

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

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

PLAINTIFFS

v.

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

DEFENDANTS.

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

CIVIL ACTION

**Motion Date:** February 19, 2019

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

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**MAHWAH DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION  
FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT**

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**PRELIMINARY STATEMENT**

This Brief is submitted on behalf of Defendants Township of Mahwah (“Township” or “Mahwah”), Thomas Mulvey, Property and Maintenance Inspector and Geraldine Multrup, (collectively referred to as the “Defendants”) in opposition to Plaintiffs’ Motion for Leave to Amend the Complaint.

Plaintiffs Ramapough Mountain Indians, Inc. and Ramapough Lenape Nation (hereinafter referred to as “Plaintiffs” or “RMI”) claim in this action that their right to assemble on property located at 95 Halifax Road in Mahwah, New Jersey (herein after referred to as the “Property”) for religious, cultural, educational and political purposes has been “constrained” by the Township’s efforts to enforce its zoning ordinances through the issuances of abatement letters, notification of the requirement to obtain a permit for structures and activities on the land, and summonses with the potential for daily fines imposed for each day that Plaintiffs remain in violation of Mahwah’s zoning ordinances. More specifically, Plaintiffs complain about the demand from Geraldine Entrup in a letters dated January 17, 2018 and April 24, 2018 notifying Plaintiffs of the multiple violations on the Property and advising that if the violations are not cured that summonses will begin to issue for each day that Plaintiffs remain in violation and the resultant issuance the issuance of “daily” summonses signed by Thomas Mulvey seeking fines for Plaintiffs’ failure to obtain a permit for group prayer open to the public, a stone alter and prayer circle (see Proposed Amended Complaint (“PAC”) ¶¶48, 61, 62, 64). They also make reference in the Complaint to the September 5, 2017 revocation of a 2012 zoning permit which allegedly

recognized Plaintiffs' use of masked poles and gatherings for religious use (see PAC, ¶¶45, n. 3 and 57).<sup>1</sup>

The summonses that are the gravamen of Plaintiffs' claims pertaining to the erection of structures and Mahwah's Zoning Ordinance prohibiting any type of assembly on privately owned land continue to be issued to Plaintiffs due to the failure of Plaintiffs to file an application for a variance to be permitted to conduct the activities it wants on the Property. To date, there has been no disposition on those summonses by the Municipal Court and thus, no amount of fines is presently owed and payable by Plaintiffs on those summonses to anyone.

Nowhere in the Complaint do Plaintiffs set forth any facts that would suggest that Plaintiff obtained permits for either the Prayer Circle, the Stone Altar or use of the site for public assembly for any reason, including educational, political, recreational, cultural or religious reasons. Thus, as set forth in the Brief, Plaintiffs' claims under the First and Fourteenth Amendments of the United States Constitution (presumably pursuant to 42 U.S.C. §1983), for a conspiracy pursuant to 42 U.S.C. §1985, and under the Religious Land Use and Institutional Persons Act ("RLUIPA") that are based upon the issuance of notices and summonses by the Township in an effort to enforce its local land use ordinances are subject to dismissal because in order to challenge a land use

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<sup>1</sup> As set forth more fully, *infra*, the 2012 permit was issued unilaterally by the former zoning officer and, contrary to Plaintiffs' assertions, was not a zoning permit but merely a permit permitting the construction of a longhouse that was erroneously granted in the absence of an application to the Zoning Board of Adjustment for a variance for religious use.

decision, the governmental entity being challenged must be given the opportunity to make a final decision on the matter under Article III's "case or controversy" requirement. Since Plaintiffs have never submitted even a single meaningful application to the Township so as to be permitted to have large gatherings (religious, cultural or otherwise) on the Property, and never even attempted to obtain a permit for erection of any structures on the land, as required under the Township's ordinances and New Jersey Municipal Land Use Laws, because the Property is located in a Conservation and flood plain zones, their claims are not yet ripe. Accordingly, Plaintiffs cannot establish that they have suffered an actual concrete injury in the matter at bar, and as a result, do not currently have standing to have their claims adjudicated by the Federal District Court.

Plaintiffs' claims under RLUIPA and the First and Fourteenth Amendments are subject to dismissal as there are only conclusory statements and formulaic recitations of the elements needed to sustain those claims. Notably missing from the Proposed Amended Complaint are any facts to suggest that there has been any type of discriminatory or unequal application of Mahwah's zoning ordinances against Plaintiff and no facts to plausibly suggest that either Defendants Mulvey or Entrup harbor any type of discriminatory animus against Plaintiff. In fact, Plaintiff fails to identify even a single similarly situated non-secular institutions that are permitted as of right in the C200 zone to use the property for public assembly purposes or who has not been subjected to enforcement actions for the same violations as Plaintiff. (PAC ¶59). These claims

are also subject to dismissal since the issuance of summonses for each day that Plaintiffs remain in violation of Mahwah's zoning ordinances because they have refused to file applications with the Township does not, as a matter of law, "shock the conscience" nor "substantially burden" Plaintiffs exercise of their religion so as to make it effectively impracticable for Plaintiffs to "simply pray." Likewise, Plaintiffs are judicially estopped from asserting a challenge to the revocation of the 2012 permit and from claiming that they are not in violation of Mahwah's zoning ordinances or that the variance process is being applied in a discriminatory manner since Plaintiffs did not obtain a favorable ruling on their appeal of the revocation and since they lost their appeal of their municipal court conviction in New Jersey Superior Court on January 10, 2019, wherein the Court affirmed Plaintiffs' conviction and imposed fines for each day that Plaintiffs were in violation of Mahwah's zoning ordinances when they erected certain structures on the property without a permit.

As none of the allegations in the Proposed Amended Complaint are sufficient to withstand a motion to dismiss the claims asserted by Plaintiff, the District Court should deny Plaintiffs' Motion for leave to amend the Complaint in its entirety.

### **LEGAL ARGUMENT**

#### **POINT I**

#### **A MOTION FOR LEAVE TO AMEND SHOULD NOT BE GRANTED WHEN PLAINTIFFS' CLAIMS WOULD BE SUBJECT TO DISMISSAL.**

Although leave to amend the pleadings may be granted when justice so requires, it should not be granted where there is bad faith or dilatory motive on

the part of the movant, when doing so would create unfair prejudice to the adverse party, or where the proposed cause of action would be futile. Foman v. Davis 371 U.S. 178, 182 83 S.Ct. 227, 230, 9 L.Ed.2d 222(1962); and Grayson v. Mayview State Hospital, 293 F.3d 103 (3d Cir. 2002).

Futility is demonstrated when a proposed amendment to the Complaint would not survive a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted. Alvin v. Suzuki, 227 F.3d 107, 121 (3d Cir. 2000). A 12(b)(6) motion to dismiss is appropriate to be granted where the facts as alleged by Plaintiffs cannot support the cause of action being asserted so as to entitle Plaintiffs to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

The purpose of a Rule 12(b)(6) motion to dismiss is to test the legal sufficiency of the complaint. See Strum v. Clark, 835 F.2d 1009, 1011 (3<sup>rd</sup> Cir. 1987). The United States Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 677-78, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), refined the standard for summary dismissal of a complaint that fails to state a claim for it to be more exacting in light of Rule 8(a)(2) of the Federal Rules of Civil Procedure's requirement that a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Expounding upon its opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) wherein the United States Supreme Court had held that a "pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do," the United States Supreme Court in Iqbal had held that in

order to survive dismissal of a Section 1983 complaint a plaintiff must allege “sufficient factual matter” to show that the claim is facially plausible; otherwise the complaint is subject to dismissal. Id. at 678-79. Likewise, since legal conclusions are not entitled to be accepted as true, a legal bar to a plaintiff’s complaint necessarily satisfies the federal motion to dismiss standard. Id. at 678; See also Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and Pinckney v. Jersey City, 140 N.J. Super. 96, 103 (L. Div. 1976) (dismissing complaint for the failure to file a timely notice of claim or to petition the court within one year to file a late notice of claim).

It is well-settled that procedural issues such as standing, mootness and ripeness are to be determined prior to any substantive analysis” on a motion to dismiss pursuant to Rule 12(b)(1) or Rule 12(b)(6) of the Federal Rules of Civil Procedure. ISP Envtl. Servs., Inc. v. City of Linden, Civ. No. 05-4249, 2007 WL 1302995, at \*7, n.1 (D.N.J. May 3, 2007), citing Palazzolo v. Rhode Island, 533 U.S. 606 (2001). Indeed, the Third Circuit has analyzed standing and ripeness issues in reviewing both a motion for failure to state a claim and a motion for subject matter jurisdiction. County Concrete v. Roxbury, 442 F.3d 158, 163-64 (3d Cir. 2006) (reviewing ripeness decisions in appeal from Rule 12(b)(6) dismissal); and Stern v. Halligan, 158 F.3d 729, 734 (3d Cir. 1998) (noting that satisfaction of the finality rule in land use matters implicates a federal court’s Article III subject matter jurisdiction). Accordingly, this Court should not permit Plaintiffs to amend the Complaint if there is a legal bar to Plaintiffs’ claim based on the doctrines of ripeness or standing, or if based upon the above analysis on

a motion for failure to state a claim, it appears to a reasonable degree of plausibility that the conduct alleged therein does not give rise to a claim for religious discrimination or a substantial burden on religious exercise pursuant to RLUIPA and the First Amendment, substantive due process violation, or for a conspiracy.

**POINT TWO**

**LEAVE TO AMEND SHOULD BE DENIED BECAUSE PLAINTIFFS CANNOT ESTABLISH THAT THEY HAVE SUFFERED AN ACTUAL CONCRETE INJURY IN THE MATTER AT BAR, AND AS A RESULT, DO NOT CURRENTLY HAVE ARTICLE III STANDING TO HAVE THEIR CLAIMS ADJUDICATED BY THE FEDERAL DISTRICT COURT.**

In Count One of the Proposed Amended Complaint, Plaintiffs assert a claim under the First and Fourteenth Amendments of the United States Constitution for alleged violation of their right to free exercise of religion based upon actions to enforce Mahwah's zoning ordinances as it pertains to the erection of structures in a C200 and flood plain zone, and to their assembly activities on the Property without first obtaining a permit to do so. In Count Two Plaintiffs assert a claim under the First and Fourteenth Amendments of the United States Constitution for alleged violation of their right to "peaceably assemble" for, not only religious purposes, but also for education, and for other political and cultural reasons based upon the enforcement actions as alleged in Count One. These claims are subject to dismissal due to the fact that they cannot establish a concrete injury from an adverse zoning decision because of their refusal and failure to submit a meaningful application in order to conduct the activities that

they claim are being curtailed by Defendants' actions to secure compliance with the Zoning Ordinances.

**A. Plaintiffs' Claims Are Not Ripe Because Plaintiffs Have Refused To File A Variance Application For Any Final Determination By The Local Board Of Adjustment**

Ripeness is a doctrine rooted in both Article III's case or controversy requirement and prudential limitations on the exercise of judicial authority. Murphy v. New Milford Zoning Comm'n, 402 F.3d 342, 347 (2d Cir. 2005); see also, Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725, 733 n. 7, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997); and Reg'l Rail Reorganization Act Cases, 419 U.S. 102, 138, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974). The goal is to see "whether a party has brought an action prematurely and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine". Id; see also, County Concrete v. Roxbury, supra, 442 F.3d 164 (stating that the ripeness doctrine serves to determine Court explained the ripeness doctrine's "basic rationale is to prevent the Courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Labs. v. Gardner, 387 U.S. 136, 148, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967); overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977).

The rule of finality in land use disputes was first articulated in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985). Although that case involved a takings claim under the Fifth Amendment, the finality rule has subsequently been expanded



by our courts to other types of claims challenging land use decisions by governmental entities, including Free Exercise Claims, Due Process Claims, Equal Protection claims, and RLUIPA claims. See Congregation Anshei Roosevelt v. Planning and Zoning Bd. Of Borough of Roosevelt, 338 Fed Appx. 214, 217, fn4 (3d Cir 2009), citing Taylor Inv., Ltd v. Upper Darby Twp., 983 F.2d 1285 (3d Cir. 1993); and Murphy, supra, 402 F.3d at 347. The rationale behind the expansion of the finality rule to all types of land use disputes is due to the fact that land use decisions concern a myriad of unique localized interests and affects the surrounding community; as such, it is the local authorities who are in a better position than the courts to assess the burdens and benefits of those varying interests. Semeric Corp. of Delaware v. City of Philadelphia, 142 F3d 582, 598 (3d Cir. 1998). If those interests were ignored absent a final decision, this would improperly convert the federal court from a court authorized by Article III to review constitutional violations into a “super land use board of appeal.” Id.

Thus, in order for a constitutional challenge to a land use decision to rise to the level of a justiciable case or controversy under Article III’s ripeness and standing requirements, a local land use board must first be given a meaningful opportunity to arrive at a definitive final decision with respect to the application of its zoning regulations to the plaintiff’s proposed use of the particular property in question. Id. at 597, quoting Williamson County, 473 U.S. at 191, 105 S.Ct. 3108. This requires a plaintiff to, at a minimum submit **a meaningful variance application prior to federal review** on a land use dispute. Id. stating that constitutional claims based on a denial of permit by initial decision makers are

premature when the property owners did not avail themselves of available subsequent procedures to obtain a final land use decision from the local entity. See also Congregation Anshei, 338 Fed Appx. at 219 (holding that plaintiff's claims under RLUIPA were not ripe until they submitted an application for a use variance and received a final determination from the local land use board whether the Yeshiva would be permitted on the property (emphasis added); Accord, House of Fire Christian Church v. Zoning Bd. Of Adj. of the City of Clifton, 379 N.J. Super. 526 (App. Div. 2005) (remanding claim under RLUIPA for development of a full record on the issue of whether applying for a conditional use variance constitutes a "substantial burden" on the Rezem Family Associates L.P. v. Borough of Millstone, 423 N.J. Super. 103 (App. Div. 2015) (implying that a final decision is not rendered on a land use application until the zoning decision is challenged through an action in lieu of prerogative writ available in New Jersey and holding absent same, the principles of finality and ripeness that are applied by the United States Supreme Court to land use cases would bar a claim for deprivation of civil rights pursuant to 42 U.S.C. §1983).

Requiring a meaningful variance application as a prerequisite to federal litigation enforces the long-standing principle that disputes should be decided on non-constitutional grounds whenever possible, in addition to 1) aiding in the development of a full record; 2) providing the Court with knowledge as to how a regulation will be applied to a particular property; 3) obviate the need for the court to decide the constitutional issue if a local authority provides the relief sought; and 4) demonstrates the judiciary's appreciation that land use disputes

are uniquely matters of local concern more aptly suites for local resolution.”  
Congregation Anshei, 338 Fed. Appx. At 217, citing Murphy, 402 F.3d at 348.

Here, Plaintiffs have refused, and thus failed, to satisfy the requirement under Williamson of a final definitive decision with respect to Plaintiffs’ use of the Property as evidenced by its failure to exhaust the variance process at the local level as a prerequisite prior to federal review, which serves as a tool for the reviewing federal court to know how the Township’s zoning regulations should be applied to the unique parcel of land in question. Indeed, nowhere in the Complaint do Plaintiffs state that they ever applied for a variance from the Township in order to use the Property for public assembly on the property.

Indeed, the facts in the present case are analogous to that of Murphy supra, wherein the Second Circuit found contrary to the District Court’s decision that the plaintiff’s religious claims were not ripe for federal judicial review. In that case, the plaintiffs were hosting Sunday afternoon Christian group worship meetings since 1994 and after complaints were received from neighbors, defendants first sent an informal letter advising that the meetings violated zoning regulations, and then, sent a formal cease and desist order charging the Murphy plaintiffs demanding that Plaintiffs no longer use their home as a meeting place by numerous group of people who are not family on a regular basis. Critical to the Court’s decision in dismissing the religious claims, the Murphy plaintiffs did not appeal the cease and desist order to the Zoning Board of Appeals, where it could have sought a variance from the zoning regulation.

Similarly, to Murphy, supra, Plaintiffs cannot prove any sort of compliance with Mahwah's zoning ordinances whatsoever. According to Mahwah's Zoning Ordinances, any use not specifically designated as a principal permitted use, an accessory use or conditional use is specifically prohibited from any zone in the Township. See Ord Section 24-4.3. Thus, due to the fact that the Property is located in Mahwah's C200 Conservation Zone, which does not expressly permit religious or cultural gatherings (or for that matter public assemblies of any type on private property, i.e. land now owned by a governmental entity), as of right, Plaintiff was required pursuant to New Jersey's Municipal Land Use Law, at N.J.S.A. 40:55D-70d to seek a variance and site plan approval before erecting any structures or conducting any public gatherings on the Property. This requirement was specifically communicated to Plaintiff by the Zoning Officer in a letter dated April 13, 2017 following Plaintiffs' application for a zoning permit for a multitude of structures, uses, and activities. (see Exhibit D, Letter from Michael J. Kelly, P.E. dated April 13, 2017). Specifically, Mr. Kelly informed Plaintiffs that since it was requesting a non-conforming use not listed under Defendant Township's C-200 Zoning Ordinance, it should submit an application for variance, to the zoning board of adjustment. (Id.).

Subsequent to the denial of a zoning permit, Plaintiff complied with Mr. Kelly's instructions by filing an application for a d(2) use variance on June 12, 2017 to be permitted to "expand a legally created non-conforming use for ceremonial, religious, and public assembly purposes" and to be permitted to "provide accessory temporary structures to facilitate the historical use of the

property.” (see Exhibit E, Plaintiffs’ application for a use variance dated June 12, 2017). This variance application was, however, inexplicably withdrawn by Plaintiff on August 21, 2017 after Defendant Township has expressed its willingness to consider Plaintiffs’ application in a hearing scheduled for September 20, 2017. (see Exhibit F, letter dated August 21, 2017 withdrawing Plaintiffs’ application for a use variance). Therefore, the Board was deprived of any ability to address the unique concerns that Plaintiffs’ proposed use or expansion of an allegedly pre-existing use presented to the Property and to the surrounding community as they are required when granting variances to any applicant. (see Exhibit G, Zoning Board of Adjustment Resolution dated November 1, 2017). Furthermore, only good-faith efforts can constitute acceptable performance to satisfy a requirement. Merely submitting a variance only to then mysteriously withdraw same does not and cannot respectfully be considered/constitute a “meaningful application for variance” as the Supreme Court intended in Williamson supra. The failure of Plaintiff to file even one variance application to conclusion means that Plaintiffs’ claims under RLUIPA and the Free Exercise Clause challenging the Township’s actions to enforce its zoning ordinances are unripe, as Plaintiff has not yet suffered a “concrete injury.”

For all of the foregoing reasons, this Court would respectfully benefit from deferring initial review. Plaintiffs’ claims have not arrived in the present forum in the concrete/final form that it can actually be due to its failure to submit a variance application as the first step to resolving this land-use dispute. To that effect, Defendant Township’s Zoning Board of Adjustment has been unable to

render a final decision vis-à-vis proper uses of and/or in the property. Thus, this Court is left without any guidance, as well as a lack of any measures to evaluate how applicable land use regulations should be applied to this uniquely situated Property.

For all of the foregoing reasons, the claims made by Plaintiff are subject to dismissal on the basis of Plaintiffs' failure to exhaust the variance process, and therefore, the Court should deny Plaintiffs' Motion for Leave to Amend the Complaint.

**B. Futility In Filing A Variance Application As Required By Mahwah's Ordinances Cannot Be Demonstrated By Plaintiffs.**

To the extent that Plaintiffs may refer to the September 15, 2017 letter written by Defendant Township in an attempt to demonstrate futility with the variance process, and to be exempt from the ripeness requirement, such effort would be flawed, if not wholly misplaced, since the revocation did not leave Plaintiff without an opportunity to obtain the approvals it needed to conduct the activities it wanted on the Property. This is because the revocation of the erroneously issued 2012 permit for the construction of a Long House, similarly to the denial of a zoning permit, is not a final decision under New Jersey Municipal Land Use Law. In New Jersey, it is the local Board of Adjustment that is tasked with the final authority to interpret a zoning ordinance, not the Zoning Official. N.J.S.A. 40:55D-70b. Thus, Plaintiff could have timely appealed that administrative decision by the Township Zoning Officer to Mahwah's Board of

Adjustment for a final decision, but did not do so. (see Exhibit J, Superior Court Order and Transcript dated April 27, 2018).

In the alternative, Plaintiff could have also resubmitted an application for a use variance on the property pursuant to N.J.S.A. 40:55D-70d. Filing an application for a d(1) variance instead of a d(2) variance is not more onerous, since both ultimately require the Board's focus upon the applicant's ability to address the positive and negative criteria of the plaintiff's application. As the court in Williamson explained, ripeness requires Plaintiffs here to not only submit a meaningful variance application as the first step, but it also requires Plaintiffs to follow through and exhaust the variance process until it actually obtains a final determination. The only exception to this is if the application is demonstrated to be futile. Assisted Living Associates of Moorestown, LLC v. Moorestown Tp., 996 F.Supp. 409, 426 (D.N.J. 1998). Futility, however, does not completely exempt a property owner from applying for approvals in order to have a ripe controversy, but only from submitting multiple applications where an adverse result is clear. Id at 427 quoting Southern Pac. Transp. Co. v. City of Los Angeles, 922 F.2d 498 (9<sup>th</sup> Cir. 1990), cert. den., 502 U.S. 943, 112 S.Ct. 382, 116 L.Ed.2d 333(1991) (other internal citations omitted).

Futility also cannot be demonstrated merely based on opposition by neighbors to the application in the absence of any evidence that the local board routinely denied variances based on such neighbor opposition. See Oxford House v. City of St. Louis, 77 F3d 249 (8<sup>th</sup> Cir 1996); cert. denied, 519 U.S. 816, 117 S.Ct. 65, 136 L.Ed.2d 27 (1996). Rather, futility is demonstrated where

either a zoning agency lacks discretion to grant relief sought by the plaintiff, or has made it clear that **all** such applications will be denied. Murphy, supra, citing Southview Assocs., Ltd. v. Bongartz, 980 F.2d 84, 98–99 (2d Cir.1992); see also Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1012 n. 3, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (an application for a variance is not required when it would be “pointless.”) (emphasis added).

Here, the Defendant Township does not lack discretion to grant variances, nor has it dug in its heels and made clear that all such application will be denied. Quite to the contrary, Defendant Township and its agents, Defendants Mulvey and Entrup have been nothing but transparent about the Township’s permit and variance processes and the Zoning Board of Adjustment even granted a hearing date to Plaintiffs’ withdrawn variance application to resolve this issue more than two (2) years ago (see Exhibit G, Zoning Board of Adjustment Resolution dated November 1, 2017). Instead, it is Plaintiffs who come to the Court with unclean hands by not giving the Township the opportunity to reasonably decide whether to grant or deny Plaintiffs’ proposed uses and construction.

Furthermore, although Plaintiffs add facts to the Amended Complaint to suggest that there has been a history of discrimination against them as a tribe, and sets forth facts to indicate that there is strong neighbor opposition and that other residents of Mahwah have directed slurs towards them at public meetings, Plaintiffs have failed to allege that any of these discriminatory acts were committed by any member or employee of the Township. However, the fact that there has allegedly been strong opposition to the activities which Plaintiffs are



conducting on the Property by persons living in the Township is of no consequence where Plaintiffs have not alleged any facts to demonstrate that the Zoning Board members continuously succumb to such pressure when determining whether or not to grant a land use application. Nor have Plaintiffs alleged that either Defendants Mulvey or Entrup have ever communicated to Plaintiffs that their zoning application would be clearly denied. Not only has such a sweeping declaration not been alleged to have been made on behalf of the individual Defendants in the PAC, but is also absent from being alleged against any single member of the Zoning Board of Adjustment. Indeed, not a single member of the Zoning Board is even identified in the PAC as having made any comments or acted in a manner which would suggest that filing an application for a variance would be futile.

For all of the foregoing reasons, Plaintiffs are not entitled to benefit from the futility exception to the finality rule in a land use dispute, and as such, Plaintiffs' Motion for Leave to Amend the Complaint should be denied.

### **POINT THREE**

**LEAVE TO AMEND THE COMPLAINT SHOULD BE DENIED FOR PLAINTIFFS' FAILURE TO ALLEGE FACTS SUFFICIENT TO SUPPORT A CLAIM FOR A VIOLATION OF THEIR FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS RIGHTS.**

In Count Four, Plaintiffs assert a claim under the Fourteenth Amendment of the Constitution for alleged violation of their substantive due process right due to their interest in the property located at 95 Halifax Road. Plaintiffs' claims in the land use context for a deprivation of their substantive due process rights

are based entirely upon the alleged imposition of “coercive” fines, and alleged “threats and intimidation tactics to cause Ramapough members to cease use of their land.” (PAC ¶103). As Plaintiffs correctly recognize in their Brief in support of their motion to amend, in order for the actions of Mahwah Defendants to constitute a violation of an applicant’s constitutional right to substantive due process pursuant to the Fourteenth Amendment’s substantive due process clause; and in order for that applicant to sustain a claim for monetary damages pursuant to §1983 against them, a plaintiff must establish something more than an action that is merely arbitrary, and unreasonable, or capricious. Rivkin v. Dover Tp. Rent Leveling Board, 143 N.J. 352 (1996) (holding that “absent egregious misconduct that **shocks the conscience** in the sense of violating civilized norms of governance, or invidious discrimination on the part of a board member or board, so long as the State provides a plain, adequate and timely remedy to redress irregularities in the proceedings, a party aggrieved by the determinations of a municipal . . . board does not have a claim for relief under §1983.”).

Shortly after the New Jersey Supreme Court had decided Rivkin, the United States Supreme Court held as follows: “It should not be surprising that the constitutional concept of shocking duplicates no traditional category of common-law fault, but rather points clearly away from liability, or clearly towards it, only at the ends of the tort law’s spectrum of culpability. Thus we have made it clear that the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state

authority causes harm...the Fourteenth Amendment [likewise] is not a font of tort law to be superimposed upon whatever systems may already be administered by the States.” County of Sacramento v. Lewis, 523 U.S. 833, 848 (1998). As to what constitutes conscience-shocking behavior in the land use context, the New Jersey Supreme Court’s decision in Rivkin is again instructive where it held that such claims must be reserved solely upon proof involving a “gross abuse of power, invidious discrimination or fundamentally unfair procedures.” See Rivkin, *supra*, 143 N.J. at 380. Given the type of conduct necessary to violate a landowner’s rights under the Fourteenth Amendment, it is not surprising that only rarely will the conduct of municipal government ever give rise to such a constitutional violation. *Id.* at 365-366. Were it otherwise true, virtually every alleged legal or procedural error of a local planning or zoning board or governing body could be challenged pursuant to §1983 on the theory that the erroneous application of state law somehow amounted to a constitutional violation. *Id.* at 367; Accord, United Artists Theatre Circuit, Inc. v. Twp. Of Warrington, 316 F.2d 392, 401 (3<sup>rd</sup> Cir. 2003).

Here, there are no facts in the complaint to plausibly suggest that any threats or intimidation tactics are being used by anyone from the Township to prevent Plaintiffs from using their land. Indeed, the facts suggest otherwise; all communications with Plaintiffs have been for the purpose of obtaining compliance with Mahwah’s ordinances through notification of the specific violations on the Property, and the resort to issuing summonses on a daily basis was only after Plaintiffs refused to avail themselves of the procedure for obtaining

permits for their non-conforming uses on the Property. In this respect, the issuance of summonses is both legal and authorized by N.J.S.A. 40:49-5, which permits a municipality to seek fines after providing a 30-day period for the owner to cure zoning code violations. Here, more than four (4) months had passed from the first notice of abatement dated January 17, 2018 before the Township began issuing summonses for Plaintiffs' violations of Mahwah's zoning ordinances. This lawful procedure, thus, cannot constitute the type of "conscience-shocking" behavior that is necessary to sustain a substantive due process claim.

For all of the foregoing reasons, Defendants are entitled to a dismissal of this claim, and Plaintiffs' motion to Amend the complaint to assert a claim for violation of their Fourteenth Amendment Substantive Due Process Claim same should be denied.

#### **POINT FOUR**

**LEAVE TO AMEND THE COMPLAINT SHOULD BE DENIED FOR THE FAILURE TO ALLEGE ANY FACTS SUPPORTING A VIOLATION OF THEIR RELIGIOUS EXERCISE OR ASSEMBLY RIGHTS UNDER THE FIRST AMENDMENT AND RLUIPA.**

In Counts Five through Seven, Plaintiffs assert a claim under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc, et seq. alleging religious discrimination by claiming selective enforcement of Mahwah's zoning ordinances, disparate treatment on less than equal terms than similarly situated landowners, and a substantial burden on their religious exercise through the total exclusion of religious assemblies within their jurisdiction due to the imposition of a land use ordinance and based upon the same enforcement

actions upon which their First Amendment claims are based. Since the analysis for determining whether there was a violation pursuant to RLUIPA is essentially the same as the analysis employed by courts in determining whether an applicant's right to freedom of religion has been curtailed through application of a municipality's zoning ordinances, Plaintiffs' inability to succeed in proving a violation pursuant to RLUIPA will then also defeat their claims under the Free Exercise Clause and Free Association Clause as contained in the First Amendment of the United States Constitution as contained in the First and Second Counts of the proposed Amended Complaint. See Lighthouse Institute for Evangelism v. City of Long Branch, 406 F.Supp.2d 507, 520 (D.N.J. 2005).

As a general rule statutory and constitutional prohibitions against using zoning laws to discriminate against a house of worship are not implicated merely because there is any regulation of the house of worship. Id. at 517 (holding that the intent of Congress in enacting RLUIPA which codifies pre-existing law in cases implicating religion was not to exempt churches from zoning regulations); and House of Fire Christian Church, supra at 544, quoting Joint Statement of Senators Kennedy and Hatch, 146 Cong. Rec. S7774-01 at S7776 (July 7, 2000). In fact, there is no bright-line rule in New Jersey against the total exclusion of a church and other places of worship from residential districts, much less the imposition of reasonable zoning regulations normally attendant to inherently beneficial uses such as a church who are afforded a process by which to obtain a variance or exemption from a municipality's zoning laws. See Jehovah's

Witness Assembly Hall of Southern New Jersey v. Woolwich Township, 223 N.J. Super. 55, 59 (App. Div. 1988); St. Joseph's Korean Catholic Church v. Zoning Bd. Of Adjustment of Borough of Rockleigh, 2006 WL 1320089 at \*9 (App. Div. 2006) (holding that where houses of worship are permitted in other zones, this does not render religious exercise "effectively impracticable"); and Kali Bari Temple v. Bd. Of Adj., 271 N.J. Super. 241, 638 A.2d 839 (App. Div. 1994) (holding that since larger churches are allowed in the residential zone that the ordinance totally prohibiting dual uses of buildings in the residential zone as applied to plaintiff who was seeking to make some minor renovations to his private home in order to facilitate small groups of Hindu worshippers was unconstitutional).

It is thus, clear that Mahwah is not necessarily required to give a religious institution the right to be located in a certain zone when that use would not fit in with the character of the neighborhoods within the Borough. Township of Dover v. Board of Adjustment, 158 N.J. Super. 401, 386 A.2d 421 (App. Div. 1978) (recognizing that township, through its governing body, is empowered to establish essential land use character of the municipality). Accord, Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285, 293 (1994) and St Gabriel's Syrian Orthodox Church v. Borough of Haworth, 2006 WL 3500965, at \*10 (Law Div. 2006) (holding that ordinance excluding churches from a residential zone did not violate any of the plaintiffs religious rights when it was completely neutral and not aimed at curtailing religious exercise in the privacy

of one's home). Nor have Plaintiffs in the matter at bar identified any similarly situated non-secular institutions that are permitted as of right in the C200 zone. Therefore, any claim that is based on Mahwah's Ordinances as being discriminatory on its face because religious assembly is not permitted in the C200 Conservation Zone is not cognizable under section 1983.

Furthermore, to demonstrate a violation of RLUIPA on the basis of a neutral zoning regulation of general applicability, a plaintiff first has the burden of showing that the land use regulation imposed a "substantial burden" on the religious exercise of plaintiff. 42 U.S.C. 2000cc-(a) (1). See also House of Fire Christian Church v. Zoning Board of the City of Clifton, 379 N.J. Super. at 544-47 (2004). A "substantial burden" must place more than an inconvenience or incidental effect upon religious exercise in order to violate RLUIPA. See Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, supra, 406 F. Supp.2d at 515 (D.N.J. 2005). To meet this burden in the context of the denial of an application, the governmental action must be shown to make the use of real property for the purpose of religious exercise "effectively impracticable." Id. A "substantial burden" does not result merely because a land use regulation makes the practice of the applicant's religion inconvenient or more expensive. Id. After all, RLUIPA is not intended to provide religious institutions with immunity from land use regulation, nor does it purport to exempt a religious institution from applying for variances or special permits or exceptions or other relief where available without discriminatory intent or unfair delay. Id. at 517;

see also, House of Fire Christian Church, supra 379 N.J. Super. at 544. If it were otherwise, this would require municipalities to impermissibly favor religious uses rather than to treat them equally with other secular land owners. Civil Liberties for Urban Believers v. City of Chicago (“CLUB”), 342 F.3d 752 (7<sup>th</sup> Cir. 2003) (holding that “no such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise.”); see also Westchester Day School v. Village of Mamaroneck, 386 F.3d 183, 189 (2004) (“Westchester I”) (“As a legislative accommodation of religion, RLUIPA occupies a treacherous narrow zone between the Free Exercise Clause, which seeks to assure that government does not interfere with the exercise of religion, and the Establishment Clause, which prohibits the government from becoming entwined with religion in a manner that would express preference for one religion over another, or religion over irreligion.”).

The fatal flaw to Plaintiffs’ claims under the First Amendment and RLUIPA lies in the fact that Plaintiffs cannot establish a substantial burden to their religious exercise exists as a result of any of the enforcement actions taken against them by the Township, as a matter of law. This is because Plaintiffs are currently in violation of Defendant Township’s C-200 Zoning Ordinance, as well as a variety of other land use regulations, and have refused to comply with the zoning application process to date for their continued use of the property for religious gatherings open to the public. See Code §24:11.2(b) and (d); 24:11.3,



4:11.5(b) and (b)(1); 24:11.5(c); and 24:11-22 at <http://clerkshq.com/Content/Mahwah-nj/books/Zoning/mahwahc24.htm>

(relevant parts only). It is well-settled that the requirement that religious institutions go through a routine permit process or variance application does not constitute a substantial burden on religious exercise/ assembly and does not run afoul of RLUIPA. St. Gabriel's, supra, at \*15 (holding that compliance with land use regulations does not violate a church's right to religious speech and assembly); see also Fortress Bible Church v. Feiner, 694 F.3d 208, 218-19 (2<sup>nd</sup> Cir. 2012); Konikov v. Orange County, 410 F.3d 1317, 1323 (11<sup>th</sup> Cir. 2005) (“[R]equiring applications for variances, special permits, or other relief provisions [does] not offend RLUIPA's goals.”); San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1035-36 (9<sup>th</sup> Cir. 2004) (holding that a city's requirement that plaintiff refile a “complete” permit application did not constitute a substantial burden); CLUB, supra, 342 F.3d at 761-62 (finding that “the scarcity of affordable land available for development in R zones, along with the costs, procedural requirements, and inherent political aspects of the Special Use, Map Amendment, and Planned Development approval processes” did not impose substantial burden on religious institutions); and Hale O Kaula Church v. Maui Planning Commission, 229 F.Supp.2d 1056, 1071 (D.Haw. 2002) (holding that laws designating various zones and requiring special use permits did not impose a substantial burden on religious institution). And since Plaintiffs have failed to identify even one landowner in the C200 zone who had violated Mahwah's zoning ordinances, but who were not issued summonses by

the Township, they likewise cannot sustain a claim for unequal or discriminatory treatment under RLUIPA or the First Amendment.

For all of the foregoing reasons, it is clear that the applicable zoning ordinances of the Township are not discriminatory on its face and have not been discriminatorily implemented against Plaintiffs; nor have Plaintiffs sufficiently pled facts to demonstrate that the application of Mahwah's zoning ordinances and the statutory procedure for obtaining a use permit for Plaintiffs' proposed religious and cultural use of the property makes the exercise of their religion virtually impracticable. Thus, it is respectfully requested that Plaintiffs' claims in the Amended Complaint be dismissed for the failure to state a claim.

**POINT FIVE**

**LEAVE TO AMEND SHOULD BE DENIED FOR THE FAILURE TO ALLEGE ANY LEGALLY COGNIZABLE FACTS TO SUPPORT A CLAIM FOR CONSPIRACY.**

In Count Three Plaintiffs assert a claim for conspiracy pursuant to 42 U.S.C. §1985. To prevail on a claim for conspiracy pursuant to 42 U.S.C. §1985 (3), a plaintiff must, at a minimum allege facts establishing: (1) a conspiracy; (2) that is motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. Russo v. Voorhees Twp., 403 F. Supp. 2d 352, 359 (D.N.J.

2005), citing Lake v. Arnold, 112 F.3d 682, 685 (3d Cir.1997), and see Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971).

As it pertains to the second element, it is significant that Section 1985(3) does not prohibit all conspiracies but only those entered into “for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.” 42 U.S.C. § 1985 (3). The Supreme Court has stated that “the language requiring the intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action.” Russo v. Voorhees Twp., 403 F. Supp. 2d at 359, citing Griffin v. Breckenridge, supra. The Supreme Court in Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268, 113 S. Ct. 753, 758, 122 L. Ed. 2d 34 (1993) clarified that a class for purposes of Section 1985(3) must be “something more than a group of individuals who share a desire to engage in conduct that the Section 1985(3)defendants disfavors. Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997). Animus against the class must be based on: (1) immutable characteristics for which the members of the class have no responsibility; and (2) historically pervasive discrimination. Russo, supra, (holding that “sex, like race and national origin, is an immutable characteristic determined by the accident of birth” and holding that the impoverished is not a class intended to be protected under Section 1985).

Here, Plaintiffs allege Defendants Township and its agents have expressed their religious animus towards and have discriminated against Plaintiffs based on their religion. But, because one's religion is not determined at birth, and is not an immutable characteristic unable to be changed, Plaintiffs claims against Defendant Township and its agents based on religious animus cannot succeed because it fails to satisfy the requirement of what constitutes a protected class under 42 U.S.C. § 1985 (3).

Assuming *arguendo* that this Court determines that Section 1985(3) protects religious discrimination on equal terms as immutable characteristics such as race and sex, Plaintiffs' claim would nonetheless fail for the failure to allege sufficient facts establishing the existence of a conspiracy. Because conspiracy is the first element needed to be satisfied in order to state a Section 1985 claim, the New Jersey District Court provides guidance as to the elements of conspiracy: Plaintiffs must allege that the Defendant (1) entered into an agreement with at least one other person, (2) for the purpose of committing an unlawful act, and (3) one of the conspirators then took at least one overt act in furtherance of the agreement, and (4) plaintiff suffered some damage as a result. Warren v. Fisher, No. CIV.A. 10-5343 JBS, 2011 WL 4073753, (D.N.J. Sept. 12, 2011), *citing* Banco Popular North America v. Gandi, 184 N.J. 161, 177, 876 A.2d 253 (2005). Thus, an agreement is a necessary component of a conspiracy. Russo, *supra*; *see also* Graves v. U.S., 961 F.Supp. 314, 320 (D.D.C.1997) (emphasis added).

Here, the gravamen of Plaintiffs complaint is based on the issuance of “crippling” summonses by the Township for their violation of Mahwah’s zoning ordinances. Plaintiffs allege in support of their claim for a conspiracy for issuance of these summonses, that 1) “Mahwah and its agents are acting at the behest of, and in partnership with, the Polo Club...members [who] have publicly expressed that their goal is to drive Ramapough [Plaintiffs] off of their property”; 2) “...representatives of the Mahwah Council, including the Mayor, regularly visited and conferred with the Polo Club regarding action to take against Ramapough [Plaintiffs]”; 3) “agents of the Township maintain close cooperation with the Polo Club in a coordinated campaign against the Ramapough [Plaintiffs].” (PAC ¶70-71, ¶76 and ¶81. None of these allegations are sufficient to support a claim for a conspiracy against the Mahwah Defendants.

First, the issuance of summonses is not an illegal act that would support a claim for damages under 42 U.S.C. 1985 (3) as it is expressly authorized by the New Jersey State Legislature and has been affirmed to be appropriate as it pertains to Plaintiffs’ violations of Mahwah’s Zoning Ordinances. (see Exhibit P Judge Bachman’s Decision dated January 10, 2019).

Second, Plaintiffs have not alleged any relevant nor concrete facts to buttress any claims it has made against Defendant Township, let alone a conspiracy claim as the aforementioned allegations do not raise any inference that Defendants and the HOA had come to any concerted agreement with respect to any illegal act. In fact, Plaintiffs fail to allege any facts in the Amended Complaint to satisfy the who, what, where why, of even one element of

conspiracy, that is: 1) when these allege meetings took place; 2) where these allege meetings and partnerships took place; 3) who were the participants in these meetings; 4) what evident agreement(s) has Defendants Township and Polo Club entered into; 5) what evident overt unlawful act(s) has Defendants Township and Polo Club actually committed; 6) which of the conspirators, Defendant Township and/or Polo Club, has committed an overt act to further the agreement, if any; and 7) what damage has Plaintiffs actually suffered.

And even if it is alleged that the summonses were allegedly issued after some alleged incident involving the Polo Club members or after other township residents' complaints regarding Plaintiffs' activities at the property, this allegation falls far short of inferring Defendant Township's issuance of summonses were part of a larger plot to discriminate against Plaintiffs. Indeed, it is well-settled that a "[c]omplaint by a private citizen urging officials to investigate does not suggest the existence of a corrupt agreement between the citizen and the officials, who are free to act upon or ignore such letters in their discretion." Warren v. Fisher, Civ. No. 10-5343 JBS, 2011 WL 4073573, at \*4 (D.N.J. Sept. 12, 2011) (holding that sending letters of complaint urging an investigation into violations and causing multiple site inspections and charging tens of thousands of dollars do not meet the Iqbal plausibility standard for a conspiracy). Accordingly, Mahwah's decision to issue violations to Plaintiffs at any alleged urging of the HOA members, even if true, does not and cannot raise an inference that their enforcement actions were part of any unlawful agreement with the Polo Club Defendants. This is especially true in light of Mahwah's

legitimate interest to keep the peace in its own township and obligation to investigate and issue summonses for violations should an unlawful act in violation of zoning ordinances have been committed by a private land owner.

For all of the foregoing reasons, it is respectfully requested that the Court deny Plaintiffs their motion to amend the Complaint with a conspiracy claim.

**POINT SIX**

**LEAVE TO AMEND THE COMPLAINT SHOULD BE DENIED SINCE THE IDENTICAL CLAIMS WERE RAISED IN OR HAVE BEEN ADJUDICATED BY THE NEW JERSEY STATE SUPERIOR COURT**

Prior to filing the instant action in federal court, Plaintiffs filed an appeal of the Zoning Officer's decision on September 15, 2017 to rescind the 2012 permit (see Exhibit I, Complaint dated October 27, 2017, BER-L-7435-17). The appeal was not, however, filed with the Board of Adjustment in accordance with New Jersey's Municipal Land Use Law at N.J.S.A. 40:55D-72, but rather was filed with the New Jersey Superior Court in Bergen County, New Jersey as an action in Lieu of Prerogative Writ, pursuant to New Jersey Court Rule 4:69-1, et seq. (Id.). In the Superior Court Complaint, Plaintiffs raised the very same facts and claims for due process violations and for an injunction as they have pled in the current Complaint to challenge the revocation of their 2012 permit. (Id.). In state court, the Township moved to dismiss Plaintiffs' Complaint as untimely and for the failure to exhaust administrative remedies on or about January 31, 2018. To avoid a dismissal by the Court of their Complaint, Plaintiffs agreed at oral argument on the Township's Motion to Dismiss to voluntarily dismiss the Complaint with prejudice (see Exhibit J, Superior Court Order and Transcript

dated April 27, 2018). Thus, Plaintiffs appeal of the zoning officer's revocation of their 2012 permit was dismissed by the Superior Court with prejudice on April 27, 2018 (see Exhibit J, Superior Court Order and Transcript dated April 27, 2018).

On or about November 17, 2017, Plaintiffs were convicted on the summonses that had been issued as a result of the construction and maintenance of several structures, (cooking shack, sweat lodge, longhouse, tents etc.) and use of the property as a campground without a permit (see Exhibit K, Municipal Court Transcript). Using the definition of a "structure" contained within the Municipal Land Use Laws of New Jersey, the Court concluded that the prayer circle and series of totem poles with a face carved on it were structures because they were constructed of a combination of materials for ornamentation. Thus, the Judge found Plaintiffs guilty on all of the summonses issued for not obtaining a permit before erecting those structures along with others on the property without a permit, and determined that there should be a minimum fine of \$100.00 imposed for each of the 103 days that Plaintiffs did not abate the violations following the notice period of 67 days for compliance with the Township's Zoning Ordinances. This ruling was subsequently appealed by Plaintiffs in the Superior Court and a trial de novo was held. Following said trial, an Order upholding the municipal court conviction for the summonses issued by the Township was entered by Judge Keith A. Bachmann on January 10, 2019 (see Exhibit P, Decision dated January 10, 2019).



In addition, Plaintiffs have also raised the same religious discrimination and RLUIPA issues in another Superior Court action that was brought by the Township against Plaintiffs for injunctive relief under Docket Number BER-L-003189-17. The Answer filed by Plaintiffs clearly raises the very same issues that are being raised affirmatively in the matter at bar, including the issue of whether the Township's efforts to enforce its zoning ordinances by issuing summonses constitutes a substantial burden on the exercise of religion, allegedly in violation of RLUIPA (see Exhibit L, Answer and Fourth Affirmative Defense dated June 15, 2017).

Plaintiffs entered into a settlement of the aforementioned Superior Court case (BER-L-3189-17) pending against them in February 2018, and said settlement was placed on the record before the Honorable Superior Court Judge Lisa Perez-Friscia on February 28, 2018. Plaintiffs, however failed to approve and execute a written agreement memorializing the settlement. Thus, this action has been reinstated to the active calendar and is still pending a disposition in state court. Upon information and belief, there is presently a trial date on this and the HOA's complaint against Plaintiffs that is scheduled for January 30, 2019.

As Plaintiffs' RLUIPA and Free Exercise claims with respect to the use of the property have been raised in several court actions, and adjudicated, there is no question that the Amended Complaint is barred by *res judicata*, and/or under Full Faith and Credit principles of comity should be dismissed. The U.S.

Supreme Court “has long recognized that the determination of a question directly involved in one action is conclusive as to that question in a second suit.” B & B Hardware, Inc. v. Hargis Indus., Inc., 135 S.Ct. 1293, 1302-1303 (2015) (citation omitted). The general rule for application of issue preclusion is that “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties,” even if the issue recurs in the context of a different claim. Id. at 1303 (emphasis added); and see Taylor v. Sturgell, 553 U.S. 880, 892, 128 S.Ct. 2161, 171 L.Ed. 2d 155 (2008), citing New Hampshire v. Maine, 532 U.S. 742, 748 (2001). In other words, issue preclusion prevents parties or their privies from re-litigating an issue already litigated in a valid, final judgment on the merits. Simoni v. Luciani, 872 F.Supp.2d 382, 388-389 (D.N.J. 2012).

The doctrine of issue preclusion “ensures that ‘once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.’” Burlington Northern R. Co. v. Hyundai Merchant Marine Co., Ltd., 63 F.3d 1227, 1231 (3d Cir. 1995). As a result, modern application of issue preclusion doctrine no longer requires complete identity of parties in the two actions. Peloro v. U.S., 488 F.3d 163, 175 (3d Cir. 2007) (under the modern doctrine of non-mutual issue preclusion, a litigant may also be estopped from advancing a position that s/he presented and lost in a prior proceeding against a different adversary). Thus, all that is now

required for preclusion to apply to materially similar issues is that the party against whom preclusion is being asserted “must have had a ‘full and fair’ opportunity to litigate the issue in the first action.” B&B Hardware, *supra*, 135 S.Ct. at 1303, *citing* University of Tennessee v. Elliott, 478 U.S. 788, 797 (1986) (holding that the Full Faith and Credit Clause’s purpose is served by giving preclusive effect to the fact finding of state administrative tribunals).

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

The Supreme Court in Younger established a principle whereby federal courts are required to abstain from exercising jurisdiction over a federal claim when federal adjudication would disrupt an ongoing state criminal proceeding. Since that decision, this “highly important” principle has been extended to civil proceedings as well as to state statutory administrative proceedings. Moore v.

Sims, 442 U.S. 415 (1979); and Williams v. Red Bank Board of Education, 662 F.2d 1008, 1017 (3d Cir. 1981) (noting that the Younger abstention doctrine is rooted in the notion of “comity”) (overruled on other grounds as recognized in Schall v. Joyce, 885 F.2d 101, 108 (3d Cir. 1989)).

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

The Pappas Court then granted the defendants' motion to dismiss based upon the Younger abstention doctrine since the state court action was ongoing. The Pappas Court explained that, based upon the holding in Addiction Specialists, Inc. v. Township of Hampton, 411 F.3d 399, 408 (3d Cir. 2005), the Federal Court may abstain under Younger where: “(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate

important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims.” Id. In that case, both actions revolved around whether the Pinelands Commission acted lawfully in denying the plaintiff’s request for a waiver from New Jersey laws proscribing construction on freshwater wetlands. The state proceedings implicated important state interests since “zoning and land use issues are of traditional significance to states,” and “[a]s such, it may often be appropriate to invoke abstention to avoid deciding land use cases in federal court.” Id. at 588, quoting Addiction Specialists, supra 411 F.3d at 409. Regarding the last prong, the court held that plaintiff failed to meet his burden of demonstrating that he did not have an adequate opportunity to raise the federal claims in state court. Id. at 589-90, quoting Schall v. Joyce, 885 F.2d 101, 107 (3d Cir. 1989). Since all three (3) prongs were satisfied, the Federal Court held that the Younger abstention doctrine was appropriate in that case.

In the matter at bar, it is clear that the both issue preclusion and the Younger because their appeal challenging said revocation under Docket Number BER-L-7345-17 was dismissed with prejudice by the New Jersey Superior Court on April 27, 2018. (See Exhibit J, Superior Court Order and Transcript dated April 27, 2018). In New Jersey, a judgment of involuntary dismissal or a dismissal with prejudice, no matter how obtained, constitutes an adjudication on the merits in favor of the dismissed party “as fully and completely as if the order had been entered after trial.” In the Matter of Estate of Gabrellian, 372

N.J. Super. 432, 447 (App. Div. 2004), quoting Velasquez v. Franz, 123 N.J. 498, 507 (1991)); see also Mack Auto Imports, Inc. v. Jaguar Cars, Inc., 244 N.J. Super. 254, 259 (App. Div. 1990). Even a dismissal with prejudice following settlement of a claim can have preclusive effect under the equitable doctrines of res judicata, collateral estoppel, judicial estoppel, and the entire controversy doctrine, all of which effectively act to bar re-litigation of claims or issues that were raised or which could have been raised in prior litigation. In the matter of Estate of Gabrellian, supra, at 447 (precluding a subsequent claim involving the same issue of intent underlying a prior judicial proceeding which had been dismissed with prejudice as the result of a settlement). The rationale underlying these preclusive doctrines against persons or their privities from raising the same claims, issues, and facts necessary to support their newly asserted claims are identical, and essentially recognizes that fairness to the defendant and sound judicial administration require a definite end to litigation. Watkins v. Resorts International Hotel, 124 N.J. 398, 412-13 (1991). Accordingly, Plaintiffs cannot now bring a new claim in a different forum based upon an alleged illegal revocation of the 2012 zoning permit.

Next, RMI's claims in the Complaint represent nothing more than a re-pleading of RMI's affirmative defenses in Township of Mahwah v. Ramapough Mountain Indians, Inc., Docket No. BER-L-3189-17 (Law Div. 2017) as violations in the instant matter. In that case, RMI asserted that the Township was enforcing its Zoning Ordinance "in bad faith solely for the purposes of harassment and

religious discrimination in contravention of the Religious Land Use and Institutionalized Persons Act.” This case is still pending adjudication, and therefore the instant matter represents a premature challenge to matters that are currently the subject of an ongoing matter in Bergen County Superior Court. Furthermore, this case implicates a predominant and important state interest since it challenges enforcement of the Township’s zoning ordinances to a unique parcel of land which is expressly designated for conservation. See Addiction Specialists, supra at 409. Accordingly, Younger abstention is appropriate to be applied by the District Court where Plaintiffs have presented the very same federal claims contained in their Amended Complaint as affirmative defenses in the Bergen County matter.

Furthermore, to the extent that Plaintiffs challenge the summonses issued by the Township for zoning violations as illegal, discriminatory, or otherwise unconstitutional in this action following the Township’s revocation of the 2012 Zoning Permit, it is significant Plaintiffs were convicted of violating the zoning ordinances due to their erection of various structures on the property without a permit. They then appealed said conviction and imposition of fines to the New Jersey Superior Court and lost. More specifically, The Superior Court found the conviction to be proper due to the fact that RMI had failed to submit even one formal application to the Zoning Board for a final decision and therefore, they were clearly in violation of Mahwah’s zoning ordinances. The Superior Court also rejected any challenge to the application of Mahwah’s zoning ordinances on

the basis that it violated RLUIPA or their religious freedom rights. Accordingly, this unfavorable decision is entitled to Res Judicata effect and/or a dismissal of the claims brought by Plaintiffs herein. See Heck v. Humphrey, 512 U.S. 477, 486-47 (1994) (holding that a plaintiff is foreclosed from obtaining damages in a Section 1983 action if an unfavorable decision on a constitutional claim would imply the invalidity of the conviction).

For all of the foregoing reasons, Plaintiffs cannot sustain the claims made in the Complaint in federal court, after having lost all such challenges to the very same actions complained about in the Complaint and since there is also another state court action pending adjudication. Accordingly, it is clear that under these circumstances, Plaintiffs Motion to Amend the Complaint must be denied.

### **CONCLUSION**

It is respectfully requested that Plaintiffs' motion for leave to amend be denied for all of the reasons set forth herein.

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

By: /s/ Ruby Kumar-Thompson  
Ruby Kumar-Thompson, Esq.  
[rkumarthompson@cgajlaw.com](mailto:rkumarthompson@cgajlaw.com)

Dated: January 23, 2019



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

<p>RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,</p> <p style="text-align: center;">PLAINTIFFS</p> <p>v.</p> <p>TOWNSHIP OF MAHWAH, RAMAPO HUNT &amp; POLO CLUB ASSOCIATION, INC., GERALDINE ENTRUP, THOMAS MULVEY, JOHN and JANE DOES 1- 14, JOHN DOE ENTITIES 1 and 2,</p> <p style="text-align: center;">DEFENDANTS.</p>	<p>Case No. 2:18-cv-09228-CCC-JBC</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;"><b>CERTIFICATION OF COUNSEL IN SUPPORT OF DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT</b></p>
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I, RUBY KUMAR-THOMPSON, ESQ., being duly sworn upon my oath, do hereby certify as follows:

1. I am an attorney at law in the state of New Jersey, admitted to practice before the United States District Court of the District of New Jersey, and a Partner in the firm of Cleary Jacobbe Alfieri Jacobs, LLC, which firm represents Defendants Township of Mahwah, Geraldine Entrup, and Thomas Mulvey, in the above-captioned matter.

2. I am submitting this Certification in support of Defendants’ Opposition to Plaintiffs’ Motion for Leave to File First Amended Complaint.

3. It is respectfully requested that this Court take into consideration the attached exhibits, which contain matters of public record and/or are explicitly referenced in the Proposed Amended Complaint, pursuant to its authority under

the Third Circuit's holdings in In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir.1997), and in Pension Guaranty Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir.1992); and in accordance with the rulings in Thomasian v. New Jersey Inst. of Tech., Docket No. 08-2218, 2009 WL 260791 \*1, n. 3 (D.N.J. February 3, 2009); Love v. S. River Police Dept., Docket No. 11-3765, 2012 WL 3950358 \*2 (D.N.J. September 10, 2012); Baklayan v. Ortiz, Docket No. 11-03943, 2012 WL1150842 \*8 (D.N.J. August 15, 2012); and Dakka v. City of Hackensack, Docket No. 09-4564, 2010 WL 1490647 \*6 (D.N.J. April 3, 2010).

4. "Exhibit A" is a true and accurate copy of the Township of Mahwah Schedule of District Use Regulations.

5. "Exhibit B" is a true and accurate copy of the erroneously-issued permit for construction of a long house dated January 25, 2012.

6. "Exhibit C" is a true and accurate copy of Plaintiff's Zoning Permit Application dated April 6, 2017.

7. "Exhibit D" is a true and accurate copy of the Letter from Michael J. Kelly, P.E. dated April 13, 2017.

8. "Exhibit E" is a true and accurate copy of a letter with Plaintiff's application for a Use Variance dated June 12, 2017, and the addendum to the application.

9. "Exhibit F" is a true and accurate copy of the letter dated August 21, 2017 withdrawing Plaintiff's application for a use variance.

10. “Exhibit G” is a true and accurate copy of the Zoning Board of Adjustment Resolution dated November 1, 2017 dismissing Plaintiff’s application for a use variance without prejudice.

11. “Exhibit H” is a true and accurate copy of the letter dated September 15, 2017 revoking the zoning permit as it was granted without authorization from the Board of Adjustment because the use was a non-conforming use in the C-200 Zone.

12. “Exhibit I” is a true and accurate copy of the Prerogative Writ Complaint dated October 27, 2017, BER-L-7435-17 filed by Plaintiffs challenging the Township’s revocation of its 2012 permit.

13. “Exhibit J” is a true and accurate copy of the New Jersey Superior Court Order dated April 27, 2018; and Transcript dismissing Plaintiff’s Complaint challenging the revocation of the 2012 permit.

14. “Exhibit K” is a true and accurate copy of the Mahwah Municipal Court Transcript, dated November 17, 2017.

15. “Exhibit L” is a true and accurate copy of the Answer filed by Plaintiffs to the Township’s Verified Complaint seeking an injunction against Plaintiffs for refusing to comply with zoning ordinances, dated June 15, 2017.

16. “Exhibit M” is a true and accurate copy of the Notice of Abatement letter dated January 17, 2018 from Geraldine Entrup.

17. “Exhibit N” is a true and accurate copy of the letter dated April 24, 2018 from Geraldine Entrup.

18. “Exhibit O” is a true and accurate copy of the Summonses issued to Plaintiffs in April and May 2018 (these were previously annexed to Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction at ECF no. 12-3).

19. “Exhibit P” is a true and accurate copy of the Decision of the Honorable Keith A. Bachmann, J.S.C., dated January 10, 2019 affirming *de novo* Plaintiffs’ municipal court conviction for violating Mahwah’s zoning ordinances through the erection of structures without first obtaining a permit.

20. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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

By: /s/ Ruby Kumar-Thompson  
Ruby Kumar-Thompson, Esq.  
[rkumarthompson@cgajlaw.com](mailto:rkumarthompson@cgajlaw.com)

Dated: January 23, 2019

# EXHIBIT A

**SCHEDULE OF DISTRICT USE REGULATIONS  
TOWNSHIP OF MAHWAH**

<b>Zone</b>	<b>Permitted Principal Uses</b>	<b>Permitted Accessory Uses</b>	<b>Conditional Uses</b>
<b>C-200 Conservation (see subsection 24-6.1, paragraph a)</b>	<ol style="list-style-type: none"> <li>1. Public open space, including hiking, horse back riding, wildlife preserves, shorelands, botanical gardens, historical edifices, woodland areas, hunting and fishing facilities, other similar uses.</li> <li>2. Agricultural uses, farms, subject to subsection 24-6.1, paragraph a.</li> <li>3. Single-family detached residences, with 200,000 sq. ft. minimum lots.</li> <li>4. Municipal facilities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Private garages subject to subsection 24-6.8, paragraph a.</li> <li>2. Swimming pools subject to subsection 24-6.8, paragraph b.</li> <li>3. Signs.</li> <li>4. Off-street parking subject to the Mahwah Township Site Plan Ordinance.</li> <li>5. Accessory uses customarily incidental to a permitted principal use.</li> </ol>	<ol style="list-style-type: none"> <li>1. Essential services subject to subsection 24-6.9, paragraph b.</li> </ol>
<b>R-80 Single-Family Residential</b>	<ol style="list-style-type: none"> <li>1. Single-family detached dwellings.</li> <li>2. Agricultural uses, farms subject to subsection 24-6.1, paragraph a.</li> <li>3. Churches, other places of worship including parish houses, Sun-day school buildings, other similar uses, subject to subsection 24-6.1, paragraph c.</li> <li>4. Public day schools, not operated for profit.</li> <li>5. Public parks, playgrounds, libraries, firehouses, not-for-profit volunteer ambulance or volunteer first aid facilities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any C-80 Zone permitted accessory use subject to the same conditions as prescribed therein.</li> <li>2. Home occupations.</li> </ol>	<ol style="list-style-type: none"> <li>1. Essential services subject to subsection 26-6.9, paragraph b.</li> <li>2. Community buildings, social clubs, lodges, fraternal organizations, subject to subsection 24-6.1, paragraph c.</li> <li>3. Private day school not operated for profit.</li> </ol>
<b>R-40 Single-Family Residential</b>	<ol style="list-style-type: none"> <li>1. Any R-80 Zone permitted principal use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-80 Zone permitted accessory use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-80 Zone conditional use subject to the same conditions as prescribed therein.</li> </ol>
<b>R-20 Single-Family Residential</b>	<ol style="list-style-type: none"> <li>1. Any R-40 Zone permitted principal use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-40 Zone permitted accessory use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-40 Zone conditional use subject to the same conditions as prescribed therein.</li> </ol>
<b>R-15 Single-Family Residential (Ord. #1036, §III)</b>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone permitted principal use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone permitted accessory use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone conditional use subject to the same conditions as prescribed therein.</li> </ol>
<b>R-10 Single-Family Residential</b>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone permitted principal use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone permitted accessory use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-20 Zone conditional use subject to the same conditions as prescribed therein.</li> </ol>
<b>R-5 Single-Family Residential</b>	<ol style="list-style-type: none"> <li>1. Any R-10 Zone permitted principal use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-10 Zone permitted accessory use under the same conditions as prescribed therein.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any R-10 Zone conditional use subject to the same conditions as prescribed therein.</li> <li>2. Nursing homes subject to subsection 24-6.5.</li> </ol>

# EXHIBIT B

### Township of Mahwah Zoning Permit

Application #: 2733	Permit No: 20120010.000	Issue Date: 01/25/2012	Voucher/Receipt #: 0
Construction Control Number: 63604			Check #: 1244
Block: 1	Lot: 131	Qualifier:	Amount collected: \$0.00
Work Site: 95 HALIFAX RD		Zone: Default	
Owner: RAMAPOUGH MOUNTAIN INDIANS, INC.		Agent: RAMAPOUGH MOUNTAIN INDIANS, INC.	
Address: 189 STAG HILL ROAD		Address:	
City/State/Zip: MAHWAH NJ 07438		City/State/Zip:	
Telephone: _____		Telephone: _____	
Fax: _____		Fax: _____	
E-Mail: _____		E-Mail: _____	
Tenant:			

This is to certify that the above-described premises together with any building thereon, are approved for use as indicated below and as depicted on the Plot Plan:  
**BUILDING LONGHOUSE TO BE USED FOR PRAYER AND COMMUNITY CULTURAL ASSEMBLY**

Which is a:

- Use permitted by Zoning Ordinance, Article - **ARTICLE** Section - STAT,  
*as per D.C.P.*
- Use permitted by variance approved on \_\_\_\_\_, § \_\_\_\_\_ subject to any special conditions attached to the grant thereof.
- Valid nonconforming use as established by ( ) findings of the Zoning Board of Adjustment or by ( ) the undersigned zoning officer or by ( ) Planning Board on the basis of evidence supplied by applicant. Conditions, if any:
- There is a nonconforming structure on the premises by reason of insufficient
- Other:

*Gary L. Montroy*  
 \_\_\_\_\_  
 Gary L. Montroy Zoning Official

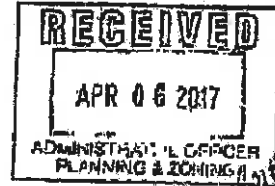
This is NOT a Construction Permit



# EXHIBIT C

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

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



APPLICANT NAME: Ramapough Mountain Indians Inc.

PHONE NUMBER: \_\_\_\_\_

ADDRESS OF APPLICANT: 95 Halifax Road, Mahwah NJ 07430

NAME OF OWNER (IF DIFFERENT): \_\_\_\_\_

ADDRESS OF OWNER: \_\_\_\_\_

BLOCK: 1 LOT: 131 ZONE: G-200

ADDRESS OF PREMISES FOR ZONING PERMIT: 95 Halifax Road, Mahwah NJ 07430

PRESENT USE: Open Space

PROPOSED USE: Public Assembly for Religious and Cultural Purposes

DESCRIBE IN DETAIL THE ACTIVITY TO BE CONDUCTED:  
The public open space use will include teepees, tents and other incidental structures for environmental conservation, education and advocacy. In addition, the Lunaspe will use the temporary and permanent structures for religious and cultural assemblies.  
Environmental conservation activities will focus on preserving the water and natural features onsite and the surrounding area. Furthermore the Lunaspe will promote environmental education and conservation of water resources in the Ramapo Mountains, and the potential threat posed by pipeline construction. Environmental advocacy trainings and workshops will be conducted in the tents, teepees, and other structures several times a month. Historic indigenous structures (teepees, and longhouse) will be used for education about the history of the Ramapo Mountains and the Ramapo Lunaspe people as well as their cultural and religious practices. Ramapo Lunaspe ceremonial events (e.g. tobacco ceremonies, water ceremonies, seasonal ceremonies) will be held several times a year.

NEW CONSTRUCTION: \_\_\_\_\_ ADDITION: \_\_\_\_\_ ALTERATION: \_\_\_\_\_ GARAGE: \_\_\_\_\_

ACCESSORY STRUCTURE: X SHED: X GENERATOR: \_\_\_\_\_ SIGN: \_\_\_\_\_

FENCE: \_\_\_\_\_ SWIMMING POOL: \_\_\_\_\_ OTHER: X

SETBACKS (EXISTING) (FEET):  
FRONT: 148.8' REAR: 888.5' SIDE: 33.6' SIDE: 330.3' TOTAL SIDE: 363.9'

SETBACKS (PROPOSED) (FEET):  
FRONT: 148.8' REAR: 888.5' SIDE: 50.0' SIDE: 330.3' TOTAL SIDE: 380.3'

EXISTING LOT COVERAGE: 0.38 %\* EXISTING IMPROVED LOT COVERAGE: 0.93 %\*

PROPOSED LOT COVERAGE: 0.38 %\* PROPOSED IMPROVED LOT COVERAGE: 0.93 %\*  
(after project built) (after project built)

**\* Attach sheet showing calculations/computations for Lot Coverage and Improved Lot Coverage. Instructions are attached.**

STREET FRONTAGE: 1384.83' (FEET) LOT DEPTH: 831.60' (FEET)

PROPOSED STRUCTURE HEIGHT: 15 (FEET) NO. OF STORIES: 1

HAS AN APPLICATION EVER BEEN MADE TO THE BOARD OF ADJUSTMENT? IF SO, STATE WHEN AND WHAT FOR: \_\_\_\_\_

(NOTE: ZONING FEES WAIVED FOR APPLICANTS THAT HAVE RECEIVED BOARD OF ADJUSTMENT APPROVAL.)

APPLICATION MUST BE ACCOMPANIED BY ONE (1) COPY OF A TRUE AND ACCURATE PLOT PLAN WITH DETAILS. THE PLOT PLAN WILL OUTLINE ALL EXISTING AND PROPOSED IMPROVEMENTS AS WELL AS DELINEATE ALL SETBACKS AND PROPERTY LINES (FRONT, SIDE AND REAR DIMENSIONS IN FEET).

SITE PLAN ONLY: TITLE: Layout and Dimensioning Plan PREPARED BY: Houser Engineering

I SWEAR THAT THE ABOVE APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SUBMITTED: 4/6/17 [Signature]  
(APPLICANT'S SIGNATURE)

(OWNER'S SIGNATURE)  
(IF DIFFERENT THAN APPLICANT)

APPROVED: \_\_\_\_\_ DENIED: ✓\*

ZONING OFFICER: [Signature] DATE: 4/13/17

\* SEE LETTER DATED 4/13/17

### INSTRUCTIONS FOR OBTAINING A ZONING PERMIT

1. THERE IS A \$50.00 PER APPLICATION FEE FOR FENCES OR SHEDS OF ONE HUNDRED TWENTY (120) SQUARE FEET OR LESS. ALL OTHER APPLICATIONS ARE \$100.00 EACH. NOTE: NO ZONING PERMITS WILL BE ISSUED UNLESS ALL REQUISITE INFORMATION IS RECEIVED BY PLANNING/ZONING OFFICE. CASH OR CHECKS ARE ACCEPTED. PLEASE MAKE CHECKS PAYABLE TO TOWNSHIP OF MAHWAH.
2. COMPLETE ATTACHED ZONING APPLICATION IN FULL, MAKING SURE THAT YOU HAVE FILLED IN YOUR NAME, CURRENT ADDRESS AND PHONE NUMBER WHERE YOU CAN BE REACHED DURING THE DAY, BLOCK, LOT, LOCATION AND ZONE PROPERTY IS LOCATED IN. A ZONING MAP IS POSTED OUTSIDE THE ZONING OFFICE IF YOU ARE UNSURE OF THE ZONE YOUR PROPERTY IS LOCATED IN.
3. FOR CONSTRUCTION OF AN ACCESSORY STRUCTURE, INDICATE ON A SITE PLAN WHAT YOU PROPOSE TO CONSTRUCT, ITS HEIGHT AND COVERAGE INFORMATION AND THE DISTANCE FROM THE PRINCIPLE STRUCTURE WHERE APPLICABLE. THIS APPLIES TO ALL ACCESSORY STRUCTURES (I.E. GARAGES, SHEDS, ETC.) AND CONSTRUCTION OF POOLS. FENCES-SKETCH ON A SITE PLAN WHERE THE FENCE IS PROPOSED TO BE LOCATED. SHOW HEIGHT AND TYPE. FOR ACCESSORY STRUCTURES PLEASE MAKE SURE THAT YOU VERIFY THE PROPOSED HEIGHT ON THE SITE PLAN ITSELF BY PROVIDING PROPOSED FINISHED GRADE ELEVATIONS AT THE FOUR CORNERS OF THE STRUCTURE. ALSO, PROVIDE THE PROPOSED ELEVATION TO THE MEAN OF THE PROPOSED HIPPED OR GABLED ROOF OR TO THE ROOF BEAMS OF A FLAT ROOF.
4. PLEASE VERIFY THE IMPROVED AND LOT COVERAGE CALCULATIONS BY PROVIDING, EITHER ON THE SITE PLAN SUBMISSION OR ON AN ATTACHED SHEET OF PAPER, THE EXISTING FOOTPRINT OF THE HOUSE 90 SQUARE FEET, SHEDS 22157 SQUARE FEET, POOL = 20 SQUARE FEET, ETC. SHOW HOW YOU ARRIVED AT THESE CALCULATIONS. *INCOMPLETE APPLICATIONS THAT DO NOT SHOW THESE CALCULATIONS WILL BE DENIED AND WILL DELAY THE REVIEW PROCESS.*
5. FOR ADDITIONS OR CONSTRUCTION OF NEW HOMES THAT CONTAIN BASEMENTS, THE APPLICANT MUST DEMONSTRATE ON THE SITE PLAN SUBMISSION THAT AT LEAST HALF OF THE PROPOSED BASEMENT IS *AT LEAST 6 FEET BELOW FINISHED GRADE*, OTHERWISE IT WILL BE CONSIDERED A STORY. MUST SUBMIT ELEVATION OF PROPOSED BASEMENT FLOOR, PROPOSED FIRST FLOOR ELEVATION AND ELEVATIONS AT PROPOSED FOUR (4) CORNERS OF NEW STRUCTURE.
6. INGROUND SWIMMING POOLS MUST INDICATE PROPOSED POOL COPING ELEVATIONS AND EXISTING TOPOGRAPHY AT NEAREST PROPERTY LINES. IF AN AS-BUILT IS NOT AVAILABLE, YOU MAY CHOOSE A BENCHMARK FIGURE AND DO PROJECTIONS. IF REGRADING THE PROPERTY, APPLICANT MUST SHOW NEW CONTOUR LINES AND EXISTING & PROPOSED GRADES IN THE VICINITY OF THE POOL. PLEASE DEPICT POOL ON SURVEY SHOWING DISTANCES TO LOT LINES AND LOT COVERAGE/IMPROVED LOT COVERAGE CALCULATIONS.
7. A PLOT PLAN (SURVEY) SEALED BY A LICENSED ENGINEERING OR LAND SURVEYOR IS REQUIRED UPON SUBMISSION FOR NEW CONSTRUCTION OF ANY RESIDENTIAL, COMMERCIAL OR INDUSTRIAL BUILDING.
8. ALLOW TWENTY (20) DAYS FOR THE COMPLETION OF ALL PERMITS (BUILDING AND ZONING).



# EXHIBIT D



## Township Of Mahwah

Municipal Offices: 475 Corporate Drive  
P.O. Box 733 • Mahwah, NJ 07430  
Tel 201-329-5757 • Fax 201-329-0537

Board of Adjustment x 245

Property Maintenance x 246

Zoning/Planning Board x 245

**VIA E-MAIL AND**  
**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

April 13, 2017

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

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

Dear Mr. Williams:

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

BOSWELL McCLAVE ENGINEERING



Michael J. Kelly, P.E.  
Administrative Officer

MJK/hg

Attachment

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



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

**I. Introduction**

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

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

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

Tribe has welcomed people with shared ceremonies for millennia<sup>1</sup>, and 2. the Ramapo Pass, where the Ramapo River passes through the Ramapo Mountains.<sup>2</sup> See Cinroy Cert.

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

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

The Tribe also proposes to bring the public onsite more often to share the Tribe's religion, culture, and views on the environment, and to educate school children and teenagers. The Tribe's proposed use includes large groups for a National Prayer Day and space for 100 or so to gather occasionally for such activities as watching outdoor movies.

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<sup>1</sup> In the Tribe's native language, the word "mahwah" means "meeting place." See Perry Cert.

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

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

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

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

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

In addition, the Tribe continues to assert sovereign immunity.

## **II. Relief Requested**

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

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

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

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

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

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

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

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

#### A. The Positive Criteria

##### 1. Special Reasons Exist for the Variance

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

The Tribe's proposed use meets six of these purposes:

1. N.J.S.A 40:55D-2(a) states, "To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare."

- o The tribal village's reconstruction will provide greater dignity to the Tribe members.
- o Traditional ceremonies associated with religious use of the land will promote morals and general welfare.

2. N.J.S.A 40:55D-2(b) states, "To secure safety from fire, flood, panic and other natural and man-made disasters."

- o The Tribe is planting a food forest in a joint effort with horticulturalists, agriculturalists, ethnobotanists, and Ramapo College students. They are planting seasonal and traditional Native American plantings to develop a local food source. This food forest will act as a flood retardant.

3. N.J.S.A 40:55D-2(g) states, "To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens."

- o The Tribe's property is already under NJDEP Green Acres designation, which allows for public use.
- o The property is the appropriate location for an environmental and cultural center alongside the Tribe's religious use on the river's edge.
- o The proposed use will meet the needs of all New Jersey citizens, who desire to restore relations with the Tribe, restore justice, reconcile the abuses of the past, and reconnect with the Earth. The proposed use will also meet the needs of the Tribe—who are New Jersey citizens as well—who need a ceremonial, cultural, and educational site to restore their tribal traditions.

4. N.J.S.A 40:55D-2(i) states, "To promote a desirable visual environment through creative development techniques and good civic design and arrangement."

- o The proposed natural building designs are creative. The designs propose to reconstruct the traditional longhouse and roundhouse in a modern context

for contemporary tribal expression through a blend of traditional techniques and more modern sustainable and environmentally sensitive design and technology.

- o The proposed tribal village design promotes a desirable natural environment, which fosters good civic design. This encourages community engagement, which builds healthy communities through future public gatherings at the ceremonial community longhouse and roundhouse.

5. N.J.S.A. 40:55D-2(a) states, "To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land."

- o The proposed natural building techniques integrating sustainable and renewable energy technology conserves the environment and habitat of the Ramapo River. It also promotes a model example of living in tiny houses, through its wigwams, in a way that prevents urban sprawl and degradation of the environment through improper use of the land.

6. N.J.S.A. 40:55D-2(a) states, "To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites."

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

**ii. The Proposed Use Inherently Serves the Public Good**

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

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

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



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

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

#### B. The Negative Criteria

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

This prong focuses on the impact of the variance on nearby properties. Medici v. BPR Co., 107 N.J. 1, 22-23 n.12 (1987). The Board of Adjustments evaluates the impact of the proposed use variance on the nearby properties to determine whether granting the variance will provide more public benefit than public detriment. Yahnel v. Bd. of Adjust. of Jamesburg, 79 N.J. Super. 509, 519 (App. Div. 1963), *cert. denied*, 41 N.J. 116 (1963).

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

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

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

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

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

### **C. Balancing the Positive and Negative Criteria**

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

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

3. "Third, in some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use. If so, the weight accorded the adverse effect should be reduced by the anticipated effect of those restrictions." Sica, 127 N.J. at 166 (1992).

- o Any anticipated adverse effect may be regulated by reasonable restrictions. For example, such restrictions could include regular maintenance of the property, parking limits, or restricted hours of operations, except for any security guard needs.

4. "Fourth, the Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good." Sica, 127 N.J. at 166 (1992).

- o Overall, due to minimal negative impact, the balance leaves no substantial detriment to the public good, allowing for grant of the variance.

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

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

The District Court of New Jersey stated:

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

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

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

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

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

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

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

Through the Religious Land Use Act, Congress made it very clear that government could not interfere with "the use, building, or conversion of real property for the purpose of religious exercise", except in the most compelling circumstances, and even then, only by the least restrictive means. 42 U.S.C. 2000cc-5; Jehovah's Witnesses Assembly Halls of New Jersey Inc. v. City of Jersey City, 597 F.Supp. 972, 981 (D.N.J. 1984) (The "practice of gathering in large groups for religious instruction and worship is in performance of their religious beliefs. This practice is protected by the First Amendment's free exercise clause"). The Ramapough Nation exercises its religion through spiritual practices and ceremonies unique to their tribe, as well as through shared ceremonies as led by other tribes on the land going back 30 years, and on neighboring land in keeping with their traditional religious practices on this continent going back for millennia. See Perry Cert.

Moreover, the Religious Land Use Act prohibits the use of burdensome zoning law restrictions on property to underhandedly inhibit the free exercise of religion, "whether or not compelled by, or central to, a system of religious belief." Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2762 (2014). In addition,

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

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

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

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

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

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

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

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

#### V. Sovereign Immunity

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

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

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

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

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

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

Finally, the Tribe claims that it merits nation to nation relations with the Township of Mahwah and other governmental entities analogous to that called for by the Two Row Wampum Treaty. The Two Row Wampum Treaty between the Haudenosaunee and the Dutch declared a brotherly relationship with each nation calling the other "Brother" to affirm equality. Codified in the Two Row Wampum Belt, with two purple rows running the length of the wampum belt, these symbolized that "[i]n one row is a ship with our White Brothers' ways; in the other a canoe with our ways. Each will travel down the river of life side by side. Neither will attempt to steer the other's vessel."<sup>3</sup> Therefore, the Tribe maintains it is a sovereign nation meriting nation to nation relations with the Township of Mahwah.

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

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<sup>3</sup> Two Row Wampum Treaty/Guswenta, available at <http://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/>, last checked May 25, 2017.



In January 2017, the Tribe met with the Township representatives, and agreed to submit applications for zoning and site plan applications for religious activities at Sweet Water. See Kelly Cert. In April 2017, the Tribe submitted a Zoning application and a Site Layout Plan. See Perry Cert. The Township denied the zoning application and provided a list of deficiencies. Id. The Tribe is hereby preparing this application addressing those deficiencies.

#### VI. Conclusion

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

#### ADDITIONAL INFORMATION

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

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

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

**A. Type of construction**

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

**B. Description of any deed restrictions or easements affecting this property Green Acres**

**C. Photograph(s) of land and buildings involved in this application**

**D. Names and Addresses of all expert witnesses proposed to be called and estimate of time to present case.**

- o Chief Dwaine Perry, 189 Stag Hill Rd., Mahwah
- o Prof. Charles Stead, Ramapo College, Mahwah
- o Charles Elmes, Middletown, NY
- o Karena Gore, Director, Center for Earth Ethics, Union Theological Seminary, NYC.
- o George W. Williams, P.P., Montclair, NJ.
- o Jeff Houser, P.E., Ringwood, NJ.

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

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

**E. Proof of payment of all taxes due and owing on the site**

The Property is tax exempt under Green Acres.

**F. Payment of Application Fees and Escrow.**

The Ramapough Mountain Indians, Inc, a 501(c)3, non-profit organization, respectfully requests a reduction of the Application Fee to \$500.00 and a waiver of the Escrow.

# EXHIBIT E

**TWW LAW PROFESSIONAL ASSOCIATION**  
**THOMAS W. WILLIAMS, ESQ**  
220 FRANKLIN TURNPIKE  
MAHWAH, NEW JERSEY 07430  
Phone: 201-529-4420 Fax: 201-529-1351  
twwesq@optonline.net

MEMBER OF NJ & NY BARS

**NEW YORK OFFICE**  
16 Chestnut Street  
Suffern, New York 10901

June 12, 2017

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

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

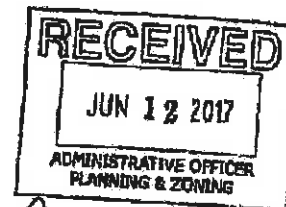
Dear Sir/Madam:

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

Very truly yours,

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

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



*Geraldini*  
*Entrep*

BOARD OF ADJUSTMENT  
TOWNSHIP OF MAHWAH  
APPLICATION

APPLICANT: Ramapough Mountain Indians, Inc.

- A VARIANCE
- B VARIANCE
- C VARIANCE
- D VARIANCE
- E VARIANCE

1. Applicant's full name, address and telephone: \_\_\_\_\_  
Ramapough Mountain Indians Inc, 189 Stag Hill Road, Mahwah, NJ 07430

2. Street address of site: 95 Halifax Road  
Lot 131 Block 1 Tax Map Sheet No. 12

3. The premises are situated on the (East) ~~(West)~~ ~~(North)~~ ~~(South)~~ side of  
West side of Halifax street approximately 1,670 feet from  
the intersection of Ramapo Valley Road

4. The premises are located in the following zone: C-200

5. Owner's name, address and telephone: Ramapough Mountain Indians Inc.  
189 Stag Hill Road, Mahwah, NJ 07430, 845-357-1038

6. Relationship of applicant to owner (i.e. Tenant, Agent, Contract Purchaser, Other):  
Same

7. Legal Counsel, name address and telephone: Thomas W. Williams, Esq.  
220 Franklin Turnpike Mahwah, NJ 07430, 201-529-4420; Aaron Kleinbaum, Esq., Valeria Georghui, Esq.

The present use of the premises is: Conservation and open space as well as  
Ramapough Lenaps ceremonial religious use and public assembly.

9. The purpose of this application is to permit the erection, alteration, extension or use  
described as follows: Expand a legally created non-conforming use for  
ceremonial, religious and public assembly purposes. In particular, provide accessory  
temporary structures to facilitate the historical use of the property.

10. List ALL Ordinances involved in this application from which variances are requested. State type of variance requested with specific Code section or Ordinance No.

Mahwah Zoning Ordinance subsection 24-6.1e,

Religious use variance within the C-200 Zone.

11. The dimensions of the property are: irregular containing 593,587

square feet or 13.627 Acres acres, and contain the following structures: \_\_\_\_\_

temporary structures related to Lunape Culture

12. Dimensions or size of proposed building or use: \_\_\_\_\_

13. Setbacks of building(s), structure(s) or use: Front: 75' Rear: 75'

Left Side: 50' Right Side: 50'

14. Date property acquired: July 1995, Prevailing zoning at the time of

acquisition: Unknown

15. Have there been any previous appeals, requests or applications to this or any other Township Board or a Construction Official involving these premises? Yes x No \_\_\_\_\_

If yes, state the nature, date and disposition of said matter and attach copies of any decision, resolutions or approvals: Site plan application was denied because of use.

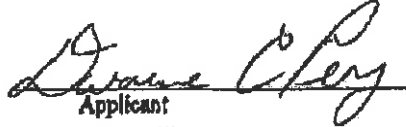
16. What are the exceptional conditions of the property preventing applicant from complying with the Zoning Ordinance requirements?

Not applicable as this relates to 'c' variances.

17. Supply a statement of facts showing why relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance:  
See addendum.


18. Does applicant or owner own any property which adjoins the premises which are the subject of this application? No

to be complete unless and until all information, submissions, schedules and fees required herein have been submitted.

  
Applicant

Sworn and subscribed to before me

This 12 day of July 2017

  
~~A Notary Public of New Jersey~~  
An Attorney at Law of New Jersey

Thomas W. Williams



AFFIDAVIT OF OWNER (IF OTHER THAN APPLICANT)

STATE OF NEW JERSEY )  
COUNTY OF BERGEN ) SS

Dwaine C. Perry, Of full age, being duly sworn according to law upon his oath,  
deposes and says that he/she resides at 13 Maulder,

Hillburn, NY

President  
of

and that he/she is the record owner of the premises which are the subject of this application and hereby  
authorizes Dwaine C. Perry  
who is (tenant, contract purchaser, other) President of the Applicant  
to make the within application. Owner further agrees that he/she will be responsible for any fees, costs or  
escrow amounts due, unpaid and/or delinquent which the applicant fails to pay. Owner further acknowledges  
that the Municipality may place a lien on the property for unpaid fees, escrows and costs in accordance with the  
Escrow Ordinance of the Township of Mahwah.

  
Owner

Sworn and subscribed to before me  
This 12 day of June, 2017

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

# EXHIBIT F

**TWW LAW PROFESSIONAL ASSOCIATION  
THOMAS W. WILLIAMS, ESQ  
220 FRANKLIN TURNPIKE  
MAHWAH, NEW JERSEY 07430**

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

Fax: 201-529-1351

MEMBER OF NJ & NY BARS

**NEW YORK OFFICE**  
16 Chestnut Street  
Suffern, New York 10901

August 21, 2017

Mahwah Board of Adjustment  
475 Corporate Drive  
Mahwah, NJ 07430

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

Dear Sir/Madam:

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

Very truly yours,



Thomas W. Williams, Esq.

TWW:kr  
cc: Aaron Kleinman, Esq.  
Chief Dwaine Perry

# EXHIBIT G

**RESOLUTION  
ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF MAHWAH**

**DOCKET NO. 1423-17**

**RAMAPOUGH MOUNTAIN INDIANS, INC.**

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

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

**WHEREAS**, that Applicant did not include a site plan application; and

**WHEREAS**, the Property is located in the C-200 Conservation District; and

**WHEREAS**, the Applicant filed the Application on or about June 12, 2017; and

**WHEREAS**, the Township of Mahwah Administrative Officer, Michael Kelly, issued a completeness review letter on June 28, 2017 that determined that the Application was incomplete for the reasons set forth therein; and

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

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

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

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

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

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

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

MOTION TO TAKE ACTION

DATE: November 1, 2017

MOVED BY: Mr. Dator

SECONDED BY: Mr. Whiteman

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

1. Mr. Dator
2. Mr. Kearney
3. Mr. Larson
4. Mr. Whiteman
5. Mr. Rabolli

TOTAL VOTES: (5)

APPROVAL OF RESOLUTION

MOVED BY: Mr. Whiteman

SECONDED BY: Mr. Kearney

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

1. Mr. Kearney
2. Mr. Rabolli
3. Mr. Whiteman

Dated: December 6, 2017

  
\_\_\_\_\_  
Michael Kelly, Administrative Officer

  
\_\_\_\_\_  
Charles Rabolli, Chairman

Prepared by: Ben R. Cascio, Esq.

# EXHIBIT H





# Township Of Mahwah

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

Board of Adjustment x 245

Property Maintenance x 246

Zoning/Planning Board x 245

September 15, 2017

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED,  
AND REGULAR MAIL**

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

RE: 95 Halifax Road  
Rescinding of Zoning Permit  
Block 1, Lot 131  
Township of Mahwah  
Our File No. MA-40-47

Dear Chief Perry:

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

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

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

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

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

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

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

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

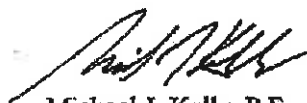
**D. Similar Zoning Application Denied in 2017**

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

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

Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Kelly".

Michael J. Kelly, P.E.  
Administrative Officer  
Department of Land Use and Property  
Maintenance

MJK/mk

Attachments

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

# EXHIBIT I

BER-L-007345-17 10/27/2017 7:06:30 PM Pg 1 of 18 Trans ID: LCV2017394273

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

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

*Attorneys for Plaintiff, Ramapough Mountain Indians Inc.*

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

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

**PREAMBLE**

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

property in question for prayer and community cultural assembly.

### THE PROPERTY

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

### THE PARTIES

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

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and Property Maintenance. That Department is also located at 475 Corporate Drive in Mahwah, and uses P.O. Box 733.

6. The Township of Mahwah and Mr. Kelly are hereinafter referred to collectively as "Defendants."

#### JURISDICTION & VENUE

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

#### HISTORY OF THE RAMAPOUGH MOUNTAIN

##### INDIANS IN NEW JERSEY

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

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



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Resolution, to recognize the Ramapough Mountain Indians as an Indian Tribe.

18. The Concurrent Resolution passed the Assembly and Senate unanimously, and was filed with the Secretary of State in January 1980. The Concurrent Resolution states “[t]hat the Ramapough Mountain People of the Ramapough mountains of Bergen and Passaic counties, descendants of the Iroquois and Algonquin nations, are hereby designated by the State of New Jersey as the Ramapough Indians.”

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

PRAYER AND COMMUNITY CULTURAL ASSEMBLY

AT SWEET WATER

20. Elders among the Ramapoughs recall witnessing religious and ceremonial use of Sweet Water and the area surrounding Sweet Water, going back more than five decades.
21. During that time, the Ramapoughs have used Sweet Water for many important religious ceremonies, including the Tobacco Ceremony, the Pipe Ceremony, the Water Ceremonies, sweat lodges, weddings, and scattering ashes of departed tribal members into the Ramapo River.
22. The Ramapoughs conduct religious ceremonies at least twice a month in the warmer months, and slightly less often during the winter. The Ramapoughs schedule regular sweat lodge sessions throughout the year.
23. In the late 1970s, Charles Elmes acquired title to Sweet Water and all the surrounding lands.
24. Soon after the acquisition, Mr. Elmes met with several Ramapoughs, including Ronald Redbone Van Dunk, who was the Chief of the Ramapoughs at that time.<sup>1</sup> Chief Redbone explained to Mr. Elmes that the Ramapoughs had used Sweet Water for prayer, community cultural assembly, hunting, and

---

<sup>1</sup> Chief Redbone passed away in April 2001.

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fishing for decades, if not centuries. Mr. Elmes allowed the Ramapoughs to continue using Sweet Water.

25. In 1984, the Township adopted a Zoning Map, which designated Sweet Water as a C-80 Conservation Zone.
26. The Ramapoughs continued to openly use the property for prayer and community cultural assembly, in open view of Township officials and police officers.
27. In June 1987, the Township amended the Zoning Ordinance to designate Sweet Water as a C-200 Conservation Zone.
28. Again, the Ramapoughs continued to use the property for prayer and community cultural assembly, in open view of the Township.
29. In July 1995, Mr. Elmes transferred title to Sweet Water to Ramapough Mountain Indians Inc.
30. The Ramapoughs, now as owners of the property, continued to use the property for prayer and community cultural assembly, in open view of the Township.
31. Over ten years ago, Bergen County authorities placed signs on the roads leading to Sweet Water, identifying the property as "Ceremonial" land.
32. In the fall of 2011, the Ramapoughs laid down a few logs in a rectangle at Sweet Water, as symbolic representation of a

Long House. A Long House is a place of worship, similar to a church, synagogue or mosque.

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

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

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

37. In reliance on the Zoning Permit and the dismissal of the October 2011 Complaint, the Ramapoughs continued conducting prayer and community cultural assembly at Sweet Water.

38. In 2013, the Ramapoughs installed several logs vertically in the ground, in a circle, to create a prayer circle. The Ramapoughs placed the remaining logs horizontally between the already-installed vertical logs, using a track excavator.

39. The Township Zoning Inspector, Thomas Mulvey, visited Sweet Water and determined that none of these activities violated the Zoning Ordinance.

40. In reliance on Mr. Mulvey's letter, the Ramapoughs continued to use the prayer circle.

41. From that point to December 2016, the Ramapoughs continued to use Sweet Water for prayer and community cultural assembly, in open view of the Township.

**DECEMBER 2016: HARASSMENT BY THE TOWNSHIP  
BEGINS**

42. In December 2016, the Township issued a Complaint to the Ramapoughs, alleging that the Ramapoughs needed a Zoning Permit for its use of Sweet Water: ignoring the fact that the Ramapoughs clearly already held a Zoning Permit allowing prayer and community cultural assembly. The Complaint threatened that if the Ramapoughs continued prayer and community cultural assembly at Sweet Water, they would incur \$1,250 in penalties, six months of jail time, and another six months of community service.

43. On January 2017, the Ramapoughs met with the Township to attempt to address the Township's concerns. The Township demanded that the Ramapoughs prepare, at great cost and effort, another Zoning Permit application.

44. On April 6, 2017, the Ramapoughs submitted the Zoning Permit application demanded by the Township.

45. On April 13<sup>th</sup>, the Township denied the Ramapoughs' application. In direct contradiction to the January 2012 Zoning Permit, the April 13<sup>th</sup> denial stated that the Zoning Ordinance did not allow prayer and community cultural assembly at Sweet Water. The denial gave no explanation of the contradiction. The denial made a new demand: that the Ramapoughs submit applications for a Site Plan Approval and a Use Variance to the Zoning Board.

46. A Use Variance is only necessary for uses that violate the Zoning Ordinance; therefore the Township's demand for a Use Variance was in direct contradiction to the Township's previous acknowledgment, in the January 2012 Zoning Permit, that the Zoning Ordinance allowed prayer and community cultural assembly at Sweet Water.

47. Nevertheless, again, at great cost, the Ramapoughs retained a planner to prepare the documents demanded by the Township, and submitted them in June 2017. The Ramapoughs also requested a partial waiver of the associated fees, owing to Ramapough Mountain Indians Inc.'s status as a nonprofit religious organization.

48. On June 28, 2017, the Township sent a letter listing the deficiencies in the application. The Township also denied the

Ramapoughs' application for a fee waiver, with no explanation whatsoever.

49. In August 2017, the Ramapo Hunt & Polo Club Association Inc. (the "Polo Club") filed a motion that it would oppose the Use Variance application.

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

51. At that point, the Ramapoughs withdrew the application.

52. On September 15, 2017, Township Administrative Officer Michael Kelly issued a letter purporting to "rescind" the January 2012 Zoning Permit.

COUNT ONE

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



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53. Only the Zoning Board of Adjustment has the power to modify or reverse a Zoning Permit. N.J.S.A. 40:55D-70(a) and N.J.S.A. 40:55D-72.

54. "Any power expressly authorized by [the Municipal Land Use Law] to be exercised by" the Zoning Board of Adjustment "shall not be exercised by any other body", including the Administrative Officer: in this case, Mr. Kelly. N.J.S.A. 40:55D-20.

55. Mr. Kelly's illegal attempt to usurp the Board of Adjustment's authority, through the September 15<sup>th</sup> letter, forced the Ramapoughs to incur the time and expense of bringing this lawsuit.

**WHEREFORE**, Plaintiff demands judgment as follows:

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

**COUNT TWO**

**(Mr. Kelly's September 15<sup>th</sup> letter violates the  
Ramapoughs' Right to Due Process.)**

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

57. The Ramapoughs also have a statutory right to prior due process, before the January 2012 Zoning Permit is rescinded.  
N.J.S.A. 40:55D-10.

58. Defendants' illegal attempt to rescind the January 2012 Zoning Permit violates the Ramapoughs' Constitutional and statutory right to due process, and has forced the Ramapoughs to incur the expenses of bringing this lawsuit.

**WHEREFORE**, Plaintiff demands judgment as follows:

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

**COUNT THREE**

**(Mr. Kelly's September 15<sup>th</sup> letter is wrong as a matter of law, arbitrary, and capricious.)**

59. The January 2012 Zoning Permit was based on a correct decision that the Zoning Ordinance allows the Ramapoughs to conduct prayer and community cultural assembly at Sweet Water.

60. Defendants' arguments to the contrary in the September 2017 letter are wrong as a matter of law, arbitrary, and capricious. Defendants' adoption of these incorrect and illogical arguments has forced the Ramapoughs to incur the time and expense of bringing this lawsuit.

**WHEREFORE**, Plaintiff demands judgment as follows:

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

**COUNT FOUR**

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

61. The Ramapoughs have openly conducted prayer and community cultural assembly at Sweet Water for decades, if not centuries.
62. The Township has always been fully aware of the Ramapoughs' use of Sweet Water for prayer and community cultural assembly.
63. Every time Township officials drive to Sweet Water, they pass signs erected by Bergen County marking Sweet Water as "Ceremonial Land."
64. The Township has repeatedly asked the New Jersey Department of Environmental Protection ("NJDEP") whether the Ramapoughs' activities conform to New Jersey environmental law, and NJDEP has always confirmed that they do.
65. The Township's longstanding knowledge of the Ramapoughs' use of Sweet Water for prayer and community cultural assembly constitutes tacit approval.
66. In January 2012, the Township made that approval explicit.

67. The Ramapoughs have relied on the Township's tacit and explicit approval to continue prayer and community cultural assembly at Sweet Water, to incur expenditures on this use, and to invite the Ramapoughs' allies to Sweet Water to join in prayer and community cultural assembly.

68. Under the equitable principle of estoppel, the Township is prohibited from withdrawing its longstanding tacit and explicit approval.

**WHEREFORE**, Plaintiff demands judgment as follows:

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

Respectfully submitted,

Date: 10.27.17

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

# EXHIBIT J

**FILED**

**APR 27 2018**

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

Nyliema Nabbie, Esq.  
Attorney ID #023341996  
Gittleman Muhlstock & Chewcaskie, LLP  
2200 Fletcher Avenue  
Suite 508  
Fort Lee, New Jersey 07024  
(201)944-2300  
Attorneys for Defendants, Michael Kelly and Township of Mahwah

<p>RAMAPOUGH MOUNTAIN INDIANS, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>MICHAEL KELLY and TOWNSHIP OF MAHWAH,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY – LAW DIVISION</p> <p>DOCKET NO. BER-L-007345-17</p> <p><u>CIVIL ACTION</u></p> <p><b>ORDER DISMISSING COMPLAINT</b></p>
--	--

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

IT IS on this 27 day of April, 2018

**ORDERED** as follows:

1. The subject Complaint is dismissed with prejudice pursuant to ~~R. 4:69-5 of the New Jersey Rules~~



of Court as a result of the Plaintiff's failure to exhaust its administrative remedies  
pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.



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

**OFFICIAL**



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I N D E X

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By Mr. Murthy	4
<u>MR. MURTHY</u> : Moves to Dismiss the Complaint	6
with prejudice	

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

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

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

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

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

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

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

THE COURT: I'm here on the motion.

MR. MURTHY: Okay.

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

MR. MURTHY: Okay. Your Honor, --

MR. SMITH: Your Honor, may I confer with Mr. Murthy for a moment please?

THE COURT: Who are you, sir?

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

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

MR. SMITH: Just for a minute.

THE COURT: Go ahead.

(PAUSE)

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

5

1 instituting this in lieu action and they cite Rule  
2 4:69-5.  
3 MR. SMITH: Your Honor?  
4 THE COURT: Sir, you're standing. Why are  
5 you standing, sir?  
6 MR. SMITH: Because we would like to withdraw  
7 this complaint, we'd like to make a voluntarily  
8 dismissal of this complaint. And that's what I  
9 discussed with Mr. Murthy before and that's what he  
10 wanted to bring to the Court's attention.  
11 THE COURT: You mean you want to dismiss it?  
12 MR. SMITH: Well, --  
13 THE COURT: It's going to be dismissed with  
14 prejudice.  
15 MR. SMITH: We would like to withdraw it.  
16 THE COURT: Well, I'm going to -- well, after  
17 a complaint is filed the rules provide that a case may  
18 only be withdrawn with the permission of the Court  
19 which may impose conditions on the withdrawal. So if  
20 you're planning on withdrawing it and then re-filing it  
21 I'm not going to permit that. If you want to withdraw  
22 it, that withdrawal and dismissal is going to be with  
23 prejudice.  
24 So you want to withdraw it, Mr. Murthy?  
25 MR. MURTHY: Your Honor, we move to withdraw

6

1 it without prejudice.  
2 THE COURT: Well, I won't permit that, so you  
3 can either stand here and argue your -- argue your case  
4 and we'll hear a response from Mr. Chewcaskie.  
5 MR. MURTHY: Your Honor, I'm going to now  
6 argue the case.  
7 THE COURT: Go ahead. All right, counsel,  
8 please confer with your client. When everyone's ready  
9 let me know please?  
10 COURT CLERK: Going off the record.  
11  
12 (OFF THE RECORD; 1:41:13 to 1:51:36)  
13  
14 THE COURT: Yes, counsel?  
15 MR. MURTHY: Your Honor, my client -- I've  
16 discussed with Mr. Chewcaskie, we are prepared to  
17 accept a dismissal with prejudice without costs.  
18 THE COURT: That being the situation, you  
19 have no objection to that resolution, Mr. Chewcaskie?  
20 MR. CHEWCASKIE: No, no objection, Judge.  
21 I'll just prepare an order indicating how we -- how we  
22 got here for your signature.  
23 THE COURT: That will be fine, I'll consider  
24 it. Any problems, I'll get in touch with counsel.  
25 MR. CHEWCASKIE: All right. Thank you, Your

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Honor.

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

(END OF PROCEEDINGS)

CERTIFICATION

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

/s/ Dolores S. Hastings                      May 23, 2018  
Dolores S. Hastings AD/T 417  
APPEALING TRANSCRIPTS, INC.  
CLARK, NEW JERSEY

# EXHIBIT K

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MAHWAH MUNICIPAL COURT

NEW JERSEY	)	DOCKET NO. 0233-SC-08491
	)	
PLAINTIFFS,	)	
	)	
v.	)	
	)	
RAMAPOUGH MOUNTAIN INDIANS	)	
	)	
DEFENDANTS.	)	

CERTIFIED COPY

AUDIO TRANSCRIPTION

NEW JERSEY V. RAMAPOUGH MOUNTAIN INDIANS

COURT DECISION

NOVEMBER 17, 2017

ATKINSON-BAKER, INC.  
COURT REPORTERS  
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TRANSCRIBED BY: MARY HARLOW

FILE NO. AB0CB6A



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1 A P P E A R A N C E S  
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3 ROY F. MCGEADY  
4 JUDGE  
5 UNIDENTIFIED MALE SPEAKERS  
6 UNIDENTIFIED FEMALE SPEAKERS  
7  
8 CLERK  
9  
10 JOSEPH P. DEMARCO  
11 MAHWAH TOWNSHIP  
12  
13 THOMAS WILLIAMS  
14 COUNSEL FOR DEFENDANTS  
15  
16 RAGHU MURPHY  
17 EASTERN ENVIRONMENTAL LAW CENTER  
18 COUNSEL FOR DEFENDANTS  
19  
20 AARON KLEINBAUM  
21 EASTERN ENVIRONMENTAL LAW CENTER  
22 COUNSEL FOR DEFENDANTS  
23  
24 VALERIA GEORGIA (PHONETIC)  
25

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AUDIO TRANSCRIPTION  
NEW JERSEY V. RAMAPOUGH MOUNTAIN INDIANS  
COURT DECISION  
NOVEMBER 17, 2017  
JUDGE MCGEADY: Thank you, ladies and gentlemen. All right. Good morning --  
MALE SPEAKER: Good morning.  
JUDGE MCGEADY: -- ladies and gentlemen.  
MALE SPEAKER: Good morning, Judge.  
FEMALE SPEAKER: Good morning.  
JUDGE MCGEADY: This is the --  
FEMALE SPEAKER: Judge, I'm so sorry.  
(unintelligible) --  
JUDGE MCGEADY: Okay.  
FEMALE SPEAKER: I'm so sorry.  
JUDGE MCGEADY: Um-hmm. I can still wish a good morning to everybody.  
(unintelligible whispering)  
JUDGE MCGEADY: All right.  
FEMALE SPEAKER: (unintelligible).  
JUDGE MCGEADY: Okay. All right, apparently we have technical problems, and they're calling IT, so I'm just going to go off the bench until it's corrected. Sorry.  
[RECORDING PAUSED]

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1 [RECORDING RESUMED]  
2 CLERK: All rise.  
3 JUDGE MCGEADY: Have a seat, and thank you very  
4 much. Okay. Thank you. (unintelligible).  
5 FEMALE SPEAKER: (unintelligible)  
6 JUDGE MCGEADY: All right. And good morning.  
7 I understand it's fixed now, so let's proceed. This  
8 is the November 17, 2017 session of the Vicinage 2  
9 Court. I'm Judge Roy McGeady. If counsel will  
10 introduce themselves, please?  
11 MR. DEMARCO: Your Honor, good morning. Joseph  
12 P. DeMarco, on behalf of the Township.  
13 JUDGE MCGEADY: Good morning, Mr. DeMarco.  
14 MR. DEMARCO: Thank you, Judge.  
15 MR. WILLIAMS: Good morning, Your Honor.  
16 Thomas Williams on behalf of the defendants --  
17 JUDGE MCGEADY: Good morning --  
18 MR. WILLIAMS: -- and --  
19 JUDGE MCGEADY: -- Mr. Williams.  
20 MR. MURPHY: Good morning, Your Honor. My  
21 name's Raghu Murphy. I'm here from the Eastern  
22 Environmental Law Center on behalf of the defendants.  
23 JUDGE MCGEADY: Good morning, Mr. Murphy.  
24 MR. KLEINBAUM: Good morning. Also on behalf  
25 of defendants, Aaron Kleinbaum from Eastern

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1 Environmental Law Center.

2 JUDGE MCGEADY: Good morning, Mr. Kleinbaum.

3 MS. GEORGIA (phonetic): Valeria Georgia, from  
4 the Law Offices of (unintelligible).

5 JUDGE MCGEADY: Good morning, Ms. Georgia. All  
6 right. We have a lot of summonses, a lot of charges,  
7 a lot of dates, a lot of issues, a lot of defenses.  
8 And the Court intends to address each of them.

9 We have one renewable energy systems charge,  
10 summons. We have three soil movement summonses. We  
11 have 23 summonses that charge a one day violation for  
12 failing to get a zoning permit for a structure.  
13 Twenty-one of them are for the structure. One of them  
14 alleges a violation by not getting a permit for a  
15 structure, or for a use. Only one uses the term,  
16 'use'. And one specifically alleges that the  
17 structure in question is a tipi. And we have 16  
18 summonses for failing to get zoning approval for  
19 structures only, and those are each five day  
20 summonses, totaling 80 days. So we have a total of 43  
21 summonses, covering 103 days between them.

22 The Court conducted a trial with respect to all  
23 the issues of all those charges, and the trial  
24 extended over a seven day period, including a pretrial  
25 motion day, and the onsite visit by the Court. The

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1 Township presented, and accepted - the Court accepted  
2 in evidence, 16 exhibits, and the defense presented  
3 and offered into evidence five exhibits. Witnesses  
4 for the Township were Thomas Mulvey, a Property  
5 Maintenance Inspector, and Michael Kelly, a  
6 professional engineer, and Zoning or Administrative  
7 Officer for the Township of Mahwah.

8 For the defense, Charles Elmes, a developer,  
9 testified; Samantha Fois (phonetic) testified, a  
10 friend of the Tribe; Dwaine Perry, Chief of the  
11 Ramapough Mountain Indian Tribe, testified. Stephen  
12 Lenardo, a friend of the Tribe, also testified.  
13 Roberto Barrera, the International Indian Treaty  
14 Council employee, testified. Karena Gore, a  
15 professor, testified. And George Williams, not to be  
16 confused with Thomas Williams, a professional planner,  
17 also testified on behalf of the Tribe. There was then  
18 rebuttal testimony by Michael Kelly.

19 The Court was liberal in allowing defense  
20 testimony on the use and the history of Sweetwater,  
21 especially when Chief Perry was testifying, probably  
22 frustrating Mr. DeMarco, despite the Court's pretrial  
23 rulings on various issues, and the hope of the Court  
24 was that the Township and its residents would hear the  
25 history and, and the culture of the, the Tribe, and it

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1 might be - help for a better understanding and  
2 tolerance of each other.

3 The Court also did an onsite inspection, and  
4 having seen a large crowd appear in this Court on the  
5 days of trial, realized that there was great interest  
6 by both the Tribe, and by the Township residents. And  
7 the Court presumed that on that onsite inspection that  
8 some of those people might show up, and the Court was  
9 correct. And the Court hopes that the dialogue might  
10 occur between the respective factions, and that it, it  
11 also might lead to a greater tolerance and  
12 understanding of the culture and the, what the Tribe  
13 is doing on the property. The future will be the jury  
14 on that hope.

15 The Court made certain pretrial rulings on the  
16 following issues, which the Court reconfirms today, in  
17 that they are legal issues, not factual issues that  
18 required factual determinations at trial.

19 The first one was that the State of New Jersey  
20 recognizes the Ramapough Mountain Indians as a Tribe.  
21 However, that does not convey a sovereign nation, or  
22 sovereign immunity status to the Tribe, exempting it  
23 from compliance with the, the laws of New Jersey, or  
24 the laws of the Township of Mahwah.

25 The Court also ruled that the soil movement

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1 ordinance and the zoning permit ordinances, both  
2 making each day a separate violation, did not  
3 constitute double jeopardy. The Court also ruled that  
4 the filing of those complaints on special form  
5 complaint summonses, as required by the Administrative  
6 Office of the Courts, does not fail to allege  
7 essential facts to the Tribe, therefore denying them  
8 due process.

9 What is available at trial, and continues to be  
10 available, are the issues of estoppel, deprivation of  
11 the free exercise of religion, and preexisting  
12 nonconforming use. Those remained available  
13 throughout the trial.

14 But directing attention first to the three soil  
15 movement without a permit summonses - Ordinance, Town  
16 Ordinance 28-2.1 says as follows: No person shall  
17 excavate, move, remove, or cause, allow, permit, or  
18 suffer to be removed, or move, any soil from, onto,  
19 in, or upon any lot, or right of way of the Township  
20 of Mahwah, unless or until a soil movement permit  
21 therefore shall have been issued, pursuant to this  
22 chapter.

23 Summons SC-008491 alleged a soil movement  
24 violation for December 13 of 2016. SC-008494 alleged  
25 the same violation for December 19, 2016. And SC-

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1 008495 alleged the same violation for December 20th,  
2 2016. Thomas Mulvey testified to observing crushed  
3 stone on the property known as 95 Halifax Road in  
4 Mahwah, and he also testified to seeing wood chip  
5 piles. He further testified to seeing mulch spread on  
6 the property. He estimated that there were three  
7 loads dumped on the property. He testified that he  
8 did not go onto the property to measure the amount of  
9 those items, and that he couldn't tell the quantity.  
10 He didn't measure the cubic yards, which becomes  
11 relevant, because he testified that Ordinance 28-3.11  
12 of Township of Mahwah has an exception that you don't  
13 need to get a permit, soil movement permit, if less  
14 than 20 cubic yards of soil is moved. So the volume  
15 of, of the soil becomes important. Mr. Kelly, the  
16 Engineer and Zoning Officer, testified to observing  
17 piles of mulch, and he estimated that a dump truck  
18 carries 12 to 14 cubic yards of mulch. He testified  
19 that he estimated that 15 yards of mulch, or wood  
20 chips, as he testified, were there, and he also agreed  
21 with the 20 cubic yard limitation as to the threshold,  
22 as to when a permit becomes necessary. He said it's  
23 cumulative, and the amount is measured over a calendar  
24 year. And he testified that the combination of stone,  
25 mulch, or wood chips was 30 cubic yards, exceeding the



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1 20 cubic yard limitation.

2 This Town - excuse me - Town Ordinance 28-1  
3 defines soil. This is a Mahwah Town Ordinance, in the  
4 Mahwah Code. And it says the following: Soil shall  
5 mean any earth, sand, clay, loam, gravel, humus, tree  
6 stumps, minerals, mud, silk, ore, muck, stone, rock,  
7 or dirt, and any debris, whether organic or  
8 construction debris, including but not limited to  
9 asphalt, concrete, and macadam. What it doesn't tell  
10 the Court - is wood chips and mulch included in the  
11 definition of soil. There are terms in there that  
12 this Court doesn't understand. I don't know what loam  
13 is. I don't know what humus is. But there's nothing  
14 there that tells this Court that wood chips and mulch  
15 is considered to be soil, and therefore needs the soil  
16 movement permit.

17 The Court agrees with Mr. Kelly's testimony  
18 that any one of those item, or any combination of  
19 those items referred to in the ordinance can be lumped  
20 together to arrive at the cubic yards of volume. But  
21 the Court is not convinced that it's clear that wood  
22 chips or mulch are also included. I think the same  
23 confusion can be attributed to the Tribe - that they  
24 wouldn't know, reading that definition of soil, that  
25 wood chips and mulch are considered soil and require

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1 the permit. That being said, and with the testimony  
2 of Mr. Kelly that he included the mulch and the wood  
3 chips in his estimate of the 30 cubic yards, the Court  
4 cannot conclude that there were more than 20 cubic  
5 yards of soil, as defined by the Township Ordinance,  
6 and therefore as to the three soil complaints, there  
7 would be a finding of Not Guilty.

8 On SC-008592, the August 16, 2017 renewable  
9 energy system trailer existing on a property without  
10 the benefit of a zoning permit - Samantha Fois, and I  
11 hope I'm pronouncing it right, testified that she was  
12 designated by the, by the Tribe to go to the Mahwah  
13 Town Hall, in particular the Zoning Department, and  
14 ascertain whether a zoning permit was necessary for  
15 the renewable energy system. She testified that she  
16 spoke to a man named Adam, and a woman named Lucy, who  
17 advised her that because the structure was not  
18 permanent, it did not need a permit. She relayed that  
19 information - she testified she relayed that  
20 information to Chief Perry. She also inquired whether  
21 she needed that determination to be reduced to  
22 writing, and Adam and Lucy advised her that it did  
23 not.

24 During his rebuttal testimony, Mr. Kelly  
25 testified that Lucy is an administrative clerk, and

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1 that Adam is a sub code inspector, and that neither  
2 has the authority to make a permit decision, and  
3 certainly not on an oral application such as presented  
4 by Ms. Fois. He said that Adam and Lucy have been  
5 instructed not to give opinions, and that they should  
6 have referred the matter to Mr. Kelly. As a result,  
7 Mr. Kelly produced a letter, T-11 in evidence, from  
8 him to Chief Perry, and it was dated August 14 of  
9 2017, and it advised Chief Perry that he needed a  
10 zoning permit for the renewable energy system -  
11 trailer. The letter indicated that it was mailed  
12 certify mail, return receipt requested. Subsequently,  
13 SC-008592 was issued for the zoning permit violation  
14 for August 16, 2017, two days after the creation of  
15 the letter by Mr. Kelly to Chief Perry, indicating  
16 that a permit was necessary. While the Court accepts  
17 that Adam and Lucy did not have the authority, accepts  
18 that Mr. Kelly's testimony as credible, Ms. Fois  
19 doesn't know that. It's also questionable whether the  
20 August 14, 2017 letter from Mr. Kelly would have  
21 reached or been received by Chief Perry by August 16,  
22 2017, some two days later, the date of the summons of  
23 the alleged violation of the renewable energy system.  
24 The Court finds that the defendant Tribe had the right  
25 to rely on the information conveyed by Adam and Lucy

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1 to Ms. Fois, and as a result, the zoning permit was  
2 not obtained. The corrective measures taken by Mr.  
3 Kelly would likely have been received by Chief - would  
4 not likely have been received by Chief Perry by August  
5 16 of 2017, the date of the alleged violation. The  
6 Court finds that the Township agents, Adam and Lucy,  
7 induced the defendant Tribe not to obtain a permit.  
8 The Tribe had a right to rely on that information, and  
9 until it received a subsequent notice from Mr. Kelly,  
10 the Township would be estopped from pursuing a summons  
11 as to the renewable energy source, until such time as  
12 it can be shown that that August 14, 2017 from Mr.  
13 Kelly was received by Chief Perry. So as to SC-  
14 008592, the one and only renewable energy system  
15 trailer, zoning permit violation, a Judgment of  
16 Acquittal is going to be entered.

17 Our next consideration is that most of the  
18 complaints concern a failure to obtain a zoning permit  
19 for structures, although one actually says a zoning  
20 permit for structures, and for the use of the land.  
21 That's 008492. While there was testimony from Mr.  
22 Mulvey and Mr. Kelly about the fact that the public  
23 assembly on the premises is a violation of the C-200  
24 zone, and the use of the property as a campground is  
25 also a violation of the C-200 zone, and that was

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1 general testimony, there was no specific testimony  
2 from either Mr. Mulvey, or Mr. Kelly as to what  
3 specific use of the property occurred on December 13,  
4 2016, the date alleged in 8492, that caused the  
5 summons to be issued not only for the structures, but  
6 also for the uses of the land. The Court agrees with  
7 the Tribe to some extent, that while the Court already  
8 ruled that the discovery process provides sufficient  
9 information to the Tribe to know what, what structures  
10 it's charged with violating, that the one summons  
11 alleging a use violation, without any testimony  
12 alleging what it is, what it is - what it is charged  
13 with, and it's the only summons as to the use of the  
14 premises being a violation, the Court cannot find a  
15 violation of a use on that date. All the other  
16 summonses refer only to structure, as does that  
17 summons - it also refers to structures - without a  
18 zoning permit. So the Court is going to limit the  
19 Township to its proofs on the existence of structures  
20 only, including on 8492.

21 Township Ordinance 22-2 defines structure as  
22 follows: Structure shall mean a combination of  
23 materials to form a construction for occupancy, use,  
24 or ornamentation, whether installed on, above, or  
25 below the surface of a parcel of land. I believe Mr.

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1 Kelly practically has that memorized, and testified to  
2 it at trial. I believe Mr. Williams, the defense  
3 planner, also testified to it. So clearly, we have a  
4 definition of what is a structure.

5 The Tribe is - tries to engraft an additional  
6 term into that definition, and that additional term is  
7 'temporary'. Many times during the trial, it was  
8 argued that because it was temporary, it was therefore  
9 not a structure; and yet, that definition does not use  
10 the term 'temporary' at all.

11 The Court had to - has to determine whether the  
12 various objects that exist on the Sweetwater property,  
13 95 Halifax, constitute a structure within the  
14 definition. Much was made of the fact that Chief  
15 Perry signed a certification, apparently in  
16 conjunction with an Order to Show Cause, and he used  
17 the term 'structure' in his certification. But he  
18 testified here in Court that he was using it  
19 generically, as opposed to - just as a convenient way  
20 of describing the various objects - it's a convenient  
21 way to, to describe them, and he didn't it to mean the  
22 legal definition. And the Court finds that to be  
23 credible that he, he wasn't admitting that they were  
24 structures. The Court has to make its own  
25 determination as to whether they qualified as

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1 structures, or not.

2 In determining whether each object is a  
3 structure, the Court is relying upon the testimony,  
4 also the exhibits, some of which were photographs,  
5 also its onsite viewing of the premises. The Court  
6 did not create this definition. Actually, Mahwah,  
7 even though it's in their code, didn't create the  
8 definition. It is exactly the definition set forth in  
9 the Municipal Land Use Law, a law that prevails  
10 throughout all of New Jersey. So it's the definition  
11 of a structure throughout the whole state of New  
12 Jersey, not just Mahwah.

13 Examining the various objects on the, on the  
14 property, the Court observed a prayer circle, and was  
15 invited into the prayer circle. My observations were  
16 that it's a series of logs in a circular  
17 configuration, with a totem pole in the middle. Each  
18 log was vertical, was upright. Each had a face carved  
19 on it on the inside of the circle, with painting on  
20 it, and each had a face carved on, on it on the  
21 outside of the circle, and there were small brass  
22 decorations attached to the logs. There was testimony  
23 that this is what is left after the removal of the  
24 Long House, which previously had a contested zoning  
25 permit. While it was a minimal combination of wood,

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1 paint, and brass, nevertheless it was a combination of  
2 materials for ornamentation, and the Court concludes  
3 that it's a structure.

4 The cooking shack, described in various  
5 different ways during the testimony, but the Court  
6 observed that it was a construction of a platform,  
7 with a vertical - with vertical wood struts, holding a  
8 roof of plastic, or fiberglass, or some type of metal.  
9 It is a construction. It's a combination of  
10 materials, and it was used for storage and cooking,  
11 and therefore, the Court concludes that that also  
12 constitutes a structure.

13 The tipis were not observed by the Court on the  
14 on site visit. However, the Court has seen  
15 photographs of them, and did see the wooden poles that  
16 are used to support the tipis, when it conducted its  
17 on site visit. And the Court observed from the  
18 photographs that there's canvas wrapped around the  
19 wooden poles, and it's used for occupancy, or use, or  
20 ornamentation, and the Court concludes that tipis  
21 would also, under the definition, constitute  
22 structures.

23 The yurt, described by Chief Perry when he was  
24 a witness, as a Mongolian tent, and referred to in Mr.  
25 Kelly's letter as a canvas cabin. It's on cinder



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1 blocks, it has wooden stairs, it's a - has a wooden  
2 platform, and it has a plastic or canvas exterior, and  
3 it has a - an aluminum vent pipe extending through the  
4 ceiling of the yurt, and there was a cot inside, and a  
5 computer. The Court concludes that that also is a  
6 structure.

7 The sweat lodge - it, it's an igloo-like  
8 configuration of flexible wooden branches tied  
9 together with string or rope. And while it wasn't  
10 present when the Court conducted its onsite  
11 examination, it - there was testimony that it's  
12 encased in tarpaulin or canvas when it's in use. The  
13 Court concludes that those are also a combination of  
14 materials, and constitutes a structure.

15 In the Court's opinion, none of the other small  
16 tents that it observed on the on site visit, or the  
17 pop-up Cabela's tent, which was never seen by the  
18 Court, either in photograph or in person, can  
19 constitute a combination of materials, and therefore  
20 the Court does not find that any of those constitute  
21 structures.

22 The dates on the summonses on the structure  
23 charges, in particular 8492, was for December 13 of  
24 2016, and that's the only one that charges both  
25 structure and uses, but we've already dealt with the

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1 uses. And then 8497 were issued - that, that's a -  
2 for an alleged violation on January 2nd of 2017. And  
3 that one is also unique, in that it particularly  
4 described the structure in question as a tipi. Mr.  
5 Mulvey testified that as to the 8492, the December 13,  
6 2016, he saw tipis, and he saw the wooden structure  
7 with a roof, which I conclude is the, the cooking  
8 shack, which I've already concluded is a structure -  
9 in fact, both are structures, the tipis and the  
10 cooking shack - and he testified that they require a  
11 permit. As to the 8497, the January 2nd, 2017, which  
12 recites a tipi, Mr. Mulvey testified that he did see a  
13 tipi, a structure, on the premises.

14 After these two summonses, the testimony of Mr.  
15 Mulvey and Mr. Kelly both was that they gave the Tribe  
16 a good faith amnesty, 67-day period to apply for  
17 zoning permits. Initially it was a 60-day period, and  
18 then there was an extension of seven days when the  
19 permit was not applied for in the 60 days.

20 Then T-9, Mahwah exhibit, a letter from Mr.  
21 Kelly to Thomas Williams, as opposed to the planner,  
22 Williams - Thomas Williams being one of the attorneys  
23 for the Tribe - states that on April 6th of 2017, a  
24 zoning permit application had, in fact, been filed,  
25 but it was rejected by Mr. Kelly, in that it requested

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1 the use for a public assembly, and religious and  
2 cultural purposes, and Mr. Kelly concluded that that's  
3 inconsistent with the C-200 zone, and therefore,  
4 rejected the zoning application.

5 As a result, 825 - I'm sorry, 8525, another  
6 summons, was issued on April 27, 2017, through 8541,  
7 dated May 19, 2017. So those were several issues, all  
8 issued because the tipis and the cooking shack  
9 continued to exist on the property with no zoning  
10 permit, per the testimony of Mr. Mulvey.

11 And then 8546, May 22nd, 2017; 8457, May 23rd,  
12 2017; 8550, May 24, 2017; and 8551, May 25th, 2017 were  
13 issued by Mr. Mulvey, and all were days on which at  
14 least some of the structures, namely the tipi and the  
15 cooking shack, were present on the property, per Mr.  
16 Mulvey's testimony.

17 Mr. Mulvey then testified that a Mahwah judge  
18 asked him to start issuing one summons for the whole  
19 week, as opposed to an individual summons for each  
20 separate day. As a result, he testified that he  
21 issued 8555 for the dates of May 29, 2017 through June  
22 2nd, 2017, a five day period, through 8588 for the  
23 period August 7, 2017 through August 11, 2017 - again,  
24 a five day period, and all the summonses in between  
25 were for five day periods - all for the same charge,

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1 of structures being present with no zoning permit, and  
2 Mr. Mulvey's testimony being that both the tipis and  
3 the cooking shack existed on all those dates,  
4 inclusive.

5 Mr. Mulvey testified that he issued Summons  
6 8370 for August 14, 2017 through August 18, 2017, as  
7 well as 8749, 8750, 8733, 8734, and 8735 - again, all  
8 five day summonses, the last one being 8735 for  
9 September 18, 2017 through September 22nd, 2017, again  
10 a five day period, the last of the summonses before  
11 this Court, again, all for the same structures  
12 existing on the property, being tipis, cooking shacks,  
13 without a zoning permit, as testified to by Mr.  
14 Mulvey.

15 The Tribe in its defense never testified that  
16 that was not true. They never denied that there were  
17 the tipi and the cooking shack on the dates that are  
18 inclusive. This is at least a prima facie showing  
19 that there an establishment of the charges that there  
20 were structures on the property without a zoning  
21 permit. However, there were defenses that were raised  
22 by the, the Tribe, and those defenses need to be  
23 examined one by one.

24 The first offense was, and, and the Court will  
25 acknowledge that the Township and the Tribe both

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1 submitted helpful briefs in this most recent week,  
2 just before this Court's decision, on trial issues,  
3 and, and it was helpful. And in, in the Tribe's  
4 brief, it brought to the Court's attention, a New  
5 Jersey Administrative Code Section defining  
6 campgrounds. However, as, as helpful as it was, and  
7 as industrious as it was for the Tribe to find that,  
8 that issue has become moot because the Court is  
9 limiting the Township to that one summons that alleges  
10 a use violation, one of which was alleged to be a  
11 campground, and the Court has already acquitted on  
12 that for other reasons, that there was no testify  
13 establishing what the improper use was. So it's not  
14 important at this point, as to what the definition of  
15 a campground is.

16 Then there was the November 26, 2013 letter  
17 from Mr. Mulvey - my, my 70th birthday. And that  
18 letter said that there are no violations on the  
19 property, and the Tribe called that to my attention  
20 with great vehemence. However, reading the letter,  
21 it's clear that Mr. Mulvey was called to the property  
22 on this occasion concerning the movement of trees and  
23 logs, and not the other issues that are before this  
24 Court. So the Court doesn't find that his statement  
25 that there were no violations means anything more than

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1       there were no violations with respect to the movement  
2       of trees or logs on that date.

3               T-17, a September 15, 2017 letter from Mr.  
4       Kelly rescinding the January 25th, 2012 original zoning  
5       permit for the Long House. The Court has to examine  
6       the, the validity and the viability of that  
7       rescission. The Court accepts that Mr. Kelly is the  
8       Zoning Officer, and he's the authorized person to  
9       issue permits. And implicit in that would be the  
10      right to rescind permits, similar to the New Jersey  
11      Motor Vehicle Commission issuing driver's licenses, or  
12      the Supreme Court of New Jersey issuing law licenses,  
13      or the Medical Examiners issuing medical licenses.  
14      Those agencies or entities are the licensing  
15      authority, and also have the authority to remove the  
16      license, or rescind. However, to rescind the permit,  
17      it would seem to require a compliance with due  
18      process. And just like the Supreme Court, just like  
19      the Motor Vehicle Commission, just like the Medical  
20      Examiners, licenses are not revoked without a hearing  
21      to establish due process, to protect due process  
22      rights of the Tribe, as opposed to just a letter from,  
23      from the Township. The Township argued that when Mr.  
24      Kelly rejected that second April - I believe it was 6,  
25      2017 zoning permit application, that the Tribe did not

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1 appeal his denial of that. And I think that  
2 emphasizes the need to have had a hearing to rescind  
3 that original zoning permit. The Tribe was not given  
4 an opportunity to be heard, present its arguments, and  
5 therefore, nothing was preserved for any appeal, which  
6 the Township argues should have been done.

7 To the extent that any of the summonses relies  
8 exclusively on the Long House without a permit, that  
9 would not be a violation, in this Court's opinion.  
10 However, it doesn't appear that any of the summonses  
11 rely on the, the Long House being the sole structure  
12 it violates.

13 The Tribe argues that the zoning ordinance is  
14 arbitrary, capricious, discriminatory, and the  
15 definition of a structure as set forth in the  
16 ordinance is overly broad, and vague. Those are  
17 Constitutional issues, and as set forth in Guy versus  
18 Petty, 275 NJ, Super. 536, those are best left to the  
19 appellate courts, and rarely to be decided by a trial  
20 court, of which this Court is. And Mr. Williams, the  
21 planner, testified that the tipis were an accessory  
22 structure to the Long House, which had a permit, a  
23 zoning permit. Chief Perry testified that there were  
24 three tipis on the property, and that the last one was  
25 taken down in September of 2017. He testified that

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1 the tipis were used for classes, and for sleeping, and  
2 that as many as 50 people could fit in them. Township  
3 Ordinance 24-6.8A3f says no portion of an accessory  
4 structure shall be used for living quarters. Tipis  
5 were used for living quarters, and because as many as  
6 50 people can occupy it, it hardly seems to fit, or  
7 qualify as an accessory. Accessories seem to be  
8 things like a - as was mentioned during the trial,  
9 doghouse; one of the children that live in a primary  
10 house puts up a pup tent in the backyard to sleep  
11 overnight; a lawnmower shed on the property to store  
12 lawnmowers in - those are accessory uses, or accessory  
13 structures - not a tipi that can hold 50 people, and  
14 that is - has been used for living quarters.

15 The preexisting nonconforming use defense - it  
16 has, it has to preexist the date of the zoning law.  
17 According to the documents, or the copy of the Code  
18 that was submitted to the Court, the zoning law went  
19 into effect in 1995, the current zoning law.  
20 Coincidentally, that's the same year that Mr. Elmes  
21 testified that he deeded the property in question to  
22 the Tribe. He testified that the 14 acres that he  
23 deeded to the - to the Tribe, were part of 650 acres  
24 owned by three - co-owned by three people. He said he  
25 bought 165 of those acres, including the 14 acres in



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1 question, in the 1990s. He wasn't any more specific  
2 than that. He testified that he allowed the Tribe to  
3 conduct pow-wows on the polo, polo field portion of  
4 the property, and they did dancing, and they did  
5 religious ceremonies there. Chief Perry testified to  
6 seeing his grandmother praying on the property some 48  
7 years ago. Because a preexisting nonconforming use is  
8 contrary to the zoning law, it's strictly scrutinized.  
9 Township Ordinance 24-9.1 says if it's a lawfully  
10 existing use at the time of the passage of the zoning  
11 ordinance, it may be continued. Town Ordinance 24-9.2  
12 says, however, even if it is a prior legal preexisting  
13 nonconforming use, it cannot be enlarged. Town  
14 Ordinance 24-9.3a says if it's not used for,  
15 continually for a one year period, it's considered to  
16 be abandoned.

17 The Court had three difficulties with the  
18 preexisting nonconforming use defense. When the April  
19 6, 2017 zoning application was denied by Mr. Kelly,  
20 because it didn't conform to the C-200 zoning  
21 requirements, the Tribe's remedy at that point was to  
22 appeal to the Zoning Board of Adjustment that there  
23 was, in fact, a, a preexisting nonconforming use, a  
24 board that is in the best position to decide, knowing  
25 - having its knowledge of the community, whether that

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1 sounds like an appropriate defense. The Tribe did not  
2 avail itself of that appeal. While the Tribe used it  
3 at various times for prayer, and the Court accepts  
4 that, it did not establish that it has been  
5 continually used for prayer during the ownership of  
6 the three unnamed co-owners that Mr. Elmes purchased  
7 from, nor during the ownership of Mr. Elmes. It was  
8 not established that the religious use was not  
9 abandoned at least for one year. Lastly, accepting  
10 that it was used for religious use, and the Court  
11 does, there's a big difference between praying on the  
12 property, or conducting religious ceremonies, and  
13 creating a structure to do a religious ceremony -  
14 creating a church, a cathedral, or even a small  
15 structure - is an expansion of a preexisting  
16 nonconforming use, and the Court does not see that  
17 that is appropriate.

18 The Court does not find that a preexisting  
19 nonconforming religious use was established. Lastly,  
20 the defense was of a, a - an inhibition to exercise  
21 its freedom of religion, and it asserts the land use  
22 by institutionalized persons - the RLUIPA Act, which  
23 is a Federal US Code Act - it prevents a substantial  
24 land use burden on a religious exercise.  
25 Interestingly enough, the Court is called upon to

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1 apply that law, that US Code, in conjunction with the  
2 Tribe saying that as an Indian Tribe, that they  
3 conduct religious ceremonies on the property. And  
4 yet, the federal government did not recognize the  
5 Ramapough Mountain Indians as an indigenous people.  
6 There was an application to the Bureau, US Bureau of  
7 Indian Affairs which was rejected. There was a re-  
8 application, which was re-rejected. There was a  
9 lawsuit filed in the US District Court in Washington,  
10 D.C., and that, that complaint was dismissed by the  
11 court. The dismissal was appealed to the US Circuit  
12 Court of Appeals, which upheld the US District Court's  
13 dismissal. And it was appealed to the United States  
14 Supreme Court, which refused to grant certiorari,  
15 leaving the US District Court's decision intact. So  
16 there is no federal recognition of the Tribe, and yet  
17 the Court has accepted that there was a, a State  
18 recognition.

19 So the Court's being asked in a State  
20 prosecution, in a State court, to apply the US Code  
21 section as a defense. And nevertheless, the Court  
22 would conclude that RLUIPA is, is an, an avenue of  
23 remedy that is available to the Tribe in the US  
24 District Court, but not in a State court. However,  
25 separate and apart from the RLUIPA argument is the

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1 fact that the New Jersey Constitution itself, Article  
2 I, paragraph 3, also grants religious freedom to the  
3 Tribe, and would give protection to the Tribe for that  
4 reason.

5 The problem this Court has is that the Tribe  
6 seems to be asserting that defense - that it conducts  
7 religious ceremonies on the property, and that  
8 therefore, the Township of Mahwah cannot regulate it  
9 at all. Both the Township and the Tribe have  
10 submitted case law in their briefs, where conventional  
11 religions have been required to submit applications to  
12 planning boards, and boards of adjustment for permits,  
13 for site plans, for variances. The Tribe's argument  
14 appears to be premature. It would appear that they  
15 need to make a completed variance application to  
16 conduct their religion on the property, and if that  
17 was rejected by the Board of Adjustment, then perhaps  
18 the religious exercise, freedom of religious exercise  
19 defense may be relevant.

20 Mr. Kelly testified that there are at least 11  
21 other zones within the Township of Mahwah that permit  
22 religious worship. Although the Court accepts that  
23 the religious exercise by the Ramapough Mountain  
24 Indian Tribe is connected tightly to the conservation  
25 and the nature aspect of the property, that perhaps

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1 the property is novel, and maybe the other 11 zones  
2 are not appropriate for the Tribe's particular needs,  
3 but that's not for this Court to decide, and it's  
4 premature. That - that needs to be argued elsewhere.

5 So the Court does not find that those defenses  
6 have been established to the extent that they negate  
7 proof beyond a reasonable doubt that the defendants  
8 did maintain structures on 95 Halifax Road in Mahwah,  
9 without having obtained a zoning permit for each  
10 structure the Court has deemed a structure, and the  
11 defendant is found guilty on all the summonses  
12 alleging structures without a permit, except for the  
13 one, 8592, the renewable energy system summons. The  
14 State wish to be heard on the sentence?

15 MR. DEMARCO: Judge, as far as the State's  
16 concerned, the State would seek the, the mandatory  
17 maximum penalty in connection with, with all of the,  
18 the guilty findings on, on each of the structure  
19 violations.

20 JUDGE MCGEADY: Okay. Defense wish to be  
21 heard?

22 MALE SPEAKER: Of course, Your Honor, we would  
23 take an 180 degree approach, and ask that the minimum  
24 be imposed, for all the reasons that were expressed  
25 during trial. This is, I think, a very important case

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1 to this group, and their understanding of the law may  
2 not be what most of the people understand this, being  
3 in this courtroom, but I believe under the  
4 circumstances, they should have the minimum sentence.

5 JUDGE MCGEADY: Okay. Well, and I should note  
6 for the record, I assume there are members of the  
7 Tribe present. They're certainly - attorneys are  
8 here, and they probably already know it, but the Tribe  
9 has 20 days from today to appeal this Court's  
10 decision, otherwise they lose the right to appeal if  
11 20 days go by and they don't.

12 There are 103 days of violations in question.  
13 The - the activity was the same for each day. It  
14 wasn't increased, so to speak. It isn't like the  
15 Tribe has been previously convicted and yet  
16 obstinately either increased the number of structures,  
17 or the size of the structures, or the continuation of  
18 the structures. Until today, there hasn't been any  
19 adjudication that those items, those objects, were  
20 even structures. Reasonable minds can differ. The  
21 Township took the position that they were structures,  
22 and the Court agreed with it. The Tribe took the  
23 position that they were not structures, and acted  
24 accordingly.

25 There was also, the Court accepts that the, the

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1 Township was - their understanding gave the Tribe the  
2 67-day good faith amnesty. Mr. Kelly sent several  
3 letters. I've found Mr. Kelly to be credible. He  
4 said that Mahwah is not in the business of issuing  
5 summonses, that that's not their objective. Their  
6 objective is to have compliance, and hence, that's why  
7 they had the 60-day - 67-day amnesty. They just want  
8 people to comply.

9 The Court is of the opinion that the mandatory  
10 minimum would be appropriate, because of a lack of  
11 aggravating circumstances. So the Court will impose  
12 the minimum, which is, by ordinance, a \$100 fine, \$33  
13 court costs on each of the 103 day, days alleged to be  
14 violated, totaling \$10,300, with \$3,399 court costs,  
15 totaling \$13,699.00.

16 Wish to be heard on payment, or appeals,  
17 request for stay?

18 MALE SPEAKER: Well, Your Honor, I would have  
19 to, of course, confer with my clients to see whether  
20 they want to appeal the Court's decision. I  
21 appreciate your reasoned decision, and the time you  
22 went - obviously put into it, but I have to discuss it  
23 with the client, to see whether or not they're going  
24 to appeal. But if they are going to appeal, I would  
25 request, either by motion, or by letter, by, by,

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1 whatever the Court requires, to stay the imposition of  
2 the sentence pending an appeal.

3 JUDGE MCGEADY: Wish to be heard, Mr. DeMarco?

4 MR. DEMARCO: Judge, Township would argue that  
5 if, if there was going to be a request for, for a  
6 stay, then that would have to be, at, at, at this  
7 point, the State would argue that in, in, again, in  
8 connection with Your Honor's findings that, that  
9 those, those fines be paid immediately. Okay.

10 JUDGE MCGEADY: All right. I, I don't see the  
11 harm to the Township. I'm - I'm going to stay the  
12 payment for the 20 days, when we find out if there is  
13 an appeal. If there is an appeal, I will stay the  
14 payments throughout the pendency of the appeal, until  
15 the first appeal decision is rendered. If there is no  
16 appeal, then automatically 20 days from today, the  
17 amount will be due and payable to the Mahwah Municipal  
18 Court unless a further application is made to this  
19 Court. All right. And I - anything else, Mr.  
20 DeMarco?

21 MR. DEMARCO: No, Judge. Thank you for your  
22 time.

23 JUDGE MCGEADY: Okay. Mr. Williams, any --

24 MR. WILLIAMS: Thank you very much, Your Honor.

25 JUDGE MCGEADY: Thank you very much. Okay.



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1 Court's adjourned.

2 MR. DEMARCO: Thank you, Your Honor.

3 JUDGE MCGEADY: I'm going to retain all  
4 exhibits for the 20 day period, in case there's an  
5 appeal.

6 MR. DEMARCO: Judge, what about the, the  
7 Township Ordinances? Do you want to keep them - the  
8 Township Ordinances?

9 JUDGE MCGEADY: No, I don't need them anymore.  
10 They - Mr. Mulvey, I know, is dying to get them back.  
11 He can have them.

12 MR. DEMARCO: I just don't, I just don't want  
13 to forget --

14 JUDGE MCGEADY: Mr. Kelly --

15 MR. DEMARCO: -- them that's all. Thank you,  
16 Judge.

17 MALE SPEAKER: Thank you. Thanks for your  
18 time. It's a pleasure working with you.

19 MALE SPEAKER: Thank you, Your Honor.

20 MALE SPEAKER: Judge, thank you again.

21 JUDGE MCGEADY: Thanks (unintelligible) good  
22 job.

23 (background talking)

24 (END OF RECORDING)

25

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I, MARY HARLOW, attest that the foregoing proceedings provided to me via audio were transcribed by me to the best of my ability.

I further attest that I am not a relative or employee to any attorney or party nor financially interested in this action.

I declare under penalty of perjury under the laws of the state of Virginia that the foregoing is true and correct.

Dated this 4<sup>th</sup> day of November, 2017.

  
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MARY HARLOW

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# EXHIBIT L



*emailed Tlawicki 06/15/17*

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June 15, 2017

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

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

Dear Sir/Madam:

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

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

Very truly yours,

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

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*Attorneys for Defendants, Ramapough Mountain Indians Inc.*

TOWNSHIP OF MAHWAH,  Plaintiff.  vs.  RAMAPOUGH MOUNTAIN INDIANS INC.,  Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION · BERGEN COUNTY DOCKET # BER-L-8189-17  CIVIL ACTION  DEFENDANT'S ANSWER TO VERIFIED COMPLAINT
---	---

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

**The Parties**

1. The Tribe admits that the Township, the filer of this action, is a municipal corporation of the State of New Jersey. The remainder of the paragraph sets forth conclusions of law rather than statements of fact, to which no response is warranted. Nevertheless, the Tribe denies that any of its activities at Sweet Water violate the Zoning Ordinance.

2. The Tribe admits that it owns Sweet Water, the fourteen-acre property located at Block 1, Lot 181, 95 Halifax Road in Mahwah Township.

**Factual Background**

3. The Tribe admits that Sweet Water is designated as a C-200 Conservation Zone in the Township's Zoning Ordinance. The remainder of the paragraph sets forth conclusions of law rather than statements of fact, to which no response is warranted. Nevertheless, the Tribe denies that any of its activities at Sweet Water violate the Zoning Ordinance.

4. The Tribe neither admits nor denies the allegation that the Township received complaints from residents, but leaves the Township to its proofs. The Tribe denies that Sweet Water is a "campground" and denies that any of its activities at Sweet Water violated the Zoning Ordinance or the Flood Hazard Area Control Act.

5. The Tribe admits that the Township Construction Official visited Sweet Water on November 28, 2016, and issued a Notice of Unsafe Structure. The Tribe denies the allegations in that Notice.

6. The Tribe admits that the Township issued two Summonses to the Tribe on December 13, 2016. The Tribe denies the allegations in those Summonses, and denies that any Tribe action violated the Zoning Ordinance.

7. The Tribe admits that a Township representative visited Sweet Water on December 20, 2016, and issued a Notice of Violation and Order to Terminate. The Tribe denies the allegations in that document, and denies that any Tribe action violated the Zoning Ordinance.

8. The Tribe admits that a meeting was held on January 12, 2017 between Township officials and Tribe representatives. The Tribe admits that the Township requested a Zoning and Site Plan, both of which have since been submitted. The Tribe neither confirms nor denies the remainder of the allegations in this paragraph, but rather leaves the Township to its proofs.

9. The Tribe admits the allegations in Paragraph 9 of the Complaint.

10. The Tribe admits that it submitted a Zoning Application on April 6, 2017.

11. The Tribe admits that its engineer, Houser Engineering LLC, submitted a Site Layout Plan on April 12, 2017. The Tribe denies that any Tribe activities at Sweet Water required Township approval.

12. The Tribe admits that the Township denied the Tribe's Zoning Application on April 18, 2017. As to the remainder of the paragraph, the Tribe leaves the Township to its proofs.

13. The Tribe denies that it ordered lumber to be delivered to the property. In April 2017, the Mahwah Environmental Volunteer Organization made a gift of lumber to the Tribe. The Tribe denies that its use of the lumber constitutes a "stage/platform.". The Tribe denies that it required any Township approval for this activity. The Tribe admits that the Township sent a letter on April 27, 2017; the Tribe denies the allegations in that letter.

14. The Tribe admits that it did not appeal the Township's denial of the April 2017 Zoning Application. The Tribe admits that as of the date of the Township's Complaint, the Tribe had not filed a complete Site Plan application.

First Count

15. The Tribe repeats, re-alleges and incorporates by reference all of its answers to Paragraphs 1-14 of the Complaint as if fully set forth herein.

16. The Tribe admits that Paragraph 16 accurately sets forth the first sentence of Section 24-4.3 of the Zoning Ordinance.

17. The Tribe denies that any Tribe action at Sweet Water violates the Zoning Ordinance.

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

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

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

Second Count

18. The Tribe repeats, re-alleges and incorporates by reference all of its answers to Paragraphs 1-17 of the Complaint as if fully set forth herein.

19. The Tribe neither confirms nor denies the allegations in Paragraph 19, but leave the Township to its proofs.

20. Nevertheless, the Tribe denies that any of its actions at Sweet Water violate the Flood Hazard Area Control Act.

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

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

FIRST AFFIRMATIVE DEFENSE

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

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

**SECOND AFFIRMATIVE DEFENSE**

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

**THIRD AFFIRMATIVE DEFENSE**

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

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

**FOURTH AFFIRMATIVE DEFENSE**

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

**FIFTH AFFIRMATIVE DEFENSE**

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

**NOTICE OF OTHER ACTIONS AND POTENTIALLY LIABLE**

**PERSONS**

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

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

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


**DESIGNATION OF TRIAL COUNSEL**





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

Respectfully submitted,

Date: June 15, 2017

  
\_\_\_\_\_  
Aaron Kleinbaum  
Raghu Murthy  
Eastern Environmental Law Center  
Thomas Williams  
Valeria Gheorghiu  
Sussman and Associates  
*Attorneys for Defendant,  
Ramapough Mountain Indians Inc.*

**Appendix XII-B1**

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b> Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 <b>Pleading will be rejected for filing, under Rule 1:6-6(c), if information above the black bar is not completed or attorney's signature is not affixed</b>		FOR USE BY THE COURT OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CD <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO BE NAME See Addendum	TELEPHONE NUMBER	COUNTY OF VENUE Bergen
FIRM NAME (if applicable)		DOCKET NUMBER (when available) BER-L-3189-17	
OFFICE ADDRESS		DOCUMENT TYPE Answer to Verified Complaint JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Defendant, Ramapough Mountain Indians Inc.	CAPTION Township of Mahwah v. Ramapough Mountain Indians Inc.		
CASE TYPE NUMBER (See reverse side for listing) 999	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:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS See Addendum	
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	
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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input checked="" type="checkbox"/> OTHER (explain) Regulator / Regulated Party <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 checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION  Township seeks to curb Defendant's Constitutional rights to religious exercise and public assembly.			
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" 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 Rule 1:38-7(b).			
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 - 180 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)

The Township alleges violations of the state Flood Hazard Area Control Act and the Township Zoning Ordinance.

**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**

- 135 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 503 COMPLEX COMMERCIAL
- 613 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>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/OCCELLA</li> <li>289 REGLAN</li> <li>290 POMPTON LAKES ENVIRONMENTAL LITIGATION</li> <li>291 PELVIC MESH/GYNECARE</li> </ul> | <ul style="list-style-type: none"> <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 OLIMESARTAN MEDOXMIL MEDICATIONS/IRENICAR</li> <li>300 TALC-BASED BODY POWDERS</li> <li>601 ASBESTOS</li> <li>623 PROPECIA</li> <li>624 STRYKER LPIT CoCr V40 FEMORAL HEADS</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

# EXHIBIT M



Board of Adjustment x 245

## *Township Of Mahwah*

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

Property Maintenance x 246

Zoning/Planning Board x 245

**VIA ELECTRONIC AND  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

January 17, 2018

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

Re: 95 Halifax Road  
**Zoning & Site Plan Violations**  
Block 1, Lot 131  
Township of Mahwah  
Our File No. MA-40-47

Dear Chief Perry:

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

### Uses and Activities

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

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

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

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

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

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

Chief Dwaine Perry  
January 17, 2018  
Page 2

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

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

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

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

### Structures

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

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

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

- Storage shed located in the woods at the west side of the site.
- A canvas cabin located at the north side of the site, to the east of the driveway from Bridal Path Lane.
- Prayer circle consisting of logs stuck in-ground (totem poles), former pieces of longhouse.
- Portable toilet at the north side of the site, to the west of the driveway from Bridal Path Lane.
- Yurt at the north side of the site, to the east of the driveway from Bridal Path Lane.
- Pop-up shed located at the east side of the site.
- A structure made of lumber with roof and floor (known as kitchen structure).
- Sweat lodge at the west side of the site.
- Stone altar located at the south side of the site.

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

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

Chief Dwaine Perry

January 17, 2018

Page 3

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

#### Site Plan Approval

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

Article 22-3.2d of the Township Code states:

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

#### Township Floodplain and Flood Hazard Areas

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

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

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

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

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

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Chief Dwaine Perry  
January 17, 2018  
Page 4

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

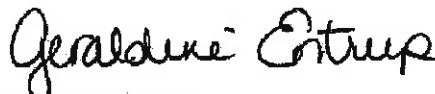
The uses at the site do not meet these requirements.

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

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

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

Very truly yours,



Geraldine Entrup  
Administrative Officer

GE/jg

cc: The Honorable Mayor and Council  
Township of Mahwah Board of Adjustment  
Quentin Wiest, Township Business Administrator  
Kathrine G. Coviello, Township Clerk  
Tom Mulvey, Property Maintenance  
James N. Batelli, Chief, Mahwah Police Department  
Brian M. Chewcaskie, Esq.  
Michael J. Kelly, P.E., Township Engineer  
Thomas W. Williams, Esq.

180117JG11.doc



# EXHIBIT N



## Township Of Mahwah

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

Board of Adjustment v 2-45

Property Maintenance v 2-46

Zoning/Planning Board v 2-45

**VIA ELECTRONIC AND  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

April 24, 2018

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

Re: 95 Halifax Road  
**Zoning & Site Plan Violations**  
Block I, Lot 131  
Township of Mahwah

Dear Chief Perry:

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

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

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

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

**Uses and Activities**

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

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

Chief Dwaine Perry

April 24, 2018

Page 2

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

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

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

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

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

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

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

### Structures

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

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

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

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

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

### Site Plan Approval

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

Chief Dwaine Perry

April 24, 2018

Page 3

Article 22-3.2d of the Township Code states:

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

**Township Floodplain and Flood Hazard Areas**

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

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

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

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

- (a) Agriculture and horticultural uses as defined in this Chapter, except for a farmhouse.
- (b) Outdoor recreational facilities, including golf course, ice-skating rinks, swimming pools, parks, playfields and other similar facilities.
- (c) Essential services.
- (d) In addition, all requirements of Chapter XVIII of the Code, as may be amended, shall be complied with. In the event that any of these subsections are inconsistent with the Chapter, the more restrictive provisions shall apply.

The uses at the site do not meet these requirements.

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

Since the uses occurring on site are not permitted uses, to obtain proper approval, a complete Board of Adjustment Application is required to be submitted to the Township’s Department of Land Use for Use Variance Approval. Also, Site Plan Approval will be required as noted above.

Since proper approval has not been received for the items noted above and since the RMI have not entered into the Settlement Agreement to amicably resolve these issues, we are issuing Summonses for

Chief Dwaine Perry

April 24, 2018

Page 4

the violations occurring at the site. These Summonses are retroactive to Thursday, March 29, 2018, the day after the deadline to enter into a Settlement Agreement. The Summonses are for each weekday up to, and including, Friday April 20, 2018 for a total of 17 days. We will continue to issue daily Summonses for each violation until this matter is resolved. Summonses for each of the following violations will be issued by the Municipal Court:

Article 24-11.2c	Failure to Obtain Zoning Permit for Use – Religious Use
Article 24-11.2c	Failure to Obtain Zoning Permit for Use – Public Assembly
Article 24-11.2c	Failure to Obtain Zoning Permit for Structure – Prayer Circle
Article 24-11.2c	Failure to Obtain Zoning Permit for Structure – Stone Altar
Article 22-3.2d	Failure to Obtain Site Plan Approval for Use – Religious Use
Article 22-3.2d	Failure to Obtain Site Plan Approval for Use - Public Assembly
Article 22-3.2d	Failure to Obtain Site Plan Approval for Structure – Prayer Circle
Article 22-3.2d	Failure to Obtain Site Plan Approval for Structure – Stone Altar
Article 24-6.1h(1)	Location of Structure Within Floodplain and Flood Hazard Area Without Proper Approval – Prayer Circle
Article 24-6.1h(1)	Location of Structure Within Floodplain and Flood Hazard Area Without Proper Approval – Stone Altar

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

Very truly yours,



Geraldine Entrup  
Administrative Officer

GE/jg  
Enclosure

cc: The Honorable Mayor and Council  
Township of Mahwah Board of Adjustment  
Quentin Wiest, Township Business Administrator  
Kathrine G. Coviello, Township Clerk  
Tom Mulvey, Property Maintenance  
James N. Batelli, Chief, Mahwah Police Department  
Brian M. Chewcaskie, Esq.  
Michael J. Kelly, P.E., Boswell Engineering  
Thomas W. Williams, Esq.

# EXHIBIT O

<b>COMPLAINT NO</b>	<b>FILE NO</b>	<b>COMPLAINT NUMBER</b>	<b>MANWAN TOWNSHIP MUNICIPAL COURT 475 Corporate Drive Manwah NJ 07430</b>		
<b>0233</b>	<b>SC</b>	<b>000702</b>			
<b>Complainant</b>					
<b>The State of New Jersey</b>					
<b>(PREVIOUSLY FILED)</b>					
<b>Defendant's Name: Eric</b>			<b>Lee</b>		
<b>Address</b>					
<b>City</b>					
<b>State</b>	<b>Zip Code</b>	<b>Telephone</b>	<b>SOCIAL SECURITY NUMBER</b>		
<b>Birth Date:</b>	<b>Mo</b>	<b>Day</b>	<b>Yr</b>	<b>Sex</b>	<b>Height</b>
<b>Dr</b>					
				<b>State</b>	<b>Exp Date</b>
<b>STATE OF NEW JERSEY</b>					
<b>COUNTY OF BERGEN</b>					
<b>SS:</b>					
<b>COMPLAINANT</b>	<b>Complaining witness:</b>				
	<b>of</b>				
	<b>Residing at</b>				
	<b>by or reflection is on oath, says true to the best of his/her knowledge or information and belief, the named defendant on or about the</b>				
	<b>in</b>				
	<b>and comm: the following offense:</b>				
	<b>(DESCRIPTION OF OFFENSE)</b>				
	<b>in violation of (one charge only)</b>				
	<b>LOCATION OF OFFENSE</b>	<b>CODE</b>	<b>DESCRIPTION OF OFFENSE</b>		
	<b>Date: Subscribed and sworn to before</b>		<b>CERTIFICATION: I certify that the complaining statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.</b>		
<b>on this</b>	<b>day of</b>				
<b>Signature of Complaining Witness</b>		<b>(Date)</b>			
<b>Signature of Present Administrative Clerk</b>		<b>Signature of Complaining Witness</b>			
<b>TRUSTEE/CLERK DETERMINATION</b>		<b>COMPLAINANT'S HOME ADDRESS</b>			
<b>LAJ7000-EMPLOYMENT USE ONLY</b>					
<b>Probable cause is found for the issuance of the Complaint/Summons</b>		<input type="checkbox"/> <b>The complaining witness is a law enforcement officer or a code enforcement officer with certified and without cause jurisdiction and a judicial probable cause determination is not required prior to the issuance of the Complaint/Summons</b>			
<input checked="" type="checkbox"/> <b>Yes</b>	<b>Signature of Administrative Clerk</b>				
<input type="checkbox"/> <b>No</b>	<b>Signature of Judge</b>				
<b>YOU ARE HEREBY SUMMONED TO APPEAR</b>					
<b>NOTICE TO APPEAR</b>					
<input checked="" type="checkbox"/> <b>CRIMINAL APPEARANCE REQUIRED</b>	<b>DATE</b>	<b>TIME</b>			
<b>4/25/18</b>	<b>6:00 PM</b>	<b>9:00 AM</b>			
<b>Signature of Plaintiff</b>					





COURT ID:	PRECED:	COMPLAINT NUMBER:	
<b>0233</b>	<b>SC</b>	<b>008784</b>	<b>MAHWAH TOWNSHIP MUNICIPAL COURT</b> 475 Corporate Drive Mahwah NJ 07430
Complainant:			
The State of New Jersey			
Defendant's Name: First Name Last Address: City State Zip Code Telephone SOCIAL SECURITY NUMBER Sex: M/F Date: Mo Day Yr Sex Eyes Height Race/Ethnicity DL # State Exp. Date			
STATE OF NEW JERSEY COUNTY OF <b>BERGEN</b> ) ss.			
COMPLAINT	Complaining Witness: _____		
	of _____		
	Residing at _____		
	by certification of SA [Name], says that to the best of his/her knowledge or information and belief, she named defendant is or about the _____		
At <b>MAHWAH</b> <b>MUNICIPAL COURT</b> County of <b>BERGEN</b> NJ			
do hereby file the following offense:			
<b>(DESCRIPTION OF OFFENSE)</b>			
In violation of (use charge only) _____			
<b>CHARGE OFFENSE</b>	<b>CODE</b>	<b>DESCRIPTION</b>	
0671: Battered and sworn to false			CERTIFICATION: I certify that the foregoing statements made by me are true and correct and that I am not a party to the offense. I am subject to punishment.
Signature of Complaining Witness: _____ Date: _____ Signature of Person Administering Oath: _____ Signature of Complaining Witness: _____			
<b>PROBABLE CAUSE INTERVIEW FOR ISSUANCE OF PROCESS</b>			
Probable cause is based on the issuance of the Complaint by SA [Name] on [Date].		<input type="checkbox"/> The complaining officer is a law enforcement officer who is not a police officer and a judicial probable cause determination is not required prior to the issuance of this Complaint Summons.	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
<b>NOTICE TO APPEAR</b>			
YOU ARE HEREBY SUMMONED TO APPEAR IN COURT AT THE PLACE AND TIME SPECIFIED IN THE NOTICE TO APPEAR. FAILURE TO APPEAR MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.			
<b>NOTICE TO APPEAR</b>			
COURT APPEARANCE REQUIRED:	DATE:	TIME:	PLACE:
<input checked="" type="checkbox"/>	16	12:00	0000
Signature of Complaining Witness: _____ Signature of Person Administering Oath: _____			

COURT ID <b>0233</b>	PARTIAL <b>SC</b>	COMPLAINT NUMBER <b>008765</b>	<b>MAHWAH TOWNSHIP MUNICIPAL COURT</b> 475 Corporate Drive Mahwah NJ 07430
The State of New Jersey (Plaintiff) vs. <b>US</b> (Defendant)			
Defendant's Name: First <b>Michael</b> Last <b>Leck</b>		Address _____ City _____	
Date	Zip Code	Telephone	SOCIAL SECURITY NUMBER
Mo. Day Yr.			
DL #			State Exp. Date
STATE OF NEW JERSEY COUNTY OF <b>BERGEN</b>			SS: _____
COMPLAINT	Complaining Witness: _____		
	of _____		
	Residing at _____		
	by certification or on oath, says that to the best of their knowledge or information and belief, the named defendant on or about the _____		
	in <b>MAHWAH</b> <b>MUNICIPAL COURT</b> County of <b>BERGEN</b> NJ did commit the following offense:		
<b>(DESCRIPTION OF OFFENSE)</b>			
In violation of (cite charge only) _____			
SECTION OF STATUTE	CODE	Describe Offense	
DATE: Subscribed and sworn to before me this _____ day of _____, 19____.	CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are untrue, I am subject to punishment.		
Signature of Person Administering Oath	Signature of Complaining Witness		
<b>PROBABLE CAUSE OR DENIAL OF RESPONSIBILITY OF OFFENSE</b>			
Probable cause is found for the commission of this Complaint.		The complaining witness is a law enforcement officer or a public official and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of the Complaint.	
<b>YOU ARE HEREBY SUMMONED TO APPEAR</b>			
PERSONS WHO DO NOT APPEAR AT A COURT HEARING WITHOUT A VALID EXCUSE MAY BE CONSIDERED IN DEFAULT OF APPEARANCE AND SUBJECT TO PENALTY.			
<b>NOTICE TO APPEAR</b>			
<input checked="" type="checkbox"/> APPEARANCE REQUIRED 4/25/18	COURT: _____ TIME: _____ PLACE: _____	SIGNATURE: _____ TITLE: _____	

<b>COURT ID</b> 0233	<b>TYPE</b> SC	<b>COMPLAINT NUMBER</b> 000768	<b>MANWAN TOWNSHIP MUNICIPAL COURT</b> 475 Corporate Drive Manwah, NJ 07436
<b>Completer</b>			
<b>The State of New Jersey</b>			
<b>(Please Print)</b>			
<b>Defendant's Name: First</b>		<b>Initial</b>	<b>Last</b>
<b>Address</b>			
<b>City</b>			
<b>State</b>	<b>Zip Code</b>	<b>Telephone</b>	<b>SOCIAL SECURITY NUMBER</b>
<b>Birth Date</b>	<b>Sex</b>	<b>Eyes</b>	<b>Height</b>
<b>Weight</b>	<b>Residence</b>	<b>Exp. Date</b>	
<b>STATE OF NEW JERSEY</b>			
<b>COUNTY OF</b> <u>BERGEN</u> <b>SS.</b>			
<b>COMPLAINANT</b>	<b>Completing Witness:</b> _____		
	of _____		
	Residing at _____		
	by declaration or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the _____		
	in <u>MANWAN</u> Township, <u>BERGEN</u> County of <u>BERGEN</u> , NJ did commit the following offense:		
<b>(DESCRIPTION OF OFFENSE)</b>			
in violation of (one charge only) _____			
<b>LOCATION OF OFFENSE</b>	<b>CODE</b>	<b>CLASSIFICATION</b>	
<b>DATE:</b> _____		<b>CERTIFICATION:</b> I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are untrue, I am subject to punishment.	
<b>Signature of Completing Witness</b>		<b>Signature of Completing Witness</b>	
<b>Signature of Power of Attorney Clerk</b>		<b>Signature of Completing Witness</b>	
<b>TAKE THE COURT TO COURT OR BY MAIL OR BY FAX OR BY E-MAIL</b>			
<b>COURT APPEARANCE</b>		<b>BY MAIL OR BY FAX OR BY E-MAIL</b>	
<input type="checkbox"/> The completing witness is a law enforcement officer or a state government official with criminal and related matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of the Complaint-Summons.			
<b>YOU ARE HEREBY SUMMONED TO APPEAR</b>			
<b>PLEASE PRINT THE NAME OF YOUR ATTORNEY OR FIRM, IF ANY, TO APPEAR IN THE INTERNATIONAL AIRPORT AT 200 W. WASHINGTON STREET, SUITE 200, NEW YORK, NY 10014</b>			
<b>NOTICE TO APPEAR</b>			
<input type="checkbox"/> COURT APPEARANCE REQUIRED	<b>COURT DATE:</b>	<b>Month</b>	<b>Day</b>
		<b>Year</b>	<b>Time</b>
			<b>AM</b>
			<b>PM</b>
<b>TAKE THE COURT TO COURT</b>		<b>(Signature of Power of Attorney Clerk)</b>	

COURT ID	INDEX	COMPLAINT NUMBER	<b>MAHWAH TOWNSHIP MUNICIPAL COURT</b> 475 Corporate Center Mahwah NJ 07430		
<b>0233</b>	<b>SC</b>	<b>008767</b>			
Complainant					
<u>State of New Jersey</u>					
Defendant's Name: First Last					
Address City					
State	Zip Code	Telephone	<b>SECURITY NUMBER</b>		
Birth Date: Mo Day Yr	Sex	Eyes	HAIR	MARRIAGE	
DL				State	Exp. Date
STATE OF NEW JERSEY COUNTY OF <u>BERGEN</u> ) SS					
<b>COMPLAINT</b>	Complaining Witness: _____				
	of _____				
	Residing at _____				
	by certification of an officer, says that to the best of his/her knowledge or information and belief, the named defendant or defendant(s) _____				
	in _____ Municipality, County of _____ NJ				
	did commit the following offense:				
	<b>(DESCRIPTION OF OFFENSE)</b>				
	in violation of (one charge only) _____				
	LOCATION OF OFFENSE <b>COL</b> _____				
	DATE: _____				
SIGNATURE OF COMPLAINING WITNESS _____					
SIGNATURE OF POLICE AUTHORIZING OFFICER _____					
<b>PROBABLE CAUSE DETERMINATION FOR ISSUING A WARRANT</b>					
Probable cause is found for the issuance of this Complaint-Warrant. <input type="checkbox"/> Yes <input type="checkbox"/> No			The complaining officer is a duly sworn police officer with authority and subject matter jurisdiction and a prima facie case of probable cause is not required prior to the issuance of this Complaint-Warrant. <input type="checkbox"/>		
<b>YOU ARE HEREBY SUMMONED TO APPEAR</b>					
<b>NOTICE TO APPEAR</b>					
<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	AM PM
1					



<b>COURT ID</b>	<b>OFFICE</b>	<b>COMPLAINT NUMBER</b>	<b>MANWAN TOWNSHIP MUNICIPAL COURT</b>		
<b>0233</b>	<b>SC</b>	<b>008769</b>	475 Corporate Drive Manwah NJ 07428		
<b>Complainant</b>					
<b>The State of New Jersey</b>					
<b>(Please Print Name)</b>		<b>VS.</b>			
Complainant's Name: First Initial Last					
Address _____ City _____					
State	Zip Code	Telephone	<b>SOCIAL SECURITY NUMBER</b>		
Birth Date: Mo Day Yr	Sex	Eyes	Hair	Residence	
DL				SSNo	Exp. Date
STATE OF NEW JERSEY COUNTY OF <u>BERGEN</u> ) SS.					
<b>COMPLAINANT</b>	Complaining Witness: _____				
	of _____				
	Residing at _____				
	by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the _____				
	in <u>MANWAN</u> <u>MUNICIPAL</u> Court of <u>BERGEN</u> NJ				
	did commit the following offense:				
<b>(DESCRIPTION OF OFFENSE)</b>					
In violation of (one charge only) _____					
<b>LOCATION OF OFFENSE</b>		<b>CHARGE CODE</b>			
DATE: Subscribed and sworn to before me this _____ day of _____, 20____.		<input type="checkbox"/> <b>DEFENDANT:</b> I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are untrue, I am subject to punishment.			
_____ (Signature of Complaining Witness)		_____ (Signature of Defendant)			
_____ (Signature of Person Administering Oath)		_____ (Signature of Complaining Witness)			
<b>PROBABLE CAUSE DETERMINATION OF BOARD OF JUDGES</b>					
<b>PROBABLE CAUSE DETERMINATION</b>			<b>ADULTERATION OF JUDICIAL OFFICE</b>		
Probable cause is found for the issuance of the Complaint against the Defendant.			The complaining witness is a law enforcement officer or a code enforcement officer with authority and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint against the Defendant.		
Yes	_____ (Signature of Judicial Officer)		_____ (Signature of Complaining Witness)		
No	_____ (Signature of Judge)		_____ (Signature of Complaining Witness)		
<b>YOU ARE HEREBY COMPELLED TO APPEAR</b>					
<b>NOTICE TO APPEAR</b>					
<input type="checkbox"/> COURT APPEARANCE REQUIRED	SEC'D DATE	Month	Day	Year	AM PM

COURT ID	FILING	COMPLAINT NUMBER	<b>MAHWAN TOWNSHIP MUNICIPAL COURT</b> 475 Corporate Drive Mahwah NJ 07430
<b>0233</b>	<b>SC</b>	<b>003770</b>	
Complainant			
STATE OF NEW JERSEY			
VS			
Defendant's Name: First Last			
Address City			
State	Zip Code	Telephone	
SOCIAL SECURITY NUMBER			
Birth Date	Mo. Day Yr.	Sex	Height Weight Restrictions
DL #			State Exp. Date
STATE OF NEW JERSEY COUNTY OF <u>BERGEN</u> } SS:			
<b>COMPLAINT</b>	Complaining Witness: _____		
	Residing at _____		
	by occupation or on oath, says (he) to the best of his/her knowledge or information and belief, the named defendant on or about the _____		
	in <u>MAHWAN</u> <u>MAHWAN TOWNSHIP</u> County of <u>BERGEN</u>		
	did commit the following offense:		
<b>(DESCRIPTION OF OFFENSE)</b>			
violation of (use charge only) _____			
LOCATION OF OFFENSE	<b>CODE</b>	LOCATION OF OFFENSE	
DATE: Subscribed and sworn to before me this _____ day of _____, 2018.			
Signature of Complaining Witness		Signature of Complaining Witness	
<b>PROBABLE CAUSE AFFIDAVIT BY POLICE OFFICER OR PROSECUTOR</b>			
Probable cause is found to the satisfaction of the Complaint Defendant:		The complaining witness is a law enforcement officer or a public defender with reasonable and articulable suspicion and a judicial probable cause determination is not required prior to the issuance of this Complaint-Affidavit.	
Signature of Police Officer/Prosecutor		Signature of Complaining Witness	
<b>YOU ARE HEREBY ADVISED TO APPEAR</b>			
<b>NOTICE TO APPEAR</b>			
COURT APPEARANCE REQUIRED	DATE	MONTH	DAY





# EXHIBIT P

**FILED**  
JAN 10 2018  
KEITH A. BACHMANN, J.S.C.

prepared by the court

STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
*Criminal Action*  
BMA 001-18-02

-vs-

RAMAPOUGH MOUNTAIN  
INDIANS, INC.,  
defendant.

**JUDGMENT AFTER TRIAL**  
*de novo*

**THIS MATTER HAVING BEEN** brought before this court for a trial de novo, on the record made before the Honorable Roy F. McGeady, P.J.M.C., Matthew W. Daloisio, Esq. Valeria Gheorghiu, Esq. and Meghan D. Maurus, Esq. appearing for the defendant, and Joseph P. De Marco, Esq., municipal prosecutor for the Township of Mahwah appearing for the State, and this court having reviewed the briefs submitted by Mr. Daloisio dated September 17, 2018 and November 27, 2018, the brief submitted by Mr. De Marco dated October 15, 2018

and this court having reviewed the transcripts of the proceedings conducted before Judge McGeady on September 26, 2017, October 3, 2017, October 10, 2017, October 24, 2017, October 31, 2017 and November 17, 2017; and the court having inspected photocopies of the tickets that identified, in chronological order in Appendix A and the court having reviewed Mahwah's ordinances, the pertinent sections reproduced, for convenience, in Appendix B; and this court having considered the arguments made by Ms. Gheorghiu and Mr. DeMarco on November 30, 2018, for the reasons set forth below, it is on this 10<sup>th</sup> day of January, 2019

**ORDERED** that a judgment of conviction be and is entered against the defendants on all of the summonses identified in Appendix A; and it is further

**ORDERED** that fines are assessed in the amount of \$5,100; and it is further

**ORDERED** that costs are assessed in the amount

of \$2,040; and it is further

**NOTED** that the defendant has 45 days within which to appeal and if an appeal is not timely filed, the defendant may be entitled, in the discretion of the Appellate Division to a 30 day extension; and that the defendant is entitled to file a Post-Conviction Relief Application within 5 years of today's conviction; and it is further

**NOTED** that all counsel for the defendant have been directed to have the appropriate corporate officer of the defendant execute and submit the notice of appeal rights and time to file a petition for post-conviction relief form attached to this decision and identified as Appendix C within 10 days.

  
\_\_\_\_\_  
Keith A. Bachmann, J.S.C.

**REASONS FOR THIS DECISION**

The defense has asked this court to consider this matter anew on the record below. R. 3:23 permits this

court to do so.

In this case the defendant was charged with violating various zoning ordinances. This court understands that 44 paper summonses issued<sup>1</sup>.

Summons SC 008496 cited a violation of an ordinance that is not a regulatory ordinance and Judge McGeady dismissed that charge. T1<sup>2</sup>, 5 @ 15. Three other summonses charged the defendant with moving soil without a permit (SC008401<sup>3</sup>, SC008494 and SC008495). Judge McGeady acquitted the defendant on those charges. S6<sup>4</sup>, 11 @ 1. Judge McGeady acquitted the defendant of allowing the energy trailer on its property on August 16, 2018.<sup>5</sup> Judge McGeady also acquitted the defendant regarding summons SC 008492 charging an offense on December 13, 2016.<sup>6</sup> These charges will not be revisited by this court because to reconsider them would have a chilling effect on a defendant's right to appeal and would abridge the defendant's right not to be placed in jeopardy twice. By this court's count, 102 summonses remain. There are 38 remaining paper summonses.

The pertinent facts established beyond a reasonable doubt by the record are:

- 1) the defendant acquired the property by deed on July 17, 1995: T3<sup>7</sup>, 46 @ 18.
- 2) on January 25, 2012 the Township of Mahwah issued a zoning permit so that the defendant might build a longhouse and use it for prayer and community

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<sup>1</sup> T1, 22 @ 2.

<sup>2</sup> T1 refers to the transcript of proceedings on September 26, 2017.

<sup>3</sup> This may have been mistakenly identified. Compare T2, 25 @ 22 through 27 @ 7 where it SC008491.

<sup>4</sup> S6 is the transcript of proceedings on November 17, 2018.

<sup>5</sup> T6, 13 @ 16.

<sup>6</sup> T6, 14 @ 16.

<sup>7</sup> T3 refers to the transcript of proceedings on October 10, 2017

cultural assembly. T1, 6 @ 1-4; T1, 19 @ 24.

- 3) on November 29, 2016 the defendant was notified that it had structures on its property that were contrary to the Township's zoning code, specifically teepees, tents, a canvas cabin and a lumber structure that contained a roof, floor and cabinets. T2, 21 @ 5
- 4) the Township of Mahwah afforded the defendant a period of time to comply with the town's ordinances
- 5) One of the structures, a large tent, was erected by the defendant on the property in October of 2016 and that tent remained on the property through and including the trial date of October 17, 2017. T3, 202 @ 22 - 203 @ 22.<sup>8</sup>
- 6) That tent measured 12 feet by 14 feet which means that it covered 168 square feet of ground
- 7) trunks of trees that had naturally fallen on the property were arranged on the ground to create what the defendant referred to as a longhouse with spaces between the trunks facing North, South, East and West: T3, 104 @ 4-22
- 8) the tree trunks were arranged in a rectangular pattern measuring 20 feet by 60 feet<sup>9</sup>: T3, 103 @ 1
- 9) the diameter of the trunks of said trees rose to a height sufficient for sitting on: T3, 104 @ 1.
- 10) in 2011 the defendant placed 12 large poles in the ground that were once tree trunks; these poles had

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<sup>8</sup> T3 refers to the transcript of proceedings on October 10, 2017.

<sup>9</sup> The record is not clear as to whether the measurement was in feet, yards or meters

carvings on them and were symbolic of walls with gates

- 11) said poles were installed in a manner similar to telephone poles. T3, 192 @ 2.
- 12) the tree trunks laying on the ground in a rectangular shape and the trunks sunk into the ground and protruding out of the ground like telephone poles remained on the property throughout the period of violation (12/13/16 through 9/22/17)
- 13) the defendant never acquired a zoning permit for the erection of tents, teepees, yurts, or a cook shack T2, 56 @ 22 through 57 @ 5.
- 14) Thomas Mulvey is Mahwah's planning, zoning and property maintenance inspector. T2, 7 @ 21.

This court will address the various defenses made.

The defense argued before Judge McGeady that the defendant was entitled to sovereign immunity. Judge McGeady held that the defendant was not entitled to sovereign immunity but was subject to the laws of the United States, of the State of New Jersey, and of the Ordinances of the Township of Mahwah. T1, 17 @ 6.

The defense continued to argue on *de novo* review that the Ramapo Mountain Indians, Inc. were entitled to sovereign immunity.

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A scholarly discussion of the foundation of such immunity is unnecessary to determine the issue. It is sufficient to recognize that the immunity springs from treaties that were made before the United States of America became a sovereign and from the prohibition

against the Federal Government, a Municipal Government or a State Government exercising jurisdiction over a sovereign Indian Tribe. Pre-existing property rights and pre-existing rights to self-govern are the subjects of sovereign immunity claims.

The doctrine basically respects tribal rights that existed prior to the creation of our Nation, our State and in this case, the Township of Mahwah.

Some tribes had possessory rights to certain land with the United States. See generally: Oneida Indian Nation v. County of Oneida, 414 U.S. 670 - 672 (1974) and a later formed Federal, State or Municipal government entity has no authority to regulate activity on said land absent consent by a tribe or an act of congress.

The record does not identify when the corporation known as the "Ramapo Mountain Indians, Inc." was formed. Incorporation is a creature of statute. The right to incorporate may have been first authorized in New Jersey in 1846. See. Waters v. Quimby, 27 N.J.L. 296, 306 (1859). Our Nation and our State became sovereign entities well before this right to incorporate.

Additionally, this defendant's incorporation could not have occurred before the initial members of the tribe organized and that had to be circa 1900. This must be so because Chief Perry testified that in order to be a member of the Ramapo Indian Tribe one had to be able to trace his or her family back to the original families that were part of the Tribe in the early 1900s. T3, 80

@ 4.

Finally, the defendant did not own this property until 1995.



The record before this court does not establish that there was a Ramapo Mountain Indian tribe prior to the formation of the United States of America or the State of New Jersey nor does it establish that the land in question was the property of said tribe prior to the formation of the United States of America or the State of New Jersey and that the property was acquired well after Mahwah incorporated<sup>10</sup> and so no sovereign immunity argument on this basis can be countenanced.

Alternatively, this defense must be supported by establishing that the Ramapo Indians are a sovereign entity and therefore not answerable for its activities to a Federal, State or Municipal government entity.

The defense relies on Lewis v. Clarke, 137 S. Ct. 1285 (2017). That case is distinguishable. That case involved the sovereign rights of the Mohegan Tribe, a tribe that was established in the early 1600s and one recognized as a sovereign by our Federal government, Id. at 1289. There is no evidence to establish that the Ramapo Indian Tribe was recognized by our Federal Government, nor that the Ramapo Indian Tribe existed before our Federal or State governments exist.

The defense relies on Montana v. Blackfoot, 471 U.S. 759 (1985). That case is distinguishable. There was no dispute that the land in question was on a recognized Indian reservation and a State's effort to tax an Indian Tribe's mineral lease royalties without permission of congress.

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The defense raised sovereign immunity to support its argument that Mahwah cannot regulate the Ramapo Indian Tribe, Inc's ceremonial use of its land. This is not a case in which a municipality seeks to regulate

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<sup>10</sup> This court takes notice that Mahwah was incorporated in 1944.

ceremonial activity. This case is not about activity; it is about code compliance.

The defense raised pre-emption as a defense. The authority for said argument is Homebuilder's League, etc. v. Evesham Tp., 174 N.J. Super. 252 (L.Div. 1980). That holding is distinguishable on its facts<sup>11</sup>.

The defense argued that the Uniform Construction Code does not require a permit for a tent. The exception outlined in the code is for tents 120 square foot in ground coverage or less, that are used for less than 180 days. Chief Perry admitted that at least one large tent covering 168 square feet of ground was erected and stood from October of 2016 through October of 2017. The tent is larger than the excepted size and existed for a period of time longer than the excepted duration and this argument, therefore, has no merit.

Judge McGeady held that the Religious Land Use and Institutionalized Person Act (RLUIPA) did not afford the defendant a defense but rather, entitled the defendant to challenge the ordinance before the Zoning Board of Adjustment in Mahwah. T1, 18 @ 1 though 19 @ 14.

RLUIPA does not except a religious institution from complying with zoning ordinances. House of Fire v. Zoning Bd., 379 N.J. Super. 526, 544 (App. Div. 2005).

In a proper forum, RLUIPA requires a religious institution to first demonstrate that the ordinance imposes a substantial burden on religious exercise

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<sup>11</sup> The trial judge held, correctly, that the ordinances created through the authority of a State Statute designed to regulate the development of property could not be used as a vehicle to collect taxes and the inclusion of such a condition, as a prerequisite to acquiring a permit to develop the land was improper and pre-empted by the State statutory scheme designed to regulate the development of land. Mahwah's ordinance does set prerequisite conditions but their only design is to regulate the development of land.

before a government entity becomes obligated to persuade the court that its ordinance furthers a compelling governmental interest and is the least restrictive means of furthering that interest. Id. at 545. This is not the proper forum. A proper challenge, placing the matter squarely in controversy, would be after Mahwah had either declined to issue a zoning permit or after Mahwah declined to grant a variance. The record before this court does not contain this information and that is because the defendant did not comply with Mahwah's ordinance and apply for a zoning permit.

In addition, this court does not need to reach the question of whether prohibiting the longhouse or a sweat lodge, for example is prohibiting religious exercise because this court determined this controversy based upon the presence of the large tent which, beyond any doubt, was erected without acquiring a zoning permit and allowed to stand for over a year.

All other defenses that were raised are without merit.

The ordinances in question are clear and have been reproduced as Appendix B.

This court reviewed the proofs provided by the State in its case on direct. This court looked for evidence that a person with first-hand knowledge observed a structure erected while believing that no zoning permit had issued. That proof is the bare minimum necessary to establish a violation.

Testimony about a cooking shack, a yurt and a sweat lodge, produced on direct, met this criteria in only forty nine instances<sup>12</sup>.

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<sup>12</sup> See the "Note" on page 2 of Appendix A.

The defendant did not move for a dismissal<sup>13</sup> at the end of the State's case presented to Judge McGeady and made no such application in this *de novo* proceeding.

The defense called Chief Perry and he testified that the defendant had erected a large tent on the property. That tent was erected in October of 2016 (before the first summons charge date) and that said tent remained there as of October 10, 2017 (after the last summons charge date).

A tent meets the definition of a "structure" in Mahwah's ordinance (*Structure shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land*).

Mr. Mulvey, the Mahwah inspector, established that no zoning permit was ever acquired by the defendant to erect said tent contrary to Mahwah's ordinance (*Zoning permits shall be secured from the Zoning Officer prior to construction, erection or alteration of any structure or part of a structure or use of a structure or land*).

If a tree falls down through natural causes and the trunk lays on the ground near other fallen tree trunks there would be no basis to charge the defendant with violating the town's ordinance. But if the defendant were to clean up that fallen tree, remove its broken and twisted branches and cut away its dirt impacted roots, and then put the fallen tree trunks in a pattern, the ordinance could be read to establish that a structure has been created. (*Structure shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land*).

This court does not have to decide this question because the record establishes, beyond a reasonable

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<sup>13</sup> See: *State v. Reves*, 50 N.J. 454 (1956)

doubt, that at least one large tent, which meets the definition of a structure, was erected on the property by the defendant and that the defendant never bothered to acquire a zoning permit for same and that said large tent was on the property on every day charged in the multiple summonses.

The multiple summonses charge violations on one hundred and two separate dates. The Mahwah ordinance declares it to be a separate violation for every day that a violation exists (Except as otherwise provided, every day in which a violation of any provision of this Code or any other ordinance of the Township exists shall constitute a separate violation.) .

The zoning ordinance provides for a maximum fine of \$1,250 per day. Judge McGeady fined the defendant \$100 per day. Judge McGeady believed that the ordinance contained a mandatory minimum fine of \$100<sup>14</sup>.

The general penalty section provides a sentencing judge with great discretion when determining a fine (Any person who shall violate any provision of [any]... ordinance ... shall ... be punishable by ... a fine not exceeding one thousand two hundred fifty (\$1,250.00) dollar .... The maximum penalty stated in this section is not intended to state an appropriate penalty for every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or violation. The governing body may prescribe that, for the violation of any particular Code provision or ordinance, at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding one hundred (\$100.00) dollars) .

Chapter 24 of Mahwah's Zoning Ordinance does not set a mandatory minimum and, instead, refers to the general penalty section. As the result this court understands that the fine can be anywhere from zero to \$1,250 per day. There was no evidence of scienter and the defendant, through agents, did make some effort, although not a great effort to comply with Mahwah's requirements.

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<sup>14</sup> See T6, a transcript of proceedings on November 17, 2017, page 32, line 24.

Given the volume of summonses, noting that this defendant would not even be in this court but for the efforts of lawyers who donated their time, this court believes a lesser fine of \$50 per day would be sufficient.

\$50 times 102 days is \$5,100.

Finally, Judge McGeady levied court costs of \$33 per day. This court takes notice of the "Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees"<sup>15</sup> supplied, post argument, by the defense. It contains recommendations to the Supreme Court and one concern centers on the "excessive imposition of financial obligations on certain defendants" that have a "... disproportionately negative impact on the poor". While the report specifically targets the "... imposition of mandatory financial obligations upon defendants that extend beyond the fine that associated with the violation ..." and while court costs are not mandatory financial obligations, the impact of large court costs is the same as the impact of mandatory surcharges.

This court has also reviewed the language in N.J.S.A. 22A:3-4. Said statute provides "In municipal court proceedings, the court shall impose court costs within the maximum limits authorize ..." and further provides that "[t]he court shall not suspend the collection..." of \$2 to the Automated Traffic System Fund and \$3 to the Automatic System Statewide Modernization Fund. This means that whether this court assesses court costs or not, the Township of Mahwah will have to remit \$5 per offense, not per summons. Were this court to only assess costs per summons then Mahwah would have to pay for this defendant's ordinance offending actions.

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<sup>15</sup> Published June, 2018; [https://njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport\\_wapp.pdf](https://njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport_wapp.pdf)

Municipalities incur costs and expenses to run a municipal court. While the Mahwah Municipal Court did not conduct this trial, its clerk had to exert efforts before this matter was sent to Judge McGeady for trial and Mahwah had to supply its prosecutor to write briefs and make arguments. Court costs serve to defer those expenses.

This court believes that the appropriate resolution is to assess \$20 in court costs per violation, not per summons. \$20 times 102 violations is \$2,040 and in this court's view, it is appropriate to assess said costs.

The defendant's fines and costs total \$7,140.

The defendant has 45 days within which to appeal this decision and 5 years within which to make a petition for post-conviction relief.

## APPENDIX A

OFFENSE DATE(S)	TICKET NO.	CHARGE
01/10/17	SC008497	24-11.2C
04/27/17	SC008525	"
04/28/17	SC008526	"
05/01/17	SC008527 * <sub>1</sub>	"
05/02/17	SC008528 "	"
05/03/17	SC008529 "	"
05/04/17	SC008530 "	"
05/05/17	SC008531 "	"
05/08/17	SC008532 "	"
05/09/17	SC008533 "	"
05/10/17	SC008534 "	"
05/11/17	SC008535 "	"
05/12/17	SC008536 "	"
05/13/17	SC008537 "	"
05/16/17	SC008538 "	"
05/17/17	SC008539 "	"
05/18/17	SC008540 "	"
05/19/17	SC008541 "	"
05/22/17	SC008546 * <sub>2</sub>	"
05/23/17	SC008547 "	"
05/24/17	SC008550 "	"
05/25/17	SC008551 "	"
05/29 - 06/02/17	SC008555 * <sub>3</sub>	"
06/05 - 06/09/17	SC008556 "	"
06/12 - 06/16/17	SC008559 "	"
06/26 - 06/30/17	SC008560 "	"
07/03 - 07/07/17	SC008581 "	"
07/10 - 07/14/17	SC008584 "	"

1 Mr. Mulvey testified that these summonses were issued because the defendant failed to acquire a zoning permit. He DID NOT testify that he saw the violations on the dates that he issued the summonses. See T2, 56 @ 24.

2 Mr. Mulvey DID NOT testify that he saw violations on the dates that he issued these summonses. Instead he testified that he issued the summonses because Mr. Kelly authorized him to do so. See and T2, 58 @ 2 and T2, 80 @ 24

3 Again, Mr. Mulvey DID NOT testify that he observed the conditions, rather he simply explained the nature of the alleged violations.



07/17 - 07/21/17	SC008585	*4	"
07/24 - 07/28/17	SC008586		"
07/31 - 08/04/17	SC008587		"
08/07 - 08/11/17	SC008588		"
08/14 - 08/18/17	SC008730		"
08/21 - 08/25/17	SC008749		"
08/28 - 09/01/17	SC008570		"
09/04 - 09/08/17	SC008733		"
09/11 - 09/15/17	SC008734		"
09/18 - 09/22/17	SC008735		"

Note: Highlight indicates that there was testimony in the record establishing that the condition that constituted an offense was observed to exist on the date complained of.

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4 Again, Mr. Mulvey DID NOT testify that he observed the conditions, rather he simply explained the nature of the alleged violations.

## APPENDIX B

### 24-2.2 Definitions.

As used in this Chapter:

*Structure* shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land

### 24-4.2 Application of Regulations.

Except as hereinafter otherwise provided:

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

### 24-11.2 Zoning Permits.

- c. *Issuance of Zoning Permit.* Zoning permits shall be secured from the Zoning Officer prior to construction, erection or alteration of any structure or part of a structure or use of a structure or land. It shall be the duty of the Zoning Officer to issue a zoning permit, provided that person is satisfied that the proposed use conforms with all requirements of this Chapter. It is the applicant's responsibility that all other reviews and actions, if any, called for in this Chapter or any other Township ordinance have been complied with and all necessary approvals secured therefor.

### 24-11.5 Violations and Penalties.

- c. *Penalties.* Any person, firm or corporation violating any provision of this Chapter shall, upon conviction, be subject to penalty, as stated in Chapter I, Section 1-5 of the Code of the Township of Mahwah.

## 1-5 GENERAL PENALTY.

### 1-5.1 Maximum

### Penalty.

Any person who shall violate any provision of this Code or other ordinance of the Township, where no specific penalty is provided regarding the section violated, shall, upon conviction thereof, be punishable by one or more of the following: a fine not exceeding one thousand two hundred fifty (\$1,250.00) dollars ...

### 1-5.2 Separate Violations.

Except as otherwise provided, every day in which a violation of any provision of this Code or any other ordinance of the Township exists shall constitute a separate violation.

### 1-5.3 Application.

The maximum penalty stated in this section is not intended to state an appropriate penalty for every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or violation.

### 1-5.4 Minimum Penalty.

The governing body may prescribe that, for the violation of any particular Code provision or ordinance, at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding one hundred (\$100.00) dollars

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

<p>RAMAPOUGH MOUNTAIN INDIANS, INC., and RAMAPOUGH LENAPE NATION,  PLAINTIFFS,  v.  TOWNSHIP OF MAHWAH, RAMAPO HUNT &amp; POLO CLUB ASSOCIATION, INC., GERALDINE ENTRUP, THOMAS MULVEY, JOHN and JANE DOES 1-14, JOHN DOE ENTITIES 1 and 2,  DEFENDANTS.</p>	<p>Case No. 2:18-cv-09228-CCC-JBC  CIVIL ACTION  <b>CERTIFICATION OF ELECTRONIC SERVICE FOR MAHWAH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT</b></p>
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I, Ruby Kumar-Thompson, Esq., a Partner at the law firm of Cleary Giacobbe Alfieri and Jacobs, LLC, hereby certify that on this 23rd day of January, 2019, a copy of the **DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT, CERTIFICATION OF COUNSEL, AND EXHIBITS in support thereof** has been served via electronic filing to all counsel of record to all of the parties.

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

By: s/ Ruby Kumar-Thompson  
RUBY KUMAR-THOMPSON, ESQ.

Dated: January 23, 2019