

DARIO, ALBERT, METZ, EYERMAN
CANDA, CONCANNON, ORTIZ & KROUSE, LLC

Attorneys at Law

By: BRIAN E. EYERMAN, ESQ.

N.J. BAR NO: 41652-2003

345 UNION STREET

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ATTORNEYS FOR DEFENDANT- TOWNSHIP OF TEANECK PLANNING BOARD

THE STOP & SHOP SUPERMARKET
COMPANY LLC,

Plaintiff,

-against-

TOWNSHIP OF TEANECK;
TOWNSHIP COUNCIL OF THE
TOWNSHIP OF TEANECK;
PLANNING BOARD OF THE
TOWNSHIP OF TEANECK; XYZ
CORPORATION 1-5; AND JOHN DOES
1-5

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. : BER-L-3507-21

Civil Action

ANSWER TO COMPLAINT, AFFIRMATIVE
DEFENSES, JURY DEMAND, AND
DESIGNATION OF TRIAL COUNSEL

The **PLANNING BOARD OF THE TOWNSHIP OF TEANECK** (“**Planning Board of Teaneck**” or “**Defendant**”) having its primary office at 818 Teaneck Road, Teaneck New Jersey 07666 by way of Answer to Complaint in Lieu of Prerogative Writs (“**Complaint**”), say:

GENERAL ALLEGATIONS

NATURE OF ACTION

1. The allegations in this paragraph of the Complaint constitute statements and a legal conclusion for which no response is required. To the extent a response is deemed necessary, the Defendant denies the allegations in this paragraph.

THE PARTIES

2. Upon information and belief, Defendant admits the allegations set for in paragraph 2 of the Complaint.

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3. Defendant admits the allegations set forth in paragraph 3 of the Complaint.
4. Defendant admits the allegations set forth in paragraph 4 of the Complaint.
5. Defendant admits the allegations set forth in paragraph 5 of the Complaint.
6. Defendant neither admits nor denies the allegations set forth in paragraph 6 of the Complaint and leaves Plaintiff to its proofs.
7. Defendant neither admits nor denies the allegations set forth in paragraph 7 of the Complaint and leaves Plaintiff to its proofs.

BACKGROUND

8. Upon information and belief Defendant admits the allegations set forth in paragraph 8 of the Complaint.
9. Defendant admits the allegations set forth in paragraph 9 of the Complaint.
10. Upon information and belief Defendant admits the allegations set forth in paragraph 10 of the Complaint.
11. Upon information and belief Defendant admits the allegations set forth in paragraph 11 of the Complaint.
12. Upon information and belief Defendant admits the allegations set forth in paragraph 12 of the Complaint.
13. Upon information and belief Defendant admits Defendant admits the allegations set forth in paragraph 13 of the Complaint.
14. Upon information and belief Defendant admits the allegations set forth in paragraph 14 of the Complaint.
15. Upon information and belief Defendant admits Defendant admits the allegations set forth in paragraph 15 of the Complaint.
16. Defendant admits the allegations set forth in paragraph 16 of the Complaint.
17. Upon information and belief Defendant admits the allegations set forth in paragraph 17 of the Complaint.
18. Upon information and belief Defendant admits the allegations set forth in paragraph 18 of the Complaint.

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19. Upon information and belief Defendant admits the allegations set forth in paragraph 19 of the Complaint.
20. Defendant neither admits nor denies the allegations set forth in paragraph 20 of the Complaint and leaves Plaintiff to its proofs.
21. Defendant neither admits nor denies the allegations set forth in paragraph 21 of the Complaint and leaves Plaintiff to its proofs.
22. Defendant neither admits nor denies the allegations set forth in paragraph 22 of the Complaint and leaves Plaintiff to its proofs.

PRELIMINARY INVESTIGATION

23. Defendant admits the allegations set forth in paragraph 23 of the Complaint.
24. Defendant admits the allegations set forth in paragraph 24 of the Complaint.
25. Defendant admits the allegations set forth in paragraph 25 of the Complaint.
26. Defendant admits the allegations set forth in paragraph 26 of the Complaint.
27. Defendant admits the allegations set forth in paragraph 27 of the Complaint.
28. Defendant admits the allegations set forth in paragraph 28 of the Complaint.

MUNICIPAL PARKING LOT (BLOCK 705, LOT 4.01)

29. Defendant admits the allegations set forth in paragraph 29 of the Complaint.
30. Defendant admits the allegations set forth in paragraph 30 of the Complaint.
31. Defendant admits the allegations set forth in paragraph 31 of the Complaint.
32. Defendant admits the allegations set forth in paragraph 32 of the Complaint.

STOP & SHOP (LOTS 3, 4 & 5)

33. Defendant denies the allegations set forth in paragraph 33 of the Complaint, except admit only that the referenced Preliminary Investigation relied in part upon the referenced “Store Analysis”.
34. Upon information and belief Defendant admits the allegations set forth in paragraph 34 of the Complaint.
35. Defendant neither admits nor denies the allegations set forth in paragraph 35 of the Complaint.
36. Defendant denies the allegations set forth in paragraph 36 of the Complaint.

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37. Defendant denies the allegations set forth in paragraph 37 of the Complaint.
38. Defendant denies the allegations set forth in paragraph 38 of the Complaint.
39. Defendant denies the allegations set forth in paragraph 39 of the Complaint.
40. Defendant denies the allegations set forth in paragraph 40 of the Complaint.
41. Defendant denies the allegations set forth in paragraph 41 of the Complaint.
42. Defendant denies the allegations set forth in paragraph 42 of the Complaint.
43. Defendant denies the allegations set forth in paragraph 43 of the Complaint.
44. Defendant denies the allegations set forth in paragraph 44 of the Complaint.
45. Defendant denies the allegations set forth in paragraph 45 of the Complaint.
46. Defendant neither admits nor denies the allegations set forth in paragraph 46 of the Complaint.
47. Defendant denies the allegations set forth in paragraph 47 of the Complaint.
48. Defendant neither admits nor denies the allegations set forth in paragraph 48 of the Complaint.
49. Defendant denies the allegations set forth in paragraph 49 of the Complaint.
50. Defendant denies the allegations set forth in paragraph 50 of the Complaint.
51. Defendant denies the allegations set forth in paragraph 51 of the Complaint.
52. Defendant denies the allegations set forth in paragraph 52 of the Complaint.
53. Defendant denies the allegations set forth in paragraph 53 of the Complaint.
54. Defendant admits to the allegations set forth in Paragraph 54 of the Complaint.
55. Defendant denies the allegations set forth in paragraph 55 of the Complaint.
56. Defendant admits the allegations set forth in paragraph 56 of the Complaint in as much as such paragraph is an incomplete summary of the hearing.
57. Paragraph 57 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
58. Paragraph 58 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
59. Upon information and belief Defendant admits the allegations set forth in paragraph 59 of the Complaint.
60. Defendant denies the allegations set forth in paragraph 60 of the Complaint.

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61. Defendant denies the allegations set forth in paragraph 61 of the Complaint.

62. Defendant denies the allegations set forth in paragraph 62 of the Complaint.

SGI BUDDHIST CENTER (LOTS 1 & 2)

63. Defendant neither admits nor denies the allegations set forth in paragraph 63 of the Complaint as the document speaks for itself.

64. Defendant denies the allegations set forth in paragraph 64 of the Complaint.

DESIGNATION OF REDEVELOPMENT AREA

65. The allegations set forth in paragraph 65 of the Complaint is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.

66. Defendant admits the allegations set forth in paragraph 66 of the Complaint

67. Defendant neither admits nor denies the allegations set forth in paragraph 67 of the Complaint

68. Defendant neither admits nor denies the allegations set forth in paragraph 68 of the Complaint

69. The allegations in paragraph 69 of the Complaint constitute a proffered legal conclusion and is therefore denied.

70. Defendant denies the allegations set forth in paragraph 70 of the Complaint.

71. Defendant neither admits nor denies the allegations set forth in paragraph 71 of the Complaint

72. The allegations in paragraph 72 of the Complaint constitute a proffered legal conclusion and is therefore denied.

73. The allegations in paragraph 73 of the Complaint constitute a proffered legal conclusion and is therefore denied

COUNT ONE

**The Redevelopment Area Does Not Meet the Criteria
for Designation Pursuant to the LRHL**

74. Defendants repeat each and every response above and incorporate the same as if more fully set forth herein.

75. Defendant denies the allegations set forth in paragraph 75 of the Complaint.

76. Defendant denies the allegations set forth in paragraph 76 of the Complaint.

77. Defendant denies the allegations set forth in paragraph 77 of the Complaint.

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78. Defendant denies the allegations set forth in paragraph 78 of the Complaint.
79. Defendant denies the allegations set forth in paragraph 79 of the Complaint.
80. Defendant denies the allegations set forth in paragraph 80 of the Complaint.
81. Defendant denies the allegations set forth in paragraph 81 of the Complaint.
82. Defendant denies the allegations set forth in paragraph 82 of the Complaint.
83. Defendant denies the allegations set forth in paragraph 83 of the Complaint.
84. Defendant denies the allegations set forth in paragraph 84 of the Complaint.
85. Defendant denies the allegations set forth in paragraph 85 of the Complaint.
86. Defendant denies the allegations set forth in paragraph 86 of the Complaint.
87. Defendant denies the allegations set forth in paragraph 87 of the Complaint.
88. Defendant denies the allegations set forth in paragraph 88 of the Complaint.
89. Defendant denies the allegations set forth in paragraph 89 of the Complaint.
90. Defendant denies the allegations set forth in paragraph 90 of the Complaint.

WHEREFORE, Defendants hereby demand judgment against the Plaintiff as follows:

- A. Dismissing Plaintiff's complaint in its entirety;
- B. For reasonable attorneys' fees and costs; and
- C. For such other relief as the Court may deem just and equitable

COUNT TWO

The Planning Board's Recommendation, and the Township Council Resolution No. 87-2021, were Arbitrary, Capricious, and Unreasonable and Must be Rescinded

91. Defendants repeat each and every response above and incorporate the same as if more fully set forth herein.
92. Defendant denies the allegations set forth in paragraph 92 of the Complaint.
93. Defendant denies the allegations set forth in paragraph 93 of the Complaint.
94. Defendant denies the allegations set forth in paragraph 94 of the Complaint.
95. Defendant denies the allegations set forth in paragraph 95 of the Complaint.
96. Defendant denies the allegations set forth in paragraph 96 of the Complaint.
97. Defendant denies the allegations set forth in paragraph 97 of the Complaint.

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98. Defendant denies the allegations set forth in paragraph 98 of the Complaint.
99. Defendant denies the allegations set forth in paragraph 99 of the Complaint.
100. Defendant denies the allegations set forth in paragraph 100 of the Complaint.
101. Defendant denies the allegations set forth in paragraph 101 of the Complaint.
102. Defendant denies the allegations set forth in paragraph 102 of the Complaint.
103. Defendant denies the allegations set forth in paragraph 103 of the Complaint.
104. Defendant denies the allegations set forth in paragraph 104 of the Complaint.

WHEREFORE, Defendants hereby demand judgment against the Plaintiff as follows:

- A. Dismissing Plaintiff's complaint in its entirety;
- B. For reasonable attorneys' fees and costs; and
- C. For such other relief as the Court may deem just and equitable

COUNT THREE

Designation of the Redevelopment Area Is Invalid Due to Conflict of Interest

105. Defendants repeat each and every response above and incorporate the same as if more fully set forth herein.

Conflict Arising from Store Analysis

106. Defendant denies the allegations set forth in paragraph 106 of the Complaint.
107. Defendant denies the allegations set forth in paragraph 107 of the Complaint.
108. Defendant admits the allegations set forth in paragraph 108 of the Complaint.
109. Defendant admits the allegations set forth in paragraph 109 of the Complaint.
110. Defendant admits the allegations set forth in paragraph 110 of the Complaint.
111. Defendant neither admits nor denies the allegations set forth in paragraph 111 of the Complaint.
112. Defendant neither admits nor denies the allegations set forth in paragraph 112 of the Complaint.
113. Defendant denies the allegations set forth in paragraph 113 of the Complaint.
114. Defendant denies the allegations set forth in paragraph 114 of the Complaint.

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115. Defendant denies the allegations set forth in paragraph 115 of the Complaint.
116. Defendant denies the allegations set forth in paragraph 116 of the Complaint.
117. Defendant neither admits nor denies the allegations set forth in paragraph 117 of the Complaint and leave Plaintiff to its proofs.
118. Defendant denies the allegations set forth in paragraph 118 of the Complaint.
119. Defendant denies the allegations set forth in paragraph 119 of the Complaint.
120. Defendant denies the allegations set forth in paragraph 120 of the Complaint.
121. Defendant denies the allegations set forth in paragraph 121 of the Complaint.
122. Defendant denies the allegations set forth in paragraph 122 of the Complaint.
123. Defendant denies the allegations set forth in paragraph 123 of the Complaint.
124. Defendant neither admits nor denies the allegations set forth in paragraph 124 of the Complaint and leave Plaintiff to its proofs.
125. Defendant denies the allegations set forth in paragraph 125 of the Complaint.
126. Defendant denies the allegations set forth in paragraph 126 of the Complaint.
127. Defendant denies the allegations set forth in paragraph 127 of the Complaint.
128. Defendant denies the allegations set forth in paragraph 128 of the Complaint.

Conflict Arising from Participation by Planning Board Member Rose

129. Paragraph 129 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
130. Paragraph 130 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
131. Paragraph 131 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
132. Paragraph 132 is an incomplete paraphrasing of testimony and is therefore neither admitted nor denied.
133. Defendant neither admits nor denies the allegations set forth in paragraph 133 of the Complaint and leave Plaintiff to its proofs.
134. Defendant denies the allegations set forth in paragraph 134 of the Complaint .

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135. Defendant denies the allegations set forth in paragraph 135 of the Complaint.

136. Defendant denies the allegations set forth in paragraph 136 of the Complaint.

137. Defendant denies the allegations set forth in paragraph 137 of the Complaint.

WHEREFORE, Defendants hereby demand judgment against the Plaintiff as follows:

- A. Dismissing Plaintiff's complaint in its entirety;
- B. For reasonable attorneys' fees and costs; and
- C. For such other relief as the Court may deem just and equitable

COUNT FOUR

Designation of the Redevelopment Area is Invalid Due to Procedural Deficiencies

138. Defendants repeat each and every response above and incorporate the same as if more fully set forth herein.

139. Defendant denies the allegations set forth in paragraph 139 of the Complaint.

140. Defendant denies the allegations set forth in paragraph 140 of the Complaint.

141. Defendant denies the allegations set forth in paragraph 141 of the Complaint.

142. Defendant denies the allegations set forth in paragraph 142 of the Complaint.

143. Defendant denies the allegations set forth in paragraph 143 of the Complaint.

144. Defendant denies the allegations set forth in paragraph 144 of the Complaint.

145. Defendant denies the allegations set forth in paragraph 145 of the Complaint.

146. Defendant denies the allegations set forth in paragraph 146 of the Complaint.

147. Defendant denies the allegations set forth in paragraph 147 of the Complaint.

148. Defendant denies the allegations set forth in paragraph 148 of the Complaint.

WHEREFORE, Defendants hereby demand judgment against the Plaintiff as follows:

- A. Dismissing Plaintiff's complaint in its entirety;
- B. For reasonable attorneys' fees and costs; and
- C. For such other relief as the Court may deem just and equitable

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to make a claim upon which punitive damages can be granted.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which Attorney's fees may be granted

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has waived any rights or claims he may have against the Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's own conduct or negligence bars the Complained for relief.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's failure to mitigate bars and/or reduces the Complained of relief.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statue of limitations.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint is bared because the applicable administrative procedures and conditions precedent were not properly effectuated or compiled with prior to the commencement of this action.

NINTH AFFIRMATIVE DEFENSE

The Complaint is barred in whole or in part by Plaintiff's own contributory and/or comparative fault.

TENTH AFFIRMATIVE DEFENSE

The Complaint is based because the applicable procedures contained within in the Municipal Land Use Law and conditions precedent were not properly effectuated or compiled with by the Plaintiff.

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ELEVENTH AFFIRMATIVE DEFENSE

Insofar as the conduct complained of in the Complaint was authorized by or can be attributed to Defendant, such conduct was privileged.

TWELFTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over any individual Defendant

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint is preempted by other State statute.

FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the insufficiency of process and insufficiency of service of process.

FIFTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred because the Plaintiff failed to respond to their received notices in the proper manner.

SIXTEENTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over any individual Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the entire controversy doctrine.

EIGHTEENTH AFFIRMATIVE DEFENSE

The acts or omissions alleged in the Complaint are cloaked by the doctrine of absolute immunity and/or qualified and/or good faith immunity.

NINETEENTH AFFIRMATIVE DEFENSE

The Complaint is Bared because the Plaintiff's claims are frivolous.

TWENTIETH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of ripeness.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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The Complaint is barred by the doctrine of waiver.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The complaint is barred by the doctrine of unclean hands.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of estoppel.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The claims alleged in the Complaint are barred in whole or in part due to the doctrines of setoff and recoupment.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to join a necessary party without who this action cannot proceed.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Complainant is bared as no relief can be grated because the proposed Redevelopment Area is designated as being a “non-condemnation area in need of redevelopment in that the designation poses no adverse impact upon any of Plaintiff’s existing title or leasehold interests in and to any of the referenced properties, and further imposes no adverse obligations or requirements upon Plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

These Defendants reserve the right to supplement and amend this Answer by asserting such defenses as further investigation reveals to be necessarily appropriate.

WHEREFORE, Defendants hereby demand judgment against the Plaintiff as follows:

- A. Dismissing Plaintiff’s complaint in its entirety;
- B. For reasonable attorneys’ fees and costs; and
- C. For such other relief as the Court may deem just and equitable

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DEMAND FOR JURY TRIAL

Pursuant to Rule 4:35-1(a), Defendants hereby demand a trial by jury on all issues so triable.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to Rule 4:5-2, Defendants hereby demand that within five (5) days of service of this pleading, Plaintiff serve on Defendants a written statement of the amount of damages claimed in the complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the Court is advised that Brian E. Eyerman, Esq., is hereby designated as trial counsel.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Pursuant to Rule 4:5-1(b)(2), I hereby certify that to the best of my knowledge as of the date herein that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and that except for the fictitious defendants listed in the caption, there are no other non-parties who should be joined in the action pursuant to Rule 4:28 or who are subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts

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Attorneys for the Defendant, Township of Teaneck Planning Board.

By: 
Brian E. Eyerman, Esq.

Dated: November 11, 2020

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-003507-21

Case Caption: THE STOP & SHOP SUPERMARKET C VS TOWNSHIP OF TE

Case Initiation Date: 05/28/2021

Attorney Name: BRIAN S EDMUND EYERMAN

Firm Name: DARIO ALBERT METZ & EYERMAN LLC

Address: 345 UNION ST

HACKENSACK NJ 07601

Phone: 2019685800

Name of Party: DEFENDANT : PLANNING BOARD OF TEANECK

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Answer

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: THE STOP & SHOP SUPERMARKET CO? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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)

11/12/2021
Dated

/s/ BRIAN S EDMUND EYERMAN
Signed

