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March 26, 2024
Via E-COURTS

Honorable Robert T. Lougy, A.J.S.C.
Superior Court of New Jersey - Mercer County
Mercer County Criminal Courthouse
400 South Warren Street, 4th Floor
Trenton, NJ 08650

RE: ***Princeton Coalition for Responsible Development Inc. vs. Municipality of Princeton Planning Board and Mayor & Council of the Municipality of Princeton***
Docket No. MER-L-000100-24 (*Action in Lieu of Prerogative Writs*)

Dear Judge Lougy:

This office represents Defendant, the Mayor and Council of the Municipality of Princeton ("Council") with respect to the above captioned matter. Please accept this letter brief in lieu of a more formal brief in support of Council's Motion for a Judgment on the Pleadings pursuant to Rule 4:6-2(e), based upon Plaintiff, Princeton Coalition for Responsible Development, Inc. ("Plaintiff")'s failure to state a claim upon which relief may be granted against the Council. In support of its Motion, Council states:

PRELIMINARY STATEMENT

Plaintiff is a non-profit organization formed by and made up of local residents who seek to stop, or at least attempt to control, the eventual redevelopment of certain lands located off of Stockton Street (US Route 206 North) in the Municipality of Princeton, that are owned by the

Princeton Theological Seminary and which are commonly known as the former "Tennent-Roberts and Whiteley Gymnasium Campus" or the "TRW Campus." On or about January 16, 2024, Plaintiff instituted the present action by filing a Complaint In Lieu of Prerogative Writs against co-defendant the Municipality of Princeton Planning Board ("Planning Board" or "Board") and Council, challenging the procedures employed by the Planning Board in adopting its 2023 Princeton Master Plan and Reexamination Report (the "Master Plan"), as well as taking issue with the Board's findings and recommendations set forth therein.

Although Plaintiff sets out an extensive series of allegations and (mis)characterizations in the Complaint related to the Board's Master Plan process and the unrelated history of the TRW Campus, what is abundantly clear on a plain reading of the Complaint is that there are absolutely no claims, counts or causes of action brought against the Council. Rather, Plaintiff brings this challenge against the Planning Board over its preparation and adoption of the Master Plan, and then includes within its prayers for relief, an improper request seeking to enjoin Council, the governing body of Princeton, from governing – specifically, by seeking an injunction to prevent Council from taking "any actions" in preparing, introducing or adopting any land use ordinances and redevelopment plans. However, (a) as the Complaint raises no claims, counts or causes of action against Council, (b) as the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq*. (the "MLUL"), vests sole responsibility for the preparation and adoption of a municipal master plan exclusively with its municipal planning board, and (c) as Plaintiff cannot demonstrate any entitlement to the relief sought against Council, Council is not a proper party to this action and Plaintiff's Complaint must be

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dismissed for failure to state a claim against Council for which relief can be granted. As such, Council files this Motion, pursuant to Rule 4:6-2(e) of the New Jersey Rules of Court, seeking the dismissal of Plaintiff's Complaint as to Council. For the reasons set forth below, Council's Motion should be granted and Plaintiff's Complaint against Council dismissed with prejudice.

STATEMENT OF MATERIAL FACTS & PROCEDURAL HISTORY

1. On January 16, 2024, Plaintiff instituted the present action by filing a Complaint in Lieu of Prerogative Writs in this court against the Planning Board and Council. *See Plaintiff's Complaint, E-Courts Transaction ID # LCV2024122937*.

2. Summarily, in this action "Plaintiff challenges the Master Plan and Reexamination Report, prepared by Clarke Caton Hintz ("CCH") and adopted by the Board on November 30, 2023." *See Plaintiff's Complaint, Transaction ID # LCV2024122937*.

3. Plaintiff's Complaint does not raise any claims, counts or causes of action against the Council.

4. Council filed its Answer and responsive pleadings on March 1, 2024. *See Answer and Affirmative Defenses of Defendant Mayor & Council of the Municipality of Princeton, Transaction ID # LCV2024553266*.

5. The Planning Board filed its Answer and responsive pleadings on March 1, 2024. *See Answer by Defendant Princeton Planning Board to Complaint in Lieu of Prerogative Writs, Transaction ID # LCV2024553608*.

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6. As part of its Affirmative Defenses, Council has asserted that the "Complaint raises no claims, counts or causes of action against Council," and that the "Complaint fails to state a cause of action upon which relief may be granted." See *Council's Affirmative Defenses, ¶¶1,3, Transaction ID # LCV2024553266*.

LEGAL ARGUMENT

A. Standard of Review for a Motion for Judgment on the Pleadings.

A motion for a judgment on the pleadings, brought pursuant to Rule 4:6-2(e), is in the nature of a motion to dismiss and is evaluated using the same standard. *See, e.g.*, Perez v. Wyeth Laboratories, Inc., 161 N.J. 1, 5 (1999). On a Rule 4:6-2(e) motion, the court "must assume the truthfulness of the allegations contained in plaintiff['s complaint], giving [plaintiff] the benefit of all reasonable factual inferences that those allegations support." Edwards v. Prudential Property and Cas. Co., 357 N.J.Super. 196, 202 (App. Div. 2003), *citing* F.G. vs. MacDonell, 150 N.J. 550, 556 (1997). Although at this preliminary stage of the proceedings the court is "not concerned with [plaintiff's] ability to prove the facts alleged in [its] complaint ... the motion should be granted if even a generous reading of the allegations does not reveal a legal basis for recovery." Id., *citing* Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989) and Camden County Energy Recovery Assocs v. N.J. Dept. of Environmental Protection, 320 N.J.Super. 59, 64-65 (App. Div. 1999), *aff'd o.b.*, 170 N.J. 246 (2001). Importantly, "[t]he motion may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for [plaintiff's] claim must be apparent from the complaint itself." Id., *citing* Camden Co. Energy Rec.

Assoc. at 64. In fact, "where the factual allegations are palpably insufficient to support a claim upon which relief can be granted," dismissal is mandated. Rieder v. N.J. Dept. of Transportation, 221 N.J.Super. 547, 552 (App. Div. 1987). *See also*, Mueller v. Kean University, 474 N.J.Super. 272, 283 (App. Div. 2022) (while review "of a complaint on a motion to dismiss is to be 'undertaken with a generous and hospitable approach ... pleading should be dismissed if it states no basis for relief and discovery would not provide one." [citations omitted]).

Additionally, where an affirmative defense appears on the face of the Complaint, as here, it may be asserted as a failure of the Complaint to state a claim upon which relief can be granted under Rule 4:6-2(e). *See, e.g.*, Prickett v. Allard, 126 N.J.Super. 438, 440 (App. Div. 1974), *citing* Rappeport v. Flitcroft, 90 N.J.Super. 578 (App. Div. 1966).

B. Plaintiff's Complaint States No Claim, Count or Cause of Action Against Council and Must Be Dismissed Pursuant to Rule 4:6-2(e).

A plain reading of Plaintiff's Complaint confirms that Plaintiff raises no claims, counts or causes of action against Council. In fact, not only does the Complaint fail to state a claim upon which relief can be granted, it simply fails to bring any claims at all against Council. Thus, a dismissal pursuant to Rule 4:6-2(e) is mandated. Rieder, *Ibid*., 221 N.J.Super. at 552.

As Plaintiff has expressed, and its pleadings make clear, the present action seeks to challenge "the Master Plan and Reexamination Report, prepared by Clarke Caton Hintz ('CCH') and adopted by the Board on November 30, 2023." *See Plaintiff's Complaint*, ¶¶4. In its "Nature of Action" section of the Complaint, Plaintiff summarizes each of the various challenges its brings against the Board's adoption of the 2023 Master Plan, including: alleging that the assumptions and resulting

principles and policies of the Master Plan fail to guide the use of lands in a manner which protects the public health and safety and promotes the general welfare, and fails to include all required components contrary to the requirements of the MLUL, *Plaintiff's Complaint* ¶4; challenges the specific recommendations in the Master Plan related to the TRW campus and surrounding properties, *Plaintiff's Complaint* ¶5; challenges the Board's use of a Master Plan Steering Committee, *Plaintiff's Complaint* ¶6; challenges the sufficiency of the notice(s) provided, *Plaintiff's Complaint* ¶7; and challenges the Board's hearing process and decision to adopt the Master Plan, *Plaintiff's Complaint* ¶8. Paragraphs 9 through 106 then detail Plaintiff's view of various events involving Princeton's Prior Master Plan and Reexamination Reports, *Plaintiff's Complaint* ¶¶9-21, the Area in Need of Redevelopment ("AINR") Study Area designation for the TRW campus, *Plaintiff's Complaint* ¶¶22-50, the 2022 Master Plan update process, *Plaintiff's Complaint* ¶¶51-61, and the 2023 Master Plan update process and renewed redevelopment discussions related to the TRW property, *Plaintiff's Complaint* ¶¶62-106. Having set the apparent background stage for its actual claims, Counts I and II of the Complaint then raise several challenges to the Board's findings and recommendations set forth in the Master Plan, *Plaintiff's Complaint* ¶¶107-133; Count III challenges the Board's use of a master plan steering committee, *Plaintiff's Complaint* ¶¶134-138; Count IV raises various procedural challenges against the Board, including contentions that the Board was required to provide notice of steering committee meetings, keep minutes, adopt a resolution of adoption and publish public notice of the adoption of the Master Plan, *Plaintiff's Complaint* ¶¶139-146; and Count V challenges the Board's conduct of the public comment portion of the November 9 and

November 30, 2023 hearing, and the Board's decision to vote on the adoption of the Master Plan, *Plaintiff's Complaint* ¶¶147-151.

Nowhere in the Complaint does Plaintiff allege that Council took part in the process, procedures or adoption of the Master Plan. Plaintiff does not challenge any actions taken by Council. In fact, as the Court and parties are well aware, the MLUL specifies that it is the Planning Board, not the governing body of the municipality, that prepares and adopts, or amends, the municipal master plan. N.J.S.A. 40:55D-28.a. Thus, because the present action challenges the Board's process, findings and recommendations associated with the Board's adoption of the 2023 Master Plan, for which the Council was not a part, and specifically because the Complaint, even on the most generous and liberal of readings fails to state any claims, counts or causes of action against the Council, Plaintiff's Complaint as it pertains to Council must be dismissed for failure to state a claim upon which relief can be granted in accordance with Rule 4:6-2(e). Mueller, *Ibid*., 474 N.J.Super. at 283, and Rieder, *Ibid*., 221 N.J.Super. at 552.

Furthermore, because jurisdiction for the municipal master plan lies solely with the Planning Board under N.J.S.A. 40:55D-28.a of the MLUL, there are no claims that Plaintiff could possibly maintain against Council in its challenge to the Master Plan, or the process, findings or recommendations associated with the Board's adoption of same. Thus, while a dismissal for failure to state a claim may ordinarily be without prejudice, and the court may often permit a plaintiff to amend its complaint in order to provide an opportunity for Plaintiff to allege additional facts in an effort to state a cause of action, *see* Hoffman v. Hampshire Labs, Inc., 405 N.J.Super. 105, 116 (App.

Div. 2009), because the MLUL is clear that jurisdiction for the municipal Master Plan lies solely with the Planning Board, a dismissal with prejudice in the instant case is warranted, appropriate, and within the sound discretion of the Court. *See* Lembo v. Marchese, 242 N.J. 477, 495 (2020) (where the statute does not give rise to an affirmative cause of action, the court "need not address whether such a claim has been sufficiently pled in the complaint, even under the permissive standard of Rule 4:6-2(e)") and Johnson v. Glassman, 401 N.J.Super. 222, 246-47 (App. Div. 2008) (no abuse of discretion by trial court in rejecting plaintiffs' request to re-plead and dismissing complaint with prejudice where amendment would not be fruitful).

C. Plaintiff is Not Entitled to Injunctive Relief Against Council.

Although the present Complaint challenges the Board's process, findings, recommendations and adoption of the 2023 Master Plan, Plaintiff then attempts to parlay its challenge against the Council by improperly seeking preliminary and permanent injunctive relief to enjoin Council from taking "any actions in furtherance of the recommendations set forth in the 2023 Master Plan and Reexamination Report, including but not limited to the introduction and adoption of land use ordinances and redevelopment plans." *See Plaintiff's Complaint, Counts I through V, Prayer for Relief,* ¶*c.* However, Plaintiff brings no claims against Council justifying such a request for relief. Furthermore, Plaintiff cannot meet the legal standard for preliminary, let alone permanent, injunctive relief, and Plaintiff's action is a frivolous attempt to circumvent the political process and improperly enjoin the municipal governing body from exercising its exclusive power to govern. For these

reasons, Plaintiff has failed to state a claim upon which relief can be granted, and its Complaint as against Council must be dismissed with prejudice pursuant to Rule 4:6-2(e).

First, it is notable that Plaintiff seeks preliminary and permanent injunctive relief against Council. However, pursuant to Rule 4:52-1(a), an action seeking preliminary injunctive relief must be brought on an Order to Show Cause with Temporary Restraints. Plaintiff has failed to do so here and its request for preliminary injunctive relief should be denied.

Second, even if Plaintiff did file an Order to Show Cause or attempt to seek a preliminary injunction against Council by motion pursuant to Rule 4:52-2, Plaintiff is unable to demonstrate any of the criteria necessary to enjoin Council from taking any action related to the preparation, introduction or adoption of any land use ordinances or redevelopment plans. The standard for preliminary injunctive relief is well settled – the moving party must establish by clear and convincing evidence: (a) a likelihood of success on the merits; (2) irreparable harm; (3) a showing that on balance the harm to the moving party is greater than the harm to the party to be restrained; and (4) the public interest will not be harmed. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); B & S Ltd. v. Elephant & Castle, 388 N.J.Super. 160, 167-68 (Ch. Div. 2006).

Here, Plaintiff is unable to meet any of the required criteria necessary for an entitlement to injunctive relief. As Plaintiff has not brought any claims against Council, it cannot demonstrate a likelihood of success on the merits against Council. While bringing claims against the Board does not entitle Plaintiff to any injunctive relief against Council, Plaintiff is similarly unable to demonstrate even a likelihood of success on the merits of its Master Plan challenge against the

Board. The MLUL vests wide discretion to the Board in its creation and adoption of the municipal master plan. The Board's findings and recommendations are entitled to a presumption of validity. Bow & Arrow Manor v. Town of West Orange, 63 N.J. 335, 343 (1973). To prevail, Plaintiff must demonstrate that the Board acted in an arbitrary, capricious and unreasonable manner. Dunbar Homes, Inc. v. Zoning Bd., 233 N.J. 546, 558 (2018); Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015). It is presumed that municipal bodies act "fairly and with proper motives and for valid reasons." Kramer v. Bd. of Adjustment of Sea Girt, 45 N.J. 268, 296 (1965); Medici v. BPR Co. and Bd. of Adj. of South Plainfield, 107 N.J. 1, 15 (1987). Thus, a court called upon to review a decision or action of a municipal body may not substitute its judgment for that of the entity. Kramer at 296; Kenwood Assoc. v. Bd. of Adj. of City of Englewood, 141 N.J.Super. 1, 4 (App. Div. 1976). "So long as the power exists to do the act complained of and there is substantial evidence to support it, the judicial branch of the government cannot interfere." Medici at 15. Even when doubt is entertained as to the wisdom of the Board's action, there can be no judicial declaration of invalidity absent clear abuse of discretion by the Board, and its decisions are entitled to deference. Pullen v. South Plainfield Planning Board, 291 N.J.Super. 303, 312 (Law Div. 1995) *quoting* New Brunswick Cellular Tel. Co. v. Old Bridge Twp. Planning Bd., 270 N.J.Super. 122, 134 (Law Div. 1993). With no claims brought against Council, and with the strong deference accorded to the Board in its preparation and adoption of the Master Plan, Plaintiff is unable to demonstrate any likelihood of success on the merits.

Similarly, Plaintiff is unable to satisfy the other three prongs of Crowe. While Plaintiff's Complaint offers several opinions as unsubstantiated facts, such as Plaintiff's view that the proposed concept plan for redevelopment of the TRW Campus would be out of character and scale with the surrounding neighborhood and would increase traffic, Plaintiff's Complaint does not demonstrate any harm to Plaintiff, let alone irreparable harm. Although Council disputes Plaintiff's characterizations regarding the TRW Campus set forth in the Complaint, even on a plain reading of the Complaint, at best Plaintiff can only demonstrate that reasonable minds may differ on how they view the impact potential future (and speculative) redevelopment of the TRW Campus would have on nearby neighborhoods. Nothing in the Complaint demonstrates that the future redevelopment of the TRW Campus would irreparably harm the site, surrounding areas or Plaintiff. Even if Plaintiff's allegations were held to be true, at most the redevelopment of the TRW Campus would result in a change to the scale and character of the site and surrounding neighborhood. While Plaintiff may characterize that as a "harm", based upon the strong public support expressed during the TRW public presentations referenced in Plaintiff's Complaint, many others may characterize such redevelopment as welcome, needed and wonderful progress towards the improvement of Princeton. Whatever such perceptions, these characterizations are a far cry from the irreparable harm Plaintiff must demonstrate to obtain injunctive relief as required by Crowe.

As Plaintiff has not demonstrated any harm, let alone irreparable harm, Plaintiff is simply unable to show that on balance, the harm to Plaintiff is greater than the harm to Council or the public which Council is elected to represent. As to demonstrating that the public interest will not be

harmed, Plaintiff's request for injunctive relief against Council can only be seen as a blatant attempt to thwart the public interest by preventing the duly elected governing body of Princeton from governing. Plaintiff's allegations and request for relief are simply untenable and are nothing more than NIMBY-ism masquerading as public advocacy. By this current action, where no claims are made against Council, but Plaintiff seeks to preemptively enjoin Council from taking future actions they fear may happen, Plaintiff demonstrates it (and by extension, its members) will stop at virtually nothing to get their way, including using / abusing the court process in an attempt to stop the deliberative public, democratic process called for by the MLUL for the enactment of land use ordinances. This is the antithesis of the public interest showing required by Crowe.

Third, Plaintiff's claims as to Council's enactment of any purported land use ordinances or redevelopment plans are arguably not ripe. While Plaintiff fears that Council may proceed in the future with adoption of a redevelopment plan for the TRW Campus, *see Plaintiff's Complaint ¶127*, Plaintiff's Complaint does not challenge any pending or past ordinances acted on by Council.

The process for the adoption of land use and redevelopment ordinances is clear with the requirements set out in the applicable statutes. Council must introduce the proposed ordinance at a public meeting of the governing body and thereafter publish notice of and the proposed ordinance with the time and place of when and where it will be further considered for final passage. N.J.S.A. 40:49-2.a. The ordinance must then be referred to the Planning Board for its "consistency review" as required by N.J.S.A. 40:55D-64. Upon notice to the public as required by N.J.S.A. 40:55D-62.1, the Ordinance is then subject to a second reading, public hearing, and consideration for adoption.

N.J.S.A. 40:49-2.c. The public is given an opportunity to ask questions and provide their comments to the governing body before the proposed ordinance is acted upon. N.J.S.A. 40:49-2.b. Thus, Plaintiff here is not without recourse – should Council move forward with a proposed ordinance or redevelopment plan as feared by Plaintiff, Plaintiff will have the opportunity to avail itself of the public process afforded under the MLUL at that time, including obtaining a copy of any proposed ordinance and providing any comments and suggestions to Council at a public hearing before the ordinance is acted upon. Should Council adopt an ordinance that Plaintiff takes issue with, Plaintiff may raise a separate challenge to the ordinance as provided for by Rule 4:69. Plaintiff's attempt to obtain injunctive relief here against Council is simply not ripe, and is an improper attempt to forego the procedural and administrative process provided for by the MLUL. With such administrative measures and relief available to Plaintiff, Plaintiff cannot meet its burden in demonstrating any entitlement to the relief sought in the Complaint against Council.

Lastly, Plaintiff's Complaint is nothing more than a house of cards in Plaintiff's attempt to seek injunctive relief against Council. Specifically, Plaintiff's Complaint attempts to challenge the procedural and substantive aspects of the Board's adoption of the Master Plan for the apparent purpose of trying to invalidate that plan so that Plaintiff can seek to enjoin Council from enacting any ordinances for which Plaintiff disagrees (or believes it will disagree with). While the MLUL makes it clear that every zoning ordinance must "either be substantially consistent with the land use plan element and the housing plan element of the master plan, or designed to effectuate such plan element", N.J.S.A. 40:55D-62a, the MLUL also recognizes that there are times that the public

interest may necessitate proceeding with adoption of an ordinance that is not consistent with the Master Plan or not designed to effectuate that Plan. In such cases, the municipality may enact the ordinance notwithstanding its inconsistency, "but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordnance." N.J.S.A. 40:55D-62a. Thus, even if Plaintiff were somehow successful in prosecuting this action and was able to have Princeton's current Master Plan set aside for some reason, such a ruling would merely result in the reinstatement of Princeton's prior Master Plan while the Board worked to cure any infirmities in the current master plan identified by the court. Throughout that process, Council would still be free to proceed with the preparation and adoption of any land use ordinance or redevelopment plan it finds necessary or advisable. So long as Council follows the procedural requirements of N.J.S.A. 40:55D-62a, Council has the inherent power to enact a land use ordinance or redevelopment plan, whether or not it is consistent with the Master Plan. Thus, Plaintiff's success or failure in pursuing its claims against the Board and Master Plan here provide no mechanism or entitlement to relief to preemptively enjoin or stop Council from exercising its statutory powers under the MLUL.

For these reasons, Plaintiff's prayer for relief against Council fails on the face of the Complaint as Plaintiff has simply not raised any claim against Council upon which relief can be granted. For these reasons, Plaintiff's Complaint against Council should be dismissed with prejudice.

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CONCLUSION

For the reasons set forth above, Plaintiff has failed to state a claim upon which relief can be granted against Council. Therefore, Council is entitled to a judgment on the pleadings in accordance with Rule 4:6-2(e), and respectfully requests that the Court enter an order granting its Motion and dismissing Plaintiff's Complaint against the Council with prejudice.

Respectfully submitted,

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Municipality of Princeton