

Borough of Lincoln Park's
Answer and Seperate Defense

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SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY/VENUE
MIDDLESEX COUNTY/TRIAL
LAW DIVISION
DOCKET NO. L-042457-85

JOSEPH RENDEIRO, GEORGE C. PECK,
and HOV-BILT, INC., a New Jersey
Corporation

Plaintiff, :

vs. :

Civil Action

BOROUGH OF LINCOLN PARK, a
Municipal Corporation
located in Morris County,

ANSWER
Separate Defense

Defendant, :

Defendant, BOROUGH OF LINCOLN PARK, having an office at 34 Chapel Hill Road in the Borough of Lincoln Park, County of Morris and State of New Jersey, in answer to the factual and legal allegations in the complaint of the Plaintiff's above says:

FIRST COUNT

1. Defendant is without knowledge or information sufficient to form a belief as to paragraph 1. of the First Count.
2. Defendant admits the allegations contained in paragraphs 2, 3, 4, 5, 6, and 7 of the First Count.
3. Defendant denies the allegations contained in paragraphs 8 and 9 of the First Count.

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SECOND COUNT

1. Defendant repeats all answers set forth in the First Count to the extent realleged in the Second Count.

2. Defendant denies the allegations contained in paragraph 2 of the Second Count.

THIRD COUNT

1. Defendant repeats all answers set forth in the Second Count to the extent realleged in the Third Count.

2. Defendant admits the allegations contained in paragraphs 2, 3, and 4 of the Third Count.

3. Defendant denies the allegations contained in paragraphs 5 and 6 of the Third Count.

FOURTH COUNT

1. Defendant repeats all answers set forth in the Third Count to the extent realleged in the Fourth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Fourth Count.

FIFTH COUNT

1. Defendant repeats all answers set forth in the Fourth Count to the extent realleged in the Fifth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Fifth Count.

SIXTH COUNT

1. Defendant repeats all answers set forth in the Fifth Count to the extent realleged in the Sixth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Sixth Count.

SEVENTH COUNT

1. Defendant repeats all answers set forth in the Sixth Count to the extent realleged in the Seventh Count.
2. Defendant denies the allegations contained in paragraph 2 of the Seventh Count.

EIGHTH COUNT

1. Defendant repeats all answers set forth in the Seventh Count to the extent realleged in the Eighth Count.
2. Defendant denies the allegations contained in paragraph 2 of the Eighth Count.

NINTH COUNT

1. Defendant repeats all answers set forth in the Eighth Count to the extent realleged in the Ninth Count.
2. Defendant admits the allegations contained in paragraph 2 of the Ninth Count.
3. Defendant denies the allegations contained in paragraph 3 of the Ninth Count.

TENTH COUNT

1. Defendant repeats all answers set forth in the Ninth Count to the extent realleged in the Tenth Count.
2. Defendant admits the allegations contained in paragraph 2 of the Tenth Count.
3. Defendant denies the allegations contained in paragraphs 3, 4, and 5 of the Tenth Count.

ELEVENTH COUNT

1. Defendant repeats all answers set forth in the Tenth Count to the extent realleged in the Eleventh Count.

2. Defendant denies the allegations contained in paragraph 2 of the Eleventh Count.

TWELFTH COUNT

1. Defendant repeats all answers set forth in the Eleventh Count to the extent realleged in the Twelfth Count.

2. Defendant admits the allegations contained in paragraph 2 of the Twelfth Count.

3. Defendant denies the allegations contained in paragraph 3 of the Twelfth Count.

THIRTEENTH COUNT

1. Defendant repeats all answers set forth in the Twelfth Count to the extent realleged in the Thirteenth Count.

2. Defendant admits the allegations contained in paragraph 2 of the Thirteenth Count.

3. Defendant denies the allegations contained in paragraphs 3 and 4 of the Thirteenth Count.

FOURTEENTH COUNT

1. Defendant repeats all answers set forth in the Thirteenth Count to the extent realleged in the Fourteenth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Fourteenth Count.

FIFTEENTH COUNT

1. Defendant repeats all answers set forth in the Fourteenth Count to the extent realleged in the Fifteenth Count.

2. Defendant admits the allegations contained in paragraphs 2, 3, and 4 of the Fifteenth Count.

3. Defendant denies the allegations contained in paragraphs 5 and 6 of the Fifteenth Count.

SIXTEENTH COUNT

1. Defendant repeats all answers set forth in the Fifteenth Count to the extent realleged in the Sixteenth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Sixteenth Count.

SEVENTEENTH COUNT

1. Defendant repeats all answers set forth in the Sixteenth Count to the extent realleged in the Seventeenth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Seventeenth Count.

EIGHTEENTH COUNT

1. Defendant repeats all answers set forth in the Seventeenth Count to the extent realleged in the Eighteenth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Eighteenth Count.

NINETEENTH COUNT

1. Defendant repeats all answers set forth in the Eighteenth Count to the extent realleged in the Nineteenth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Nineteenth Count.

TWENTIETH COUNT

1. Defendant repeats all answers set forth in the Nineteenth Count to the extent realleged in the Twentieth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Twentieth Count.

TWENTY-FIRST COUNT

1. Defendant repeats all answers set forth in the Twentieth Count to the extent realleged in the Twenty-First Count.

2. Defendant admits the allegations contained in paragraph 2 of the Twenty-First Count.

3. Defendant denies the allegations contained in paragraph 3 of the Twenty-First Count.

TWENTY-SECOND COUNT

1. Defendant repeats all answers set forth in the Twenty-First Count to the extent realleged in the Twenty-Second Count.

2. Defendant admits the allegations contained in paragraph 2 of the Twenty-Second Count.

3. Defendant denies the allegations contained in paragraphs 3, 4 and 5 of the Twenty-Second Count.

TWENTY-THIRD COUNT

1. Defendant repeats all answers set forth in the Twenty-second Count to the extent realleged in the Twenty-Third Count.

2. Defendant denies the allegations contained in paragraph 2 of the Twenty-Third Count.

TWENTY-FOURTH COUNT

1. Defendant repeats all answers set forth in the Twenty-third Count to the extent realleged in the Twenty-Fourth Count.

2. Defendant admits the allegations contained in paragraph 2 of the Twenty-Fourth Count.

3. Defendant denies the allegations contained in paragraph 3 of the Twenty-Fourth Count.

TWENTY-FIFTH COUNT

1. Defendant repeats all answers set forth in the Twenty-fourth Count to the extent realleged in the Twenty-Fifth Count.

2. Defendant admits the allegations contained in paragraphs 2, 3, and 4 of the Twenty-Fifth Count.

3. Defendant denies the allegations contained in paragraphs 5 and 7 of the Twenty-Fifth Count.

4. Defendant neither admits nor denies, the allegations contained in paragraph 6, but leaves Plaintiff to its proofs.

TWENTY-SIXTH COUNT

1. Defendant repeats all answers set forth in the Twenty-Fifth Count to the extent realleged in the Twenty-Sixth Count.

2. Defendant denies the allegations contained in paragraph 2 of the Twenty-Sixth Count.

TWENTY-SEVENTH COUNT

1. Defendant repeats all answers set forth in the Twenty-Sixth Count to the extent realleged in the Twenty-Seventh Count.

2. Defendant denies the allegations contained in paragraphs 2, 3 and 4 of the Twenty-Seventh Count.

TWENTY-EIGHTH COUNT

1. Defendant repeats all answers set forth in the Twenty-Seventh Count to the extent realleged in the Twenty-Seventh Count.

2. Defendant admits the allegations contained in paragraphs 2, 3, 4, 5, and 8 of the Twenty-Eighth Count.

3. Defendant denies the allegations contained in paragraphs 6, 7 and 9 of the Twenty-Eighth Count.

FIRST SEPARATE DEFENSE

Statutory Authority for Phasing of Development, in general and as implemented by the Borough Ordinance 788, is rooted in the Provisions of The Municipal Land Use Law N.J.S.A. 40:55D-1 et seq.

SECOND SEPARATE DEFENSE

By statute, the Borough is empowered to make amend repeal and enforce ordinances not contrary to other state and federal laws as it may deem necessary and proper for

THIRD SEPARATE DEFENSE

1. The Borough entered into a settlement agreement in the Morris 27 Action with the New Jersey Office of Public

Interest Advocacy and others which provided for certain restructuring of the Borough ordinances to include substantial over zoning for multi-family development and set aside housing for low/moderate income families and to also include provision for suspension of zoning at the time 178 units of low/moderate income housing had been constructed and occupied.

2. The Borough ordinances were approved by the Superior Court, Morris County (Venue Middlesex County) and Order Of Compliance was thereupon issued.

3. Shortly following adoption of the ordinance in compliance with the settlement and order of the court, the Borough received applications for multi-family development substantially in excess of the Borough's set aside goal and obligation of 178 units.

4. The development proposals strained the capacity of the Borough Planning Department to process and posed a threat to the future ability of the Borough to properly regulate the construction of such developments as well as to provide adequate services therefor.

5. So as to effectuate suspension of zoning following the Borough's satisfaction of its fair share goal and obligation and to avoid chaotic development review processing and multi-family construction in the municipality, the Borough adopted the Phasing Ordinance and submitted such ordinance to the New Jersey Office of Public Interest Advocacy and to the Superior

Court for approval as part of the final judgment of compliance proceedings.

6. The Superior Court is authorized within the powers of Judicial Management enunciated in the Southern Burlington County N.A.A.C.P.V. Township of Mount Laurel, 92 N.J. 158, (1983) (also referred to as Mount Laurel II.) to approve, adopt or otherwise authorize Phasing of Development so as to implement its judgment.

FOURTH SEPARATE DEFENSE

By its entry an of Order of Compliance preliminary to the Judgment of Compliance, the Court has approved suspension of zoning in the Borough.

FIFTH SEPARATE DEFENSE

There is a presumption in favor of the validity of the ordinances of the Borough of Lincoln Park.

SIXTH SEPARATE DEFENSE

The complaint fails to state a cause of action.

SEVENTH SEPARATE DEFENSE

The Plaintiff's have failed to exhaust available administrative remedies.

SCANGARELLA AND FEENEY
Attorneys for Defendant

BY: Frank Scangarella
FRANK SCANGARELLA

DATED: July 5, 1985

I hereby certify that the within Answer has been filed
within the time prescribed by the rules of the Court.

SCANGARELLA AND FEENEY
Attorneys for Defendant

BY: Frank Scangarella
FRANK SCANGARELLA

DATED: July 5, 1985