Road Block 1, Lot 131 Township of Mahwah Our File No. MA-40-47

Dear Mr. Williams:

On April 6, 2017 our office received a Zoning Permit Application for uses proposed at the above reference property. The Application indicates that the proposed use is for public assembly for religious and cultural purposes.

The property in question is located in the Township's Conservation (C-200) Zone. As per the Township Code, the following are permitted principal uses in the C-200 Zone:

- Public open space, including hiking, horse back riding, wildlife preserves, arboretums, botanical gardens, historical edifices, woodland areas, hunting and fishing facilities, other similar uses.
- 2. Agricultural uses, farms, subject to subsection 24-6.1, paragraph a.
- 3. Single-family detached residences, with 200,000 sq. ft. minimum lots.
- 4. Municipal facilities.

Based on numerous site observations, we have found the property currently has many structures on site. These structures consist of camping tents, tepees, popup tents, a canvas cabin and a structure consisting of lumber with roof, floor and cabinets. These structures have been on the site since at least November 4, 2016 and the site has been occupied on a permanent basis.

The site currently and has been utilized as a campground with some individuals using the site on a permanent basis as living quarters and as a place of public assembly.

Thomas W. Williams, Esq. April 13, 2017 Page 2

We are forced to deny the Application for Zoning Permit submitted, since the activities currently being performed at the site and proposed to be conducted at the site are not permitted as per the Township's List of Permitted uses in this zone. Please see the attached Refusal of Permit.

In addition, we have reviewed the Amendment, submitted on April 6, 2017; to the Zoning Application submitted. The Amendment requests a Hearing for Zoning Interpretation be heard. As you know, a Request for Zoning Interpretation Hearing must be made by submitting a completed Township of Mahwah Board of Adjustment Application.

As our office has made you and your client aware on several occasions, a Township Development and Board of Adjustment Application for Use Variance and Site Plan Approval must be approved prior to the activities currently being performed and proposed to be performed on site would be permitted.

As per our meeting on January 12, 2017, we agreed to adjourn the Summons for the violations that have occurred for a period of 60 days. The 60 day adjournment would provide your client with the time necessary to submit a Zoning and Site Plan Application to the Township for review.

While we have received the Applicant's Zoning Application, we still have not received the necessary Development and Board of Adjustment Applications, along with all required application and escrow fees. Therefore, we again are forced to recommend that the summonses be reinstated.

Thank you for your kind attention to this matter. Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

BOSWELL McCLAVE ENGINEERING

Michael J. Kelly, P.E. Administrative Officer

MJK/jg Attachment

ce: The Honorable Mayor and Council
Township of Mahwah Board of Adjustment
Quentin Wiest, Township Business Administrator
Kathrine G. Coviello, Township Clerk
Dan Mairella, Construction Code Official
Geri Entrup, Administrative Officer
Tom Mulvey, Property Maintenance
James N. Batelli, Chief, Mahwah Police Department
Brian M. Chewcaskie, Esq.
Angela Musella, Health Officer
Chief Dwaine Perry, Ramapo Mountain Indians, Inc.

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EXHIBIT E

TWW LAW PROFESSIONAL ASSOCIATION THOMAS W. WILLIAMS, ESQ 220 FRANKLIN TURNPIKE

MAHWAH, NEW JERSEY 07430

Phone: 201-529-4420 twwesq@optonline.net

Fax: 201-529-1351

MEMBER OF NJ & NY BARS

NEW YORK OFFICE 16 Chestout Street Suffern, New York 10901

June 12, 2017

Township of Mahwah Board of Adjustments 475 Corporate Drive Mahwah, NJ 07430

> Re: Ramaough Mountain Indians, Inc. 95 Halifax Road, Mahwah, NJ

Dear Sir/Madam:

Enclosed please find an original and one copy of variance applications, site plan and a check in the amount of \$500.00.

Very truly yours,

Thomas W. Williams, Esq. Thomas W. Williams, Esq.

TWW/kr

cc: Chief Dwaine Perry Aaron Kleinbaum, Esq. Joel R. Kupferman, Esq.

JUN 12 2017

ADMINISTRATIVE OFFICER PLANNING & ZONING

OFFICER PLANNING & ZONING

CITCLE CONTROL

CONTRO

BOARD OF ADJUSTMENT TOWNSHIP OF MAHWAH APPLICATION

APPLICANT Ramapough Mountain Indians, Inc.
() A VARIANCE () B VARIANCE () C VARIANCE () E VARIANCE
1. Applicant's full name, address and telephone:
Ramapough Mountain Indians Inc., 189 Stag Hill Road, Mahwah, NJ 07430
2. Street address of site: 95 Halifax Road
Lot 131 Block Tex Map Sheet No. 12
3. The premises are situated on the (East) (West) (North) (South) side of West side of Halifax
street approximately feet from
the intersection of Ramapo Valley Road
4. The premises are located in the following zone:
5. Owner's name, address and telephone: Ramapough Mountain Indians Inc.
189 Stag Hill Road, Mahwah, NJ 07430, 845-357-1038
6. Relationship of applicant to owner (i.e. Tenant, Agent, Contract Purchaser, Other):
7. Legal Counsel, name address and telephone: Thomas W. Williams, Esq.
220 Franklin Turnpike Mahwah, NJ 07430, 201-529-4420; Aaron Kleinbaum, Esq., Valeria Georghui, Esq.
The present use of the premises is:
Ramapough Lenape ceremonial religious use and public assembly.
9. The purpose of this application is to permit the erection, alteration, extension or use described as follows: Expand a legally created non-conforming use for
ceremonial, religious and public assembly purposes. In particular, provide accessory
temporary structures to facilitate the historical use of the property.

	ahwah Zoning Ordinance subsection 24-6.1e,
Re	ligious use variance within the C-200 Zone.
_	
11.	The dimensions of the property are: irregular containing 593,587
squi	porary structures related to Lunape Culture
	Dimensions or size of proposed building or use:
13, 5	Setbacks of building(s), structure(s) or use: Front: 75' Rear: 75'
ı.	eft Side: 50' Right Side: 50'
14, I	Pate property acquired: _July 1995 Prevailing zoning at the time of
	ave there been any previous appeals, requests or applications to this or any other Township Board or a suction Official involving these premises? Yes <u>x</u> No If yes, state the nature, date and disposition of said matter and attach copies of any decision, resolution ovals: Site plan application was denied because of use.
. Wi	nat are the exceptional conditions of the property preventing applicant from complying with the Zonin, ice requirements?
t app	olicable as this relates to 'c' variances.
Sup	ply a statement of facts showing why relief can be granted without substantial detriment to the public will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance;
d and	

to be complete unless and until all information, submissions, schedules and fees required herein have been submitted.
Applicant Cley
Sworn and subscribed to before me This 13 day of Juny 20 17
An Attorney at Law of New Jersey Thomas W. William S

AFFIDAVIT OF OWNER (IF OTHER THAN APPLICANT)

	STATE OF NEW JERSEY)
	COUNTY OF BERGEN) SS
Presider ot	Duaine C. Per Of full age, being duly sworn according to law upon his oath, deposes and says that he/she resides at 13 Maul Qer and that he/she is the record owner of the premises which are the subject of this application and hereby authorizes Devaine President of the Applicant to make the within application. Owner further agrees that he/she will be responsible for any fees, costs or escrow amounts due, unpaid and/or delinquent which the applicant fails to pay. Owner further acknowledges that the Municipality may place a lien on the property for unpaid fees, escrows and costs in accordance with the Escrow Ordinance of the Township of Mahwab.
	Sam Colon
	Sworn and subscribed to before me This 12 day of This 20 17

This 12 day of June, 20

A Netary Public of New Jersey An Attorney at Law of New Jersey

EXHIBIT F

USE-VARIANCE(D)(2) APPLICATION ADDENDUM RAMAPOUGH MOUNTAIN INDIANS INC. 95 HALIFAX LANE, MAHWAH, NJ 07430 BLOCK 1, LOT 131 C-200 CONSERVATION ZONE

I. Introduction

The Applicant, Ramapough Mountain Indians Inc. ("the Tribe" or "Applicant"), owns Split Rock Sweet Water Prayer Camp ("Sweet Water"), a fourteen-acre property at 95 Halifax Lane in Mahwah, New Jersey, 07430–Block 1, Lot 131. See Chief Dwaine Perry Certification ("Perry Cert."). The property carries the C-200 Conservation Zone designation in the Township's Zoning Ordinance. Id. The property is also designated part of the State of New Jersey Department of Environmental Protection ("NJDEP") Green Acres Program, pursuant to N.J.S.A. 54:4-3.63 et seq., as open space for public recreation and conservation purposes.

The Tribe has used Sweet Water for religious ceremonies for over twenty-five (25) years. See Perry Cert. Numerous other tribes, friends, and supporters join the Ramapough Lenape Indians for Pow wows and other ceremonies. See Kieran Cinroy Certification ("Cinroy Cert."). The Tribe conducts these ceremonies twice a month in warmer weather and less often in colder weather. Additionally, they use Sweet Water for sweat lodges throughout the year. See Perry Cert, Cinroy Cert., and Gore Cert. The Tribe, also, has used the property for hunting, fishing and camping for many years, including prior to ownership by permission of the previous landowner, Chuck Elms. See Cinroy Cert.

The Tribe accommodates guests in teepees and tents, and for the past five (5) years, has been using a temporary kitchen to provide food. Sweet Water is uniquely situated for these uses and ceremonies. Sweet Water is irreplaceable for those purposes because it is very close to two of the Tribe's sacred sites: 1. the confluence of the Mahwah and Ramapo Rivers, where the

Tribe has welcomed people with shared ceremonies for millennia, and 2. the Ramapo Pass, where the Ramapo River passes through the Ramapo Mountains. See Cinroy Cert.

Over twenty (20) years ago, the Tribe began using a Long House onsite and about a year ago, began to construct a Round House and Weewiikaan. These are integral and necessary for the Tribe's religious practices and ceremonies. See Perry Cert and Cinroy Cert. Moreover, Sweet Water is on the Ramapo River waterfront; the Tribe requires water access for many of its religious ceremonies. See Perry Cert. Finally, there is no other alternative land that the Tribe owns that satisfy these criteria.

The Tribe will continue the ceremonial, religious and public assembly use primarily as a place to worship, share Ramapough Lenape culture, and for environmental education as it has done for decades on this property and for millennia in the region. See Cinroy Cert. However, to accommodate a surge in local, regional and national interest, the Tribe seeks to expand its use of Sweet Water. See Perry Cert. The site will be a place to educate their own and local youth. The Tribe wishes to awaken people to their culture and history. They propose to expand the use of the property to accommodate the Lenape diaspora who can return to the area with their families and come to Sweet Water to learn about, preserve and pass on their culture, and to have a place to camp and food to eat.

The Tribe also proposes to bring the public onsite more often to share the Tribe's religion, culture, and views on the environment, and to educate school children and teenagers.

The Tribe's proposed use includes large groups for a National Prayer Day and space for 100 or so to gather occasionally for such activities as watching outdoor movies.

In the Tribe's native language, the word "mahwah" means "meeting place." See Perry Cert.

² In the winter of 1779-1780, the Tribe welcomed George Washington to use the Ramapo Pass to shelter five hundred soldiers of the Continental Army. Since that time, the Tribe has been known as Keepers of the Pass. <u>See</u> Perry Cert.

In addition, the Tribe seeks to educate its members and the public about the proposed Pilgrim Pipeline. See Gore Cert. A private company has proposed to build the Pilgrim Pipeline, an oil pipeline, above the nearby Ramapo River Aquifer, a drinking water source that could take decades to clean if contaminated by a pipeline leak. The Tribe needs a place to bring people together around this issue, as well as other related environmental, cultural, and spiritual issues. The Tribe also wishes to hold non-violent water protector training workshops at the site.

The Tribe proposes to use more temporary teepees, which are religious and historic in nature, as well as tents. In addition, the Tribe plans to construct an elevated, flood resilient 50x100 foot Long House designed by flood plain experts and powered by solar energy, wigwams-traditional Lenape structures-to have a mini-Lenape village on the site, eating and sleeping spaces, an improved elevated cooking shack, a food storage structure, and bathing facilities. The Tribe has had agreements with Ramapo College to accommodate satellite parking for its members and guests.

The Tribe seeks to invite its members, the public, fellow tribal members and professionals to Sweet Water to learn, share, and help explore and create a sustainable and resilient society for future generations. The Tribe intends to seek an agreement with a nearby neighbor for use of its parking spaces throughout the year, as well allow some temporary parking on the land during special events. The Tribe recently purchased a passenger van to be used to shuttle visitors to and from the site.

As described in detail below, relief from the Township of Mahwah's Zoning Ordinance is appropriate because the Tribe meets the necessary criteria for a use variance. Furthermore, denying the use variance would subject the Township to penalties under the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

In addition, the Tribe continues to assert sovereign immunity.

II. Relief Requested

Pursuant to Mahwah Zoning Ordinance, §24-6.1e, religious uses are not permitted in the C-200 zone, therefore the Tribe requests to expand its legally existing nonconforming use and requires relief pursuant to N.J.S.A. 40:55D-70(d)(2), in addition to Site Plan approval.

Further, to the extent that the Tribe does not comply with some of the items specifically identified in the Application Checklist, Applicant submits that the religious use will have a *de minimis*, if any, affect upon any on-site or off-site condition and as a result, many of the checklist items are not applicable to this proposed use.

However, in the event it is required, Applicant reserves the right to seek variances, waivers, or other relief from any other condition or requirement of its application at the time of the hearing not expressly heretofore identified.

III. The Ramapough Indians are entitled to Use Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)(2).

The Doctrine of Equitable Estoppel allows a preexisting nonconforming use to be considered lawfully created where a municipality has tacitly or explicitly long allowed the nonconforming use. Bonaventure Int'l v. Spring Lake, 350 N.J. Super. 420, 436-38 (App. Div. 2002). A "d(2)" use variance is applicable when one wishes to expand or intensify a lawfully created preexisting nonconforming use. N.J.S.A. 40:55D-70(d)(2).

The Tribe has been using the land in the region for religious and ceremonial purposes for millennia. See Perry Cert. Over twenty-five (25) years ago, the Tribe acquired 95 Halifax Lane and continued to conduct religious ceremonies. See Perry Cert. Over ten (10) years ago, Bergen County erected signs on public roads leading to the entrance of the Tribe's property that identify Sweet Water as "Ceremonial" land. The Township has long acquiesced in this designation

and acknowledged that the land is used for religious purposes and, with that public sign, encouraged this use. Therefore, the Doctrine of Equitable Estoppel applies.

An applicant for a use-related variance must show (A) that special reasons exist for the variance or the proposed use inherently serves the public good ("the positive criteria") and (B) that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and the zoning ordinance ("the negative criteria"). Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152, 159 (1992); Alpine Tower v. Mayor & Council Borough of Alpine, 231 N.J. Super. 239, 248 (App. Div. 1989). The Tribe respectfully submits that they qualify for a use variance to continue using their property for their religious, ceremonial, and educational uses.

A. The Positive Criteria

i. Special Reasons Exist for the Variance

An applicant must demonstrate that its proposed use will meet at least one of the intentions and purposes of the Municipal Land Use Law set forth in N.J.S.A 40:55D-2. The Tribe's proposed use meets six of these purposes:

- N.J.S.A 40:55D-2(a) states, "To encourage municipal action to guide the appropriate
 use or development of all lands in this State, in a manner which will promote the
 public health, safety, morals, and general welfare."
 - o The tribal village's reconstruction will provide greater dignity to the Tribe members.
 - Traditional ceremonies associated with religious use of the land will promote morals and general welfare.

- N.J.S.A 40:55D-2(b) states, "To secure safety from fire, flood, panic and other natural and man-made disasters."
 - o The Tribe is planting a food forest in a joint effort with horticulturalists, agriculturalists, ethnobotanists, and Ramapo College students. They are planting seasonal and traditional Native American plantings to develop a local food source. This food forest will act as a flood retardant.
- 3. N.J.S.A 40:55D-2(g) states, "To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens."
 - The Tribe's property is already under NJDEP Green Acres designation, which allows for public use.
 - o The property is the appropriate location for an environmental and cultural center alongside the Tribe's religious use on the river's edge.
 - o The proposed use will meet the needs of all New Jersey citizens, who desire to restore relations with the Tribe, restore justice, reconcile the abuses of the past, and reconnect with the Earth. The proposed use will also meet the needs of the Tribe—who are New Jersey citizens as well—who need a ceremonial, cultural, and educational site to restore their tribal traditions.
- 4. N.J.S.A 40:55D-2(i) states, "To promote a desirable visual environment through creative development techniques and good civic design and arrangement."
 - The proposed natural building designs are creative. The designs propose
 to reconstruct the traditional longhouse and roundhouse in a modern context

- for contemporary tribal expression through a blend of traditional techniques and more modern sustainable and environmentally sensitive design and technology.
- The proposed tribal village design promotes a desirable natural
 environment, which fosters good civic design. This encourages community
 engagement, which builds healthy communities through future public
 gatherings at the ceremonial community longhouse and roundhouse.
- 5. N.J.S.A 40:55D-2(a) states, "To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land."
 - o The proposed natural building techniques integrating sustainable and renewable energy technology conserves the environment and habitat of the Ramapo River. It also promotes a model example of living in tiny houses, through its wigwams, in a way that prevents urban sprawl and degradation of the environment through improper use of the land.
- 6. N.J.S.A 40:55D-2(a) states, "To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites."

o The proposed site plan offers a unique alternative to traditional development through the use of wigwam clustering, open-air ceremonial longhouses and roundhouses, and natural building techniques integrating modern sustainability technology such as solar panels, composting toilets, and outdoor water showers.

ii. The Proposed Use Inherently Serves the Public Good

N.J.S.A. 40:55D-4 defines an inherently beneficial use as one which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. This presumptively satisfies the positive criteria. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.

This parcel is already designated as a part of the Green Acres program, to ensure both the access to public outdoor recreation areas and the conservation of natural resources. Per Green Acres Definitions pursuant to N.J.S.A. 54:4-3.63 et seq., "Recreation and conservation purposes' means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both, pursuant to the Green Acres laws."

The Tribe proposes to use Sweet Water as an environmental and cultural educational center for the public, in addition to continued use for religious ceremonies. The proposed use serves the conservation purposes of the current zoning C-200 as well. The Tribe's temporary structures are aesthetic and will enhance the local environment. The educational, conservational, cultural,

religious, and charitable purposes will inherently serve the public good. See Perry Cert. and Jeffrey Gagnon Certification ("Gagnon Cert.").

The New Jersey Supreme Court has stated that while an inherently beneficial use should not be per se exempted from restrictions designed to alleviate harmful physical impact, reasonable restrictions are better than a complete rejection of needed regional facilities. Sica, 127 N.J. at 162. Rather than outright rejection of the religious use variance, the Board of Adjustment here should consider reasonable restrictions in granting the variance.

B. The Negative Criteria

i. There will be no substantial detriment to the public good.

This prong focuses on the impact of the variance on nearby properties. Medici v. BPR

Co., 107 N.J. 1, 22-23 n.12 (1987): The Board of Adjustments evaluates the impact of the proposed use variance on the nearby properties to determine whether granting the variance will provide more public benefit than public detriment. Yahnel v. Bd. of Adjust. of Jamesburg, 79

N.J. Super. 509, 519 (App. Div. 1963), cert. denied, 41 N.J. 116 (1963).

The neighboring Polo Club has complained about increased car traffic due to the increased frequency of prayer circles and educational programs. The Tribe intends to seek an agreement with a nearby neighbor for use of its parking spaces throughout the year, as well allow some temporary parking on the land during special events. The Tribe recently purchased a passenger van to be used to shuttle visitors to and from the site.

To provide substantial public good, the Tribe proposes to implement environmental education programs to teach the public about Native American history and the Tribe's way of life. These programs will be environmentally friendly and include conservation practices consistent with the Conservation Zone.

ii. There will be no substantial impairment of the intent and purpose of the zone plan.

The focal point of this prong is the extent to which granting the variance would constitute an arrogation of the authority of the governing body and planning board. Here, this is not a request to rezone the entire area. The Tribe intends to continue using the land consistently with its intended environmental conservation purpose. The Tribe simply wishes to add some religious ceremonies and environmental education open to the public.

Granting this use variance will not constitute an arrogation of any authority.

C. Balancing the Positive and Negative Criteria

The Supreme Court suggested the below four steps as a guide to municipal boards. Sica v. Board of Adjustment Tp. of Wall, 127 N.J. 152 (1992).

- "First, the board should identify the public interest at stake." Sica, 127 N.J. at 165 (1992).
 - o The public interest at stake is the environment, the Tribe's welfare and cultural survival, the public youth's moral development, the preservation of the Tribe's history and spiritual well-being, as well as that of its friends and allies who share in religious ceremonies at the site.
- "Second, the Board should identify the detrimental effect that will ensue from the grant of the variance." Sica, 127 N.J. at 166 (1992).
 - The neighboring Polo Club has complained about the increase in parking. The Tribe intends to seek an agreement with a nearby neighbor for use of its parking spaces throughout the year, as well allow some temporary parking on the land during special events. The Tribe recently purchased a passenger van to be used to shuttle visitors to and from the site.

- 3. "Third, in some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use. If so, the weight accorded the adverse effect should be reduced by the anticipated effect of those restrictions." Sica, 127 N.J. at 166 (1992).
 - Any anticipated adverse effect may be regulated by reasonable restrictions. For example, such restrictions could include regular maintenance of the property, parking limits, or restricted hours of operations, except for any security guard needs.
- 4. "Fourth, the Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good." Sica, 127 N.J. at 166 (1992).
 - Overall, due to minimal negative impact, the balance leaves no substantial detriment to the public good, allowing for grant of the variance.

IV. Religious Land Use and Institutionalized Persons Act ("RLUIPA" or "Religious Land Use Act")

The Township's determinations on this religious use variance application are subject to the Religious Land Use and Institutionalized Persons Act (42 <u>U.S.C.</u> 2000cc <u>et seq.</u>), to prohibit any further substantial burden on the tribe's religious exercise. The Religious Land Use Act requires the Township to demonstrate a compelling interest in enforcing the Zoning Ordinance and the Flood Hazard Area Control Act ("FHACA"), and further requires the Township to use the least restrictive means to further that interest. 42 <u>U.S.C.</u> 2000cc-5(a).

The District Court of New Jersey stated:

The denial of the requested zoning variances at issue in this case invoke[s] the same form of strict scrutiny under the First Amendment as mandated by the RLUIPA statute.... Under the First Amendment's Free Exercise protections,

religious justifications for such an exemption cannot be denied unless the Township can demonstrate a compelling state interest for the denial and that the denial represents the least restrictive means available to further that interest. Sherbert v. Verner, 374 U.S. 398, 406, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). See also Fraternal Order of Police, 170 F.3d at 366 (3d Cir. 1999).

Church of the Hills of Twp. of Bedminster v. Twp. of Bedminster, CIV. 05-3332 (SRC), 2006 WL 462674, at *4 (D.N.J. Feb. 24, 2006).

There is no compelling government interest here where the Township has responded to a handful of influential neighbors to selectively enforce land use laws by such extreme measures, including the previous inappropriate lawsuit in Superior Court. The Township of Mahwah's actions under pressure from the Polo Club neighbors are similar to the actions of the Village Mamaroneck in Westchester Day School v. Village of Mamaroneck, 504 F.3d 338 (2d Cir. 2007), where the 2nd Circuit held that it was a substantial burden on a Jewish School's religious exercise to deny them a variance. The 2nd Circuit found such denial was due to political pressure from a group of influential neighbors and Mamaroneck citizens who opposed the variance. The court held that such political pressure was not a compelling government interest and ordered the Village of Mamaroneck to grant the permit immediately. Likewise, a court may order the Township of Mahwah to grant this variance immediately if denied under such similar circumstances.

There are several lesser restrictive means of compelling the enforcement of land use laws available to the Township of Mahwah. For example, the Township is aware of the Tribe's previously stated intentions to address religious use. See Perry Cert. Granting a religious use variance is the first lesser restrictive means of compelling the enforcement of land use laws, as has been done to other similarly situated properties in the Township of Mahwah. Second, to address the alleged FHACA violations, the Township could convene a meeting among the

Township, the Tribe, NJDEP, and the Council on Indian Affairs as NJDEP representatives have suggested. See Perry Cert.

Denying a religious use variance would severely harm the Tribe because the Township would thereby deny the Tribe's Constitutional right to free exercise of their religion and public assembly in violation of the Religious Land Use Act.

Through the Religious Land Use Act, Congress made it very clear that government could not interfere with "the use, building, or conversion of real property for the purpose of religious exercise", except in the most compelling circumstances, and even then, only by the least restrictive means. 42 U.S.C. 2000cc-5; Jehovah's Witnesses Assembly Halls of New Jersey Inc.

v. City of Jersey City, 597 F.Supp. 972, 981 (D.N.J. 1984) (The "practice of gathering in large groups for religious instruction and worship is in performance of their religious beliefs. This practice is protected by the First Amendment's free exercise clause"). The Ramapough Nation exercises its religion through spiritual practices and ceremonies unique to their tribe, as well as through shared ceremonies as led by other tribes on the land going back 30 years, and on neighboring land in keeping with their traditional religious practices on this continent going back for millennia. See Perry Cert.

Moreover, the Religious Land Use Act prohibits the use of burdensome zoning law restrictions on property to underhandedly inhibit the free exercise of religion, "whether or not compelled by, or central to, a system of religious belief." <u>Burwell v. Hobby Lobby Stores.</u>

<u>Inc.</u>, 134 S. Ct. 2751, 2762 (2014). In addition,

[t]o warrant protection under the Constitution and RLUIPA, the belief need not be mandated by a particular, established religion or held by a majority of the believers within a religion. Thomas v. Review Bd. Of Ind. Emp't Sec. Div., 450 U.S. 707, 716 (1981) [finding that federal courts are not to sit as arbiters of religious orthodoxy]; 42 U.S.C. § 2000cc-5(7)(A) (defining "religious exercise")

as including "any exercise of religion, whether or not compelled by or central to, a system of religious belief."

Chapter 3, Litigating Religious Land Use Cases, Second Edition, American Bar Association, 2014 at 47. Therefore, the Religious Land Use Act protects the Ramapough Nation's religious exercise and assembly on their land regardless of whether they do so as an organized religion.

Furthermore, a denial of a religious use variance, coupled with the Township of Mahwah's selective enforcement, issuance of daily summons, previous preemptive lawsuit and other treatment allows for an inference not only of interference, but also of discrimination. A land use regulation, to be abused in a discriminatory manner, does not have to specifically target religious exercise. <u>Lighthouse Community Church of God v. City of Southfield</u>, CIV. 05-40220, 2007 WL 30280, *8 (E.D. Mich. Jan. 3, 2007).

In <u>Lighthouse</u>, the Church purchased a building in a zone allowing churches, but received citations and a cease and desist notice for failure to obtain a Certificate of Occupancy because they had only 73 parking spots instead of 95. The court noted that a land use regulation does not have to specifically target a religious exercise to create a substantial burden. Rather, "[a] land use regulation that is specifically blind to religious use of land can still substantially burden religious exercise." 2007 WL 30280, *8. The parking ordinance essentially restricted the church from using its building for religious exercise. The city could have granted the church a variance to the parking requirement, but it declined to choose this less restrictive option in a discriminatory manner. See also Albanian Associated Fund v. Twp. Of Wayne, CIV. 06-cv-3217 (PGS) 2007 WL 2904194 (D.N.J. Oct. 1, 2007), where plaintiffs survived summary judgment for their Religious Land Use Act claim alleging the Township's condemnation of their land for the Open Space Plan was a pretext for religious discrimination where they showed the

Township granted permission to develop environmentally sensitive land to 32 of 34 waiver applicants.

This fact pattern granting waivers to develop in environmentally sensitive land despite the Open Space Plan is similar to that of the instant case, where the Township of Mahwah may grant a use variance to the C-200 conservation district, where the Tribe's land is located.

Analogously, the Township of Mahwah may grant a religious use variance. If the Township of Mahwah denies the Tribe a religious use variance, not only is the Township abusing local land use laws in a discriminatory manner to substantially burden the Ramapough Nation's religious exercise, but it is also denying the public the inherent benefit of the Tribe's cultural, environmental, and religious services.

V. Sovereign Immunity

Notwithstanding all of the above, the Tribe continues to assert sovereign immunity for the reasons below.

The Tribe is a sovereign nation recognized by the State of New Jersey and does not concede the authority of Mahwah to regulate its activities on its own land. The United States Supreme Court recently stated, "Indian tribes are generally entitled to immunity from suit" under principles of sovereign immunity, analogizing tribal sovereign immunity to state and federal sovereign immunity to preserve a government's "ability to govern itself independently." Lewis v. Clarke, 137 S. Ct. 1285, 1289, 1290 (2017). Furthermore, as a part of international customary law, Articles 4, 5 and 6 of the United Nations Declaration on the Rights of Indigenous Peoples affirm:

Article 4. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6. Every indigenous individual has the right to a nationality.

Additionally, the Tribe asserts its rights under the American Convention on Human Rights, through the Inter-American Commission on Human Rights, of the Organization of American States. Specifically, Article 1, the obligation to respect rights without discrimination, Article 12, the right to freedom of conscience and religion and Article 20, the right to nationality.

Finally, the Tribe claims that it merits nation to nation relations with the Township of Mahwah and other governmental entities analogous to that called for by the Two Row Wampum Treaty. The Two Row Wampum Treaty between the Haudenosaunee and the Dutch declared a brotherly relationship with each nation calling the other "Brother" to affirm equality. Codified in the Tow Row Wampum Belt, with two purple rows running the length of the wampum belt, these symbolized that "[i]n one row is a ship with our White Brothers' ways; in the other a canoe with our ways. Each will travel down the river of life side by side. Neither will attempt to steer the other's vessel." Therefore, the Tribe maintains it is a sovereign nation meriting nation to nation relations with the Township of Mahwah.

Nevertheless, in the spirit of Brotherly relations, the Tribe is retaining a licensed land use planner and hereby submits an application to the Township for approval of a use variance from the Township's Zoning Ordinance for expansion of its religious activities and public assembly on the Sweet Water site.

Two Row Wampum Treaty/Guswenta, available at http://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/, last checked May 25, 2017.

In January 2017, the Tribe met with the Township representatives, and agreed to submit applications for zoning and site plan applications for religious activities at Sweet

Water. See Kelly Cert. In April 2017, the Tribe submitted a Zoning application and a Site Layout Plan. See Perry Cert. The Township denied the zoning application and provided a list of deficiencies. Id. The Tribe is hereby preparing this application addressing those deficiencies.

VI. Conclusion

For the reasons set forth above, and as the testimony to be adduced at the public hearing will corroborate, the application of Ramapough Mountain Indians Inc. for site plan approval with use variance relief should be approved. The Applicant reserves the right to provide additional factual and legal arguments at its hearing. If denied, the town's actions will likely be found in violation of the Religious Land Use and Institutionalized Persons Act.

ADDITIONAL INFORMATION

Question 16: Regarding exceptional conditions of the property preventing applicant from complying with the Zoning Ordinance requirements, the NJ Municipal Land Use law makes clear that this particular criteria relates to the c (bulk) variance, not the d variance. N.J.S.A. 40:55D-70(c)(1)(c); Lang v. Zoning Board of Adjustment, 160 N.J. 41, 53 (1999); Wilson v. Brick Twp. Zoning Bd., 405 N.J. Super. 189, 201 (App. Div. 2009).

Question 17: Regarding "facts showing why relief can be granted without substantial detriment to the public good and will substantially impair the intent and purpose of the zone plan and Zoning Ordinance," see Addendum above.

Question 19: All applicants must attach to this application a schedule showing the following information (if applicable):

Type of construction

In reconstructing their indigenous and traditional systems of building, the Tribe will use natural building methods, which use local sources of lumber and other materials, natural materials that will dissolve upon impact by a river and thereby reduce or eliminate any threat of harm to other humans or the environment as it washes downriver, and appropriate siting for storm water considerations. They will also plant natural native plants that absorb rain and use reeds for thatching roofing materials. The Round House will be constructed on stilts to ensure it is flood-proof. (See Gagnon Affidavit.)

- B. Description of any deed restrictions or easements affecting this property Green
 Acres
- C. Photograph(s) of land and buildings involved in this application
- D. Names and Addresses of all expert witnesses proposed to be called and estimate of time to present case.
 - o Chief Dwaine Perry, 189 Stag Hill Rd., Mahwah
 - o Prof. Charles Stead, Ramapo College, Mahwah
 - Charles Elmes, Middletown, NY
 - Karenna Gore, Director, Center for Earth Ethics, Union Theological
 Seminary, NYC.
 - o George W. Williams, P.P., Montclair, NJ.
 - o Jeff Houser, P.E., Ringwood, NJ.

- Roberto Muccaro Buccaro
- o Chief Arwil Lookinghorse
- o Stephen Leonardo
- Kieran Conroy, Lay Minister, Cornwall Youth Group, St. John's Episcopal Church
- Dinesh Khosla, Founder of Hindu Samaj Mandir Temple and CUNY Law
 School, Professor
- Richard DeGroat Wolfpaw Thomas, Chief, Martin Band, Ramapough Lenape
 Nation
- Charles Morgan Mud Turtle, Arena Director
 for Pow Wows, Ramapough Lenape Nation
- Clara Soaring Hawk Hasbrouck, Chief, Deer Clan, Ramapough Lenape
 Nation
- Jeffrey Gagnon, Natural Builder and Designer, Founder, Sacred Spaces
 Design Build Collective, 246 Dewitt Road, Olivebridge, NY 12461

The Tribe reserves the right to add or change fact and expert witnesses to be called to testify. The Tribe estimates about four hours to present its case.

- E. Proof of payment of all taxes due and owing on the site
 The Property is tax exempt under Green Acres.
- F. Payment of Application Fees and Escrow.
 The Ramapough Mountain Indians, Inc, a 501(c)3, non-profit organization,
 respectfully requests a reduction of the Application Fee to \$500.00 and a waiver of the Escrow.

EXHIBIT G

TWW LAW PROFESSIONAL ASSOCIATION

THOMAS W. WILLIAMS, ESQ 220 FRANKLIN TURNPIKE

Phone: 201-529-4420 twwesq@optonline.net

MAHWAH, NEW JERSEY 07430 29-4420 Fax: 201-529-1351

MEMBER OF NJ & NY BARS

NEW YORK OFFICE 16 Chestnut Street Suffern, New York 10901

August 21, 2017

Mahwah Board of Adjustment 475 Corporate Drive Mahwah, NJ 07430

> Re: Ramapough Mountain Indians 95 Halifax Road, Mahwah, NJ

Dear Sir/Madam:

Please be advised that the applicant, Ramapough Mountain Indians, hereby withdraws its variance application in this matter.

Very truly yours,

Thomas W. Williams, Esq.

TWW:kr

cc: Aaron Kleinman, Esq. Chief Dwaine Perry

EXHIBIT H

RESOLUTION ZONING BOARD OF ADJUSTMENT TOWNSHIP OF MAHWAH

DOCKET NO. 1423-17

RAMAPOUGH MOUNTAIN INDIANS, INC.

USE VARIANCE APPLICATION FOR HOUSE OF WORSHIP – CAMPGROUND USE – PUBLIC ASSEMBLAGE

WHEREAS, the Ramapough Mountain Indians, Inc. (the "Applicant" or "RMI") filed an application for a use variance to authorize the use of the property commonly known as 95 Halifax Road, Mahwah, New Jersey (the "Property"), which is formally known and designated as Block 1, Lot 131 on the Tax Assessment Maps of the Township of Mahwah (the "Application") for religious worship, campground, and a variety of other activities; and

WHEREAS, that Applicant did not include a site plan application; and
WHEREAS, the Property is located in the C-200 Conservation District; and
WHEREAS, the Applicant filed the Application on or about June 12, 2017; and
WHEREAS, the Township of Mahwah Administrative Officer, Michael Kelly,
issued a completeness review letter on June 28, 2017 that determined that the Application
was incomplete for the reasons set forth therein; and

WHEREAS, the Applicant has not submitted any additional documents or information as required by the Administrative Officer; and

WHEREAS, the Ramapo Hunt and Polo Club Association, Inc. (the "Association") entered an appearance in the use variance application and submitted a Notice of Appearance and various letters providing a response to the use variance

application, on issues including the sovereignty raised by the Applicant, waiver and estoppel, the Religious Land Use and Institutionalized Persons Act, 42 *U.S.C.* §§2000cc, et seq. ("RLUIPA"), and a response to such other issues as raised by the Applicant in the Application; and

WHEREAS, the Association also filed a Motion to Dismiss the Application for failure to process same or render same complete, and/or lack of prosecution, by motion dated August 18, 2017; and

WHEREAS, before that motion was decided, the Applicant, by its counsel, Thomas Williams, Esq., sent a letter dated August 21, 2017 that withdrew the Application; and

WHEREAS, the Chairman sent a letter dated August 22, 2017 that established a briefing schedule and set a hearing date for the Association's motion; and

WHEREAS, the Applicant's counsel thereafter again confirmed that the application was withdrawn by an additional (undated) letter. That undated letter requested the return of the application filing fees submitted by the Applicant; and

WHEREAS, the Association, through its counsel, John J. Lamb, Esq., by letter dated September 6, 2017, indicated the Association did not object to the withdrawal of the Application and confirmed that the withdrawal would render its motion to dismiss for lack of prosecution moot; and

WHEREAS, that letter of the Association also cited the case of Sansone

Oldsmobile-Cadillac, Inc. v. Bd. of Adj. of Shrewsbury, 211 N.J. Super. 304 (Law Div. 1986), which allowed upon the withdrawal of the application, the condition that the

Applicant would pay the attorney's fees incurred by the interested parties, including not only the Board attorney but also an objector; and

WHEREAS, the Board is willing to confirm the withdrawal of the application by this Resolution based upon the following terms and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED, the Board hereby determines as follows:

- 1. The Board hereby dismisses the Use Variance Application without prejudice and without costs, except for the costs set forth below.
- 2. The Applicant shall pay the professional fees incurred by the Board Attorney and Board Engineer for the process and review of the Application, the review and processing of the letters of the Association, and the review and processing of the Motion to Dismiss and the preparation of the within Resolution.
- 3. Said Board professional fees shall be paid no later than 90 days from the date the amount due is provided to the Board.
- 4. The Applicant has the right to appear before the Board to dispute or contest any such legal & engineering fees by requesting to hear that issue before the Board, in addition to what rights it has under the MLUL to contest any professional fees of the Board. Be further resolved that should the Applicant file any future applications with the Board which results in withdrawal or lack of prosecution by the applicant and dismissal by the Board, the Applicant shall pay all costs and legal fees of the Association, as well as the Board, and this Resolution shall serve as written notice to the Applicant.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be provided to the Applicants, the Construction Code Officer of the Township of Mahwah, and a notice of this decision of the Board of Adjustment shall be published in the official newspaper of the municipality within ten (10) days of the date hereof and thereafter be published according to law.

MOTION TO TAKE ACTION

DATE: November 1, 2017

MOVED BY: Mr. Dator

SECONDED BY: Mr. Whiteman

AFFIRMATIVE VOTES (5) NEGATIVE VOTES () ABSTENTIONS ()

1. Mr. Dator

2. Mr. Kearney

3. Mr. Larson

4. Mr. Whiteman

5. Mr. Rabolli

TOTAL VOTES: (5)

APPROVAL OF RESOLUTION

MOVED BY: Mr. Whiteman

SECONDED BY: Mr. Kearney

AFFIRMATIVE VOTES (3) NEGATIVE VOTES () ABSTENTIONS ()

1. Mr. Kearney

2. Mr. Rabolli

3. Mr. Whiteman

Dated: December 6, 2017

Michael Kelly, Administrative Officer

Charles Rabolli, Chairman

Prepared by: Ben R. Cascio, Esq.

EXHIBIT I



Township Of Mahwah

Municipal Offices: 475 Corporate Drive P.O. Box 733 • Mahwah, NJ 07430 Tel 201-529-5757 • Fax 201-512-0537

Property Maintenance x 246

Zoning/Planning Board x 245

September 15, 2017

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND REGULAR MAIL

Chief Dwaine Perry Ramapough Mountain Indians, Inc. 189 Stag Hill Road Mahwah, New Jersey 07430

RE: 95 Halifax Road

Rescinding of Zoning Permit

Block 1, Lot 131 Township of Mahwah Our File No. MA-40-47

Dear Chief Perry:

The undersigned is the Zoning Officer for the Township of Mahwah (the "Township"). This letter is being sent to you in connection with the above referenced matter. A copy of this letter is also being sent to counsel for the Ramapough Mountain Indians, Inc. ("RMI"), Aaron Kleinbaum, Esq. and Thomas W. Williams, Esq. The purpose of this letter is to advise that Zoning Permit No. 20120010.000 dated January 25, 2012 (the "Permit") and issued by the former Zoning Officer, Gary L. Montroy, for the construction of a longhouse to be used for prayer and community cultural assembly on premises known as 95 Halifax Road, Mahwah, NJ (the "Property") is hereby rescinded for the reasons set forth herein. A copy of said Permit, as well as the permit application submitted by the RMI, are attached to this letter.

A. Gary Montroy had no authority to issue the Zoning Permit.

By way of background, on January 25, 2012, Mr. Montroy, in his then capacity as Zoning Officer, issued said Zoning Permit approving the construction of "building longhouse to be used for prayer and community cultural assembly" on the subject Property. At the time of that application, and at the current time, the subject Property was located in the Township of Mahwah's Conservation (C-200) Zone. Houses of worship were, and still are, not a principal permitted use in the C-200 Zone. Mr. Montroy had no authority to issue a Zoning Permit to permit the use of the Property for prayer and assembly as said use, as aforesaid, is contrary to the Township's Land Development Ordinance (the "Ordinance"). As such, the action taken by Mr. Montroy was void

and is contrary to the Township's Ordinance. The Township Zoning Board of Adjustment is the sole body to grant a use variance pursuant to N.J.S.A. 40:55D-70d(1) to permit the Property to be used in a manner which is not contemplated or permitted by the Township's Ordinance.

B. Site Plan Approval and Other Relief was Required Prior to the Erection of a Longhouse on the Property.

Furthermore, site plan approval and other relief was required to be obtained by the RMI pursuant to Chapter XXII (Site Plan Review) of the Township's Ordinance. The subject longhouse is a structure pursuant to the Ordinance and the Municipal Land Use Law, which both define a structure as "a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land". In addition, the Township's Ordinance, in part, provides that "no permanent structure or building or any enlargement of same which is used or designed to be used for housing, commerce, industry or public activity shall be located in a floodplain or flood hazard area." In sum, the RMI were obligated to obtain site plan and other approvals from the Township prior to constructing a longhouse on the Property.

C. The RMI were Required to Obtain a Building Permit Prior to the Erection of the Longhouse on the Property.

A Zoning Permit is not the equivalent of a Building Permit. I direct your attention to §24-11.3 of the Township's Zoning Ordinance. No Building Permit was applied for, nor granted by the Township in connection with said longhouse. The RMI were also obligated to, notwithstanding the issuance of the subject Zoning Permit, obtain a Building Permit. I understand that Chief Mann was advised by Mr. Montroy of his obligation to obtain a Building Permit, site plan and all additional approvals required by the Township's Ordinance. The RMI, contrary to the Ordinance, Municipal Land Use Law and Mr. Montroy's advice, failed to apply for a building permit. In addition thereto, an inspection of such longhouse would be required to be conducted by the appropriate Township Official during construction.

D. Similar Zoning Application Denied in 2017

A Zoning Application was submitted on April 6, 2017, see copy attached, for a proposed use of Public Assembly for Religious and Cultural Purposes. This application was denied on April 13, 2017, see copies attached, of Refusal of Permit and supporting letter both dated April 13, 2017.

The Township is entitled and authorized to enforce its Ordinance. For the foregoing reasons, the Zoning Permit dated January 25, 2012 and issued by Gary L. Montroy is hereby rescinded by the undersigned on behalf of the Township of Mahwah. You may appeal the decision of the undersigned in accordance with N.J.S.A. 40:55D-70(a).

Please be guided accordingly.

Very truly yours,

Michael J. Kelly, P.E. Administrative Officer

Department of Land Use and Property

Maintenance

MJK/mk Attachments

cc: Brian M. Chewcaskie, Esq.

Thomas W. Williams, Esq. Aaron Kleinbaum, Esq.

EXHIBIT J

Township of Mahwah Zoning Permit

7		CALL DESCRIPTION OF THE PARTY O					
Application #:	2733	Permit No:	20120010.000	Issue Date:	01/25/2012	The second second second	
Cor truction Co	ntrol Number:	63604				Voucher/Receipt#: Check #:	0 1244
Bluen.	1	Lot:	131	Qualifier:		Amount collected:	\$0.00
Work Site:	95 HALIFAX RD			Zone:	Default		
Owner:	RAMAPOUGH M	OUNTAIN II	NDIANS,INC.	Agent:	RAMAPOUGH	MOUNTAIN INDIAN	NS,INC.
Address:	189 STAG HILL	ROAD		Address:			
City/State/Zip:	MAHWAH NJ 07	430		City/State/Zip:			
Telephone:				Telephone:			
Fax:	└			Fax:	<u></u>		
EMail:				EMail:			
Tenant:							
the Plot Plan:	that the above-descri					e as indicated below and	as depicted on
Which is a:	ermitted by Zoning O		cis-ARTICLE	Section - STAT.			
Use pe	rmitted by variance hereof.	approved on_		,#	subjec	to any special conditio	ns attached to the
	nonconforming use as dersigned zoning offi					y() plicant. Conditions, if a	ny:
					35		
[] There is	s a nonconforming st	ructure on the	promises by reason	of insufficient			
[] Other:				<i>E</i> ;			
	San 1	7	Manki	Eez	9 4 *		
ary L. Montroy						Zaning Official	
		Th	is is NOT a Cor	astruction Per	mit	,	

EXHIBIT K

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 1 of 15 Trans ID: LCV2018197094

GITTLEMAN, MUHLSTOCK & CHEWCASKIE, L.L.P.

Attoeneys at Law
2200 FLETCHER AVENUE
9W OFFICE CENTER
FORT LEE. NEW JERSEY 07024
(201) 944-2300

MELVIN GITTLEMAN (1830-2019) STEVEN MUBLSTOCE BRIAN M. CHEWCASEIE NYLEMA NABBIE (N.J. & N.Y.)

TELECOPIER (201) 844-1487

January 31, 2018

VIA ELECTRONIC FILING

Honorable Charles E. Powers, Jr., J.S.C. Bergen County Courthouse 10 Main Street Hackensack, New Jersey 07601

> RE: Ramapough Mountain Indians, Inc. v. Michael Kelly and Township of Mahwah Docket No. BER-L-007345-17

Dear Judge Powers:

This Firm represents Michael Kelly and the Township of Mahwah (the "Township") in connection with the above referenced matter. This Motion to Dismiss the Complaint with prejudice is filed pursuant to R. 4:69-5 of the New Jersey Rules of Court. The Township relies on this letter brief, as well as the Certification of Michael J. Kelly, P.E., in support of the subject Motion to Dismiss the RMI's Complaint with prejudice for the reasons that follow.

PRELIMINARY STATEMENT

By letter dated September 15, 2017, the former Township Administrative Officer, Michael J. Kelly, lawfully rescinded a 2012 Zoning Permit (the "Permit") issued to the RMI by the Township's former Zoning Official, Gary Montroy, for the reasons specified in such letter. The RMI and its counsel, Thomas Williams, Esq. and Aaron Kleinbaum,

Esq. were specifically advised of the RMI's right to appeal the rescission of said Permit in accordance with N.J.S.A. 40:55D-70(a). Pursuant to statutory law, the RMI had twenty (20) days to appeal Mr. Kelly's decision. On or about October 27, 2017, the Plaintiff, Ramapough Mountain Indians, Inc. ("RMI") untimely filed a "Complaint for Declaratory Judgment and In Lieu of Prerogative Writs" following the September 15, 2017 revocation of the 2012 Permit. The property which is the subject of the Complaint is 95 Halifax Road, Mahwah, New Jersey (the "Property"). Rule 4:69-5, the New Jersey Rules of Court provide that actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted. The RMI had the opportunity to appeal Mr. Kelly's decision within twenty days of his letter and to have its appeal considered by the Mahwah Board of Adjustment, as statutorily mandated by N.J.S.A. 40:55D-72. No such appeal was filed by the RMI or its counsel. The RMI sat on their rights. The RMI failed to exhaust its administrative remedies pursuant to N.J.S.A. 40:55D-70(a), as well as N.J.S.A. 40:55D-72 and as a consequence thereof, the RMI may not maintain the present action pursuant to Rule 4:69-5 of the New Jersey Rules of Court.

PROCEDURAL HISTORY/STATEMENT OF FACTS

On January 25, 2012, the former Zoning Officer, Gary Montroy, issued a Zoning Permit to the RMI, following an application by the RMI to construct a long house on the Property. The long house was the sole structure for which such Permit was issued by Mr. Montroy. The long house, as testified to at the trial before the Honorable Roy F. McGeady, P.J.M.C., was removed by the RMI. Attached as Exhibit "A" to Michael J. Kelly's Certification is the relevant portion of the November 17, 2017 transcript of Judge McGeady's Decision in connection with the Township of Mahwah v. Ramapough Mountain Indians, Inc. (0233-SC-08491). Judge McGeady determined that there were

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 3 of 15 Trans ID: LCV2018197094

various structures on the Property to be removed. As to the long house, Judge McGeady determined as follows, to wit:

Examining the various objects on the, on the property, the Court observed a prayer circle, and was invited into the prayer circle. My observations were that it's a series of logs in a circular configuration, with a totem pole in the middle. Each log was vertical, was upright. Each had a face carved on it on the inside of the circle, with painting on it, and each had a faced carved on, on it on the outside of the circle, and there were small brass decorations attached to the logs. There was testimony that this is what is left after the removal of the Long House, which previously had a contested zoning permit. While it was a minimal combination of wood, paint, and brass, nevertheless it was a combination of materials for ornamentation, and the Court concludes that it's a structure. (Emphasis supplied.)(See Exhibit "A" attached to the Certification of Michael J. Kelly, P.E. at Page 16, Line 13 to Page 17, Line 3).

As a result, the long house which was the subject of the 2012 Zoning Permit was removed by the RMI. Not only was said Permit issued in error by the former Zoning Official, Gary Montroy, the structure for which said Permit was issued no longer exists, as it was removed by the RMI. The purpose of requiring a Zoning Permit is to assure that the proposed use, construction or alteration will be in accordance with the provisions of the Zoning Ordinance. The RMI never obtained approval for the construction of said long house from the Township Board of Adjustment, nor did it obtain a building permit from the Township. Notwithstanding, this issue is now moot as said long house no longer exists. (See Certification of Michael J. Kelly, P.E., at Paragraph 5).

Furthermore, Mr. Montroy advised the RMI that it was necessary to obtain all additional approvals, including approval from the Board of Adjustment of the Township of Mahwah, and it was necessary to secure all permits, including building permits. The RMI never obtained approval from the Board of Adjustment of the Township of Mahwah, nor did they obtain all necessary permits in order to construct the subject long house.

(See Certification of Michael J. Kelly, P.E., at paragraphs 4, 5 and 6). A true and accurate copy of Gary Montroy's Certification is annexed as Exhibit "B" to Michael J. Kelly's Certification,

On September 15, 2017, Mr. Kelly revoked the 2012 Permit and, in that letter, the RMI were advised of their right to appeal Mr. Kelly's decision. (A copy of Mr. Kelly's letter of September 15, 2017 revoking the 2012 Zoning Permit is attached as Exhibit "C" to his Certification).

In Mr. Kelly's revocation letter, the RMI and their counsel were specifically advised of their right to appeal said revocation in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq. (See Certification of Michael Kelly, P.E. at Paragraph 9). The RMI never filed an appeal within 20 days of September 15, 2017. At best the RMI had until October 2, 2017 to appeal Mr. Kelly's revocation of the 2012 Permit. The RMI never appealed Mr. Kelly's decision by October 2, 2017. As a matter of law, the RMI are barred from challenging the revocation of the 2012 Permit.

LEGAL ARGUMENT

THE COURT SHOULD DISMISS THE COMPLAINT BECAUSE THE RMI FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES WHEN THE PERMIT WAS REVOKED

N.J.S.A. 40:55D-70(a) authorizes the Board of Adjustment to "hear and decide appeals where it is alleged by the appellant that there was error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance". Pursuant to N.J.S.A. 40:55D-72, the Municipal Land Use Law establishes an appeal process by an interested party to the Board of Adjustment. §72 of the MLUL provides as follows:

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 5 of 15 Trans ID: LCV2018197094

Appeals and applications to board of adjustment. a. Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken. b. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to an administrative officer. (emphasis supplied).

Despite being afforded an opportunity to appeal Mr. Kelly's decision, the RMI did not file an appeal within the twenty-day period mandated by the MLUL. The RMI and its counsel were served with Mr. Kelly's September 15, 2017 letter revoking the Permit, yet neither the RMI or its counsel took action within the statutorily mandated twenty-day appeal period. The RMI failed to exhaust its administrative remedies and to create a record before the Mahwah Board of Adjustment. The RMI were afforded due process in accordance with the statutory time limits prescribed by the MLUL and failed to avail themselves of the appeal process before the Mahwah Board of Adjustment.

In sum, the Municipal Land Use Law establishes an appeal procedure for any person wishing to challenge the decision of an administrative officer. In particular, N.J.S.A. 40:55D-72(a) states that "appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map." The statute requires that such an appeal be filed "within 20 days." Id. Pursuant to § 24-11.1 of the Mahwah Zoning Ordinance, the Mahwah Zoning Officer is the Administrative Officer of the Township of Mahwah for purposes of enforcing the Zoning Ordinance. Michael J. Kelly, P.E. was the Zoning Officer and Administrative Officer of the

Township of Mahwah when the September 2017 revocation letter was sent to the RMI, as well as its counsel.

When a person fails to appeal the decision of an administrative officer within the statutorily prescribed 20-day period, the boards of adjustment and a reviewing court have no legal authority to overturn it. In *Sitkowski v. Bd. of Adj.*, 238 *N.J. Super*. 255 (App. Div. 1990), the Appellate Division held that a board of adjustment could not consider the validity of a decision of the administrative officer under any circumstances if the appeal was filed more than 20 days after that decision. In reaching this conclusion, the Court rejected the argument that the board of adjustment could simply interpret the ordinance pursuant to the power conferred by *N.J.S.A.* 40:55D-70(b). Thus, it held that where the relief sought was to reverse the decision of the administrative officer, a timely appeal must be filed.

The failure to utilize the appeal procedure authorized in N.J.S.A. 40:55D-72(a) is fatal to the RMI's demand that the permit be reinstated. In 21^{st} Century Amusements, Inc. v. D'Alessandro, 257 N.J. Super. 320 (App. Div. 1992), the Appellate Division rejected a permit-seeker's attempt to compel the issuance of a certificate of occupancy after having failed to first appeal the denial of the permit to the local board of adjustment. In reaching that conclusion, the court relied upon R. 4:69-5 — the exhaustion of administrative remedies rule — to find that it had no power to require issuance of the certificate of occupancy when the plaintiff had failed to avail itself of the board. Id. at 322-323.

The import of the exhaustion of administrative doctrine comes into focus with an examination of the Plaintiffs' complaint. In their request for relief, the RMI describe their purportedly long history of use of the subject property. Their claims regarding the scope

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 7 of 15 Trans ID: LCV2018197094

of their use are uniquely within the province of the Mahwah Board of Adjustment pursuant to N.J.S.A. 40:55D-68. Yet here, they ask the Court to review the validity of the official action by the Township of Mahwah Administrative Officer without a record. Had they appealed the decision of the Administrative Officer to the Board of Adjustment, they would have been permitted to present evidence in support of their claims. That evidence would have either substantiated the unfounded claims they now make in this case, or they would not have. But by depriving the Board of Adjustment of its statutory primary jurisdiction to review decisions by the Administrative Officer leaves this Court unable to adjudicate the RMI's claims. The simple reason for this is that an action in lieu of prerogative writs is based upon the administrative record, and the Court cannot consider evidence not in the record. See, e.g., Kempner v. Edison Twp., 54 N.J. Super. 408, 417 (App. Div. 1959)(matters outside the record of the proceedings before the local board cannot be considered by the court).

It is also noted that in its prayer for relief, the RMI requests: (1) a declaration that Mr. Kelly's September 15, 2017 letter is null and void and; (2) that the Township and Mr. Kelly be enjoined from interfering with the January 2012 Zoning Permit, except through the processes detailed in N.J.S.A. 40:55D-70(a) and 72. As aforesaid, the RMI was afforded an opportunity to appeal Mr. Kelly's decision and to heard by the Mahwah Board of Adjustment pursuant to Sections 70 and 72 of the MLUL, yet the RMI failed to timely avail themselves of the appeal process mandated by the aforesaid sections of the MLUL. The RMI are statutorily prohibited from appealing the revocation of the 2012 Permit. As a matter of law, the RMI failed to exhaust its administrative remedies pursuant to Rule 4:69-5 of the New Jersey Rules of Court which mandates as follows:

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 8 of 15 Trans ID: LCV2018197094

Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.

The RMI are also prohibited from maintaining the present action in accordance with Sections 70 and 72 of the MLUL. It also bears repeating that the long house which was the subject matter of the 2012 Zoning Permit no longer exists and therefore, the issue is moot. (Certification of Michael J. Kelly at Paragraph 4).

THE 2012 ZONING PERMIT WAS LAWFULLY RESCINDED BY MICHAEL KELLY, ADMINISTRATIVE OFFICER

A zoning application was filed on December 12, 2011 by the RMI, wherein it is stated that the "applicant presently uses the premises for outdoor prayer and community/cultural assembly. The long house will be used in conjunction with these activities." On January 25, 2012, Gary Montroy (the prior zoning officer) issued a Zoning Permit (the "Permit") to the RMI. Said permit provides that a "building long house to be used for prayer and community/cultural assembly" and same is "as per DEP". The Permit only allowed the longhouse. At the time of the filing of said application and issuance of the permit, the Property was and had been since at least 1999, located in a Conservation Zone, which strictly prohibited outdoor prayer and cultural assembly as permitted uses. Mr. Montroy did not have the authority to allow a use clearly not permitted under the Zoning Ordinance in the C-200 Zone by a zoning permit, unless the same was issued by the Board of Adjustment, which it was not. That is the clear and unambiguous state of the law.

In the case of <u>Yard Sale Treasures</u>, <u>LLC v. Township of Berkeley</u>, 2007 W.L. 2301638 (App. Div. 2007), the Appellate Division concluded that Township of Berkeley was not equitably estopped from revoking a zoning permit that had been issued in error

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 9 of 15 Trans ID: LCV2018197094

by its Zoning Officer. In that case, the Plaintiffs desired to operate a restaurant and bar within Berkeley Township, and spent approximately \$385,000.00 to purchase a pocket liquor license. Plaintiffs searched for a location for said restaurant and bar. During its search, Plaintiffs consulted with the Township Zoning Officer and sought assurances that the proposed site was zoned for restaurants and bars. Plaintiffs purchased an existing restaurant in light of their communications with Berkeley's zoning officer who opined restaurants and bars were permitted uses in the zone. The Berkeley zoning officer issued a zoning permit to Plaintiffs. The Plaintiffs purchased the business and spent \$75,000.00 in renovations. Prior to the opening of the restaurant and bar, the Township Attorney sent written advice to Plaintiffs advising that the premises were located within the Neighborhood Business Zone, which prohibited restaurants or bars. There was a question as to whether the restaurant use was grandfathered. However, the operation of a bar within the Neighborhood Business Zone was clearly not permitted pursuant to Berkeley's Zoning Ordinance and, as a result, the Township refused to issue a Certificate of Occupancy. Plaintiffs filed suit against the Township of Berkeley seeking a declaration as to whether said use was a permitted use within the zone or a prior non-conforming use that had been grandfathered. The trial judge concluded that, as the Zoning Ordinance did not permit restaurants or bars in the Neighborhood Business Zone and given that the zoning permit had been issued in clear violation of the Zoning Ordinance, the Township was not equitably estopped from revoking same.

On appeal, Plaintiffs repeated its argument that the Township was equitably estopped from revoking the zoning permit. Under certain circumstances, municipalities may be estopped from revoking a permit where the owner has applied for the permit in good faith and has acted in reliance upon its issuance. <u>Id.</u> at 1, citing Bonaventure

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 10 of 15 Trans ID: LCV2018197094

International, Inc. v. Borough of Spring Lake, 350 N.J. Super. 420, 435, 436 (App. Div. 2002). In order for estoppel to apply, it is necessary to analyze whether the Zoning Officer's interpretation of the Zoning Ordinance was "debatable." In the <u>Yard Sale Treasures</u> decision, the Appellate Division concluded as follows:

There is a carefully prescribed dichotomy between instances where equitable estoppel may or may not be applied against a municipality. The dichotomy is between an act which is utterly beyond the jurisdiction of the municipality and an act which involves an irregular exercise of a basic power possessed by the municipality. The former is ultra vires in the primary sense and void, but the latter is ultra vires only in a secondary sense, which would not preclude application of the doctrine of estoppel in the interest of equity and essential justice". citing to Bridge v. Neptune Township Zoning Board of Adjustment, 233 N.J. Super. 587, 597 (App. Div. 1989). "This factor has been described as requiring consideration of whether the issuance was in clear violation of the zoning ordinance or whether it was based on a colorable, even if mistaken, construction of the ordinance. The requirement we would add....is the necessity for the appearance of an issuance of construction of the zoning ordinance or statute, which, although ultimately not too debatable, yet was, when the permit was issued, sufficiently substantial to render doubtful a charge that the administrative official acted without any reasonable basis or that the owner proceeded without good faith", citing Jesse A. Howland's Sons. Inc., v. Borough of Freehold, 143 N.J. Super. 484, 489 (App. Div. 1976). (Emphasis supplied).

In the <u>Yard Sales</u> decision, Plaintiffs unsuccessfully argued that Berkeley's Zoning Ordinance was ambiguous as to whether restaurants and bars were permitted uses within the Neighborhood Business Zone and that, as a result, the Zoning Officer's initial determination was debatable. In its analysis, the Appellate Division affirmed well-settled law, which is that land development ordinances provide that uses not specifically permitted in a zone are prohibited (just like in Mahwah) and that the Neighborhood Business Zone section of Berkeley's Ordinance did not identify restaurants or bars as permitted uses. The Appellate Division concluded that the municipality's argument was persuasive and concluded as follows:

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 11 of 15 Trans ID: LCV2018197094

We construe municipal ordinances using the same principles of statutory interpretation that we apply to acts of the Legislature. Fin Servs, LLC v. Zoning Board of Adjustment of Little Ferry, 326 N.J. Super. 265, 273 (App. Div. 1999). We seek to effectuate the legislative intent. AMN, Inc. of N.J. v. S. Brunswick Rent Leveling Board, 93 N.J. 518, 525 (1983). In this case, reading the Neighborhood Business and Highway Business sections of the ordinance in pari materia, and applying the principal of expressio unius est excelusio alterius, we concluded that the municipality clearly intended to permit bars and restaurants in the Highway Business Zone and intended to prohibit them in the Neighborhood Business Zone. We do not find the ordinance ambiguous on that point, nor is plaintiffs proposed construction reasonably debatable.

The Appellate Division affirmed the decision of the Trial Court and concluded that the Township of Berkeley was not equitably estopped from revoking the zoning permit. The Appellate Division also determined that there was nothing that precluded the owner in that matter from applying to the Zoning Board of Adjustment for approval of the proposed use. The Yard Sale Treasures decision is on all fours with the facts of this case, meaning that Mr. Montroy clearly had no authority to issue the 2012 Permit and in addition, the long house was removed by the RMI. Furthermore, there was no reliance on the Permit by the RMI. (See Paragraph 14 of the Certification of Michael J. Kelly).

As a matter of law, Michael Kelly lawfully rescinded the 2012 Zoning Permit. The Township's Ordinance is unambiguous and clearly prohibits the current uses on the subject Property owned by the RMI. The Zoning Permit was clearly void and Gary Montroy's issuance of said Permit was *ultra vires* and void. Given that said Permit was clearly void, the same could not be used by the RMI as an excuse, justification or defense to permit the use or to permit the longhouse.

¹ The case of <u>Yard Sale Treasures</u>, <u>LLC v. Township of Berkeley</u>, 2007 WL 2301638 (App. Div. 2007) is an unpublished decision and a copy is attached to this Brief. The undersigned knows of no decision which reverses or calls such decision into question.

BER-L-007345-17 01/31/2018 4:20:57 PM Pg 12 of 15 Trans ID: LCV2018197094

CONCLUSION

For the reasons set forth herein, the Township of Mahwah and Michael J. Kelly respectfully submit that, as a matter of law, the subject Complaint filed by the RMI should be dismissed with prejudice by the Court.

Respectfully submitted,

NYLEMA NABBIE

NN/cj

cc: Thomas Williams, Esq. Aaron Kleinbaum, Esq. Brian M. Chewcaskie, Esq.

EXHIBIT L

SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CIVIL PART BERGEN COUNTY, NEW JERSEY DOCKET NO. BER-L-007345-17 APP. DIV. NO. RAMAPOUGH MOUNTAIN, INDIANS, INC., Plaintiff, TRANSCRIPT vs. of HEARING ON MICHAEL KELLY and MOTION TO DISMISS TOWNSHIP OF MAHWAH, Defendants. Place: Bergen County Superior Court Justice Center, 10 Main St. Hackensack, N.J. 07601 Date: April 27, 2018 BEFORE: HONORABLE CHARLES E. POWERS, JR., J.S.C. TRANSCRIPT ORDERED BY: BRIAN M. CHEWCASKIE, ESQ. (Gittleman, Muhlstock & Chewcaskie, L.L.P.) APPEARANCES: RAGHU MURTHY, ESQ. (Eastern Environmental Law Center) Attorney for the Plaintiff BRIAN M. CHEWCASKIE, ESQ. (Gittleman, Muhlstock & Chewcaskie, L.L.P.) Attorney for the Defendants Transcriber Dolores Hastings, AD/T 417 APPEALING TRANSCRIPTS INC.

8 Victoria Drive

Digitally Recorded

Clark, New Jersey 07066

Appealingtrans@gmail.com

Operator: Lucila Caraballo

(732) 680-1610 / Fax (732) 680-1615

THE COURT: All right, this R.M.I., Inc. versus Township of Mahwah, Docket 7345-17. Appearances please?

MR. MURTHY: Good morning, Your Honor, my name -- good afternoon, my name is Raghu Murthy, I'm here from the Eastern Environmental Law Center representing the Ramapough Mountain Indians.

MR. CHEWCASKIE: Good afternoon, Judge, Brian M. Chewcaskie, Gittleman, Muhlstock & Chewcaskie, on behalf of the Township of Mahwah and Michael Kelly.

THE COURT: All right, thank you. So this is a motion to dismiss by the Township of Mahwah based on Rule 4:69-5. So I think the -- the position of the Township of Mahwah is fairly straight forward. So, Mr. Murthy, I want you to tell me why a dismissal wouldn't be the appropriate resolution of the motion for whatever reason you want me to consider.

MR. MURTHY: Your Honor, before -- before we begin with that can I bring up two quick items?

THE COURT: Not if they're not in the motions. We're not going to address things that are not before the Court. Things are brought before the Court by way of motion and response. So that's what I have before me, I'm not going to consider other matters not before the Court.

MR. MURTHY: Your Honor, they're just housekeeping matters related to this matter.

THE COURT: I'm here on the motion.

MR. MURTHY: Okay.

THE COURT: So that's what I'm here prepared to proceed on and ready to hear.

MR. MURTHY: Okay. Your Honor, --

MR. SMITH: Your Honor, may I confer with Mr.

Murthy for a moment please?

THE COURT: Who are you, sir?

MR. SMITH: I'm -- my name is Steven Denison Smith, I'm with the Ramapough Mountain (indiscernible) I'm one of their clients. But if I may talk to him for just a moment please?

THE COURT: So you want to delay the proceedings to confer with your attorney?

MR. SMITH: Just for a minute.

THE COURT: Go ahead.

(PAUSE)

MR. MURTHY: As Your Honor stated, the Township is making the argument that the Ramapoughs failed to exhaust their administrative remedies by failing to appeal to the Board of Adjustment before

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instituting this in lieu action and they cite Rule
4:69-5.
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MR. SMITH: Your Honor?

THE COURT: Sir, you're standing.

you standing, sir?

MR. SMITH: Because we would like to withdraw this complaint, we'd like to make a voluntarily dismissal of this complaint. And that's what I discussed with Mr. Murthy before and that's what he wanted to bring to the Court's attention.

> THE COURT: You mean you want to dismiss it?

MR. SMITH: Well, --

THE COURT: It's going to be dismissed with

prejudice.

MR. SMITH: We would like to withdraw it. THE COURT: Well, I'm going to -- well, after a complaint is filed the rules provide that a case may only be withdrawn with the permission of the Court which may impose conditions on the withdrawal. you're planning on withdrawing it and then re-filing it I'm not going to permit that. If you want to withdraw it, that withdrawal and dismissal is going to be with prejudice.

> So you want to withdraw it, Mr. Murthy? MR. MURTHY: Your Honor, we move to withdraw

it without prejudice.

THE COURT: Well, I won't permit that, so you can either stand here and argue your -- argue your case and we'll hear a response from Mr. Chewcaskie.

MR. MURTHY: Your Honor, I'm going to now argue the case.

THE COURT: Go ahead. All right, counsel, please confer with your client. When everyone's ready let me know please?

COURT CLERK: Going off the record.

(OFF THE RECORD; 1:41:13 to 1:51:36)

THE COURT: Yes, counsel?
MR. MURTHY: Your Honor, my client -- I've discussed with Mr. Chewcaskie, we are prepared to accept a dismissal with prejudice without costs.

THE COURT: That being the situation, you have no objection to that resolution, Mr. Chewcaskie? No, no objection, Judge. MR. CHEWCASKIE: I'll just prepare an order indicating how we -- how we

got here for your signature.

THE COURT: That will be fine, I'll consider Any problems, I'll get in touch with counsel. MR. CHEWCASKIE: All right. Thank you, Your

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Honor.

THE COURT: Thank you. COURT CLERK: Off the record.

(END OF PROCEEDINGS)

CERTIFICATION

I, DOLORES S. HASTINGS, the assigned transcriber, do hereby certify the foregoing transcript of proceedings of April 27, 2018, digitally recorded, index number from 1:37:21 to 1:41:01 and 1:51:39 to 1:52:13, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

/s/ Dolores S. Hastings
Dolores S. Hastings AD/T 417
APPEALING TRANSCRIPTS, INC.
CLARK, NEW JERSEY

May 23, 2018

7

EXHIBIT M

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04/30/2018 10:42

05/01/2018

Pg 1 of 1 Trans ID: LCV2018757336

GMC LAW

PAGE 02/02

Brian M. Chewcaskie, Esq.
Attorney ID #021201984
Gittleman Muhlstock & Chewcaskie, LLP
2200 Fletcher Avenue - Suite 508
Fort Lee, New Jersey 07024
(201)944-2300

2019441497

FILED

MAY 0 1 2018

CHARLES E. POWERS, JR., J.S.C.

Attorneys for Defendants, Michael Kelly and Township of Mahwah

RAMAPOUGH MOUNTAIN INDIANS, INC.,

Plaintiff,

٧.

MICHAEL KELLY and TOWNSHIP OF MAHWAH,

Defendants.

SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY - LAW DIVISION

DOCKET NO. BER-L-007345-17

CIVIL ACTION

ORDER DISMISSING COMPLAINT

THIS MATTER having been opened to the Court, the Honorable Charles E. Powers, Jr., I.S.C., presiding, upon application by Gittleman, Muhlstock & Chewcaskie (Brian Chewcaskie, Esq., appearing), attorneys for the Defendants, Michael Kelly and Township of Mahwah, and on notice to Raghu Murthy, Esq. and Thomas W. Williams, Esq., counsel for the Plaintiff, Ramapough Mountain Indians, Inc. ("RMP"), and it appearing that the Plaintiff, having been provided notice of the within application, and the Court having read and considered the Certification and Briefs submitted in support of and in opposition to Defendants' application, and good cause having been shown;

IT IS on this ________, 2018

ORDERED as follows:

1. The subject Complaint is dismissed with prejudice and without costs.

Charles E. Powers, Jr., J.S.C.

EXHBIT N

emented Thanks oblisting

TWW LAW PROFESSIONAL ASSOCIATION THOMAS W. WILLIAMS, ESQ

220 FRANKLIN TURNPIKE MAHWAH, NEW JERSEY 07430

Phone: 201-529-4420 twwesq@optonline.net Fax: 201-529-1351

MEMBER OF NJ & NY BARS

NEW YORK OFFICE 16 Chestnut Street Suffern, New York 10901

June 15, 2017

Superior Court of New Jersey Bergen County, Law Division 10 Main Street Hackensack, NJ 07430

Re: Township of Mahwah vs. Ramapough Mountain Indians, Inc. Docket No.: BER-L-3189-17

Dear Sir/Madam:

Enclosed please find an original and two copies of Defendant's Answer to Verified Complain the above matter.

Please return one copy to me marked "filed" in the enclosed envelope. My account number to charge for the filing fee is: 143536.

Very truly yours,

Thomas W. Williams, Esq.
Thomas W. Williams, Esq.

TWW/kr cc: Brian M. Chewcaskie Aaron Kleinbaum, Esq. Aaron Kleinbaum (Attorney ID 002681991) Raghu Murthy (Attorney ID 006042008) Eastern Environmental Law Center 50 Park Place, Suite 1025, Newark, NJ 07102 973.424.1166 akleinbaum@easternenvironmental.org

Thomas Williams, Esq. (Attorney ID 009361973) 220 Franklin Turnpike, Mahwah, NJ 07430 201.529.4420 twwesq@optonline.net

Valeria A. Gheorghiu (Attorney ID 042912007) Sussman & Associates P.O. Box 1005, 1 Railroad Avenue, Suite 3, Goshen, NY 10924 845.294.3991 vgheorghiu_sussman1@frontier.com

Attorneys for Defendants, Ramapough Mountain Indians Inc.

TOWNSHIP OF MAHWAH,	
Plaintiff.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - BERGEN COUNTY DOCKET # BER-L-3189-17
vs.	
	CIVIL ACTION
RAMAPOUGH MOUNTAIN	
INDIANS INC.,	DEFENDANT'S ANSWER TO VERIFIED COMPLAINT
Defendant.	

Defendant Ramapough Mountain Indians Inc. (the "Tribe"), by way of answer to the Verified Complaint by Plaintiff, the Township of Mahwah, say:

:

The Parties

- 1. The Tribe admits that the Township, the filer of this action, is a municipal corporation of the State of New Jersey. The remainder of the paragraph sets forth conclusions of law rather than statements of fact, to which no response is warranted. Nevertheless, the Tribe denies that any of its activities at Sweet Water violate the Zoning Ordinance.
- 2. The Tribe admits that it owns Sweet Water, the fourteen acre property located at Block 1, Lot 131, 95 Halifax Road in Mahwah Township.

Factual Background

- 3. The Tribe admits that Sweet Water is designated as a C-200 Conservation Zone in the Township's Zoning Ordinance. The remainder of the paragraph sets forth conclusions of law rather than statements of fact, to which no response is warranted. Nevertheless, the Tribe denies that any of its activities at Sweet Water violate the Zoning Ordinance.
- 4. The Tribe neither admits nor denies the allegation that the Township received complaints from residents, but leaves the Township to its proofs.

 The Tribe denies that Sweet Water is a "campground" and denies that any of its activities at Sweet Water violated the Zoning Ordinance or the Flood Hazard Area Control Act.
- 5. The Tribe admits that the Township Construction Official visited Sweet Water on November 28, 2016, and issued a Notice of Unsafe Structure. The Tribe denies the allegations in that Notice.

- 6. The Tribe admits that the Township issued two Summonses to the Tribe on December 13, 2016. The Tribe denies the allegations in those Summonses, and denies that any Tribe action violated the Zoning Ordinance.
- 7. The Tribe admits that a Township representative visited Sweet Water on December 20, 2016, and issued a Notice of Violation and Order to Terminate. The Tribe denies the allegations in that document, and denies that any Tribe action violated the Zoning Ordinance.
- 8. The Tribe admits that a meeting was held on January 12, 2017 between Township officials and Tribe representatives. The Tribe admits that the Township requested a Zoning and Site Plan, both of which have since been submitted. The Tribe neither confirms nor denies the remainder of the allegations in this paragraph, but rather leaves the Township to its proofs.
- 9. The Tribe admits the allegations in Paragraph 9 of the Complaint.
- The Tribe admits that it submitted a Zoning Application on April 6,
 2017.
- 11. The Tribe admits that its engineer, Houser Engineering LLC, submitted a Site Layout Plan on April 12, 2017. The Tribe denies that any Tribe activities at Sweet Water required Township approval.
- 12. The Tribe admits that the Township denied the Tribe's Zoning Application on April 13, 2017. As to the remainder of the paragraph, the Tribe leaves the Township to its proofs.

- 13. The Tribe denies that it ordered lumber to be delivered to the property. In April 2017, the Mahwah Environmental Volunteer Organization made a gift of lumber to the Tribe. The Tribe denies that its use of the lumber constitutes a "stage/platform.". The Tribe denies that it required any Township approval for this activity. The Tribe admits that the Township sent a letter on April 27, 2017; the Tribe denies the allegations in that letter.
- 14. The Tribe admits that it did not appeal the Township's denial of the April 2017 Zoning Application. The Tribe admits that as of the date of the Township's Complaint, the Tribe had not filed a complete Site Plan application.

First Count

- 15. The Tribe repeats, re-alleges and incorporates by reference all of its answers to Paragraphs 1-14 of the Complaint as if fully set forth herein.
- 16. The Tribe admits that Paragraph 16 accurately sets forth the first sentence of Section 24-4.3 of the Zoning Ordinance.
- 17. The Tribe denies that any Tribe action at Sweet Water violates the Zoning Ordinance.

WHEREFORE, the Tribe seeks judgment in favor of the Tribe, as follows:

- a) Dismissing Plaintiff's Complaint with prejudice; and
- b) Awarding Defendant its costs of suit and attorneys' fees; and

- c) Issuing a permanent injunction against any further violation notices from the Township, regarding the Tribe's lawful use of Sweet Water; and
- d) Such other relief as the Court deems just and equitable.

Second Count

- 18. The Tribe repeats, re-alleges and incorporates by reference all of its answers to Paragraphs 1-17 of the Complaint as if fully set forth herein.
- 19. The Tribe neither confirms nor denies the allegations in Paragraph 19, but leave the Township to its proofs.
- 20. Nevertheless, the Tribe denies that any of its actions at Sweet Water violate the Flood Hazard Area Control Act.

WHEREFORE, the Tribe seeks judgment in favor of the Tribe, as follows:

- a) Dismissing Plaintiff's Complaint with prejudice; and
- b) Awarding Defendant its costs of suit and attorneys' fees; and
- c) Issuing a permanent injunction against any further violation notices from the Township, regarding the Tribe's lawful use of Sweet Water; and
- d) Such other relief as the Court deems just and equitable.

FIRST AFFIRMATIVE DEFENSE

The Township's Complaint is barred by the entire controversy doctrine. There is currently a matter pending in Mahwah Township

Municipal Court, scheduled for a hearing on [date], consisting of the same parties and same issues.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the equitable doctrines of estoppel, waiver and unclean hands. The Tribe has been openly using the land in the region for religious and ceremonial purposes for more than twenty-five years. The Township has long been well aware of the religious use of this property; in fact, over ten years ago, Bergen County erected signs on public roads leading to the entrance of the Tribe's property that identify Sweet Water as "Ceremonial" land. The Tribe relied on the explicit approval of Bergen County and the tacit approval of the Township in continuing its religious use of Sweet Water. Therefore, the Township is estopped from asserting its claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the doctrine of laches. The Tribe has been using the land in the region for religious and ceremonial purposes for at least twenty-five years. Over ten years ago, Bergen County erected signs on public roads leading to the entrance of the Tribe's property that identify Sweet Water as "Ceremonial" land. The Township was well aware of the Tribe's religious use of Sweet Water starting, at the latest, with the erection of these signs.

Therefore, the Township's delay in bringing action only now is unexplained, unexcused, and unreasonable.

FOURTH AFFIRMATIVE DEFENSE

The Township's Complaint is barred, in whole or in part,
because the claims asserted therein are made in bad faith solely for the
purposes of harassment and religious discrimination in contravention
of the Religious Land Use and Institutionalized Persons Act.

FIFTH AFFIRMATIVE DEFENSE

The Township's Complaint is barred because the actions of the Tribe are consistent with the Municipal Land Use Law, the Township Zoning Ordinance, the Flood Hazard Area Control Act, and all other applicable laws.

NOTICE OF OTHER ACTIONS AND POTENTIALLY LIABLE PERSONS

The alleged Zoning Ordinance violations are also being litigated in Mahwah Township Municipal Court.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

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

DESIGNATION OF TRIAL COUNSEL

The Tribe designates Thomas Williams, Esq. as trial counsel in this matter.

Respectfully submitted,

Date: June 15, 2017

Aaron Kleinbaum

Raghu Murthy

Eastern Environmental Law Center

Thomas Williams

Valeria Gheorghiu

Sussman and Associates

Attorneys for Defendant,

Ramapough Mountain Indians Inc.

Appendix XII-B1



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division

PAYMENT TYPE:	□CK □CG □CA
CHG/CK NO.	
AMOUNT:	
OVERPAYMENT:	

A CONTRACTOR	Civil Part pleadings (not motions) under Rule 4:5-1								
38 # 195	Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed					OVERPAYMENT:			
	or attorney's signature is not affixed				700	BATCH NUMBER:		20.20	
ATTORNEY/PRO SE NAME			TELEPHONE NUMBE	ER	COUNT	TY OF Y	VENUE		
See Addendum	See Addendum				Berge				
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Effective 06/05/2017, CN 10517



CIVIL CASE INFORMATION STATEMENT

(CIS)
Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TY	PES (Choose one and enter number of case type in appropriate space on the reverse side.)
-	ck I - 150 days' discovery
	51 NAME CHÂNGE
	75 FORFEITURE 02 TENANCY
3	99 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
5	UZ BOOK ACCOUNT (debt collection matters only)
5	05 OTHER INSURANCE CLAIM (including declaratory judgment actions)
5	06 PIP COVERAGE
	10 UM or UIM CLAIM (coverage issues only) 11 ACTION ON NEGOTIABLE INSTRUMENT
5	2 LEMON LAW
81	D1 SUMMARY ACTION
8	OPEN PUBLIC RECORDS ACT (summary action) OTHER (briefly describe nature of action)
2.	
	The Township alleges violations of the state Flood Hazard Area Control Act and the Township Zoning Ordinance.
Trac	ck II - 300 days' discovery
	DE CONSTRUCTION
50	9 EMPLOYMENT (other than CEPA or LAD)
55	99 CONTRACT/COMMERCIAL TRANSACTION
60	IBN AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold) IBY AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
60	5 PERSONAL INJURY
	0 AUTO NEGLIGENCE - PROPERTY DAMAGE
60	11 UM or U!M CLAIM (includes bodily injury) 19 TORT – OTHER
122	1 102 102 10 10 10 10 10 10 10 10 10 10 10 10 10
	k III - 450 days' discovery 5 CIVIL RIGHTS
	1 CONDEMNATION
60	2 ASSAULT AND BATTERY
60	4 MEDICAL MALPRACTICE
	6 PRODUCT LIABILITY 7 PROFESSIONAL MALPRACTICE
	TONIC TORT
60	9 DEFAMATION
61	6 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
	7 INVERSE CONDEMNATION 8 LAW AGAINST DISCRIMINATION (LAD) CASES
Irac 15	k IV - Active Case Management by Individual Judge / 450 days' discovery ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
	3 MT LAUREL
50	B COMPLEX COMMERCIAL
	3 COMPLEX CONSTRUCTION
	4 INSURANCE FRAUD D FALSE CLAIMS ACT
	ACTIONS IN LIEU OF PREROGATIVE WRITS
	county Litigation (Track IV)
	1 ACCUTANE/ISOTRETINOIN 292 PELVIC MESH/BARD
27	4 RISPERDAL/SEROQUEL/ZYPREXA 293 DEPUY ASR HIP IMPLANT LITIGATION
28	BRISTOL-MYERS SQUIBB ENVIRONMENTAL 295 ALLODERM REGENERATIVE TISSUE MATRIX
	2 FOSAMAX 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS 5 STRYKER TRIDENT HIP IMPLANTS 297 MIRENA CONTRACEPTIVE DEVICE
	LEVAQUIN 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR
	YAZYASMIN/OCELLA 300 TALC-BASED BODY POWDERS
	REGLAN 601 ASBESTOS
	D POMPTON LAKES ENVIRONMENTAL LITIGATION 623 PROPECIA 1 PELVIC MESH/GYNECARE 624 STRYKER LFIT CoCr V40 FEMORAL HEADS
-	7 22-3 MES TO ME
If you	believe this case requires a track other than that provided above, please indicate the reason on Side 1,
in the	space under "Case Characteristics.
	Please check off each applicable category Putative Class Action Title 59

EXHIBIT O

SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CIVIL PART BERGEN COUNTY, NEW JERSEY DOCKET NO. BER-L-3189-17 APP. DIV. NO. TOWNSHIP OF MAHWAH, Plaintiff, TRANSCRIPT of HEARING RAMAPOUGH MOUNTAIN RE: SETTLEMENT INDIANS, INC., Defendant. Place: Bergen County Superior Court Justice Center, 10 Main St. Hackensack, N.J. 07601

Date: February 28, 2018

BEFORE:

vs.

HONORABLE LISA PEREZ-FRISCIA, J.S.C.

TRANSCRIPT ORDERED BY:

BRIAN M. CHEWCASKIE, ESQ. (Gittleman, Muhlstock & Chewcaskie, L.L.P.)

APPEARANCES:

BRIAN M. CHEWCASKIE, ESQ. (Gittleman, Muhlstock & Chewcaskie, L.L.P.) Attorney for the Plaintiff

THOMAS WILLIAMS, ESQ. (Attorney at Law) Attorney for the Defendant, Ramapough Mountain Indians, Inc.

JOHN J. LAMB, ESQ. (Beattie Padovano, LLC) Attorney for the Ramapough Hunt and Polo Club Community Association, Inc.

> Transcriber Dolores Hastings, AD/T 417 APPEALING TRANSCRIPTS INC. 8 Victoria Drive Clark, New Jersey 07066 (732) 680-1610 / Fax (732) 680-1615 Appealingtrans@gmail.com Digitally Recorded by Shante Faulk

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INDEX Page(s) General Colloquy 3, 65 Settlement Terms being placed on the record with extensive colloquy THE COURT: Voir dire of Chief Perry and Mr. Smith as to the settlement terms

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THE COURT: So counsel, so I can put both docket numbers on the record, I'm going to ask first for your appearances and then I will do that. And just so you know, I'm going to swear you in. The reason why I'm not -- there is no other party here, but counsel are going to represent to me that which they have apparent authority for, for today. Okay? Sorry.
MR. CHEWCASKIE: Judge, if I may, Brian M.

Chewcaskie, Gittleman, Muhlstock & Chewcaskie, on behalf of the Township of Mahwah.

MR. LAMB: John J. Lamb from the Law Firm of Beattie Padovano, we represent the Ramapough Hunt and Polo Club Community Association, Inc., which is in a related action which is subject to a motion to consolidate with this action.

THE COURT: And I'm just looking -- this action, the docket that I believe you have, is 3189-17. What I'm looking for though is the docket for the --UNIDENTIFIED: The Mahwah case, Judge?

THE COURT: Yeah. Let's see. Mahwah v. the Ramapough Mountain Indians is 3189-17. I'm looking for

MR. CHEWCASKIE: 3189-17 is -- is the Mahwah docket number.

THE COURT: Yours.

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MR. LAMB: I have my filed complaint but it
doesn't have a docket number on it.
          THE COURT: No. Maybe we can back into it?
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MR. LAMB: Oh, here it is, Judge. THE COURT: Oh, good. Thank you.

MR. LAMB: I want to make sure it's the right one. Yes, BER-L-006409-17.

THE COURT: Okay. 6409-17? Is that correct? That's what you have?

MR. LAMB: Yes.
THE COURT: Okay. All right. So -- thank you, I cut you off before your appearance, counsel. MR. WILLIAMS: Thomas Williams on behalf of

the Ramapough Indians.

THE COURT: And, gentlemen, can I have you both please stand? I'm going to have you both raise your right hands.

CRAWFORD DWAINE PERRY, SWORN STEVEN B. S M I T H, SWORN

THE COURT: And first -- please, put your State your name and spell your last name? CHIEF PERRY: Dwaine Crawford Perry, P-E-R-R-Y.

> MR. SMITH: Steven B. Smith, S-M-I-T-H. THE COURT: Thank you. Okay, please be

seated.

First, counsel, you know you can be seated as well. Thank you for your respect. The record will reflect as the Assignment Judge in Bergen -- Assignment Judge? As the Settlement Judge in Bergen County, the Presiding Judge had listed this matter before me and counsel had listed this matter before me and counsel had agreed, as well as the parties, to attempt to settle and resolve the matter with me and I believe this is your third -- third --

MR. CHEWCASKIE: At least the third, Judge.
THE COURT: At least the third day, forgive
me, there might have been a fourth if I'm not -MR. CHEWCASKIE: We were last here February
14th.

THE COURT: Okay. And so counsel have all, this Court observes, been working somewhat tirelessly to try to come to an amicable resolution. I note that because there has been agreement by all parties that while the case has not yet been consolidated, counsel have all acknowledged there is a motion to consolidate, now, counsel, jump in and correct me, that's pending and has been adjourned once before Judge Powers. Is that an accurate --

MR. LAMB: That's correct, Your Honor.

THE COURT: Okay. Additionally, it's my understanding that the matter was today, for at least today's purposes, before the Presiding Judge Polifroni for a trial call for which, my understanding, he advised counsel and counsel agreed to come over to continue the negotiations for settlement. All so far correct?

MR. CHEWCASKIE: Correct, Judge.
THE COURT: All right. And it's my
understanding that there have been communications back
and forth with proposed settlement agreement, I know I
have two or three of them that have gone through
multiple modifications and it's my understanding that
counsel believe in good faith that there is a
settlement agreement today between the Township and the
Ramapough Mountain Indians that of course will be
subject to the approval, while I know you're going to
put on the record Mr. Kelly's recommendations, but the
approval would be subject by the Governing Body.
Accurate?

MR. CHEWCASKIE: That is correct, Judge.
THE COURT: And it's my understanding from
Counsel Lamb that on behalf of -- now is it the
Ramapough Hunt and Polo Club? Is that the correct
title?

7 MR. LAMB: Yes, Association, yes. THE COURT: Okay. On behalf of the 2 3 Association, you believe in good faith that they will 4 be in agreement to all of the terms, except for one 5 that you're going to delineate on the record, and in 6 addition to that you believe any agreement to dismiss 7 your action, which has yet to be consolidated, would be 8 subject to approval of the Association by vote? 9 MR. LAMB: Correct, Board of Trustees and 10 Association, yes. THE COURT: Okay. 11 12 MR. LAMB: It's two hurdles usually on these 13 things, Judge, the Board of Trustees votes and then 14 schedules a Unit Owners Meeting. 15 THE COURT: But you -- but you believe it's not -- alone the Trustees will not -- that you believe 16 17 it will need the entire Association to vote? 18 MR. LAMB: Yes. 19 THE COURT: That the Trustees won't be able 20 to --21 MR. LAMB: That's correct. 22 THE COURT: Okay. All right. 23 MR. CHEWCASKIE: And, excuse me, Your Honor. 24 THE COURT: Go ahead. 25 MR. WILLIAMS: My only concern --

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THE COURT: I'm going to -- I know, you're going to be subject to -- right? Is that what you're --

MR. WILLIAMS: If they don't dismiss it. THE COURT: Well, I'm going there, hold on. MR. WILLIAMS: Okay.

okay. In addition to that, it's my understanding that while the Chief is here today and has had multiple, you represented, had multiple meetings with your members, and you believe that you have apparent authority on all of them, you're making the settlement subject to your membership. Is that accurate as well?

MR. WILLIAMS: Yes.

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THE COURT: So we have subject to Trustees and Association, all of the terms, Counsel Lamb, you believe will be agreeable, except for one that we're going to set forth on the record. On behalf of the Borough, and I know you've spoken with Mr. Perry and we're going to delineate that and set it forth on the record, is subject to the --

COUNSEL: Mr. Kelly.

THE COURT: Mr. Kelly, sorry. You have to -- it's the school nurse, I'm sorry.

COUNSEL: Judge, always take the school

nurse.

. .

MR. CHEWCASKIE: Take the school nurse. THE COURT: Yes, I'm sorry. Can you pause

us?

(OFF THE RECORD; 1:32:07 to 1:35:59)

THE COURT: Okay. So, as we left off, I think I mispronounced as Mr. Kelly on behalf of the Borough is recommending that the agreement would be contingent upon Governing Body approval. Okay. And as to Ramapough, it's my understanding, is your -- is your client stands here today, Counsel Williams, he believes he has the authority to engage in the settlement discussions and has discussed many of these provisions with all the members, but he's going to bring it back to the membership and it's contingent on their agreement. Is that everybody's understanding so far of any contingencies to settlement before we put the settlement terms on the record?

MR. WILLIAMS: Except for what I started to mention before, and that is if the Ramapough Hunt and Polo Club did not dismiss their complaint -THE COURT: But that's going to be a term.

MR. WILLIAMS: Okay.

THE COURT: That -- right, that will be a -- MR. CHEWCASKIE: A contingency.

THE COURT: Right.

MR. CHEWCASKIE: Yeah, okay.

THE COURT: One of the terms of settlement is there is no settlement unless there's agreement and they withdraw their complaint.

MR. CHEWCASKIE: Okay. THE COURT: All right? MR. CHEWCASKIE: Fine.

THE COURT: Okay. So now let's talk about the terms of the settlement as we've gotten any of the subject to(s) out. So it's my understanding you're willing, Counsel Chewcaskie can I ask you to put it on the record for us?

MR. CHEWCASKIE: That is correct, Judge. And we do have drafts of settlement agreements that went back and forth, certainly those will be modified. It is my intention to present the written document to the Township Council at their meeting on March 22nd, which will be the next cycle that it could get before them and it will give us time to draft it and circulate it to everyone. So if there are certain specific terms that are missed, it's something that the parties have seen, but the salient terms of the settlement are as

follows.

All structures are to be removed from the site within 60 days.

THE COURT: Are we defining structures?

MR. CHEWCASKIE: And we're going to define them in a minute. In 30 days all structures — structures that are — that are not, what I will call of a large nature, shall be removed. The larger structures, which is the cooking shack and the associated platform and yurt and the associated stairs and the sweat lodge, should be removed in 60 days.

THE COURT: Changing -- okay.

MR. CHEWCASKIE: And I think everything else can be removed in 30 days, but I'll -- I'll let Mr. -THE COURT: Okay. Just so I know for the 60 days, I know it would be -- my recollection is I know it's the yurt, I know it's the cooking lodge, the changing -- so maybe I'm calling it the wrong terminology.

MR. CHEWCASKIE: I don't know which is the changing area --

MR. WILLIAMS: I think it's the cooking shed?

Is that what it is?

THE COURT: I thought that was a separate structure, I thought.

MR. CHEWCASKIE: Yeah. I have a cooking shack, a yurt, and those are the two large structures that I'm aware of.

 $$\operatorname{MR}.$$ WILLIAMS: That's the only thing I'm aware of too.

THE COURT: Okay.

MR. WILLIAMS: The two large --

MR. CHEWCASKIE: So -- so within 30 days all other structures as identified will be removed. The -- there's an additional 30 day period for a total of 60 days for the yurt and the cooking shack.

Within 60 days of the execution of the agreement there will be an application to the Zoning Board of Adjustment for any type of use or structure on the property and the -- and what the Township is willing to do. If it's only going to be limited to the structures that will remain, which I missed, the structures remaining are the -- what are identified as those poles within the prayer circle and also the stone alter which we have pictures of and we'll attach to the agreement, those can remain.

 $\,$ THE COURT: And I thought the sitting stones as delineated in the photo.

MR. CHEWCASKIE: Whatever's in the -- whatever's in the photos, Judge.

THE COURT: Okay. But just so we're, I think, in agreement, because the same photos then are the photos that were previously produced. Is that accurate?

MR. CHEWCASKIE: Correct.

THE COURT: You want to mark -- just mark one? Because that -- my recollection is, is that there was some dispute as to what was there and now there's agreement that regardless of what's there, only that for which is in the photo, and I think this is more the Polo Club's concern, it's that which is in the photo that will remain, regardless of what's there, it's that which is in the photo.

MR. CHEWCASKIE: Those are them, yes.
THE COURT: So it's the alter, there's the
poles and what did you call them, counsel? Sitting -sitting?

MR. CHEWCASKIE: Excuse me, Judge, may I

approach --

THE COURT: Yeah.

MR. CHEWCASKIE: -- and I'll show you the

photos that I have?

THE COURT: Thank you. Okay.

MR. CHEWCASKIE: So those -- those are permitted to remain. If it is the intention to utilize

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that area only, the -- and there's an application to the Board of Adjustment for that use which would include gatherings, events or whatever, the Township will waive any application fees to the Board of Adjustment, certainly professional fees will have to -- escrow will have to be paid. If there are additional structures or uses proposed on the site with that application, then the associated fees will be charged.

THE COURT: Okay. So for any structures or uses, it's contemplated within 60 days from the execution of the agreement they will apply for same?

MR. CHEWCASKIE: Right.

THE COURT: Okay.

MR. CHEWCASKIE: Including the interim use we just discussed.

THE COURT: So there's an agreement that for the interim use they have to -- what -- define that.

MR. WILLIAMS: Well, that's a -- a question, a concern that we talked about in the settlement. We are going to leave it up to the Board of Adjustment in terms of an understanding of the use. We're going in there saying we have a settlement agreement, we have a prayer circle and we have an alter and it's our understanding that we're permitted to use the property for these purposes.

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THE COURT: Continue in that use?

MR. WILLIAMS: Continuing the use. So I'm
not going to go, or I don't think that the client is
going to go to the Board seeking a variance for a use,
unless the Board deems that's appropriate and then
we'll have to decide whether their -- whether that's
proper or whether we have to do something in the
interim. But right --

THE COURT: Okay.

MR. WILLIAMS: Right -- right now we're not -- we're just going in saying this is the use we're -we've been using it for, there's a settlement agreement
saying we can go forward with that. So we -- and I
think counsel for the Township understands and agrees
to that.

MR. CHEWCASKIE: Right. We're going to leave it to the Board to decide, Judge. And as I indicated, in terms of any application to the Board, any notices, anything that was issued by the Zoning Officer can be presented to the Board without any argument that such review would be time barred. So --

THE COURT: So if there's no application made, then $\ensuremath{\text{--}}$

 $$\operatorname{MR}.$ CHEWCASKIE: There is an application required pursuant to the settlement agreement.

THE COURT: And if no application is made?
MR. CHEWCASKIE: Then we can seek to enforce
the settlement, Judge.

THE COURT: You'll have to ask your attorney. CHIEF PERRY: Can I say something? MR. WILLIAMS: Yeah, what?

CHIEF PERRY: Tell me, I want to know what is going to protect the tribal people in the land from overly burdensome and manipulative and pointed and refocused zoning and building and violations that have been used that we thought was over with in the 50's.

MR. WILLIAMS: There's nothing in this

agreement --

CHIEF PERRY: I'm just saying I don't want to pay \$25,000 for a zoning permit that everybody else would pay \$100 for.

MR. WILLIAMS: I understand.

MR. CHEWCASKIE: Judge, the fees -- Judge, the fees and the escrow are going to be exactly as they are in the Township Code today. We're not going to make up the numbers.

THE COURT: Okay. So the Borough's position is that there's going to be an application, if there's no application they can seek to enforce as they're permitted. And it sounds to me as if the Ramapough

. .

Indians' position is the settlement says we're allowed to continue this use which — continue to gather with these limitations. It's contemplated if we seek a use variance or structures will apply and we are subject to the Borough, we believe that we can continue the use and that will be later determined if we make no application?

MR. WILLIAMS: Yes.

 $$\operatorname{MR}.$ CHEWCASKIE: That's to be determined by the Board, Judge.

THE COURT: Okay.

MR. LAMB: Judge, what I told my clients is that there's a firm obligation of the RMI to make an application to the Board of Adjustment within 60 days. By allowing an interim use of the property, it's really, as I told Mr. Williams when we were discussing it, I call it an interim use pending decision of the Board of Adjustment. Okay? Then the Board of Adjustment's got to make the decision. By allowing this interim use, that should not be held against the Township or my client, that doesn't give any special rights. Whatever rights they have they can argue their

THE COURT: Well, whatever the continuing rights they have.

MR. LAMB: Yeah.

THE COURT: They used it for five years --

MR. CHEWCASKIE: Right.

MR. LAMB: Right. It's --

THE COURT: -- pursuant to a permit, they're continuing that, what they were doing for congregation with some limitations that they didn't have before and

MR. LAMB: They can make all those arguments, but it's just that we — the extra time period, this interim time period, they can't go to the Board and say well, see, we got approval, we can do this. No. it's — it's you have to apply for that. And maybe, if the Board decides that they didn't need approval then the Board will decide it. As Your Honor knows, if — if they have an issue as to what's required they can ask for an interpretation that no use variance is necessary or, in the alternative, we need a use variance. I'm not telling them what to apply for.

MR. WILLIAMS: We recognize that.

CHIEF PERRY: My -- Tom, by -- by setting a -- a timeline is really adopting an undue burden because in some of the things that we may want to do, even though there's an overall plan, we only maybe do one thing a year. And in order to put a 60 timeline on to

people who are working class people is an undue fiscal burden.

THE COURT: Well, then you're not understanding. They don't see it as a 60 day. This litigation has been going on for a very long time, so -

CHIEF PERRY: Right.

THE COURT: And there had been an original use application which was withdrawn. So from the municipality's perspective, they're not saying this, but I'm gathering they're going to say well, wait a minute, 60 days is in contemplation of the many months prior to this. And their position hasn't changed. They're saying they're not going to make your fees or your application will be no different than anyone — it can't be, quite frankly, they — it would be not sustainable. They are required to file the MLUL for you like they would anyone else.

CHIEF PERRY: So the interpretation is that - site plans that we're talking about?

MR. WILLIAMS: We have go to the Board of Adjustment, yes.

MR. CHEWCASKIE: What -- and I think maybe to allay the Chief's fears, nothing prevents the Ramapough Mountain Indians from making whatever applications they

desire in the future. It's not that you have to do everything at once.

THE COURT: Right. If you want to just seek one -- I mean, and people do that. I mean, frankly, sometimes people apply for one thing, they withdraw and apply for something else once they're there and they realize, you know, for whatever reasons, financial reasons, legal reasons. And nothing will preclude you from being heard. And if they do, then you'll be back here quite frankly.

MR. CHEWCASKIE: During -- during the period of time while the -- while an application is being filed and subject to the Board's review, Township agrees that the Ramapough Mountain Indians can hold 18 events a year. They will provide a specific list of those events and number of people over the next six months so that we can make it part of the agreement. And four of those events on an annualized basis will provide for up to 80 people, the remaining events will be up to 30 people.

THE COURT: But I -- so I thought it was when those 80 events. So their 18 events, they are entitled to 18 events per year but they have to give you the dates for those 18 events or they have to give you dates for the four events?

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                 MR. CHEWCASKIE: Well, for the --
 2
                 THE COURT: For the four events?
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                 MR. CHEWCASKIE: For the four.
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                 THE COURT: Okay, I just wanted to make sure
       I heard you, I'm sorry. They'll give you the dates for
 5
 6
       the anticipated -- they must file a -- they can plan
 7
       for up to 80 people that they can -- that they have
 8
       knowledge, for parking and other reasons?
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                 MR. CHEWCASKIE: Right.
10
                 THE COURT: Right? For the other 18 events,
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       they're capped at 18 events but you don't have to
12
       provide -
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                 MR. CHEWCASKIE: It's a -- it's a total of 18
14
       events --
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                 THE COURT: Right.
16
                 MR. CHEWCASKIE:
                                  -- of which four -- four --
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                 THE COURT: The four is included in those 18?
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                 MR. CHEWCASKIE: Correct.
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                 MR. LAMB: It's up to 30 people.
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                 MR. CHEWCASKIE: With up to 30 people.
21
                 THE COURT: Okay, hold on, up to 30 people.
       Okay.
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23
                 MR. CHEWCASKIE: And then the --
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                 THE COURT: And I'm hoping, while Counsel
25
       Lamb, he's looking for his approval.
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                  MR. LAMB: I apologize for being
 2
       disrespectful, but I'm --
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                  THE COURT: No, I want you to get it because
       I'd rather -- frankly -- MR. LAMB: I'm -- I'm sending it. I got one
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 6
       e-mail saying that we can't approve of this and then
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       I'm like well, they -- no, where -- where they have to
       apply -- we -- we have a historical problem of
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       timeliness of certain actions, that's our position,
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       they may disagree. But so we want, you know, an
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       agreement we want okay, when is the application going
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       to be filed, which we have, the 60 days. They're going
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       to apply for uses and structures on the property and
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       however they want to make that application.
15
                  THE COURT: Right.
       MR. LAMB: Second -- second thing is when is the Board going to decide it? My client's asking me to
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       put a limit on it to try to facilitate special meetings
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       and things.
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                  THE COURT: Yeah.
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                  MR. WILLIAMS: I told them -- I told them
22
       that --
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                  THE COURT: If I can't do it you can't do it.
24
                  MR. CHEWCASKIE: And -- and I --
25
                  THE COURT: No Board ever does it for me.
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Now why is that?

MR. CHEWCASKIE: Because they don't care,

Judge.

THE COURT: I know. So -
CHIEF PERRY: Regulating the numbers of

people that are allowed to pray? If I said five people and they go to the synagogue, so if there's -- if yous are going to tell us that if people show up to pray it's against the law?

MR. CHEWCASKIE: No, no, no.

MR. WILLIAMS: We're not -- we're not saying that, Chief, we're talking about events.

CHIEF PERRY: Or I should get fined extra because somebody finally gets their grandmother to come down?

MR. CHEWCASKIE: No. Let -- let me -THE COURT: Well wait, now we're digressing,
because whether you're a church or a synagogue -CHIEF PERRY: I'm just trying to figure out
numbers.

THE COURT: -- any structure, this Court -- I can't have -- I'm the Judiciary and I'm a sitting Superior Court Judge, I can't have more than 45 people in here.

CHIEF PERRY: Yeah.

THE COURT: Now, why is that? Safety reasons; fire hazards, exits. So everything for public safety reasons can be regulated. Just because you are a religious institution or socially doesn't mean the Constitution protects you in all aspects. You get to govern, we can't -- courts can't tell you, but there are limitations to that, safety limitations. Whether you're a synagogue, a church, a -- right? You can't put people at risk. So when you couch it like you're not going to -- you can't tell how many people to pray, no. Anyone can pray when they want to pray, but not everyone can pray in one structure or facility if it puts everybody at risk and the structure and facility can't hold it. All right? So it's all in how we say it.

CHIEF PERRY: This -- this property could hold about 3,000 people.

THE COURT: Yeah, I -- sir, I've got to tell you something, I don't think it, having been there and understanding and -- I don't know parking-wise that there's -- so I will respectfully disagree, that I don't think anywhere where there is not sort of a firmed -- I don't know that that doesn't have safety implications.

MR. WILLIAMS: Judge, --

THE COURT: And I'm not here to, you know, go back and forth with you.

MR. WILLIAMS: Yeah, we'll let the Board of Adjustment deal with that.

CHIEF PERRY: Yeah.

MR. WILLIAMS: Yeah, that's -- and that's right, those are issues before the Board of Adjustment. There's a single lane bridge to it and 88 percent of the property is in a flood plain. So that -- and, Judge, I --

THE COURT: And I don't think -- and I understand the Chief has a concern for his membership too. I'm not -- there's no finding. I know you wouldn't want to put anyone in peril either.

CHIEF PERRY: Correct.

THE COURT: You just want to ensure that you can gather. They want to ensure that what occurs is done in a safe fashion.

CHIEF PERRY: Right. For the 20 years prior to this, that the police actually helped us park outside the bridge where the water -- where we used to hold the pow-wows. That's where we used to park, not This -- this sort of discourse is a brand new thing, we haven't really had that. We're not opposed to aid.

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THE COURT: Well, there also weren't all these structures. I mean things happen, the history is what it is. I can't -- I can't undo what has occurred. So I understand the concerns on all sides, are very valid for me. So my understanding is it's 18 events per year and of those 18 events, only four of them where you're seeking to have approximately 80 people, they're going to be notified so police, fire department, whoever needs to know for the safety of your congregation, for your -- I don't want to use the wrong terminology, so forgive me, members, whatever your --

CHIEF PERRY: Syntax.

THE COURT: Everybody's comfort and safety. MR. LAMB: Judge, one other thing. You mentioned that -- reference to religious institution. I don't want your comment to be taken out of context later, but we disagree that this is a religious institution and there's no finding and that's not before Your Honor, number one.

THE COURT: No, but they maintain that --MR. LAMB: Yeah, yeah. Number two, there was a limitation, I think, on 15 cars allowed for those 80 -- parked for those 80 --THE COURT: I -- I have not heard that part

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of the --1 MR. LAMB: I -- well, I'll let Mr. --3 THE COURT: I really need you to get your 4 client, even if it means they have to come back 5 tomorrow, I need -- because it's -- everything that 6 they're saying, you're throwing a little hitch in. And 7 so it's really concerning me because then this 8 settlement --9 MR. LAMB: I -- I'm trying --10 THE COURT: -- while they can settle around 11 you is -- and quite frankly, counsel have worked very 12 hard to try and -- as have you, I don't mean to 13 preclude you. 14 MR. CHEWCASKIE: There are a couple other 15 terms, Judge, is that the additional litigation between 16 the parties will be dismissed. There are some pending 17 actions that I think will have to be adjourned during 18 the --19 THE COURT: It's my understanding everything 20 is being dismissed, all -- both cases are being 21 dismissed subject to these approvals. 22 MR. CHEWCASKIE: But there are other cases 23 too, Judge. 24 THE COURT: Oh. MR. CHEWCASKIE: There was a case filed by

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the Ramapough Mountain Indians against Mr. Kelly and the Township regarding the recision of the permit, that's a case that is scheduled for a dismissal on March 16th. We will adjourn the motion on that pending the resolution.

THE COURT: Where is that case? MR. CHEWCASKIE: I'm sorry? THE COURT: Who has that case?

MR. CHEWCASKIE: I believe Judge Farrington

has that case.

THE COURT: What docket is that case,

gentlemen?

MR. CHEWCASKIE: That one I don't have in front of me, Judge. In addition, there was an appeal of the Municipal Court which was filed out of time, there are motions pending before Judge Foti, those will have to be adjourned and also dismissed.

THE COURT: All right. But I need -- I need the docket for Judge Farrington's. I promise I won't forget. I need somebody to get me Judge Farrington's docket from my --

MR. SMITH: I believe it, if I may, I believe it's Judge Powers that it might be in front of.

THE COURT: No. Judge Powers is the motion to consolidate.

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                 MR. WILLIAMS: Judge Farrington has the other
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       one, I believe.
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                 THE COURT: Yeah. I don't think Judge --
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                 MR. CHEWCASKIE: Yeah, that one --
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                 THE COURT: Because this is the first I'm
 6
       hearing about --
 7
                 MR. CHEWCASKIE: It was -- oh, I have it in
 8
       the --
 9
                 THE COURT: And what about the matters before
10
       Judge Mizdol?
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                 MR. WILLIAMS: That's in the settlement
12
       agreement.
13
                 THE COURT: So the Judge Mizdol matter is
14
       only --
15
                 MR. CHEWCASKIE: For the --
16
                 THE COURT: -- the Municipal due process?
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                 MR. CHEWCASKIE: Okay, the --
18
                 THE COURT: I --
19
                 MR. CHEWCASKIE: It was in the documents --
20
       I'm sorry, the docket number was in the settlement
21
       agreement, the other case --
22
                 COUNSEL: Which case is this?
23
                 MR. CHEWCASKIE: -- against Mr. Kelly by the
24
       -- by the Ramapough Mountain Indians, Docket Number
25
       007345-17, the Municipal Court matter is Docket Number
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       233-SC-8491.
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                  THE COURT: And now that's the Municipal
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       appeal before Foti? Not the due process --
 4
                 MR. CHEWCASKIE: Before Judge Foti.
 5
                 THE COURT: -- before Her Honor Judge Mizdol?
 6
                 MR. WILLIAMS: Correct.
 7
                 MR. CHEWCASKIE: No -- right. Judge Mizdol
 8
       has separate, I think it was criminal violations --
 9
                 THE COURT: But isn't that this week or next
10
       week?
11
                 MR. CHEWCASKIE: Which? Which case, Judge?
12
                 THE COURT: The matter before Judge Mizdol is
13
       being heard -- what's the title of that action? Do you
14
       all know?
15
                 MR. CHEWCASKIE: Tom, that's -- I don't think
       we're a party to that case, Judge.

MR. WILLIAMS: No, they are not. This is a
16
17
18
       separate Municipal, alleged Municipal violation and one
19
       or both of these gentlemen at the table are the
20
       defendants in that case.
21
                 MR. LAMB: I -- I --
22
                 MR. CHEWCASKIE: It's not -- it's -- it's a
23
       separate action.
24
                 THE COURT: I thought it was being prosecuted
25
       by members of the Polo Club --
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                  MR. CHEWCASKIE: Oh, is it?
 2
                  THE COURT: -- against --
 3
                  MR. LAMB: No, the -- well, one of the
 4
       members of the Polo Club is a complaining witness, but
 5
       the Township has obtained a conviction against Mr.
 6
       Smith who is sitting at the counsel table.
 7
                  THE COURT: And it's an appeal of the
 8
       conviction?
                  THE COURT: Can
 9
10
                             Can you see when the appeal of
11
       the conviction against Mr. Smith --
12
                  MR. LAMB: We don't --
13
                  THE COURT: -- for a Municipal action is
14
       before her?
15
                  MR. CHEWCASKIE: Are you appealing it?
16
                  MR. SMITH:
                             Yes.
17
                  THE COURT:
                              I think it's before Judge Mizdol
18
                  MR. WILLIAMS:
                                 Yes.
19
                  MR. LAMB: We --
20
                  THE COURT: It is?
21
                  MR. WILLIAMS: He's appealing it, yes.
22
                             If I may, Your Honor?
Yes, but just -- yes?
                  MR. SMITH:
23
                  THE COURT:
24
       appealing it before Judge Mizdol?
25
                  MR. SMITH: I'm appealing -- yes, I'm
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32
 1
       appealing the Municipal conviction. I'm not sure which
 2
       judge it's before.
 3
                 THE COURT: Okay. We're going to try to
 5 6
       track that down because I thought all the --
                 MR. CHEWCASKIE: But it was not -- it was not
       a zoning violation, Judge, it was a separate action --
 7
                 THE COURT: No, I under --
 8
                 MR. LAMB:
                            This is --
 9
                 MR. CHEWCASKIE: -- and it's not part of the
10
       settlement.
11
                 MR. LAMB:
                           It's a separate quasi criminal
12
       action which we -- frankly I heard that there was an
13
       appeal, I haven't seen a document that -
14
                 THE COURT: So -- but the Municipal
15
       Prosecutor, yes?
16
                 MR. LAMB:
                            The Municipal Prosecutor
17
       prosecuted it.
18
                 THE COURT: Correct. I'm just making sure --
19
                 MR. LAMB: Yeah.
20
                 THE COURT:
                            -- we're all on the same page as
21
       -- as opposed to the Municipal appeal of Judge --
22
                 MR. LAMB: Correct.
                                      That's a -- yeah, a
23
       Municipal zoning ordinance and ordinance summonses
24
       which are their 38, that's the action that Mr.
25
       Chewcaskie referred to.
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                  THE COURT: That's the -- was from Judge
 2
       McGeady to Judge Foti, yes?
 3
                  MR. CHEWCASKIE: Correct.
 4
                  THE COURT: That's the 2338491 is what would
 5
       be dismissed?
                      Correct?
 6
                  MR. LAMB: Correct.
 7
                  THE COURT: The appeal would be withdrawn?
 8
       Let's use the correct --
 9
                  MR. WILLIAMS: Yes.
10
                  MR. CHEWCASKIE: 233-SC-8491, correct, Your
11
       Honor.
12
                  THE COURT: But so I --
13
                 MR. LAMB: Once this thing is --
14
                  THE COURT: Just so that I have an
15
       understanding though, because when we say all actions,
16
       I need to define that. You're not dismissing your
17
       appeal of the Municipal action for which you alone were
18
       found guilty that we might have before Judge Mizdol?
19
       Is that --
20
                 MR. LAMB: I have nothing to do with that,
21
       yes, that's correct.
                 COUNSEL: Yes, yes.
COUNSEL: That's correct, Your Honor.
22
23
24
                            That's correct.
                 COUNSEL:
25
                 THE COURT: So that action is carved out?
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                 COUNSEL: Correct.
 2
                 THE COURT: And would take it's natural
 3
       course?
 4
                           Yes.
                 COUNSEL:
 5
                          And we --
                 COUNSEL:
 6
                 THE COURT: The only Municipal action, appeal
 7
       action then, would be the one before Judge Foti that,
       thank you, counsel, you put on the record, that's the
 8
 9
       only one that would be withdrawn?
10
                 MR. CHEWCASKIE: And those were specifically
11
       defined in the agreement, Judge.
12
                 THE COURT: Okay.
13
                 MR. WILLIAMS: The other -- the other -- and
14
       again, I apologize, --
15
                 THE COURT: Are there any other actions? Let
16
       me -- let me get this.
17
                 MR. CHEWCASKIE: No, Your Honor.
18
                 THE COURT: Is there absolutely any other
19
       action I don't know about?
20
                 MR. WILLIAMS: There's -- just to be full
21
       transparency, there's another Municipal Court criminal
22
       action against Chief Perry who was supposed to be tried
23
       at the same time as Mr. Smith, but he changed attorneys
24
       and that has not been decided yet, so that's also not
25
       part of this.
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THE COURT: And is -- as complainant are they withdrawing their -- the Prosecutor can still seek to prosecute -- the Prosecutor can always seek to prosecute it regardless of whether a complainant says it was a misunderstanding.

MR. WILLIAMS: No, the complainant is not withdrawing any of those, that's -- that has the -- that has -- that's a separate criminal action.

MR. SMITH: If I may, Your Honor? From what I understand, it was a private warrant that was taken out by the Polo Club against myself and Chief Perry, so it wasn't the State. And also, Chief Perry's lawyer has — is in the process or has filed a motion —

THE COURT: A motion to dismiss probably. But what occurs is the Prosecutor can seek to prosecute regardless, with or without a complainant. The complainant comes in, says this is what I believe was violated and the municipality chooses -- there's -- after -- I mean --

MR. SMITH: Well, there's -- there's -- THE COURT: That will take its course

regardless --

MR. SMITH: Yeah. I mean just for clarification sake, I don't know if it's relevant to this, but I believe --

THE COURT: Don't say anything about the case. Don't put it -

MR. SMITH: I'm just saying procedurally.

THE COURT: Okay.

MR. SMITH: Okay? There was a -- an action filed in the Superior Court, Bergen Superior Court, even though this matter is still in the Municipal Court for a de minimis --

THE COURT: Which is fine, okay, before Her Honor. Okay.

MR. SMITH: Yeah.

THE COURT: I'm only being protective of you. I'm not trying to cut you off, I'm just trying to be protective of you.

MR. SMITH: Thank you.

THE COURT: Okay? Don't take any offense.

I'm just saying don't -- because -- right?

MR. SMITH: Yeah, I'm just trying to be

precise, that's all.

MR. LAMB: Judge, last one, last action that has anything to do with this, there is criminal charges filed against a Mr. Molt (phonetic) which is pending in the Prosecutor's Office. He's currently in jail.

THE COURT: Who's Mr. Molt?

MR. LAMB: He was a RMI member who used a

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 1
       shotgun to shoot out the street lights in the
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       Association and break the -- damage the security
 3
       cameras, allegedly, and also take the name plate of
 4
       Ramapough Hunt and Polo Club on the bridge and throw it
 5
       in the river.
 6
                  THE COURT:
                             Where's -- what's the -- hold on,
 7
       what's the status of that case?
 8
                 MR. LAMB: That case, the last time -- last
 9
       Monday, I believe, Mr. Molt declined a plea bargain and
10
       that -- apparently there's still discovery going on
11
       with the Prosecutor's Office.
12
                 THE COURT:
                              Okay.
                                    So that case is with the
13
       Prosecutor's Office?
14
                 MR. LAMB:
                            Yes, yeah, the County Prosecutor's
15
       Office.
16
                 THE COURT: They didn't -- they didn't kick
17
       it down?
18
                 COUNSEL:
                           No.
19
                 MR. LAMB:
                            No. It's a -- it's a felony.
20
                 THE COURT: Because he had a firearm?
21
                 MR. LAMB: A firearm and the amount of damage
22
       he did.
23
                 THE COURT:
                             And he was on the other property?
24
                 MR. SMITH:
                            Your Honor, if I may?
25
                 THE COURT:
                             Yeah.
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                  MR. SMITH: Mr. Molt is not a member of the
 234567
       Ramapough Mountain Indians, --
                  THE COURT:
                              Okay.
                  MR. SMITH:
                              -- he's a member of the Mohawk
       Tribe.
                  THE COURT:
                              Okay.
                  MR. SMITH: And he's -- he's not incarcerated
 8
       right now.
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                  MR. LAMB:
                             Oh, then --
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                 MR. SMITH: And the last hearing was actually
11
       related to discovery matters.
12
                 THE COURT:
                              I'm not -- okay, --
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                 MR. SMITH:
                              It was a status hearing.
14
                 THE COURT:
                              I'm not making any findings, I'm
15
       just trying flush out what's out there. I make no
16
       findings whether it occurred or didn't occur, they're
17
       only allegations, the matters not to me, if he's in
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       jail or not jail, I'm just trying to see what bearing
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       it would have on here.
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                 MR. SMITH:
                              Yeah, I just wanted to --
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                 THE COURT:
                              Okay.
22
                              -- make sure that we protected he
                 MR. SMITH:
23
       record.
24
                 THE COURT:
                             Yeah, that's okay.
25
                 CHIEF PERRY: I would submit that that's a
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good example of people abusing, being abusive with 2 their own authority because this is continuously 3 pushing legal matters on people that don't have a 4 wherefor all and then victimizing themselves. 5 THE COURT: Those are pretty serious 6 allegations, sir, I don't --7 CHIEF PERRY: Definitely. 8 · THE COURT: Generally the Prosecutor's Office 9 doesn't take a case unless they -- not generally, 10 professionally it's against the RPCs for them to take a 11 case that they don't believe they can prove beyond a 12 preponderance of the evidence. 13 MR. LAMB: It's all on videotape too. THE COURT: Not even by a preponderance, it's 14 15 the lowest standard to indict and then it gets to 16 reasonable doubt, but --17 MR. LAMB: It's on videotape too, Judge. 18 THE COURT: What? 19 MR. LAMB: It's on videotape allegedly. 20 THE COURT: Oh boy. 21 CHIEF PERRY: Allegedly. 22 THE COURT: If she needs --23 MR. LAMB: If that's a school nurse though, 24 Judge, go head. 25 THE COURT: It is, I don't --.

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(OFF THE RECORD; 2:03:20 to 2:09:59)

THE COURT: When last we left --MR. CHEWCASKIE: The last items, Judge, is that the Township, pending the period of review and the removal of the structures pending review by the Zoning Board, will suspend any fines that have been assessed by Judge McGeady and will not take any further enforcement action.

THE COURT: But they're suspended and then eradicated once everything's been moved? The condition

MR. CHEWCASKIE: Once -- once the Board of Adjustment makes its determination. Has to be -- the Board of Adjustment has to go through to conclusion. It doesn't matter what the decision is, Judge, it's that, you know, they -- they go away.

THE COURT: It's not upon their application?

MR. CHEWCASKIE: No.

THE COURT: I mean you're keeping this --MR. CHEWCASKIE: Because the application could be filed and then it's withdrawn, that's what happened with the earlier application.

MR. LAMB: I have no problem with that. MR. CHEWCASKIE: It has to be adjudicated

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before the Board.

THE COURT: Okay. And you have no problem with it? All right. And have you heard? You have? Excellent.

MR. LAMB: I'm still -- the last two comments, and again, I'm talking to the president and, you know.

THE COURT: That's okay.

MR. LAMB: Apparently, still people are living there and I just want to have no misunderstandings.

THE COURT: Part of the condition is that no one is living there.

MR. LAMB: Right, nobody's going to use it.
THE COURT: They don't -- you don't believe
anyone is living there, but if they are, you're
acknowledging no one can live there?

CHIEF PERRY: No one can live there. The person that's living there has a room at Ramapo College, he's a student, he goes in and out to see what garbage has been dumped on our land.

MR. LAMB: Okay, so that's -- so no one's living there.

THE COURT: Okay.

MR. LAMB: And the other thing is whether the

-- the question is whether the RMI had liability insurance because they have to get to the property, they have to go over the bridge owned by the Association and it's roads. So if they want to continue to use the property, the concern is -
THE COURT: Yeah. So that's not a -- they now have no term for insurance, so let's call them back and --

MR. LAMB: I'm just -THE COURT: Right. So relay to him that's a
no. You can come -- why don't we have him come down?
Because I need this to be resolved. This is not -this piecemeal is not a good --

MR. LAMB: I --

THE COURT: -- situation. So we can order him down, they're here, they've been here, this is the third time they're here, they should know the efforts for which you've undertaken on their behalf. Mr. Kelly has been here on behalf of the Borough. What's the gentleman's name, the --

MR. LAMB: It's a woman, Deborah Brill. THE COURT: Have Ms. Brill down.

MR. LAMB: Hold on.

UNIDENTIFIED: Have Greg come with her.
THE COURT: Anything in terms of the terms?

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       Yes?
 2
                 MR. WILLIAMS:
                                No.
 3
                 THE COURT: Okay.
 4
                 MR. WILLIAMS: I was just going to say I have
 5
       to leave.
 6
                 THE COURT: Okay. I just want to make sure
 7
       because I'm going to ask your client.
 8
                 MR. WILLIAMS:
                                 Okay.
 9
                                 We're (indiscernible)
                 UNIDENTIFIED:
10
       progress.
11
                 THE COURT: Excellently done.
12
                 UNIDENTIFIED: Maybe. Not on resolving it,
13
       but out of your hair.
14
                 THE COURT: Oh. All right. But we're good
15
       for Friday regardless, right?
16
                 UNIDENTIFIED: Pending the client being back,
       availability, yes.

THE COURT: Somebody needs to reach out.
17
18
                 UNIDENTIFIED: Counsels are both on board,
19
20
       we've already reached out.
21
                 THE COURT: All right. Okay.
22
                 UNIDENTIFIED:
                                E-mail and voice mail.
23
                 THE COURT: Let's have them reach out again.
24
                 UNIDENTIFIED: We're doing our best.
25
                 MR. LAMB: I'm reaching out, I'm --
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       THE COURT: Yeah, why don't we call? Yeah, let's -- why don't I call? You want to give me the
 2
       phone number or does that you put you at a bad
 5 6
       position? Because I have lots of other --
                                  (Indiscernible) making a call,
                  UNIDENTIFIED:
       but I made a proposal if Your Honor wants to --
 7
                  THE COURT: Yeah, why don't you come up and
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                 We'll pause while they do that.
       tell me?
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                  UNIDENTIFIED: Okay.
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                  (OFF THE RECORD; 2:13:46 to 2:18:44)
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13
                  THE COURT: I'm going to ask some questions.
       All right, we're back on the record. So, last we left
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15
       off was the concerns for insurance which is not --
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                  MR. LAMB: Judge, excuse me, for the record
17
       she's in St. Martin.
18
                  MR. CHEWCASKIE: We have to fly down there,
19
       Judge.
20
                  MR. LAMB: We have to.
21
                  MR. CHEWCASKIE: We can be there tomorrow.
22
                  THE COURT: Insurance is not proposed, nor do
23
       I think a viable --
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                  MR. WILLIAMS: It's not an issue. For the
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       record, they have insurance but I don't think -- it was
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not part of my --
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THE COURT: Agreement? MR. WILLIAMS: -- discussions with the Town. MR. LAMB: Can I just make a statement? It's -- I understand we're not going to make it part of this. If we want to try to ruffle, you know, like to eliminate some of the problems, I've had insurance spoken to me about all these people and their coming in and they're going over our bridge and they're going down our roads and what happens if somebody gets hurt and they have to have insurance. And so do what you want, but -

THE COURT: Yeah, but you won't get that from The Court's not the Court.

MR. LAMB: No, no, no, I'm just --THE COURT: Yeah, yeah, so all right. I know they want it, but if they -- you know --MR. LAMB: I'm just suggesting if they may have it and put the Association as an additional named insured, which doesn't cost any money, --

THE COURT: That's not true. Every day of my -- that's not true. MR. LAMB:

I -- I --

THE COURT: That's not true. Adding and -- a whole Association as additional insured you think is

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not going to cost more money?
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MR. LAMB: No.

CHIEF PERRY: Well, this is erratic people in that Association, --

THE COURT: Yeah.

CHIEF PERRY: -- and we don't want to be responsible.

MR. WILLIAMS: All right, all right, all right, okay, all right, don't worry about it.

MR. CHEWCASKIE: Judge, I'm finished.

THE COURT: I know you are. So now we're just waiting for either her to call in, us to call her

or what the plan is here. MR. CHEWCASKIE: Do you want to voir dire my clients?

THE COURT: I'd rather voir dire once I have that.

MR. CHEWCASKIE: Well if she's in St. Martin I don't know what we're doing.

THE COURT: That's all right. Counsel Lamb is diligently typing away there.

MR. LAMB: Okay, I asked her to call me, but I think we're getting there.

THE COURT: So assuming the insurance is off the table, what was the other concern, just so I --

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MR. LAMB: The -- the --
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THE COURT: Because I think I cut you off in

the process of --

MR. LAMB: You've confirmed that no one's staying there overnight anymore, so that's -- that's fine.

THE COURT: Correct. But so that language is going to go into this agreement?

MR. CHEWCASKIE: Correct, Judge.

THE COURT: Right? You're adding -- I just

want --

MR. LAMB: The -- we didn't address the maximum number of cars that can park there for their larger groups which I thought they said they -- Tom Williams suggested 15 cars.

THE COURT: All right, see I hadn't -MR. WILLIAMS: That wasn't part of the
agreement, that was just part of the discussion.

THE COURT: Okay.

MR. LAMB: Okay, let me call her, she just

said she'll take it, --

THE COURT: Excellent.

MR. LAMB: -- she'll catch my phone call.

Okay.

THE COURT: Okay, let's go off the record.

(OFF THE RECORD; 2:21:44 to 2:39:59)

MR. LAMB: Judge, I have had a conversation with my client in St. Martin. She told me that she specifically stayed on the part of the beach that has cell service. She apologizes, she would have been here and changed her trip if she would have known, but she didn't know.

THE COURT: No, that's okay.

MR. LAMB: So I've strongly recommended that she recommends to the Board and the homeowners and she believes she -- she -- I've answered her questions and she will recommend it.

THE COURT: Okay. So the issue regarding the insurance won't be a problem --

MR. LAMB: Correct.

THE COURT: -- and the parking won't be a problem but the inclusion will be that no one will be -- no one currently nor in the future can live there without some other development. Yes?

COUNSEL: Yes.

THE COURT: So -- and then, counsel, you're going to include that provision in the global -- did you put it in already?

MR. CHEWCASKIE: That's correct, Judge.

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MR. WILLIAMS: What?
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CHIEF PERRY: Nobody can live there.

MR. WILLIAMS: Right.

CHIEF PERRY: But how that became a position was that we had people, including Mr. Smith, stay there for security purposes, both for health and safety and because --

MR. WILLIAMS: Okay. But no one can live there. Okay?

CHIEF PERRY: Yeah, no one's living there.

THE COURT: Okay.

CHIEF PERRY: But I'm just saying if you see somebody there overnight they're not moving in, they're

MR. WILLIAMS: All right. CHIEF PERRY: Or two or three people around. MR. LAMB: Well, let me just -- let me get a clarification of that. There's no camping there until -- unless they say I want to -- what they wanted to do

and the Board of Adjustment approves it. I -certainly they can have somebody there for the security, but they can't stay there.

THE COURT: Someone's not staying overnight is all they're saying. You of course can be there during this period where you have -- any time you have

1 these 18 events, that's completely understandable, you 2 want to watch over your congregation, but people 3 shouldn't be staying there overnight. 4 CHIEF PERRY: Well, what we've had is people 5 cutting tents, putting in Swastikas, doing a lot of --6 a variety of vandalism. 7 THE COURT: None of that should be -- but --8 CHIEF PERRY: And that's why -- how we come 9 about it. 10 THE COURT: So -- and if -- then you can call 11 the municipal police department if you are there --12 CHIEF PERRY: Okay. 13 THE COURT: -- and if someone is doing that -14 15 MR. LAMB: They should call the police. 16 CHIEF PERRY: So can we sit in the car then 17 and not the tent? Because the idea was --18 MR. WILLIAMS: Don't even -- look it --19 CHIEF PERRY: Just to check the property. MR. LAMB: You're going to be -- you're trying to protect a piece of vacant land. If some --20 21 if you see anything, you know, you call the police.

THE COURT: Neither side should be -- not, 22 23 24 when I say -- the municipality, I don't include in either side, the municipality of course is -- can

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51 police as appropriate. I'm talking about the Polo Club 2 or the Ramapough Indians. It's neither of your 3 obligation to police. Your obligation is to call the 4 police department, report if you see something, and 5 it's their obligation to police. All right? Okay? 6 CHIEF PERRY: Well, I mean --7 THE COURT: No. It -- no. 8 CHIEF PERRY: People see things, that they 9 shouldn't have been on our property. 10 THE COURT: If you see something you call and 11 you say something. You should not be policing the 12 property. 13 CHIEF PERRY: See something, say something. 14 MR. LAMB: I can tell you, Your Honor, that 15 even though the property is designated Green Acres and 16 it's supposed to be open to the public, --17 THE COURT: Right. 18 MR. LAMB: -- I have strongly recommended to 19 the Board to tell the homeowners they should not set 20 foot on the property. 21 CHIEF PERRY: Thank you. 22 THE COURT: Okay. But it's Green Acres 23 property. I'm not telling that no one can set foot. 24 MR. LAMB: Yeah. 25 THE COURT: There's a distinction, but I mean

52 we really -- I feel -- we don't need to digress to this 2 level: It's Green Acres property, that doesn't mean 3 someone can't set foot on the property. I'm telling 4 you, neither side, the municipality can -- whatever 5 police officer wants to go, they're entitled to go 6 there and police as their -- within their police 7 functions. Neither party outside of the municipality has or is charged with police authority to do it. Both sides will run amuck if they do that. Right? We 8 9 understand that. You're shaking your head, so all 10 11 right. 12 Now to recap. You've spoken with Ms. --13 forgive me, I didn't take her name down. 14 MR. LAMB: Deborah Brill. 15 THE COURT: Ms. Brill. 16 MR. LAMB: B-R-I-L-L. 17 THE COURT: Ms. Brill is recommending the 18 settlement as set forth on the record with no other 19 provisions. Correct? 20 MR. LAMB: The only issue was the 80 -- the 21 only issue of concern was the four events of 80 people 22 23 THE COURT: But no, I wanted you to ask her 24 about that now. I wanted that to be --25 MR. LAMB: I -- she said she -- she said she

would recommend the whole thing without qualification.

THE COURT: Okay. So she's going to recommend the whole thing without qualification subject to the Trustees' approval as is, as well as your perception that it might need past Trustee approval. Right?

MR. LAMB: No, homeowners' approval. THE COURT: Homeowners?
MR. LAMB: There's members, it's an

Association with members.

THE COURT: Yeah, Board of -- it's a what?
MR. LAMB: Board -- it's a Homeowners'
Association, so there's a Board of Trustees of five
people --

THE COURT: Trustees plus, um-hm.

MR. LAMB: -- and then the homeowners, the

members are 29 members.

THE COURT: Okay. And so generally, when I do these subject to settlements, I say it's 30 days. Is this accomplished within 30 days, gentlemen? Or do you need 60 days?

MR. LAMB: I think you should do 15 days

frankly, Your Honor.

MR. CHEWCASKIE: Judge, I -- I -- my meeting is the 22nd, it should be the 30 days.

24 25

THE COURT: Thirty days.

CHIEF PERRY: And I think we could use -- I would say 60 days but I -- we'd even be good with 45 days, but it has to be qualified in terms of weather permitting. For instance, it rained today, tomorrow, you're finished for a week. We were -- we were -- because of this it's got a lot of -- there's been approximately 15,000 to 20,000 yards of topsoil taken off our property.

THE COURT: You just -- sir, you need to -- you need to --

CHIEF PERRY: Well, what I'm saying is the weather would determine it. I don't want to say 15 days and then it rains for a week and you can't get on it for 30 days.

MR. CHEWCASKIE: I think what -- Chief, we're talking about something different. This is for the approval of the settlement.

THE COURT: The approval. You're the -- CHIEF PERRY: Oh, I'm sorry.

THE COURT: You told me you've already talked to your -- you're the least of my worries because you've said to me you -- I know you've done your job.

CHIEF PERRY: I misunderstood, I thought you

meant --

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THE COURT: You've talked to them all and have authority. You're just reporting back to them because you've already got --

CHIEF PERRY: I apologize.

THE COURT: No, that's okay, because you already have authority for 99 percent of this, you're just clarifying the extra little icing on the cake.

CHIEF PERRY: Okay, it's just the time to get it approved, that's what you meant, so I'm sorry.

THE COURT: No, no, I'm just making sure that they have enough time for the Governing Body.

CHIEF PERRY: Oh, let me apologize to all of

you.

THE COURT: So 30 days?

MR. LAMB: Thirty days, Judge.

THE COURT: All right. So -- all right. now let's double back. So 30 days and then did you write these provisions out there so that we can just have all three attorneys sign it?

MR. CHEWCASKIE: Well, I'm just making notes, Judge. We'll have -- I have a formal agreement and I'm still waiting --

THE COURT: No, no, I know, but I want your -- I just want that little memo of understanding, that's -- I remember your --

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MR. CHEWCASKIE: Well, I did not -- I was referring to the agreement which I had in my iPad and I have the -- the additional notes that I meant -- that I

THE COURT: Well, do you want to just pull out the ones that you read on the record and e-mail them to my clerk and we'll just print it out in a rough form and you can each sign it?

MR. CHEWCASKIE: Well, I -- I wrote them down, Judge. I have the settlement agreement which I referenced and as we put on the record --

THE COURT: All I want is the provisions you read on the record signed. That's all I have, so I can keep a copy.

MR. CHEWCASKIE: Well, I don't think it can do that now.

THE COURT: Why not?

MR. CHEWCASKIE: Because I was referring to

the -- to the agreement for the salient --

THE COURT: So e-mail the agreement and then you'll just -- we'll cross out what -- I just want what you -- because for me to get -- I can't order transcripts, I don't have the ability to pay for a transcript unless I pay for it out of my own pocked. MR. CHEWCASKIE: Well, I'm -- I -- but what I

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       indicated, I'm ordering the transcript to incorporate
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       it into the agreement. We're going to have the --
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                  THE COURT: But I want -- I -- before you
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       leave I want those. You only read --
 5
                  MR. WILLIAMS: Yeah, with all due respect,
 6
       Your Honor, I won't be able to stay to do that.
 7
                  THE COURT:
                              Okay.
 8
                  MR. WILLIAMS:
                                 Okay?
 9
                  THE COURT: We're going to do it right now.
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                  MR. WILLIAMS: I mean I can stay --
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                  THE COURT: Gentlemen, listen, respectfully,
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       I like you all, I -- this is your third day here, I
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       want those provisions for myself right now. So thank
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             All right, that being said, while they do that
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       I'm going to have a hard copy, I'll give you a hard
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       copy, it won't take long. Can you grab Matt so Matt
       helps them? Unless you have a hard copy, unless you have what's written there in your --
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19
                  MR. CHEWCASKIE: Well, I'm going to re-write
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       it, Judge.
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                  THE COURT: All right.
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                  MR. LAMB: Why don't you just take the hard
23
       copy?
24
                  MR. CHEWCASKIE: Well, no, a hard copy is
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       here if you want to -- I can --
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                 THE COURT: Well, that's why I thought if you
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       just e-mailed it, right?
                 MR. CHEWCASKIE: Who do I e-mail it to?
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                 THE COURT: She's giving it to you. And then
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       what all you're going to do is pull out the --
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                 MR. CHEWCASKIE: Change it.
 7
                 THE COURT: You all have done this huge
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       effort already. Right? Just take out -- the
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      provisions you read, just take out what was not agreed
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       to and we'll print that. Right? Because what I have
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       is not the last -- I have -- my agreement is from three
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      weeks ago.
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                 Can you warn Matt so he can print out?
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                 And I know you all know why I'm doing this,
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      because last time every word was --
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                 MR. CHEWCASKIE: I just send the agreement.
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                 THE COURT: With the piece -- pulled out
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      pieces?
                Or you want --
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                 MR. CHEWCASKIE: It's the -- it's the
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       agreement which we can modify.
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                 THE COURT: Excellent.
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                 (OFF THE RECORD; 2:49:16 to 3:01:05)
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                 THE COURT: We're back on the record and
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please remain seated. You've both been put under oath, right? So I'm going to ask all the questions and all I'm going to ask is that you say yes, you agree, or no, you don't. Okay?

VOIR DIRE OF CHIEF DWAINE PERRY AND STEVEN SMITH, PREVIOUSLY SWORN, BY THE COURT:

THE COURT: You've heard the terms and conditions as set forth on the record. Correct?

CHIEF PERRY: Correct.

MR. SMITH: Yes.

THE COURT: And you've had an opportunity to go through each of the provisions as set forth in the document that counsel is putting signature lines on now. Yes?

CHIEF PERRY: No.

MR. SMITH: What was the question?
THE COURT: The provisions counsel has gone through with you, over all the provisions, he's agreed that he's gone -- he's just reviewed it himself, your attorney's just reviewed it himself. Right? And agreed that that memorializes the settlement that you

CHIEF PERRY: Yes.

heard put on the record. Yes?

THE COURT: Do you agree to the terms as set forth on the record and memorialized in the writing?

CHIEF PERRY: I think I'm going to need some clarity, but --

THE COURT: Well, I don't know what that -MR. WILLIAMS: Excuse me, Judge.
Do you agree to the settlement?
CHIEF PERRY: Yeah, I agree to the

settlement.

THE COURT: Right. All the provisions of the settlement that have been put forth on the record and that are in the agreement. Yes?

CHIEF PERRY: Yes.

MR. SMITH: Yes, subject to the approval of our Council as per the agreement.

THE COURT: Okay. But you've told me almost all these provisions, you've been here not just today but previously, --

MR. SMITH: Correct.

THE COURT: -- almost all these provisions you've already gone through and gotten approval from your membership. Correct? As Chief? In your capacity as Chief?

CHIEF PERRY: Right.

THE COURT: In your capacity as Chief?

Right?

CHIEF PERRY: Right.

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                 THE COURT: So there's very few of these that
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       are really going back to the Board because the vast
 3
       majority you already have agreement on, yes?
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                 CHIEF PERRY: I believe so, yes.
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                 THE COURT: Okay. And so do you have clarity
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       of mind today?
 7
                 CHIEF PERRY: Yes.
 8
                             Yes.
                 MR. SMITH:
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                 THE COURT: You're not under the influence of
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       anything?
                  Drugs, alcohol? And these are standard
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       questions. Alcohol, anything that would render you
12
       unable to understand? No, correct?
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                 CHIEF PERRY: Correct.
14
                 THE COURT:
                             You're not taking anything? No?
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                 MR. SMITH:
                             No.
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                 THE COURT:
                             Okay. And you've had the advice
       of counsel, right? I've seen, as your attorney has
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       been here multiple days and has been calling you,
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       talking to you, talking to you in the hallway, talking
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       to you here.
                    Right?
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                 CHIEF PERRY: Correct.
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                 MR. SMITH: Yes.
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                 THE COURT: You're satisfied with counsel's
24
       representation?
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                 CHIEF PERRY: Yes.
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                  MR. SMITH: Yes.
                  THE COURT: He's answered all of your
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       questions?
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                  CHIEF PERRY: Yes.
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                  MR. SMITH: Yes.
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                  THE COURT: All right. You understand once
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       this matter is settled and finalized it's a full and
 8
       final resolution of all the enumerated actions that
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       have been set forth on the record and that are
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       contained in this settlement agreement.
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                  CHIEF PERRY: Correct.
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                  MR. SMITH: Yes.
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                  THE COURT: Okay. Do you have any question
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       for me any question for counsel, other than all the
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       ones we've already got, you know, answered so far?
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                  CHIEF PERRY: I think we're fine.
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                  THE COURT: You're good?
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                  MR. SMITH: For the record, this is subject
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       to approval of our membership and Council.
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       THE COURT: Well, when you say that, here's what's just worrying me, is that you've already
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22
       represented -- it's been represented to me that almost
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       all of this has been agreed to.
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                  CHIEF PERRY: Well, I'd like to take it back
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       and have -- and say this is what it's going to be, not
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this is what we're working on.

THE COURT: No, but when I say what's working on, is that you've been here three times before, this is your third or fourth time. The vast majority of this is represented to me you've already discussed and had a meeting about and gotten your membership to agree

CHIEF PERRY: Well, I think it's not going to be a problem, I think -

THE COURT: Okay.

CHIEF PERRY: -- formally I need to go back there and say that we did a vote on this.

THE COURT: Okay.

CHIEF PERRY: You know what I mean? I'm sure somebody will have questions, but they're going to want to have the professional courtesy to ask the questions.

THE COURT: All right. But you see no reason why, based upon your understanding of what's been agreed to previously that this will --

CHIEF PERRY: Yeah, at this point I don't see

any problem.

MR. SMITH: Yes, conditioned upon the -- the ultimate approval of -- of, you know, our membership, just -- just as the Polo Club has to get approval, just as the Town --

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THE COURT: Right.

MR. SMITH: -- in the same way.
THE COURT: So here's the little difference, because you're in a little different vantage point because already you've -- so Mr. Kelly has come in and there was previously addressed things that were approved on your side, it's my understanding things have also been approved. We've just tailored or fine tuned this. So it's my understanding the vast majority of this is already agreed to. Correct? I'm looking at you because you're the Chief and that was my understanding.

CHIEF PERRY: Yeah, I'm listening, I'm just saying I --

THE COURT: So you're bringing back just the global agreement? Yes?

CHIEF PERRY: Well, primarily. And there's going to people that's going to want to pick it apart, but that's -- I agree to it, I'll -- I said I gave my word.

THE COURT: No, I'm not questioning your word, I'm just making sure that I understood correctly. CHIEF PERRY: Yeah. I mean I don't foresee a different outcome of myself to take it there. THE COURT: Okay.

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CHIEF PERRY: You know?
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THE COURT: All right. And so there's no questions for myself or for counsel? Correct?

No, no questions. All right. MR. SMITH:

THE COURT:

Counsel, do you have any questions?

MR. CHEWCASKIE: No, no questions, Judge. We've provided you with the writing indicating the settlement was put on the record before Your Honor today and as indicated it will be subject to the approval of the Township Council which it was going to be recommended and that action should occur on March 22.

THE COURT: And Mr. Kelly has also advised you that you have apparent authority to tell me he's recommending it?

MR. CHEWCASKIE: Correct.

THE COURT: And you've spoken with Ms. Brill?

MR. LAMB: Correct.

THE COURT: And she has advised that she's

recommending it?

MR. LAMB: That's correct, Your Honor. THE COURT: All right. The only last caveat -- sorry, Counsel Williams, do you say anything on the

record?

MR. WILLIAMS: No, Your Honor. THE COURT: Only caveat is I just need to

know the stage of the litigation so that I can tell all the other judges because this matter is dismissed without -- this matter is dismissed subject to. So I

need to make -- go ahead.
MR. CHEWCASKIE: No, I was going to suggest that those pending motions or whatever they are be adjourned until -

THE COURT: The civil cases are dismissed subject to, that --

MR. CHEWCASKIE: Oh, okay, whatever you want to do.

THE COURT: I'm not going to tell, but what I don't want to have occur is --

MR. CHEWCASKIE: No, I was --

-- some anomaly on the matters THE COURT: before Judge Foti. I don't know what the status of that is and I don't have the ability to dismiss that.

MR. CHEWCASKIE: Yeah. I really don't like the idea of dismissing it in case one of these bodies do not agree to this thing.

THE COURT: If they don't agree a motion is filed and it's said it was subject to and we go back

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                  MR. CHEWCASKIE: With regard to Judge Foti,
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       Judge, I can certainly alert the Municipal Prosecutor -
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 4
                  THE COURT: Yeah, with that --
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                  MR. CHEWCASKIE: -- that -- what's happening
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       and then the matter could either be carried or however
 7
       he wishes to handle it.
 8
                  THE COURT: Correct. They can't officially
 9
       stay it but they can carry it --
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                  MR, CHEWCASKIE: Right.
11
                  THE COURT: -- for final resolution here.
12
                  MR. CHEWCASKIE: That's fine, Your Honor.
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                  MR. WILLIAMS: Yes.
14
       THE COURT: Okay. So what happens is these matters are dismissed. If, within the 30 days, there's
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       an issue I know I'll hear from all of you. I don't
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       have any trepidation or fear that I won't.
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                                 Thank you.
                  MR. WILLIAMS:
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                  THE COURT: All right. Counselors, thank you
20
       for your efforts, thank you for staying, thank you for
21
       making your accommodations personally, thank you for
       getting a hold of Ms. Brill in St. Martin.
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23
                 MR. LAMB: In St. Martin. She -- I asked her
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       to send a picture of the beach.
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                  THE COURT:
                             Yeah, right, exactly. Thank you
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        for --
 2
                   MR. WILLIAMS: And can I get a copy?
 3
                    MR. LAMB: Can we get a copy?
 4
                    THE COURT: Yeah, I'm going to get --
 5
        everybody's going to get a copy.
 6
                   MR. CHEWCASKIE: Okay, thank you.
THE COURT: Thank you for doing that.
 7
 8
                   MR. LAMB:
                                Thank you, Your Honor, and I hope
 9
        your son feels better:
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                   THE COURT: Thank you.
11
12
                            (END OF PROCEEDINGS)
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CERTIFICATION

I, DOLORES S. HASTINGS, the assigned transcriber, do hereby certify the foregoing transcript of proceedings of February 28, 2018, digitally recorded, index number from 1:27:03 to 3:08:09, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

/s/ Dolores S. Hastings
Dolores S. Hastings AD/T 417
APPEALING TRANSCRIPTS, INC.
CLARK, NEW JERSEY

15 1 m e

March 5, 2018

EXHIBIT P

Case 2:18-cv-09228-CCC-JBC Document 12-5 Filed 06/07/18 Page 1 of 16 PageID: 136

United States District Court

For The District of New Jersey

RAMAPOUGH MOUNTAIN INDIANS, INC.,

Civil Action No. 2:18-cv-09228

and

RAMAPOUGH LENAPE NATION,

Plaintiffs

V.

TOWNSHIP OF MAHWAH,

RAMAPO HUNT & POLO CLUB ASSOCIATION, INC.

GERALDINE ENTRUP,

THOMAS MULVEY,

JOHN and JANE DOES 1 THROUGH 14,

JOHN DOE ENTITIES 1 AND 2

Defendants

DECLARATION OF CHIEF DWAINE PERRY IN SUPPORT OF PLAINTIFF RAMAPOUGH LENAPE NATION held a Zoning Permit. Each Complaint threatened that if the Ramapough continued prayer and community cultural assembly at Sweet Water, it would incur \$1,250 in penalties, six months of jail time, and another six months of community service.

- 51. On January 2017, Ramapough representatives met with the Township to attempt to address the Township's concerns. The Township demanded that the Ramapough prepare, at great cost and effort, another Zoning Permit application, despite the fact that the Ramapough already held a Zoning Permit.
- 52. After negotiations failed to lead to an agreement, Mahwah started to issue daily summonses for alleged zoning violations in May of 2018.
- 53. The Bergen County Superior Court dissolved a temporary restraining order on June 17, 2017.
- 54. On September 7, 2017, Kathleen Murray, a member of the Polo Club who has displayed deep-seated prejudice against the Ramapough for years, filed an application with the Zoning Board seeking to revoke the January 2012 Zoning Permit.

Case 2:18-cv-09228-CCC-JBC Document 12-5 Filed 06/07/18 Page 16 of 16 PageID: 151

- 59. At a hearing on that date, Mahwah told the Court that it could use "self-help" or "actual enforcement" regardless of how the Court ruled. I interpreted this as a threat to unilaterally stop Ramapough and allies from simple prayer and to destroy our sacred sites.
- 60. On April 24, 2018, without approval from the Bergen County Superior Court, Mahwah began to issue coercive fines based on summonses to prohibit prayer and use of our Stone Altar and Prayer Circle. Those fines are based on ten summonses per week day of up to \$12,500 per day which, as of the date of this declaration, are almost \$600,000.

I declare pursuant to 28 U.S.C. § 2486 and hereby swear under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief."

DATED: June 2, 2018

Chief Dwaine Perry

EXHIBIT Q



Township Of Mahwah

Municipal Offices: 475 Corporate Drive P.O. Box 733 • Mahwah, NJ 07430 Tel 201-529-5757 • Fax 201-512-0537

Property Maintenance x 246

Zoning/Planning Board x 245

VIA ELECTRONIC AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 17, 2018

Chief Dwaine Perry Ramapo Mountain Indians, Inc. 189 Stag Hill Road Mahwah, New Jersey 07430

Re:

95 Halifax Road

Zoning & Site Plan Violations Block 1, Lot 131

Block 1, Lot 131 Township of Mahwah Our File No. MA-40-47

Dear Chief Perry:

The Township continues to find and experience numerous violations at the above referenced site with respect to uses of the site, structures at the site, failure to obtain site plan approval and Township floodplain and flood hazard areas requirements. Please see our findings below.

Uses and Activities

Our site observations on various days, including yesterday, indicate that the property and structures on site are being used for religious uses (house of worship and prayer groups), public assembly uses and as a campground. These uses at the site are being performed without obtaining the necessary Zoning approval from the Township. Please note that Article 24-11.2c Township Code states:

"Zoning Permits shall be secured from the Zoning Officer prior to construction, execution or alteration of any structure or use of a structure or land."

Proper zoning approval has not been received for the uses and the structures utilized for these uses on site.

In addition, Article 24-4.2a of the Township Code states:

"No building or structure shall be erected and no existing building or structure shall be moved, altered, added or enlarged, nor shall any land or building be designed, used or intended to be used for any purpose or in any manner other than as specified among the uses thereinafter listed as permitted in which building or land is located."

Case 2:18-cv-09228-CCC-JBC Document 29-7 Filed 07/18/18 Page 7 of 30 PageID: 1108 Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 6 of 8 PageID: 118

Chief Dwaine Perry January 17, 2018 Page 2

As you know, the property in question is located in the Township's Conservation (C-200) Zone. As per the Township Code, the following are permitted principal uses in the C-200 Zone:

- 1. Public open space, including hiking, horseback riding, wildlife preserves, arboretums, botanical gardens, historical edifices, woodland areas, hunting and fishing facilities, other similar uses.
- 2. Agricultural uses, farms, subject to subsection 24-6.1, paragraph a.
- 3. Single-family detached residences, with 200,000 sq. ft. minimum lots.
- 4. Municipal facilities.

In addition to the permitted principal uses, a number of accessory and conditional uses are permitted in this zone, none of which would apply to the uses being performed at the site. The uses being performed at the site are clearly not listed as permitted uses in this zone. Article 24-1.3b of the Township Zoning Code states:

"The Zoning Ordinance for the Township shall be viewed as a permissive ordinance. In no instance after the adoption of this Chapter shall any use be permitted in the Township which is not listed as a permitted, accessory or conditional use as specified herein. Any uses not permitted or specified shall be prohibited."

Structures

Based on numerous site observations, we have found many structures on site. As per Article 24-2.2 of the Township Code and NJSA 40:55D-7, a structure is defined as:

"A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land."

Based on our most recent site observation, performed yesterday, we found the following nine (9) structures on-site:

Storage shed located in the woods at the west side of the site.

A canvas cabin located at the north side of the site, to the east of the driveway from Bridal Path Lane.

Prayer circle consisting of logs stuck in-ground (totem poles), former pieces of longhouse.

Portable toilet at the north side of the site, to the west of the driveway from Bridal Path Lane.

Yurt at the north side of the site, to the east of the driveway from Bridal Path Lane.

Pop-up shed located at the east side of the site.

A structure made of lumber with roof and floor (known as kitchen structure).

Sweat lodge at the west side of the site.

Stone altar located at the south side of the site.

As per Article 24-11.2c of the Township Code, see above, Zoning Permits are required prior to construction, execution or alteration of any structure or use of a structure or land.

Case 2:18-cv-09228-CCC-JBC Document 29-7 Filed 07/18/18 Page 8 of 30 PageID: 1109

Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 7 of 8 PageID: 119

Chief Dwaine Perry January 17, 2018 Page 3

It should be noted that in the decision made in Municipal Court by Judge McGeady on November 17, 2017, the structures placed on site were installed without obtaining prior zoning approval.

Site Plan Approval

Site plan approval is required and has not been obtained for uses of the property or for the installation of structures.

Article 22-3.2d of the Township Code states:

"Except as provided in paragraphs b., 1. and 2. herein, all construction, alteration or enlargement of a building, structure or use or change of use or occupancy on or in a nonconforming structure, use or lot shall require site plan approval."

Township Floodplain and Flood Hazard Areas

The structures used on site for religion uses and public activity are located within the floodplain and flood hazard area of the Ramapo River and are not developed above the maximum flood elevation.

Article 24-6.1h(1) of the Township Code states:

"No permanent structure or building or any enlargement of same which is used or designated to be used for housing, commerce, industry or public activity shall be located in a floodplain or flood hazard rea. Exceptions to this restriction shall include uses which are developed above the maximum flood elevation with appropriate access provided or as provided in Chapter XVIII of the Code, as may be amended."

In addition, Article 24-6.1h(3) of the Township Code lists the uses permitted within a floodplain or flood hazard area. These uses are:

- (a) Agriculture and horticultural uses as defined in this Chapter, except for a farmhouse.
- (b) Outdoor recreational facilities, including golf course, ice-skating rinks, swimming pools, parks, playfields and other similar facilities.
- (c) Essential services.

Case 2:18-cv-09228-CCC-JBC Document 29-7 Filed 07/18/18 Page 9 of 30 PageID: 1110 Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 8 of 8 PageID: 120

Chief Dwaine Perry January 17, 2018 Page 4

(d) In addition, all requirements of Chapter XVIII of the Code, as may be amended, shall be complied with. In the event that any of these subsections are inconsistent with the Chapter, the more restrictive provisions shall apply.

The uses at the site do not meet these requirements.

Our office is seeking compliance for the continued violations that are present at the site.

Until proper approval is received, all non-permitted uses must cease and structures and materials associated with the site's uses must be removed. Should you fail to have all structures and materials associated with the non-permitted uses removed from the site by the end of business day (4:00 p.m.) on Friday, February 2, 2018, we will recommend that a daily summons be issued for each violation for non-permitted uses occurring on site, for each structure on site and all violations noted above. Since the uses occurring on site are not permitted uses, to obtain proper approval, a completed Board of Adjustment Application will be required to be submitted to the Township's Department of Land Use for Use Variance approval. Also, site plan approval will be required as noted above.

Thank you for your kind attention to this matter. Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Geraldine Entrup

Administrative Officer

GE/jg

cc: The Honorable Mayor and Council

Township of Mahwah Board of Adjustment

Quentin Wiest, Township Business Administrator

Kathrine G. Coviello, Township Clerk

Tom Mulvey, Property Maintenance

James N. Batelli, Chief, Mahwah Police Department

Brian M. Chewcaskie, Esq.

Michael J. Kelly, P.E., Township Engineer

Thomas W. Williams, Esq.

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EXHIBIT R

Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 1 of 8 PageID: 113



Township Of Mahwah

Municipal Offices: 475 Corporate Drive P.O. Box 733 • Mahwah, NJ 07430 Tel 201-529-5757 • Fax 201-512-0537

Property Maintenance x 246

Zoning/Planning Board x 245

VIA ELECTRONIC AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 24, 2018

Chief Dwaine Perry Ramapough Mountain Indians, Inc. 189 Stag Hill Road Mahwah, New Jersey 07430

Re:

95 Halifax Road

Zoning & Site Plan Violations

Block I, Lot 131 Township of Mahwah

Dear Chief Perry:

As per the Pending Action in the Superior Court of New Jersey, Bergen County, Law Division, the Township of Mahwah (Township) and Ramapough Mountain Indians, Inc. (RMI) were to enter into a Settlement Agreement to resolve disputes relative to the above referenced property by March 28, 2018.

While the Township of Mahwah has acted in good faith to review and approved the proposed Settlement Agreement, the RMI have refused to approve and sign the Agreement.

In my January 17, 2018 report, see copy attached, we noted numerous violations with respect to the Zoning and Site Plan requirements of the Township. In addition, we noted that until proper approval is received, all non-permitted uses must cease and structures and materials associated with the site's uses were to be removed. In the event all structures and materials associated with the non-permitted uses were not removed from the site by the end of business day (4:00 p.m.) on Friday, February 2, 2018 we would recommend that daily summonses be issued for each violation for non-permitted uses occurring on site and for each structure on site and all violations noted. This deadline was not met; however, Summonses were not issued as this matter was in litigation and we were hopeful of an amicable solution. Now since it is clear that this matter is not being resolved, we are recommending that Summonses be issued.

As of Friday, April 20, 2018, the following violations were found at the above referenced site:

Uses and Activities

Our site observations on various days, including Friday, April 20, 2018, indicate that the property and structures on site are being used for religious uses (house of worship and prayer groups) and public assembly uses. These uses at the site are being performed without obtaining the necessary Zoning approval from the Township. Article 24-11.2c of the Township Code states:

"Zoning Permits shall be secured from the Zoning Officer prior to construction, execution or alteration of any structure or use of a structure or land.

Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 2 of 8 PageID: 114 Chief Dwaine Perry April 24, 2018 Page 2

Proper zoning approval has not been received for the uses and the structures utilized for these uses on site.

In addition, Article 24-4.2a of the Township Code states:

"No building or structure shall be erected and no existing building or structure shall be moved, altered, added or enlarged, nor shall any land or building be designed, used or intended to be used for any purpose or in any manner other than as specified among the uses thereinafter listed as permitted in which building or land is located."

As you know, the property in question is located in the Township's Conservation (C-200) Zone. As per the Township Code, the following are permitted principal uses in the C-200 Zone:

- 1. Public open space, including hiking, horseback riding, wildlife preserves, arboretums, botanical gardens, historical edifices, woodland areas, hunting and fishings facilities, other similar uses.
- 2. Agricultural uses, farms, subject to subsection 24-6.1, paragraph a.
- 3. Single-family detached residences, with 200,000 sq. ft. minimum lots.
- 4. Municipal facilities.

In addition to the permitted principal uses, a number of accessory and conditional uses are permitted in this zone, none of which would apply to the uses being performed at the site. The uses being performed at the site are clearly not listed as permitted uses in this zone and as per Article 24-1.3b of the Township Zoning Code.

"The Zoning Ordinance for the Township shall be viewed as a permissive ordinance. In no instance after the adoption of this Chapter shall any use be permitted in the Township which is not listed as a permitted, accessory or conditional use as specified herein. Any uses not permitted or specified shall be prohibited."

Structures

Based on numerous site observations, we have found a number of structures on site. As per Article 24-2.2 of the Township Code and NJSA 40:55D-7, a structure is defined as:

"A combination of materials to form a construction for occupancy, use or ornamental whether installed on, above, or below the surface of a parcel of land."

Based on our most recent site observation performed on Friday, April 20, 2018, we found the following structures on site:

- Prayer circle consisting of logs stuck in-ground (totem poles), former pieces of longhouse.
 - Stone altar located at the south side of the site.

As per Article 24-11.2c of the Township Code, see above, Zoning Permits are required prior to construction, execution or alteration of any structure or use of a structure or land.

Site Plan Approval

Site plan approval has not been obtained for uses of the property, for the installation of structures or for the driveway and access points at the site.

Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 3 of 8 PageID: 115 Chief Dwaine Perry April 24, 2018 Page 3

Article 22-3.2d of the Township Code states:

"Except as provided in paragraphs b., 1. and 2. herein, all construction, alteration or enlargement of a building, structure or use or change of use or occupancy on or in a nonconforming structure, use or lot shall require site plan approval."

Township Floodplain and Flood Hazard Areas

The structures on site are used for religious uses and public activity and are located within the floodplain and flood hazard area of the Ramapo River and are not developed above the maximum flood elevation.

Article 24-6.1h(1) of the Township Code states:

"No permanent structure or building or any enlargement of same which is used or designated to be used for housing, commerce, industry or public activity shall be located in a floodplain or flood hazard area. Exceptions to this restriction shall include uses which are developed above the maximum flood elevation with appropriate access provided or as provided in Chapter XVIII of the Code, as may be amended".

In addition, Article 24-6.1h(3) lists the uses permitted within a floodplain or flood hazard area. These uses are:

- (a) Agriculture and horticultural uses as defined in this Chapter, except for a farmhouse.
- (b) Outdoor recreational facilities, including golf course, ice-skating rinks, swimming pools, parks, playfields and other similar facilities.
- (c) Essential services.
- (d) In addition, all requirements of Chapter XVIII of the Code, as may be amended, shall be complied with. In the event that any of these subsections are inconsistent with the Chapter, the more restrictive provisions shall apply.

The uses at the site do not meet these requirements.

Our office is seeking compliance for the continued violations that are present at the site.

Since the uses occurring on site are not permitted uses, to obtain proper approval, a complete Board of Adjustment Application is required to be submitted to the Township's Department of Land Use for Use Variance Approval. Also, Site Plan Approval will be required as noted above.

Since proper approval has not been received for the items noted above and since the RMI have not entered into the Settlement Agreement to amicably resolve these issues, we are issuing Summonses for

Case 2:18-cv-09228-CCC-JBC Document 12-2 Filed 06/07/18 Page 4 of 8 PageID: 116 Chief Dwaine Perry April 24, 2018 Page 4

the violations occurring at the site. These Summonses are retroactive to Thursday, March 29, 2018, the day after the deadline to enter into a Settlement Agreement. The Summonses are for each weekday up to, and including, Friday April 20, 2018 for a total of 17 days. We will continue to issue daily Summonses for each violation until this matter is resolved. Summonses for each of the following violations will be issued by the Municipal Court:

Article 24-11.2c Article 24-11.2c	Failure to Obtain Zoning Permit for Use – Religious Use Failure to Obtain Zoning Permit for Use – Public Assembly
Article 24-11.2c	Failure to Obtain Zoning Permit for Structure – Prayer Circle
Article 24-11.2c	Failure to Obtain Zoning Permit for Structure - Stone Altar
Article 22-3,2d	Failure to Obtain Site Plan Approval for Use – Religious Use
Article 22-3.2d Article 22-3.2d	Failure to Obtain Site Plan Approval for Use – Public Assembly Failure to Obtain Site Plan Approval for Structure – Prayer Circle
Article 22-3.2d	Failure to Obtain Site Plan Approval for Structure – Stone Altar
Article 24-6.1h(1)	Location of Structure Within Floodplain and Flood Hazard Area Without Proper Approval – Prayer Circle
Article 24-6.1h(1)	Location of Structure Within Floodplain and Flood Hazard Area Without Proper Approval – Stone Altar

Thank you for your kind attention to this matter. Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Geräldine Entrup Administrative Officer

Graldene Entrop

GE/jg Enclosure

cc: The Honorable Mayor and Council
Township of Mahwah Board of Adjustment
Quentin Wiest, Township Business Administrator
Kathrine G. Coviello, Township Clerk
Tom Mulvey, Property Maintenance
James N. Batelli, Chief, Mahwah Police Department
Brian M. Chewcaskie, Esq.
Michael J. Kelly, P.E., Boswell Engineering
Thomas W. Williams, Esq.

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EXHIBIT S

Case 2:18-cv-09228-CCC-JBC Document 12-3 Filed 06/07/18 Page 5 of 5 PageID: 125

Township Of Mahwah

Municipal Court
Municipal Offices: 475 Corporate Drive
P.O. Box 733 • Mahwah, NJ 07430
Tel 201-529-2862 • Fax 201-529-2054

Dennis G. Harraka Municipal Court Judge Lorraine Cuomo, CMCA Court Administrator Lorraine.Cuomo@njcourts.gov Kelly Mangin Municipal Court Deputy Administrator

April 25, 2018

Ramapo Mountain Indians, Inc. 189 Stag Hill Rd. Mahwah, NJ 07430 ATTN: CHIEF DWAYNE PERRY

Re: State of New Jersey v. RAMAPO MOUNTAIN INDIANS, INC.

Summons Nos: SC 2018-008762 THRU SC 2018 -8771

Dear Chief Perry:

Enclosed please find the above mentioned Summons charging you with Township Ordinances 24-11.2C, failure to obtain zoning permit; and 22-3.2d-failure to obtain site plan approval.

You Must Appear in the Mahwah Municipal Court on:

THURSDAY, JUNE 14, 2018 AT 9:00 A.M.

Lorraine Cuomo, CMCA Mahwah Municipal Court

:lc Encs.

Case 2:18-cv-09228-CCC-JBC Document 12-3 Filed 06/07/18 Page 4 of 5 PageID: 124

Township Of Mahwah

Municipal Court

Municipal Offices: 475 Corporate Drive
P.O. Box 733 • Mahwah, NJ 07430

Tel 201-529-2862 • Fax 201-529-2054

Dennis G. Harraka Municipal Court Judge

Lorraine Cuomo, CMCA Court Administrator Lorraine.Cuomo@njcourts.gov

Kelly Mangin Municipal Court Deputy Administrator

April 30, 2018

Ramapo Mtn. Indians Inc. C/O Chief Perry 189 Stag Hill Rd Mahwah, NJ 07430

Re: State of New Jersey v. RAMAPO MTN. INDIANS INC. C/O CHIEF PERRY Summons Nos: SC 2018 8772, SC 2018 8773, SC 2018 8774, SC 2018 8775, SC 2018 8776, SC 2018 8776, SC 2018 8777, SC 2018 8778, SC 2018 8779, SC 2018 8780, SC 2018 8781

Dear Vartan Naljayan:

Enclosed please find the above mentioned Summons charging you with violations 24-11.2c, 22-3.2d, and 24-6.1.

You Must Appear in the Mahwah Municipal Court on:

THURSDAY, JUNE, 2018 AT 9:00 A.M.

Samantha Chvasta, DCA Mahwah Municipal Court

:lc Encs.

Case 2:18-cv-09228-CCC-JBC Document 12-3 Filed 06/07/18 Page 3 of 5 PageID: 123

Township Of Mahwah

Municipal Court

Municipal Offices: 475 Corporate Drive
P.O. Box 733 • Mahwah, NJ 07430

Tel 201-529-2862 • Fax 201-529-2054

Dennis G. Harraka Municipal Court Judge Lorraine Cuomo, CMCA
Court Administrator
Lorraine.Cuomo@njcourts.gov

Kelly Mangin Municipal Court Deputy Administrator

May 7, 2018

Ramapo Mnt. Indians C/O Dwayne Perry 189 Stag Hill Rd Mahwah, NJ 07430

Re: State of New Jersey v. RAMAPO MNT. INDIANS C/O DWAYNE PERRY; SC 2018 8783, SC 2018 8784, SC 2018 8785, SC 2018 8786, SC 2018 8787, SC 2018 8788, SC 2018 8789, SC 2018 8790, SC 2018 8791, SC 2018 8792

Dear Ramapo Mnt. Indians C/O Dwayne Perry:

Enclosed please find the above mentioned Summons charging you with a violation of township ordinance 24-11.2c, 22-3.2d, and 24-6.1.

You Must Appear in the Mahwah Municipal Court on:

TUESDAY, JUNE 14, 2018 AT 9:00 A.M.

Samantha Chvasta, DCA Mahwah Municipal Court

:lc

Encs.

Case 2:18-cv-09228-CCC-JBC Document 12-3 Filed 06/07/18 Page 2 of 5 PageID: 122

Township Of Mahwah

Municipal Court

Municipal Offices: 475 Corporate Drive
P.O. Box 733 • Mahwah, NJ 07430

Tel 201-529-2862 • Fax 201-529-2054

Dennis G. Harraka Municipal Court Judge Lorraine Cuomo, CMCA Court Administrator Lorraine.Cuomo@njcourts.gov Kelly Mangin Municipal Court Deputy Administrator

May 14, 2018

Ramapo Mnt. Indians Inc C/O Chief Dwayne Perry 189 Stag Hill Rd. Mahwah, NJ 07430

Re: State of New Jersey v. RAMAPO MNT. INDIANS INC. C/O CHIEF PERRY; SC 2018 8794, SC 2018 8795, SC 2018 8796, SC 2018 8797, SC 2018 8798, SC 2018 8799, SC 2018 8800, SC 2018 8801, SC 2018 8802, SC 2018 8803

Dear Ramapo Mtn. Indians Inc.:

Enclosed please find the above mentioned Summons charging you with a violation of township ordinance 24-11.2c, 22-3.2d, and 24-6.1.

You Must Appear in the Mahwah Municipal Court on:

THURSDAY, JULY 14, 2018 AT 9:00 A.M.

Samantha Chvasta, DCA Mahwah Municipal Court

:lc

Encs.

ase 2:18-cv-09228-CCC-JBC Document 12-3 Filed 06/07/18 Page 1 of 5 PageID: 121

Township Of Mahwah

Municipal Court

Municipal Offices: 475 Corporate Drive
P.O. Box 733 • Mahwah, NJ 07430

Tel 201-529-2862 • Fax 201-529-2054

Dennis G. Harraka Municipal Court Judge Lorraine Cuomo, CMCA Court Administrator Lorraine.Cuomo@njcourts.gov Kelly Mangin Municipal Court Deputy Administrator

May 21, 2018

Ramapo Mountain Indians, Inc. 189 Stag Hill Rd. Mahwah, NJ 07430 ATTN: CHIEF DWAYNE PERRY

Re: State of New Jersey v. RAMAPO MOUNTAIN INDIANS, INC.

Summons Nos: SC 2018-008806 THRU SC 2018 -8815

Dear Chief Perry:

Enclosed please find the above mentioned Summons charging you with Township Ordinances 24-11.2C, failure to obtain zoning permit; and 22-3.2d-failure to obtain site plan approval and 24-6.1- location of structure without approval.

You Must Appear in the Mahwah Municipal Court on:

THURSDAY, JUNE 14, 2018 AT 9:00 A.M.

Lorraine Cuomo, CMCA Mahwah Municipal Court

:lc

Encs.

Case 2:18-cv-09228-CCC-JBC Document 12-4 Filed 06/07/18 Page 1 of 10 PageID: 126

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Case 2:18-cv-09228-CCC-JBC Document 12-4 Filed 06/07/18 Page 3 of 10 PageID: 128

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Case 2:18-cv-09228-CCC-JBC Document 12-4 Filed 06/07/18 Page 4 of 10 PageID: 129

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Case 2:18-cv-09228-CCC-JBC Document 12-4 Filed 06/07/18 Page 5 of 10 PageID: 130

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