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Attorneys for Plaintiff Save Barnegat Bay, Inc.

SAVE BARNEGAT BAY, INC.,

Plaintiff,

vs.

LITTLE EGG HARBOR TOWNSHIP
PLANNING BOARD, TOWNSHIP OF
LITTLE EGG HARBOR, and US HOMES,
LLC, d/b/a LENNAR HOMES,

Defendants.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
LAW DIVISION

Docket No.: OCN-L-_____

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiff, Save Barnegat Bay, Inc. (“SBB”), by and through its attorneys, Lieberman Blecher & Sinkevich, P.C. and Michele Donato, Esq., by way of Complaint in Lieu of Prerogative Writs against Defendants Little Egg Harbor Township Planning Board (“Planning Board”), Township of Little Egg Harbor (“Township”), and US Homes, LLC, d/b/a Lennar Homes (“Applicant”), does hereby allege and say:

PARTIES

1. Plaintiff, Save Barnegat Bay, Inc., is a non-profit corporation of the State of New Jersey with its principal place of business at 117 Haines Road, Toms River, New Jersey, 08753.

2. SBB’s mission is to restore and protect Barnegat Bay and its watershed and ecosystem. The goal of SBB is to ensure that applicable regulatory standards are correctly applied and enforced to protect the Bay and its environment. The rights of SBB and its supporters to use and enjoy property have been denied, violated and infringed by the actions of the Defendants.

3. Defendant Township of Little Egg Harbor is a municipality organized pursuant to the statutes of the State of New Jersey, located at 655 Radio Road, Little Egg Harbor Township, New Jersey 08087.

4. Defendant Little Egg Harbor Township Planning Board is a municipal agency established pursuant to the Municipal Land Use Law, with jurisdiction to adopt and amend the master plan, review proposed amendments to the Land Use and Development Ordinance (“LUDO”), and act on applications for development.

5. Defendant US Homes, LLC, d/b/a Lennar Homes is the applicant and proposed developer of the Venue at Summers Corner, designated as Block 286, Lots 3, 5, & 6 and Block 287, Lots 5 & 7, commonly known as 451 Center Street (“Site”).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to Rule 4:69.

7. Venue is proper in Ocean County because the subject property is located in the Little Egg Harbor Township, Ocean County.

BACKGROUND

8. The Land Use Element of the 1999 Master Plan and subsequent Master Plan documents do not designate the Site for planned retirement communities (“PRC”) or cluster development.

9. Reexamination reports and other planning documents do not identify the Site for cluster or PRC and do not authorize cluster development in the R-150 zone.

10. The 1999 Master Plan and other planning documents identify traffic problems with Route 9 and other Township roadways.

11. Even though the Land Use Element of the Master Plan does not designate the Site for PRC, the LUDO allows PRC as a conditional use in the R-150 zone in which the Site is located.

12. The conditional use standards for a PRC development are specified in Section 15-4.15F of the LUDO.

13. PRC is not authorized by the Land Use Element of the Master Plan.

14. The Site has high ground water and other environmental constraints.

15. The Site drains to the Barnegat Bay and is in the watershed of the Barnegat Bay, which is designated as Category One waters.

16. Category One waters are afforded the highest protection under the Clean Water Act as delegated to the State of New Jersey for implementation. Other creeks affected by the development have required buffers and protections.

17. The Planning Board previously granted preliminary land use approvals for the Site in approximately 2006 (“2006 Approval”).

18. Joseph Coronato, Esq., and the firm Coronato and Brady, represented the Planning Board when the previous application was approved.

19. Joseph Coronato, Esq. served as Planning Board attorney from 2000-2013.

20. Terry Brady, Esq., the current Board attorney, participated in the prior application as attorney for the Board.

21. From approximately 2012-2016, Mr. Coronato's son worked for Mr. Brady's current law firm, Brady & Kunz, and served as planning board attorney for Little Egg Harbor.

22. Applicant has a pending application before the NJDEP for CAFRA and wetlands delineation, classification, and permits. There are many deficiencies in the applications.

23. The NJDEP has not issued wetlands delineation and classification, and, therefore, the extent of development allowed by State laws and regulations is not known. These determinations affect the gross and net density calculations in the LUDO for PRC development.

24. The Site is subject to flooding. Designation of flood hazard areas affects the density calculations required by the LUDO for PRC development.

25. The Site is the last significant open space remaining in this area of the rapidly growing Township and is environmentally sensitive.

26. The Site contains streams and wetlands that are documented habitat for threatened and endangered species.

27. This documented habitat for threatened and endangered species affects the transition area requirements for wetlands and the availability of modifying the wetlands in the DEP permit system.

28. Determination of the extent and nature of wetlands and available permits, and the presence of flood hazard areas are fundamental elements of the development that must be determined before PRC development and subdivision and site plan approval can be granted. These factors are essential to determine whether the PRC standards are satisfied and whether variances and waivers are required.

**COUNT I – INVALIDITY OF ORDINANCE DUE TO FAILURE TO COMPLY WITH
N.J.S.A. 40:55D-62a**

29. Plaintiff repeats and incorporates by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.

30. N.J.S.A. 40:55D–28b(2)(b) requires that the land use element of the master plan must include provisions for cluster development and must state the relationship to existing and proposed zone plans and zoning ordinances.

31. The Land Use Element of the Master Plan (“Land Use Element”) does not comply with the requirements of Section 28 of the MLUL.

32. The Land Use Element does not explain circumstances when planned development in PRC is allowed.

33. Although the Land Use Element designates certain properties for PRC development, the Site is not identified for cluster or PRC development in the Land Use Element.

34. N.J.S.A. 40:55D-62a requires that all zoning ordinances and zoning ordinance amendments be substantially consistent with or designed to effectuate the Land Use Element of the Master Plan.

35. The MLUL provides at N.J.S.A. 40:55D-62a that zoning ordinances “shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land.”

36. The ordinance allowing PRC development on the Site is not substantially consistent with the Land Use Element and violates essential planning provisions of the MLUL.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants as follows:

- a. Declaring that the cluster and PRC provision of the LUDO are invalid because they are not supported by the Land Use Element of the Master Plan, and are void and of no effect;
- b. For a judgment reversing and voiding all relief granted and approvals associated with the application based on the invalidity of the LUDO cluster and PRC provisions;

- c. Awarding Plaintiff attorneys fees and costs of suit; and
- d. For an award of all such other relief as deemed just and equitable by the Court

**COUNT II – INVALIDITY OF ORDINANCE DUE TO FAILURE TO COMPLY WITH
MLUL REQUIREMENTS FOR PLANNED DEVELOPMENT**

37. Plaintiff repeats and incorporates by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.

38. N.J.S.A. 40:55D-39c authorizes municipalities to adopt ordinances containing provisions for planned development.

39. N.J.S.A. 40:55D-39c(2) provides that planned development ordinances must require that “common open space resulting from the application of standards for density, or intensity of land use, be set aside for the use and benefit of the owners or residents in such development” subject to compliance with creation of an open space entity as set forth in N.J.S.A. 40:55D-43.

40. N.J.S.A. 40:55D-39c(3) requires the ordinance to set forth “how the amount and location of any common open space shall be determined and how its improvement and maintenance for common open space use shall be secured” subject to compliance with creation of an open space entity as set forth in N.J.S.A. 40:55D-43.

41. Specifically, N.J.S.A. 40:55D-43a specifies that if an ordinance permits planned development, the land to be set aside for common open space must be maintained as open space. If the open space is not dedicated to the municipality or made available to public use, it must be dedicated to an organization to protect the open space. If the organization is dissolved, the land must be dedicated to the municipality.

42. N.J.S.A. 40:55D-45 requires that the planning board must make certain findings and conclusions when approving a planned development. Among these requirements is that the

maintenance and conservation of common open space must be reliable and adequate. N.J.S.A. 40:55D-45b.

43. N.J.S.A. 40:55D-45.1a requires that the “planned development shall be developed in accordance with the general development plan approved by the planning board notwithstanding any provisions of P.L. 1975 c. 291 (C. 40:55D-1 *et seq.*) or an ordinance or regulation adopted pursuant thereto after the effective date of the approval.”

44. N.J.S.A. 40:55D-45.2a requires a “general land use plan specifying the total number of dwelling units, the open space to be created and an environmental inventory and overall plans for stormwater management and timing.”

45. N.J.S.A. 40:55D-65c also addresses the adoption of ordinances allowing planned development, the required findings and the mandates to assure that open space will be preserved.

46. PRC development in the LUDO does not contain the provisions required by the MLUL for planned development.

47. The LUDO provisions for PRC development violates the MLUL.

48. Plaintiff seeks relief against the Township and the Planning Board to compel compliance with the MLUL requirements pertaining to density calculations and open space protection in a planned development as implemented in the Township ordinance.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants as follows:

- a. For a declaration that Sections 15-4.8F and 15-4.9 of the LUDO violate the MLUL;
- b. For a declaration that Sections 15-4.8F and 15-4.9 of the LUDO violate the planned development provisions of the MLUL;
- c. For a judgment voiding Sections 15-4.8F and 15-4.9 of the LUDO;
- d. For a judgment reversing and voiding all relief granted and approvals associated with the application;
- e. Awarding Plaintiff attorneys fees and costs of suit; and
- f. For an award of all such other relief as deemed just and equitable by the Court.

COUNT III – ARBITRARY CAPRICIOUS AND UNREASONABLE

49. Plaintiff repeats and incorporates by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.

50. Public hearings took place before the Planning Board on the subject application on July 3, 2025, August 7, 2025 and August 26, 2025.

51. At the initial Planning Board hearing on July 3, 2025, Applicant presented its initial application for a 415-unit, age-restricted community on a 146-acre tract, proposing approximately 95 acres of disturbance and a purported 35% “tree-save” commitment.

52. Applicant had the burden of proof to satisfy the cluster and PRC requirements of the MLUL and the LUDO and to satisfy the RSIS standards, zoning requirements and design and performance standards, including demonstrating compliance with certain requirements to be permitted to propose PRC and cluster development.

53. An application for development cannot be deemed complete unless all municipally required materials are submitted or submission waivers are granted.

54. The application did not meet completeness requirements of the MLUL at N.J.S.A. 40:55D-10.3.

55. The LUDO requires that an EIS includes a constraints map, composite environmental mapping, soils and borings analysis, threatened and endangered species identification, an alternatives analysis, a mitigation plan, and an assessment of impacts to Township ecological systems.

56. Applicant did not provide an Environmental Impact Statement (EIS) with all the information required by Section 215-15.6 of the LUDO, and fails to include an analysis of interior-

forest habitat, forest fragmentation, migration corridors and impacts on upland pine/oak ecosystems.

57. Applicant relied on a compliance statement submitted to the NJDEP that does not address these requirements of the LUDO EIS requirements.

58. None of the studies required by the LUDO were provided, making the Board's approval ultra vires.

59. Determination of the extent of wetlands, transition areas and flood hazard areas is essential to determine the permissible density and allowed PRC development.

60. The Board attorney has identified conflicts of interest and personal involvement under the common law and the Local Government Ethics Law.

61. Although this conflict was brought to the Board's attention, the Board attorney did not recuse himself.

62. The Board extended special privileges to Applicant's attorney, Joseph Coronato, Esq., who previously represented the Planning Board on the prior application for the Site in approximately 2005.

63. Although the conflict was brought to the Board's attention, no response was received to determine whether his representation violated the Code of Ethics.

64. The application contains contradictory, uncertain, and ambiguous statements.

65. Applicant's witnesses' testimony contained material inconsistencies regarding gross and net density acreage totals, verified wetlands delineation and buffers, flood hazard areas and other environmental constraints.

66. The forest-preservation calculations were unreliable.

67. The evaluation of traffic impacts was contradictory and evasive.

68. Improvements to the road system and the critical question of access to Route 9 were incorrectly and confusingly addressed and inconsistent with sound traffic engineering.

69. There was considerable discussion regarding traffic conditions and the need to provide a secondary access from the site to Route 9.

70. Although the Resolution acknowledges that “[t]he Route 9 connection was deemed by the Board to be an integral component of the proposed development,” the Resolution fails to require the connection as a condition of approval.

71. The condition of approval for the Route 9 connection was one of several conditions of approval that were the subject of revisions after discussions between the Board counsel and Applicant’s counsel.

72. Although the Board insisted on requiring access to Route 9, the Resolution provided the opportunity for the developer to seek relief from that requirement if access to Route 9 could not be secured.

73. The Fire Chief expressed concerns regarding the need for sufficient access for emergency vehicles and the need for sufficient gallons per minute for firefighting purposes.

74. The condition of approval addresses the gallons per minute concern but does not address the concerns of the Fire Chief regarding safe access for emergency vehicles due to the narrow roadway widths and other design considerations.

75. The Resolution refers to elimination of excess height to comply with the ordinance but does not contain a condition requiring reduction of the height.

76. The Planning Board improperly proceeded with the hearing despite the application being incomplete due to missing stormwater calculations and other essential documents for stormwater analyses.

77. The application did not include documentation regarding threatened and endangered species, a wetlands delineation, contradictions in acreage, clearing, and preservation figures, an alternatives analysis, and unresolved traffic impacts.

78. The August 7, 2025, meeting was adjourned due to multiple procedural and constitutional defects.

79. Applicant's attorney, Joseph Coronato, Esq., was a partner with the firm that represented the Planning Board at the time of the prior application for the Site in 2005.

80. Joseph Coronato, Esq. served as Planning Board attorney from 2000-2013.

81. At the August 7, 2025 meeting, the room was too small for the many residents in attendance, causing a fire code violation.

82. During the August 7, 2025 meeting, the microphones and the audio system failed, making testimony inaudible and preventing the creation of a reliable record.

83. From 2013-2018, Mr. Coronato served as the Ocean County Prosecutor.

84. During the August 7, 2025 meeting, Mr. Coronato faced the audience, invoked his former position as Ocean County Prosecutor, and threatened to have residents removed if they "got out of line."

85. Shortly after his threat to the public, a municipal police officer removed a resident, chilling public participation.

86. Due to the unsafe and hostile environment, the meeting was abandoned and rescheduled.

87. The Planning Board scheduled another meeting on August 26, 2025, at Pinelands High School.

88. During the August 26, 2025 meeting, Applicant introduced volumes of new material for the first time.

89. Several hundred residents attended the August 26, 2025 meeting, however had never received information about the application prior to the meeting, leaving them without time to review or materially respond to the materials.

90. The application failed to meet the stormwater standards, including but not limited to incorrect drainage area delineations, basins requiring reclassification as “large-scale,” inadequate infiltration information, lack of analysis of flood risk to neighboring residents, and insufficient emergency access modeling.

91. There is insufficient data presented to determine if the Application can meet the stormwater management standards.

92. Applicant repeatedly deflected questions about environmental impacts, wetlands, buffers, stormwater, and forest clearing by stating these issues were “for DEP under CAFRA,” not for the Planning Board, even though the Township EIS ordinance requires local review.

93. On August 26, 2025, the Planning Board approved the preliminary and final subdivision and site plan application.

94. The Planning Board, as a matter of procedure, stops all hearings at 10:00pm.

95. In this matter, the Planning Board continued past 10:00pm and voted to approve the application after midnight without meaningful deliberations among the members of the board.

96. The Planning Board attorney drafted a resolution that was presented for adoption approximately one week after the approval.

97. Through the month of September, several drafts of the resolution were exchanged between the Board and the Applicant.

98. On October 2, 2025, the Planning Board adopted a Resolution No. 2025-14, granting both Preliminary and Final Major Subdivision and Preliminary and Final Major Site Plan approval (“Resolution”).

99. On October 8, 2025, Applicant published the required public notice of the approval of the application.

100. The Resolution does not refer to the conditional use status of the application, is ambiguous about variances and design waivers, and does not contain findings of fact and conclusions to support the findings.

101. Essential conditions that were part of the approval adopted by the Planning Board on August 26, 2025, are not recited in the Resolution.

102. The Resolution contains no analysis of MLUL §10.3 completeness requirements.

103. The Resolution omits or distorts substantial public testimony, fails to address EIS and stormwater deficiencies, relies on incorrect factual assertions contradicted in the record and ignores ongoing CAFRA deficiencies and incomplete wetlands review.

104. The Resolution failed to address significant defects in the traffic plans and does not consider the unreasonable adverse impacts from the development.

105. The Resolution and approval fails to address health and safety issues and other application deficiencies that were repeatedly brought to the attention of the Planning Board by its own professionals reviewing the application, including the Fire Chief and the Board Engineer, and by the residents.

106. The approval violates the Township’s affordable housing obligation by failing to provide affordable housing units and was improperly exempted from inclusionary housing obligations.

107. The record and the Resolution are deficient and do not reflect whether the stormwater management system meets the requirements stormwater management regulations, whether the plan is feasible, and whether the approval will have an unreasonable adverse impact on the area.

108. The proposals for maintenance and conservation of the common open space were not established and do not satisfy the MLUL requirement that the open space protections must be reliable and that the amount, location, and purpose of the common open space are adequate.

109. Due to the absence of a Land Use Element of the Master Plan that is substantially consistent with the cluster and PRC provisions of the LUDO, the cluster and PRC provisions of the LUDO are invalid, and the approval of the application as a cluster PRC development is invalid.

110. In granting the approval, the Planning Board failed to satisfy the requirements of the MLUL for conditional use approval and preliminary and final subdivision and site plan approval, failed to comply with the requirements in the LUDO for cluster PRC development and failed to protect the open space generated by the use of the cluster option as required by the planned development provisions of the MLUL.

111. The Resolution of the Planning Board is unreasonable, erroneous, and not based on facts in the record.

112. The Resolution lacks substantial credible evidence to support the findings and conclusions.

113. The Resolution fails to address identified variances and design waivers and does not consider the cluster PRC option provisions of the LUDO.

114. The approval and Resolution fails to make the required findings of the MLUL and the LUDO that are necessary for the approval of a PRC development.

115. The Resolution lacks sufficient findings to assure compliance with the Township's cluster PRC development requirements in the LUDO, the RSIS stormwater management requirements and the environmental impacts of the extensive restructuring and filling of the site.

116. The action of the Planning Board in granting the approvals in question is invalid, unlawful, *ultra vires* and void, and is otherwise arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants as follows:

- a. For a judgment declaring that the Egg Harbor Township Planning Board's approval of the application is arbitrary, capricious and unreasonable and in violation of the MLUL;
- b. For a judgment reversing and voiding all relief granted and approvals associated with the approval of the application; and
- c. For an award of all such other relief as deemed just and equitable by the Court.

LIEBERMAN BLECHER & SINKEVICH, P.C.
Attorneys for Plaintiff

Dated: November 21, 2025

/s/Stuart J. Lieberman
Stuart J. Lieberman, Esq.

Michele R. Donato, P.C.
Attorneys for Plaintiff

Dated: November 21, 2025

/s/ Michele R. Donato
Michele R. Donato, Esq.

DESIGNATION OF TRIAL COUNSEL

Stuart J. Lieberman, Esq. is hereby designated as trial counsel for Plaintiff.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, Plaintiff hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. To the best of Plaintiff's knowledge and belief, no other parties need to be joined at this time.

CERTIFICATION PURSUANT TO RULE 4:69-4

Pursuant to Rule 4:69-4, Plaintiffs hereby certify that the transcript of the proceeding before the Little Egg Harbor Planning Board for the within matter is being ordered.

CERTIFICATION PURSUANT TO RULE 1:38-7

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

LIEBERMAN BLECHER & SINKEVICH, P.C.
Attorneys for Plaintiff

Dated: November 21, 2025

/s/Stuart J. Lieberman
Stuart J. Lieberman, Esq.

Michele R. Donato, P.C.
Attorneys for Plaintiff

Dated: November 21, 2025

/s/ Michele R. Donato
Michele R. Donato, Esq.

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-003270-25

Case Caption: SAVE BARNEGAT BAY, I NC. VS LITTLE EGG HARBOR TO

Case Initiation Date: 11/21/2025

Attorney Name: CHING WEI MICHAEL GAN

Firm Name: LIEBERMAN BLECHER & SINKEVICH, P.C.

Address: 10 JEFFERSON PLZ STE 400
PRINCETON NJ 085409502

Phone: 7323551311

Name of Party: PLAINTIFF : Save Barnegat Bay, Inc.

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

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

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Save Barnegat Bay, Inc.? 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 **Medical Debt Claim?** 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)*

11/21/2025
Dated

/s/ CHING WEI MICHAEL GAN
Signed

