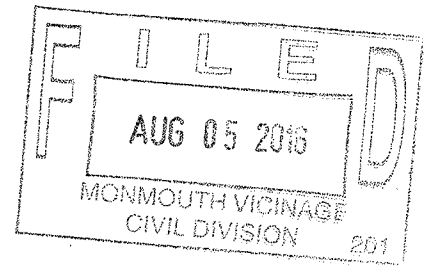


James H. Gorman, Esq. - 025951980  
1129 Broad Street  
Shrewsbury, NJ 07702  
(732)542-4200  
Attorney for Defendant/  
Third Party Plaintiff,  
Township of Hazlet



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HIGHVIEW HOMES, LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MONMOUTH COUNTY
Plaintiff,	:	
	:	DOCKET NO. MON-L-4224-15
v.	:	
	:	CIVIL ACTION
TOWNSHIP OF HAZLET and	:	
PLANNING BOARD OF THE TOWNSHIP	:	ANSWER AND
OF HAZLET,	:	THIRD PARTY COMPLAINT
	:	
Defendants,	:	
	:	
and	:	
	:	
TOWNSHIP OF HAZLET,	:	
	:	
Defendant/Third Party	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE CHURCH OF THE HOLY FAMILY,	:	
	:	
Third Party Defendant.	:	

---

Defendant, Township of Hazlet, (hereinafter the "Defendant" or the "Township") a municipal corporation of the State of New Jersey, with offices at 1766 Union Avenue, Hazlet, New Jersey 07730, by way of answer to the Complaint says as follows:

1. The allegations of paragraph 1 are denied.
2. The allegations of paragraph 2 are denied.

3. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 3.

4. The allegations of paragraph 4 are admitted.

5. The allegations of paragraph 5 are admitted.

6. The allegations of paragraph 6 are admitted.

7. Defendant neither admits nor denies the allegations of paragraph 7, as they are conclusions of law.

8. Defendant neither admits nor denies the allegations of paragraph 8, as they are conclusions of law.

9. Defendant neither admits nor denies the allegations of paragraph 9, as they are conclusions of law.

10. The allegations of paragraph 10 are admitted.

11. The allegations of paragraph 11 are admitted.

12. The allegations of paragraph 12 are admitted.

13. The allegations of paragraph 13 are admitted.

14. Defendant neither admits nor denies the allegations of paragraph 14, as they are conclusions of law.

15. Defendant neither admits nor denies the allegations of paragraph 15, as they are conclusions of law.

16. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 16.

17. Defendant neither admits nor denies the allegations of paragraph 17, as they are conclusions of law.

18. Defendant neither admits nor denies the allegations of paragraph 18, as they are conclusions of law.

19. Defendant neither admits nor denies the allegations of paragraph 19, as they are conclusions of law.

20. Defendant neither admits nor denies the allegations of paragraph 20, as they are conclusions of law.

21. The allegations of paragraph 21 are admitted.

22. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 22.

23. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 23.

24. The allegations of paragraph 24 are admitted.

25. The allegations of paragraph 25 are admitted.

26. Defendant neither admits nor denies the allegations of paragraph 26, as they are conclusions of law.

27. The allegations of paragraph 27 are admitted.

28. The allegations of paragraph 28 are denied.

29. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 29.

30. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 30.

31. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 31.

32. The allegations of paragraph 32 are denied.

33. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 33.

34. The allegations of paragraph 34 are denied.

**AS TO THE FIRST COUNT**

35. Defendant repeats all prior answers as if they were fully set forth at length herein.

36. The allegations of paragraph 36 are admitted.

37. Defendant neither admits nor denies the allegations of paragraph 37, as they are conclusions of law.

38. The allegations of paragraph 38 are denied.

39. The allegations of paragraph 39 are denied.

40. Defendant is without sufficient information or belief to admit or deny the allegations of paragraph 40.

41. The allegations of paragraph 41 are denied.

**WHEREFORE**, the defendant, Township of Hazlet, demands judgment against the plaintiff dismissing this count of the complaint, along with attorney's fees and cost of suit and such other relief as the Court may deem just and equitable.

**AS TO THE SECOND COUNT**

42. Defendant repeats all prior answers as if they were fully set forth at length herein.

43. The allegations of paragraph 43 are denied.

44. The allegations of paragraph 44 are denied.

45. The allegations of paragraph 45 are denied.

46. The allegations of paragraph 46 are denied.

47. The allegations of paragraph 47 are denied.

48. The allegations of paragraph 48 are denied.

**WHEREFORE**, the defendant, Township of Hazlet, demands judgment against the plaintiff dismissing this count of the complaint, along with attorney's fees and cost of suit and such other relief as the Court may deem just and equitable.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff failed to make a good faith effort to obtain relief without litigation.

**SECOND AFFIRMATIVE DEFENSE**

The plaintiff's complaint is barred by the doctrine of unclean hands.

**THIRD AFFIRMATIVE DEFENSE**

The plaintiff's complaint should be dismissed as the Township's zoning ordinance provides a realistic opportunity for the construction of its fair share of affordable housing.

**FOURTH AFFIRMATIVE DEFENSE**

The plaintiff is not entitled to the relief requested as plaintiff failed to propose a bona fide affordable housing plan.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiff failed to join a necessary and indispensable party, that being the property owner, The Church of the Holy Family, which has an interest inevitably involved in the subject matter before the court, and a judgment cannot

be made without judging or affecting the property owner's interest.

**SIXTH AFFIRMATIVE DEFENSE**

The complaint is barred pursuant to an order of immunity issued on July 28, 2008 in Elegant Properties, LLC v. Township of Hazlet and Township of Hazlet Planning Board, MON-L-1559-08.

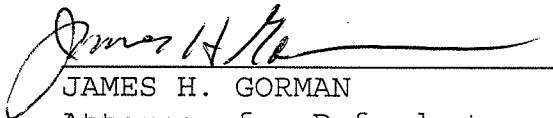
**SEVENTH AFFIRMATIVE DEFENSE**

The complaint is barred pursuant to an order of immunity issued on November 17, 2009 in Elegant Properties, LLC v. Township of Hazlet and Township of Hazlet Planning Board, MON-L-1559-08.

**RESERVATION OF RIGHTS**

The Defendant reserves the right to assert such additional affirmative defenses as further investigation and discovery may disclose.

Dated: 8/3/16

  
\_\_\_\_\_  
JAMES H. GORMAN  
Attorney for Defendant,  
Township of Hazlet

**THIRD PARTY COMPLAINT**

The defendant-third party plaintiff, Township of Hazlet, (hereinafter "Township") a municipal corporation of the State of New Jersey, with its office at 1766 Union Avenue, Hazlet,

New Jersey 07730, by way of a third party complaint against third party defendant, The Church of the Holy Family (hereinafter "Holy Family") says:

1. The Township is a defendant in a Mount Laurel complaint brought by plaintiff, Highview Homes, LLC (hereinafter "Highview").

2. The complaint seeks the approval and construction of plaintiff's project on property owned by third party defendant, The Church of the Holy Family ("Holy Family") with its principal office located at 727 Highway 36, Union Beach, NJ 07735.

3. Holy Family's property is known as 910 Highway 36, and as Block 68.13, Lot 26 and Block 69.01, Lot 8 on the Township tax map (hereinafter the "Property").

4. If plaintiff is successful in its complaint, the Township will be required to rezone Holy Family's property.

5. Holy Family has an interest inevitably involved in the subject matter of the complaint now before the Court.

6. A judgment (or a settlement) cannot justly be made between Highview and the Township without either adjudging or affecting the property interests of Holy Family.

7. Holy Family is a necessary and indispensable party to this litigation.

8. Highview alleges that it is the contract purchaser of the Property.

9. Highview's standing to challenge the zoning of Holy Family's property derives solely from the rights of Holy Family.

10. In 2010, at the request of Holy Family, the front half of its property was rezoned from a single family residential zone requiring 7,000 square feet to the BH Business Highway zone to permit commercial development sought by Holy Family.

11. No affordable housing was proposed by Holy Family in 2010.

12. The Township rezoned the front portion of the property as requested by Holy Family by ordinance adopted on March 15, 2011.

13. On or about October 26, 2011, Tri State Commercial, Inc., on behalf of Holy Family, inquired about further zoning changes to permit a 65 unit multi-family development on the rear part of the Property.

14. No affordable housing was proposed by Tri State Commercial on behalf of Holy Family.

15. By email dated January 17, 2012, Tri State Commercial even objected to the payment of an affordable housing fee stating:

I want to confirm if the Township of Hazlet has any affordable housing fees that could be imposed under the Mt. Laurel II decision or any possible contributions to the municipality's housing fund (if that exists on



the books) or regional contribution agreements. Please let me know as these could be huge impediments to pursuing the projects. Thank you John.

16. The next proposal on behalf of Holy Family was from William F. Barglow, who at a meeting held on or about January 16, 2014 switched gears and proposed that all of the Property now be rezoned as part of the BH Business Highway zone.

17. No affordable housing was proposed by Mr. Barglow on behalf of Holy Family.

18. At a meeting held on or about June 10, 2014, Jack Morris of M&M Realty Partners, on behalf of Holy Family, requested that the rear portion of the Property be rezoned to permit 192 apartments in four story buildings while the front remain as BH Business Highway.

19. No affordable housing was proposed by Jack Morris or M&M Realty on behalf of Holy Family.

20. On or about March 12, 2015, Holy Family presented its next plan, now consisting of 150 luxury apartments covering the entire Property.

21. As of approximately March 12, 2015, Highview was Holy Family's new developer.

22. At a meeting held on or about May 14, 2015, Mr. John Abene of Highview presented his plans for a 150 unit luxury rental apartment complex.

23. Highview Homes did not propose any affordable units in its luxury rental apartment plan.

24. To study the Highview request, the Township retained Fred Heyer, P.P., on June 1, 2015.

25. On or about July 30, 2015, over four months after Highview first presented its luxury apartment plan, Highview's planner, Christine Cofone, P.P. emailed her planning report to Fred Heyer, the Township's planner.

26. The Highview plan called for 180 luxury rental apartments, an increase of 30 luxury units, and still did not propose any affordable housing.

27. At a meeting held with Ms. Cofone at Mr. Heyer's office on or about August 6, 2015, Mr. Heyer on behalf of the Township advised Ms. Cofone that any rental apartment project must contain at least 15 percent affordable units, pursuant to COAH rules.

28. In an email of August 12, 2015, Ms. Cofone on behalf of Highview proposed only a deficient 10 percent affordable set-aside.

29. Mr. Heyer was reviewing Highview's deficient proposal after Ms. Cofone's email.

30. Mr. Heyer was scheduled to appear before the Township Committee at its meeting of November 16, 2015 to discuss Highview's deficient proposal.

31. Highview filed its complaint on November 10, 2015.

32. Holy Family has failed to act in good faith.

33. Holy Family's failure to act in good faith inures to the detriment of Highview.

34. Highview has also failed to act in good faith.

**WHEREFORE,** the Township of Hazlet as defendant/third party plaintiff demands judgment as follows:


- a. Declaring that third party plaintiff, The Church of the Holy Family, and plaintiff, Highview Homes, LLC did not act in good faith prior to the filing of the complaint.
- b. Declaring that Holy Family and Highview did not act in good faith is binding on them and on future developers of the Property.
- c. Awarding defendant/third party plaintiff Township of Hazlet attorney's fees, cost of litigation, and court costs.
- d. Granting defendant/third party plaintiff Township of Hazlet such relief as the court may deem just and equitable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, James H. Gorman, is hereby designated as trial counsel in the above matter.

Dated:

8/3/16

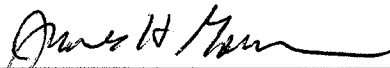
  
\_\_\_\_\_  
JAMES H. GORMAN  
Attorney for Defendant/  
Third Party Plaintiff  
Township of Hazlet

CERTIFICATION PURSUANT TO R. 4:5-1



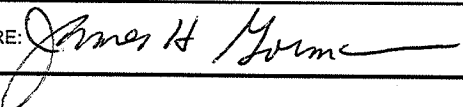
I hereby certify that the subject matter of the within controversy is not the subject of any other action in any court or arbitration proceeding to the best of my knowledge, information and belief and that no other action or arbitration proceeding is contemplated.

Dated:

8/3/16

  
\_\_\_\_\_  
JAMES H. GORMAN  
Attorney for Defendant/  
Third Party Plaintiff  
Township of Hazlet

**Appendix XII-B1**

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</b></p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. <hr/> AMOUNT: <hr/> OVERPAYMENT: <hr/> BATCH NUMBER:
	ATTORNEY / PRO SE NAME <b>JAMES H. GORMAN</b>	TELEPHONE NUMBER (732) 542-4200	COUNTY OF VENUE Monmouth <input checked="" type="checkbox"/>
	FIRM NAME (if applicable)		DOCKET NUMBER (when available) MON-L-4224-15
	OFFICE ADDRESS 1129 BROAD STREET SHREWSBURY, NJ 07702		DOCUMENT TYPE ANSWER & 3RD PTY COMPLAINT  JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) TOWNSHIP OF HAZLET, DEFENDANT, THIRD PARTY PLAINTIFF		CAPTION HIGHVIEW HOMES, LLC V. TOWNSHIP OF HAZLET AND PLANNING BOARD OF THE TOWNSHIP OF HAZLET AND TOWNSHIP OF HAZLET V. THE CHURCH OF THE HOLY FAMILY	
CASE TYPE NUMBER (See reverse side for listing)  701	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)  <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?	
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 <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			



# CIVIL CASE INFORMATION STATEMENT (CIS)

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

## CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

### Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

### Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

### Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Multicounty Litigation (Track IV)

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>271 ACCUTANE/ISOTRETINOIN</li> <li>274 RISPERDAL/SEROQUEL/ZYPREXA</li> <li>278 ZOMETA/AREDIA</li> <li>279 GADOLINIUM</li> <li>281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL</li> <li>282 FOSAMAX</li> <li>285 STRYKER TRIDENT HIP IMPLANTS</li> <li>286 LEVAQUIN</li> <li>287 YAZ/YASMIN/OCELLA</li> <li>288 PRUDENTIAL TORT LITIGATION</li> <li>289 REGLAN</li> </ul> | <ul style="list-style-type: none"> <li>290 POMPTON LAKES ENVIRONMENTAL LITIGATION</li> <li>291 PELVIC MESH/GYNECARE</li> <li>292 PELVIC MESH/BARD</li> <li>293 DEPUY ASR HIP IMPLANT LITIGATION</li> <li>295 ALLODERM REGENERATIVE TISSUE MATRIX</li> <li>296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS</li> <li>297 MIRENA CONTRACEPTIVE DEVICE</li> <li>299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR</li> <li>300 TALC-BASED BODY POWDERS</li> <li>601 ASBESTOS</li> <li>623 PROPECIA</li> </ul> |
|--|--|

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