CASELLA FARMS HOMEOWNERS ASSOCIATION, INC. Plaintiff/Appellant, v. MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON and WH DEVELOPMENT URBAN RENEWAL, LLC, Defendants/Respondents. HOLDING SMITH, INC. and HOLDING SONS & DAUGTHERS, INC., Plaintiffs/Respondents, v. MAYOR AND TOWNSHIIP COMMITTEE OF THE TOWNSHIP OF HARRISON and WH DEVELOPMENT URBAN RENEWAL, LLC, Defendants/Respondents,.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003880-22 CIVIL ACTION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, GLOUCESTER COUNTY SAT BELOW: HON. BENJAMIN C. TELSEY, A.J.S.C. BARON & BRENNAN, P.A. Jeffrey M. Brennan, Esquire (015542002) Staffordshire Professional Center 1307 White Horse Road Building F – Suite 600 Voorhees, New Jersey 08043 Phone: (856) 627-6000 Fax: (856) 627-4548 Attorneys for Plaintiff/Appellant Casella Farms Homeowners Association, Inc.

PLAINTIFF/APPELLANT CASELLA FARMS HOMEOWNERS ASSOCIATION, INC.'S BRIEF IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

Plaintiff Casella Farms Homeowners Association, Inc. ("Casella") appeals from the Honorable Benjamin C. Telsey, A.J.S.C.'s dismissal of its Complaint in Lieu of Prerogative Writs challenging defendant Mayor and Township Committee of the Township of Harrison's ("Township") passage of Ordinance No. 13-2022 and adoption of the Kings Landing Redevelopment Plan. The contested legislation created superseding zoning for certain specific properties in Harrison Township which then enabled defendant WH Development Urban Renewal, LLC ("WHDUR") to file a by-right site plan application with the Harrison Township Joint Land Use Board ("JLUB") for a 2,182,101 square foot, 24-hour-a-day operating warehouse complex on a farm field located directly across the street from the Casella residential development where many young families live. For the reasons explained infra, Casella justifiably commenced the litigation after the 45-day appeal period had already expired. Nevertheless, the trial court determined that no basis existed for an enlargement of time.

In fact, the site plan application which WHDUR filed following Ordinance No. 13-2022's passage was met with tremendous public outcry and opposition. Multiple major media outlets covered the hearing, including 6ABC, CBS3 and NJ.com. Indeed, so many residents turned out to protest WHDUR's development proposal that the JLUB's hearing had to be relocated to a larger venue. Ultimately,

the JLUB voted to deny the application, which denial WHDUR subsequently appealed and the trial court reversed.

Unlike the tremendous public uproar that resulted from the filing of WHDUR's application with the JLUB only a few months later, the April 18, 2022 hearing conducted on Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan drew no attention. In fact, the reason why no one appeared at the hearing is because no one understood what Ordinance No. 13-2022 portended. The Township published a notice prior to the hearing which failed to include the most essential statutorily-required component: a clear and concise statement from the clerk setting forth the purpose of the ordinance. Consequently, when WHDUR published and served its notice for the subsequent site plan hearing premised on the new superseding zoning, that constituted the first occasion when the public, including Casella's membership, was put on notice of the changes that Ordinance No. 13-2022 facilitated.

The trial court's decision dismissing Casella's Complaint includes both errors of fact and law. R. 4:69-6(c) expressly contemplates a court enlarging the 45-day appeal period "where it is manifest that the interest of justice so requires." To that end, New Jersey decisional law is replete with cases enlarging the appeal period for far longer delays than that involved in this case and for circumstances far less compelling. Accordingly, and for the reasons more fully detailed infra, it is

respectfully submitted that the trial court's decision should be reversed and Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan should be invalidated and set aside, as a matter of law.

PROCEDURAL HISTORY[1]

Casella commenced the instant litigation by filing a Complaint in Lieu of Prerogative Writs against the Township on November 30, 2022. (Pa1-Pa10). Casella then filed an Amended Complaint in Lieu of Prerogative Writs on December 19, 2022 and, ultimately, a Second Amended Complaint in Lieu of Prerogative Writs on January 20, 2023 which joined WHDUR as a defendant in accordance with a Consent Order for Intervention. (Pa11-Pa21; Pa22-Pa32; Pa44-Pa45).

On February 16, 2022, rather than filing Answers, both defendants filed Motions to Dismiss for Failure to State a Claim pursuant to R. 4:6-2(e). (Pa46-Pa47; Pa48-Pa49). The trial court subsequently conducted a case management conference on February 28, 2023 following which it entered a Case Management Order providing for consolidation of this matter with a separate lawsuit challenging Ordinance No. 13-2022 filed by Holding Smith, Inc. and Holding Sons &

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[1] Pursuant to R. 2:6-8, the transcripts from this matter are hereby designated as follows:
1T – April 18, 2022 Township Committee Hearing
2T – May 11, 2023 Trial Court Hearing on Motions to Dismiss

Daughters, Inc.[2] under Docket No. GLO-L-77-23. (Pa33-Pa43; Pa50). The Motions to Dismiss in both cases were argued orally on May 11, 2023 and the trial court thereafter requested supplemental briefing. (2T). On July 12, 2023, the trial court issued an Order and accompanying Memorandum of Decision granting the defendants' motions. (Pa51; Pa52-P62).

Casella filed a Notice of Appeal on August 18, 2023 and the Appellate Division issued a Notice of Docketing on August 21, 2023 and then a Scheduling Order on August 29, 2023. (Pa63-Pa68; Pa69-Pa74; Pa75-Pa76; Pa77-Pa78). WHDUR filed a Case Information Statement on August 30, 2023 and the Township then filed its Case Information Statement on August 31, 2023. (Pa79-Pa83; Pa84-Pa88).

STATEMENT OF FACTS

In or about 2018, the Township, utilizing the powers available to it under to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. ("LRHL"), conducted an investigation and determined that the properties designated as Block 46, Lot 2 and Block 47, Lots 1, 2, 3, 3.01 and 4 on the Harrison Township Tax Map (collectively, the "Redevelopment Area") satisfied the criteria to be determined an area in need of redevelopment. (Pa23; Pa95). The Township thereafter authorized and directed the JLUB to prepare a redevelopment

[2] The plaintiffs in the other matter are the owners and operators of a nearby day care facility and the property on which it is located.

plan for the Redevelopment Area and to further transmit the JLUB's recommendations relating to the same. (Pa23). For some time, however, little activity occurred on this front.

In the interim, on December 31, 2020, Mayor Lou Manzo in his end of the year message posted to YouTube announced that the Township would not be "surrendering to the tax ratable chase." (Pa24). He explained that the Township's elected leaders were careful "to balance what is good for the town and what can be an increase in revenue." (Pa24). Mayor Manzo then clarified, "for example, **if we wanted to just completely sell out for tax ratables we'd be building warehouses all over the place like you see in Logan**." (Pa24) [Emphasis supplied]. He continued and added "we have been resistant to that because we have a different sense of community here and what we want the makeup of our town to be." (Pa25).

Despite the numerous unambiguous statements in Harrison Township's planning guidance documents and from Mayor Manzo concerning the preservation of Harrison Township's community character, the Township's elected officials opted to legislate in a contrary direction. On or about April 4, 2022, the Township introduced for first reading Ordinance No. 13-2022, entitled "An Ordinance of the Mayor and Township Committee of the Township of Harrison, County of Gloucester Adopting a Redevelopment Plan for Block 46, Lot 2; Block 47, Lots 1,

2, 3, 3.01 and 4 in the Township of Harrison, Gloucester County, State of New Jersey". (Pa24-Pa25; Pa90-Pa91). The redevelopment plan referenced in Ordinance No. 13-2022, entitled the "King's Landing Redevelopment Plan," establishes superseding zoning for the Redevelopment Area which specifically facilitates warehouses and order fulfillment centers at any size and up to 60-feet in height.[3] (Pa25; Pa92-Pa113).

The Township caused notice of Ordinance No. 13-2022's introduction to be published in the South Jersey Times on April 8, 2022. (Pa25; Pa89). This notice set forth the title of Ordinance No. 13-2022, the date of its introduction, the date, time and location of the public hearing wherein it would be considered for final passage as well as the time and place where a copy could be obtained at no cost, but no other information. (Pa25; Pa89). The Township subsequently conducted the public hearing on Ordinance No. 13-2022 on April 18, 2022 and passed it the same night. (Pa25; 1T).

A few months later, WHDUR submitted an application to the JLUB for preliminary and major site plan approval to construct a warehouse complex based on the new superseding zoning. (Pa114-Pa115). The proposed development included four (4) warehouse buildings with a combined 2,182,101+/- square feet of

[3] For comparison, the C-57 Flexible Planned Industrial-Commercial District underlying the Redevelopment Area limits individual buildings to 20,000 square feet in area and 35 feet in height. (Pa284; Pa290).

building area, with each building having a maximum height up to 60 feet. (Pa114-Pa115). The proposal also planned 1385+/- passenger vehicle parking spaces, trailer parking spaces, landscaping, stormwater management facilities and related site improvements. (Pa25-Pa26; Pa114-Pa115).

The JLUB opened the hearing on WHDUR's application on November 17, 2022. (Pa26; Pa116). It drew significant public interest particularly from area residents concerned about the proposed warehouse development's potential conflict with and adverse impact on their community. (Pa26; Pa140-Pa145). As explained, the notice which WHDUR published and served for the site plan hearing constituted the first occasion which residents had reason to understand the practical effect of Ordinance No. 13-2022 since the notice which preceded Ordinance No. 13-2022's passage provided no substantive information at all. (Pa26; Pa89; Pa114-Pa115).

The hearing on WHDUR's application was continued to December 1, 2022 in order to accommodate public comment. (Pa26; Pa116). In the interim, multiple media outlets including, but not limited to, CBS3, 6ABC and NJ.com featured stories about the tremendous public outcry over WHDUR's proposed warehouse development. (Pa26). In fact, the planned continuation of the hearing on December 1, 2022 ultimately did not occur because the number residents who

appeared to object to WHDUR's application exceeded the capacity of the municipal building. (Pa26; Pa116).

The JLUB rescheduled the continuation of the hearing to December 15, 2022 at the larger Pleasant Valley School. (Pa26; Pa116). In the interim time, the Township Committee conducted its regularly scheduled bi-monthly meeting on December 5, 2022. (Pa26). Although WHDUR's application was not on the Committee's agenda that night, Mayor Manzo, also a member of the JLUB, publicly announced that he would vote against it. (Pa27).

The continuation of the hearing on WHDUR's application subsequently occurred as scheduled on December 15, 2022 at the Pleasant Valley School. (Pa27; Pa116). Mayor Manzo recused himself and did not participate. (Pa27; Pa116). Following a public comment period which lasted approximately three-and-a-half hours, the Board voted unanimously to deny WHDUR's site plan approval due to traffic concerns. (Pa27). The Board subsequently memorialized its decision in a resolution which WHDUR challenged in separate litigation and which the trial court reversed.[4] (Pa116-Pa147; Pa241-Pa266; Pa267; Pa268-Pa283).

[4] WH Development Urban Renewal, LLC v. The Joint Land Use Board of the Township of Harrison, Docket No. GLO-L-266-23.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THIS MATTER DID NOT IMPLICATE THE PUBLIC INTEREST EXCEPTION WARRANTING AN ENLARGEMENT OF THE 45-DAY APPEAL PERIOD PURSUANT TO R. 4:69-6(c) (Pa55-Pa58)

It is undisputed that Casella commenced this litigation more than 45 days after Ordinance No. 13-2022's passage. This late filing directly resulted from the defective notice which obfuscated the purposed of that legislation. Indeed, had the notice included the statutorily-required information, no delay would have occurred. Casella and other interested parties would have immediately pursued the defeat of Ordinance No. 13-2022 in the same way that they did with WHDUR's site plan application several months later. An enlargement of time is plainly warranted under these circumstances. It is also warranted because, as explained infra, this matter implicates the public interest given its connection to the expenditure of public funds, the generation of ratables, political upheaval, development density and traffic.

The law in this area is well settled. R. 4:69-6(a) requires a Complaint in Lieu of Prerogative Writs to be filed within 45 days of the accrual of the right to review. This 45-day limitation is not absolute, however, because the measure of repose which R. 4:69-6 intends to effectuate does not trump all other considerations. Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361,

401-402 (App. Div. 2008). Indeed, the appeal period may be enlarged "where it is manifest that the interest of justice so requires." R. 4:69-6(c).

The "interest of justice" standard merely "restate[s] in the form of a generalized standard, decisional exceptions which had already been engrafted upon the rule." Schack v. Trimble, 28 N.J. 40, 48 (1958). The most commonly cited exceptions to the 45-day appeal period include:

> (1) [I]mportant and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification.
>
> Brunetti v. Borough of New Milford, 68 N.J. 576, 586 (1975) (citing Holloway v. Pennsauken Twp., 12 N.J. 371, 374-375 (1953); McKenna v. N.J. Highway Authority, 19 N.J. 270, 276 (1955); Oldfield v. Stoeco Homes, Inc., 26 N.J. 246, 262 (1958); Catalano v. Pemberton Tp. Bd. of Adjustment, 60 N.J. Super. 82, 95-96 (App. Div. 1960); Nelson v. So. Brunswick Planning Bd., 84 N.J. Super. 265, 274-275 (App. Div. 1964); Schack v. Trimble, supra, 28 N.J. at 49-50; Olsen v. Borough of Fair Haven, 64 N.J. Super. 90 (App. Div. 1960); Thornton v. Village of Ridgewood, 17 N.J. 499, 511-512 (1955); Bernstein v. Krom, 111 N.J. Super. 559, 564 (App. Div. 1970); Guernsey v. Allan, 63 N.J. Super. 270, 277 (App. Div. 1960); Haack v. Ranieri, 83 N.J. Super. 526 (Law Div. 1964)); see also, Reilly v. Brice, 109 N.J. 555, 558 (1988).

Significantly, these three exceptions to the 45-day appeal period are not exhaustive. See Hopewell Valley Citizens' Group, Inc. v. Berwind Property Group Development Co., L.P., 204 N.J. 569, 583-584 (2011); Cohen v. Thoft, 368 N.J.

Super. 338, 346 (App. Div. 2004); Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 401 (App. Div. 2008). A court may enlarge the time for filing based upon other equitable considerations. Id. In this regard, the Appellate Division has observed:

> A determination of whether the interest of justice requires a relaxation of the time limit involves, in any case, a consideration of the potential impact upon the municipality if the matter proceeds as well as a consideration of the impact upon the plaintiff if the claim to relief is barred. It is also appropriate to look to the previous actions or inactions of the plaintiff; if it sat idly by in the past, its entitlement to the enlargement of the time limit is weakened.
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> Southport Development Group, Inc. v. Township of Wall, 310 N.J. Super. 548, 556 (App. Div. 1998) (citing County of Ocean v. Zekaria Realty, Inc., 271 N.J. Super. 280, 288 (App. Div.), cert. denied, 513 U.S. 1000 (1994)).

New Jersey decisional law includes many cases in which the courts have relaxed R. 4:69-6, including matters where the initial 45 days have long since expired. See e.g., Concerned Citizens of Princeton, Inc. v. Mayor and Council of Borough of Princeton, 370 N.J. Super. 429 (App. Div. 2004) (nine months); Damurjian v. Board of Adjustment of Colts Neck, 299 N.J. Super. 84 (App. Div. 1997) (three and a half years); Wolf v. Mayor of Shrewsbury, 182 N.J. Super. 289 (App. Div. 1981) (one year); Ocean County Bd. of Realtors v. Borough of Beachwood, 248 N.J. Super. 241 (Law Div. 1991) (seven years). Such cases

include matters involving statutory notice violations. See e.g., Dolente v. Borough of Pine Hill, 313 N.J. Super. 410 (App. Div. 1998) (involving out-of-time challenge filed by Township counsel M. James Maley, Esquire following municipality's failed compliance with the Open Public Meetings Act). Courts have also granted significant extensions of time in cases where the "full nature and extent" of the government's action "did not become apparent" until a subsequent application was filed on which the initial action was based. See Adams v. DelMonte, 309 N.J. Super. 572, 582 (1998) (permitting nine month late challenge to zoning board's determination that septic tank cleaning business was "home occupation" qualifying as a conditional use where subsequent site plan application to planning board revealed full aspect of the enterprise); Gregory v. Borough of Avalon, 391 N.J. Super. 181, 191 (App. Div. 2007) (enlarging time to contest governing body's resolutions authorizing agreements to permit encroachments on municipal property required for land use application subsequently granted by planning board for motel expansion).

The Appellate Division previously considered a situation similar to the instant case in Willoughby v. Planning Board of Tp. of Deptford, 306 N.J. Super. 266 (App. Div. 1997). Willoughby arose out of a challenge by a citizens group to a rezoning and subsequent site plan approval permitting the development of a retail shopping center on a 30-acre tract in Deptford Township. The governing body

adopted the zoning ordinance amendment on September 7, 1995 at the developer's request. Instead of immediately challenging the rezoning, however, the citizens group mounted a political campaign to change the governing body's composition. The political campaign proved successful and the new governing body subsequently adopted an ordinance repealing the zoning change, but the repealing ordinance did not take effect until after the developer had already obtained preliminary site plan approval in May 1996. The citizens group thereafter initiated litigation on June 28, 1996 challenging both the preliminary site plan approval as well as the repealed zoning ordinance which served as a basis of the approval. The citizens group contended, inter alia, that the zoning ordinance amendment was inconsistent with Deptford Township's Master Plan. The developer filed an Answer and then a Motion for Summary Judgment which the trial court granted its entirety. Specifically as to the challenge to the zoning ordinance amendment, the trial court held that it violated R. 4:69-6(a)'s 45-day limitation and that no basis existed to extend time because the ordinance's validity involved a "private" and not "public" dispute. The citizens group thereafter appealed and the Appellate Division reversed.

In analyzing the timeliness of the challenge to the zoning ordinance amendment, the Appellate Division noted that New Jersey courts have "found a sufficient public interest to justify an extension of time for filing a prerogative writ

action in a variety of circumstances, including challenges to the validity of ordinances on the ground that they were not adopted in conformity with the applicable statutory requirements." Id. at 277 (citing Reilly, supra, 109 N.J. at 560-61; Cervase v. Kawaida Towers, Inc., 124 N.J. Super. 547, 569 (Ch. Div. 1973), aff'd o.b., 129 N.J. Super. 124 (App. Div. 1974); Wolf, supra, 182 N.J. Super. at 296; Catalano v. Pemberton Township Bd. of Adjustment, 60 N.J. Super. 82, 95-97 (App. Div. 1960)). The Appellate Division held that the trial court erred in determining that the zoning ordinance amendment challenge implicated a "private" and not "public" dispute, and specifically noted "the substantial impact upon residents of the adjoining neighborhood" as well as "a substantial impact upon the flow of traffic on Highway 41" and "loss of public access to nature trails." Id. The Appellate Division further observed that the "claimed benefits of the rezoning, such as increased shopping facilities, employment opportunities and tax ratables, are also a matter of broad public interest." Id. Moreover, the Appellate Division found it significant that:

> [T]he primary basis of plaintiffs' challenge to the validity of the ordinance—that it violated N.J.S.A. 40:55D–62(a) because it was not substantially consistent with the land use element of the master plan—is similar to the claims that zoning ordinances had been adopted in violation of the applicable land use legislation which we found to justify extensions of time in Wolf and Catalano.
>
> Id. at 278.

Finally, the Appellate Division noted that the "public interest in an adjudication of plaintiffs' claims…outweighed…'the policy of repose expressed in the forty-five day rule.'" Id. (quoting Reilly, supra, 109 N.J. at 559). The Appellate Division subsequently reversed and remanded the case to the trial court for further proceedings.

It is respectfully submitted that the Appellate Division's decision in Willoughby provides an appropriate reference and framework for the analysis in this case. As in Willoughby, this case involves a challenge to an ordinance eight and a half months after its adoption by the municipality. Also as in Willoughby, this case involves a public dispute over a proposed development which stands to significantly impact the adjacent residential neighborhood in various way including by substantially increasing the traffic in the area. Moreover, like Willoughby, the proposed project in this case promises to bring additional employment opportunities and tax ratables. Finally, similar to Willoughby, Casella's challenge to the Township's adoption of Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan is premised, in part, on its inconsistency with the Harrison Township Master Plan.

In fact, the circumstances warranting an enlargement of time in this case are even more compelling than they were in Willougby. For example, unlike Willoughby, this case involves a municipality's violation of a statutory notice

requirement. See N.J.S.A. 40:49-2; Dolente, supra. Moreover, this case also involves a situation where, because of the defective notice, the "full nature and extent" of the government's action "did not become apparent" until a subsequent application was filed on which the action was based. See Adams, supra; Gregory, supra. Finally, unlike Willoughby, the challengers to the municipal action did not employ a "wait and see" approach.

Notwithstanding the foregoing, the trial declined to enlarge the 45-day appeal period in this case primarily on the basis of the Appellate Division's reasoning in Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384, 401 (App. Div. 2009). In relevant part, the trial court's Memorandum of Decision states:

> Rocky Hill alludes to what type of interest could rise to the level of warranting an extension to the filing deadline. "There are no public funds involved, no political upheavals, no significant impact on density, traffic, ratables or any other interest other than the concerns expressed by the individual plaintiffs and their supporters and no constitutional implications." Id. None of these significant issues exist in this matter either. There are no public funds involved, no political upheavals, and no significant impact on density, traffic or ratables. Plaintiffs loosely reference tax ratables as a reason for the public interest, but do not support such an argument. There is nothing in the record to suggest that the Ordinance creates a significant tax ratable issue. Plaintiff's [sic] also reference the potential for increase in traffic. This may be accurate, but there is nothing in the record to suggest that there will be a "significant impact" on traffic or that the traffic situation will affect most of

> the Township or just the small area around the project. Many ordinances, if not most, may have some effect on the public, but that does not justify an extension of filing deadlines. There must be something significant that has an effect on the larger portion of the Township, not potentially just some of the roads around the project.
>
> (Pa57-Pa58).

It is respectfully submitted that the trial court erred in its application of Rocky Hill to this case, particularly considered in the context of the defendants' motions to dismiss (the standard for which is more fully discussed infra). As an initial matter, Ordinance No. 13-2022 clearly implicated both public funds as well as significant tax ratables. In fact, during the hearing conducted immediately prior to Ordinance No. 13-2022's passage, Mayor Manzo confirmed that the creation of the latter was the Township's primary motivating factor with the enactment of this legislation, to wit:

> And this is a precursor. This goes to our – our overall fiscal plan, and the future fiscal solvency plan where we have designed several sites….
>
> (1T, 2:23-25).
>
> *****
>
> [T]he reality is as we look at our overall fiscal situation, and the future, and what is left on the table for any substantial commercial ratable, it's the only place that that ratable's going to come from in the foreseeable future.
>
> (1T, 3:15-20).

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> This will be a roughly $1.6 million PILOT paid to the town from day one, which would go up in increments every five years based on the new assessment, if they should actually move forward and build this thing.
>
> (1T, 9:19-24).

Mayor Manzo correctly observed that the PILOT (Payment in Lieu of Taxes) Agreement facilitated by the Kings Landing Redevelopment Plan would generate substantial revenue for the municipality once effectuated. A PILOT Agreement incentivizes development which might not otherwise occur by essentially eliminating the property taxes that would be due for the new improvements in exchange for smaller negotiated payments from the redeveloper. A PILOT also effectively constitutes a choice with the direction of public funds because, unlike real estate taxes, school districts do not share in this revenue. In other words, this matter implicates both public funds and ratables.

Contrary to the trial court's determination, this matter also involves political upheaval. By way of explanation, Mayor Manzo had long expressed opposition to warehouse development in Harrison Township. For example, in his end of the year message posted to YouTube on December 31, 2020, he made clear that Harrison Township would not be "surrendering to the tax ratable chase" and that the Committee was careful "to balance what is good for the town and what can be an

increase in revenue." Mayor Manzo then explained, "for example, if we wanted to just completely sell out for tax ratables we'd be building warehouses all over the place like you see in Logan [Township]." He added "we have been resistant to that because we have a different sense of community here and what we want the makeup of our town to be." A significant part of Mayor Manzo's constituency (including Casella's members) shared this sentiment and were heartened to hear it voiced by their elected leader.

In fact, despite outwardly expressing opposition to warehouse development, at or around this same time Mayor Manzo and the Committee was actually working toward precisely that. Their lengthy negotiations with WHDUR eventually culminated with the April 18, 2022 passage of Ordinance No. 13-2022 and the adoption of the Kings Landing Redevelopment Plan. As Mayor Manzo remarked during the hearing on Ordinance No. 13-2022, the Committee took its time in this process so as to extract the maximum possible financial benefit from the developer:

> We drug our feet for a while for several reasons; some of it was fiscal, until we got what we required, which we did. And most importantly, we had an agreement – and all of this is contingent on the developer. This approval, and therefore, anything that would go beyond this is contingent on the developer signing the redevelopment agreement which is the words about the financial agreement, the PILOT payment, and it includes a dedication and commitment for sewer to be brought to

> that quadrant of our town which is mainly the Tomlin Station Commerce Park.
>
> (1T, 7:5-16).

The public hearing on WHDUR's site plan application occurred several months after Ordinance No. 13-2022's passage and was met with substantial public opposition. Unlike the notice which preceded Ordinance No. 13-2022's passage, the notice published and served prior to the site plan hearing made explicitly clear what the new development regulations established by the Kings Landing Overlay Plan portended, particularly in terms of the sheer size and intensity of the development which it enabled. The public interest and coinciding backlash apparently surprised Mayor Manzo. As the trial court observed in its decision reversing the Joint Land Use Board's denial of WHDUR's site plan application, Mayor Manzo essentially reversed his position after the first JLUB meeting:

> After closing the public comment period, the Board carried WHDUR's application to December 1, 2022, which date was ultimately postponed to December 15, 2022, and relocated in order to accommodate the large number of members of the public who wished to attend. Prior to the meeting, Mayor Louis Manzo ("Mayor Manzo"), despite having voted in favor of the Redevelopment Plan, as well as the financial agreements entered into with WHDUR, and attended the hearing on WHDUR's application on November 17, 2022, publicly announced his intention to vote "No" on the application.
>
> (Pa270).

The trial court suggested that Mayor Manzo's actions in this regard essentially amounted to an exercise in political self-preservation:

> The crowd also likely impacted Mayor Manzo's premature public announcement of his intentions to vote "No" to WHDUR's application. After all, the Mayor voted "Yes" to the underlying Redevelopment Plan that permitted construction of these warehouses. It does not make sense that the Mayor would then say he is a "No" vote before the hearing is completed, unless his purpose was to appease the crowd.
>
> (Pa281).

In fact, the public reacted in the manner which it did to WHDUR's site plan application because of the significant increase in density and traffic which Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan enabled. By way of explanation, the Harrison Township properties which comprise WHDUR's proposed warehouse complex are situated in the C-57 Flexible Planned Industrial-Commercial District which limits individual buildings to 20,000 square feet in area and 35 feet in height. (Pa284; Pa289). The superseding zoning established by the Kings Landing Redevelopment Plan, on the other hand, includes no limitation on individual building size. Moreover, it permits building heights up to 60 feet. WHDUR subsequently took full advantage of these relaxed restrictions with a site plan that proposed four supersized buildings including one approaching 1,000,000 square feet – i.e., almost 50 times larger than that permitted by the underlying zone – at the new maximum height. (Pa114-Pa115).

Compounding matters, the increased development density made possible by Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan also intensified what would otherwise be the anticipated traffic volume attributable to the development permitted by the underlying C-57 Flexible Planned Industrial-Commercial District zoning. Indeed, the subject of traffic was at the center of the discussion on WHDUR's development proposal and was ultimately the reason why the JLUB denied the site plan application, to wit:

> Here, the Board is mindful of the public's concerns raised by the proposed development. Specifically, as set forth in Paragraph 21 above, the community raised several issues, particularly as to traffic, safety and environmental concerns, that leave open questions regarding the development and steps necessary to satisfactorily address and mitigate those concerns. For instance, Applicant's Traffic Engineer confirmed that the traffic report did not account for or consider the proposed impacts resultant from nearby developments already approved along Route 322 that will add more than 1.5 million square feet of new warehouse space within 2.5± miles of the subject property. Similarly, without knowledge of the number, types and size of the various tenants, Applicant is unable to describe with specificity how many trucks and employees will be entering / exiting the site daily, at what times they will be doing so, or what goods and materials will be entering / stored / exiting the site. Without such answers, it is not possible to ascertain with any reliability that the proposed traffic control measures being provided off-site will adequately address the impacts caused by the project, and the Board is unable to determine whether other safety, containment or mitigation measures are required for the safe operation of the site.

(Pa146-Pa147).

In summary, although the trial court determined to the contrary, this matter implicates the expenditure of public funds, the generation of ratables, political upheaval, density and traffic. Put another way, and whether adjudged against the Appellate Division's logic in Willougby or in Rocky Hill, this matter is fairly said to implicate the public interest and warrant an enlargement of the 45-day appeal period. Accordingly, it is respectfully submitted that the trial court erred in dismissing Casella's Complaint and that the trial court's decision should be reversed.

II. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE NOTICE PUBLISHED BY THE TOWNSHIP FOLLOWING THE INTRODUCTION OF ORDINANCE NO. 13-2022 COMPLIED WITH N.J.S.A. 40:49-2 (Pa58-Pa61)

Casella did not commence this litigation within the 45-day period prescribed by R. 4:69-6 because it did not learn that the Township passed Ordinance No. 13-2022 and adopted the Kings Landing Redevelopment Plan until many months after that action occurred. Indeed, only after receiving notice of WHDUR's site plan application hearing and subsequent investigation did Casella come to understand what had happened. In fact, Casella was not contemporaneously aware of the passage Ordinance No. 13-2022 because the notice published by the Township lacked a fundamental, statutorily-required element, to wit, "a clear and concise

statement prepared by the clerk of the governing body setting forth the purpose of the ordinance". N.J.S.A. 40:49-2(a). The trial court nevertheless determined that no defect existed in this regard and held:

> Publication of the title only, in this case, is compliant with N.J.S.A. 40:49-2(a). This is because the title itself provides a sufficient summary of the purpose of the ordinance. An interested person would understand that the Township is adopting an ordinance, and that the Ordinance's purpose is to adopt a redevelopment plan for certain lands which are specifically identified. The publication also includes the lot and block, which is not required but provides additional information to the public and informs as to who may have an interest or may be affected by the adoption of the Ordinance. The publication in its entirety, provides the public with sufficient information so they will know the purpose of the Ordinance and may further inquire if they choose to do so.
>
> (Pa60).

It is respectfully submitted that the trial court erred in its determination that the Township's notice complied with N.J.S.A. 40:49-2(a). Several reasons support this conclusion.

A. The clear and unambiguous language of N.J.S.A. 40:49-2 requires the notice to include both the ordinance's title and a separate statement of purpose prepared by the clerk. (Pa58-Pa61)

The Supreme Court has explained that ascertaining the "Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492

(2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). In this regard, courts are instructed to "ascribe to the statutory words their ordinance meaning and significance…and read them in context with related provisions so as to give sense to the legislation as a whole." Id. (citing Lane v. Holderman, 23 N.J. 304, 313 (1957); Chasin v. Montclair State Univ., 159 N.J. 418, 426-27 (1999)).

It has long been settled that "legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless." Board of Ed. of City of Hackensack v. City of Hackensack, 63 N.J. Super. 560, 569 (App. Div. 1960) (citing Abbotts Diaries, Inc. v. Armstrong, 14 N.J. 319 (1954)). Courts may neither "rewrite a plainly written enactment" nor "presume an intention other than that expressed by way of the plain language." O'Connell v. State, 171 N.J. 484, 488 (2002) (citing State v. Afanador, 134 N.J. 162, 171 (1993); State v. Wright, 107 N.J. 488, 495 (1987)).

In the instant case, N.J.S.A. 40:49-2 requires the ordinance to be "published in its entirety or by title or by title and summary" in the newspaper "together" with "a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance". Id. By operation of logic, the use of the word **"together"** compels the conclusion that the statement of purpose must exist separate and apart from any of the alternatives provided for in the first part of the statute. Moreover, unlike the ordinance itself, N.J.S.A. 40:49-2 specifies that the

statement of purpose must be prepared by "the clerk of the governing body". There would have been no reason for the Legislature to include that specific caveat if it did not intend something more than the publication of the proposed ordinance's title. Put another way, N.J.S.A. 40:49-2's unambiguous language requires that an ordinance published by title also include a separate statement of purpose. Any other interpretation renders a significant portion of the statute inoperative, superfluous and meaningless. Such an interpretation cannot be sustained as a matter of law.

B. Even assuming, arguendo, that N.J.S.A. 40:49-2 was not clear and unambiguous, the statute's legislative history leaves no doubt as to the drafters' intent for the notice to include both the ordinance's title and a separate statement of purpose prepared by the clerk. (Pa58-Pa61)

As previously explained, in interpretating a statute the "first consideration is the statute's plain meaning." State v. Hoffman, 149 N.J. 564, 578 (1997) (citing State v. Szemple, 135 N.J. 406 421 (1994); Merin v. Maglaki, 126 N.J. 430, 434 (1992); Town of Morristown v. Women's Club, 124 N.J. 605, 610 (1991)). When a court encounters ambiguous statutory language subject to different interpretations, however, its role is to "ascertain and effectuate the Legislature's intent." Id. (citing Szemple, 135 N.J. at 422 (citing Cedar Cove, Inc. v. Stanzione, 122 N.J. 202, 213 (1991)). In such instances, the Supreme Court has explained that "[e]xtrinsic aids, such as legislative history, committee reports, and

contemporaneous construction, may be used to help resolve any ambiguity and to ascertain the true intent of the Legislature." Id.

The current iteration of N.J.S.A. 40:49-2 traces its history to 1995. Prior to that time, the procedure for passing ordinances required municipalities to publish ordinances in their entirety after first reading. The Legislature, recognizing the financial burden that this procedure imposed upon municipalities with the attendant publication costs, amended the statute to provide the option for municipalities to publish ordinances by title, as long as the notice also included "a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, and the time and place when and where a copy of the ordinance can be obtained without cost by any member of the general public who wants a copy of the ordinance." Id. As explained by the Senate Community Affairs Committee:

> Sections 30 and 31 of this bill amend R.S. 40:49-2 and R.S. 40:49-18 to permit the proposed municipal ordinances by title, rather than in its entirety. **The bill further provides that if the publication of the ordinance is by title, the publication must contain a clear and concise statement setting forth the purpose of the ordinance** and a notice of the time and place when and where copies of the proposed ordinance may be obtained by the public.
>
> The purpose of these sections is to reduce the costs associated with the publication of municipal ordinances.

> Senate Community Affairs Committee Statement to Senate Bill No. 7 at 4 (June 22, 1994) [Emphasis supplied].

Significantly, the Senate Budget and Appropriations Committee noted in its Statement on the then proposed legislation:

> Sections 30 and 31 amend R.S. 40:49-2 and R.S. 40:49-18 to permit the publishing of proposed municipal ordinances **by title**, rather than in their entirety, **with a concise statement of the purpose of the ordinance** and a notice of the time and place for obtaining copies.
>
> Senate Budget and Appropriations Committee Statement to Senate Bill No. 7 at 1 (June 22, 1994) [Emphasis supplied].

The Senate Budget and Appropriations Committee then specifically commented on the expected fiscal impact of this and other cost-saving measures which would be implemented with S7 even though a formal analysis had not been prepared:

> A fiscal estimate on the savings which municipalities will realize as a result of the enactment of this bill, or the additional costs to the State which may result, if any, has not been prepared. The sponsors of the bill have stated that they estimate the annual savings to municipalities to be approximately $28.5 million.
>
> Senate Budget and Appropriations Committee Statement to Senate Bill No. 7 at 3 (June 22, 1994).

The legislative history behind the current iteration of N.J.S.A. 40:49-2 confirms that the Legislature never intended for the prehearing notice requirements

to be satisfied by the mere publication of the ordinance's title alone. The prior version of the statute required the publication of the proposed ordinance in its entirety. Intended as a cost saving measure only and not as a reduction in the conveyance of substantive information, the Legislature's amendment of the statute permits publication by title but only if the same is accompanied by "a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance". Id. In other words, the "clear and concise statement" of the "purpose of the ordinance" substitutes for the entirety of the ordinance that was once required. Plainly, and as the legislative history confirms, that requirement cannot be satisfied by mere publication of the title alone. The trial court's decision unreasonably ignores this legislative history and effectively disregards the Legislature's intent.

C. The notice published in advance of the hearing and passage of Ordinance No. 13-2022 was deficient because it did not include a separate statement of purpose prepared by the clerk. (Pa58-Pa61)

There is unquestionably an element of subjectivity in determining whether a notice published in accordance with N.J.S.A. 40:49-2 includes a sufficient "clear and concise statement" of the "purpose of the ordinance". In the instant case, however, the Court need not engage in that analysis. That is because the required statement is entirely missing from the notice that the Township published following the first reading of Ordinance No. 13-2022.

Nevertheless, even assuming, arguendo, that publication of the ordinance's title alone could somehow also satisfy the separate statement of purpose requirement (which it cannot), the same result would obtain in this case. Although no reported decisions exist concerning the issue of the statement of purpose's substantive sufficiency under N.J.S.A. 40:49-2, several analogous cases exist involving notices published pursuant to N.J.S.A. 40:49-2.1. In fact, the Appellate Division has previously commented on the shared history of these statutes, noting that prior to the enactment of N.J.S.A. 40:49-2.1, L. 1977, c. 395, which was also implemented as a cost saving measure, land use ordinances had to be published in entirety in accordance with the then-existing version of N.J.S.A. 40:49-2. Cotler v. Township of Pilesgrove, 393 N.J. Super. 377, 385-386 (App. Div. 2007). Then, "[n]early twenty years after the enactment of N.J.S.A. 40:49-2.1, the Legislature amended N.J.S.A. 40:49-2 to authorize municipalities to publish only a "summary" of other proposed ordinances." Id. at 385, fn. 1 (citing L. 1996, c. 113, § 7).

It is significant that the Appellate Division in Colter specifically utilized the word "summary" to describe the substantive notification requirements that N.J.S.A. 40:49-2 now mandates. The word "summary" is also specifically used in N.J.S.A. 40:49-2.1. In explaining that term, the Appellate Division observed:

> N.J.S.A. 40:49-2.1 does not require the published notice of proposed adoption of a zoning ordinance to contain a description of every change in the municipality's zoning that the ordinance will produce. The notice is only

> required to contain a "brief summary" of the ordinance's "main" objectives or provisions…
>
> However, this does not mean that the notice can simply state that the amendment will result in changes to the municipality's zoning, without indicating **the nature or scope of those changes**. The essential purpose of the required notice is to alert individual property owners to the possibility that the proposed amendment may affect the zoning or their properties or of nearby properties. Therefore, the notice must be sufficient to serve this purpose.
>
> Colter, 393 N.J. Super. at 387 [Emphasis supplied].

The Appellate Division in Colter reversed the trial court's decision and invalidated the challenged ordinance because the notice at issue "did not provide any information concerning the specific nature or scope of the proposed changes." Id. In fact, this decision accorded with the decision reached by the Appellate Division more than 25 years earlier in Wolf v. Mayor and Borough Council of Borough of Shrewsbury, 182 N.J. Super. 289 (App. Div. 1981). Like the Colter court, the Wolf court noted the requirement for zoning ordinances to be published in their entirety prior to the adoption of N.J.S.A. 40:49-2.1. Id. at 294. The Wolf court went on to explain that the abbreviated form of notice permitted by the newer statute "must be reasonably sufficient and adequate to inform the public of the essence and scope of the proposed changes." Id. at 296 (citations omitted). And, prior to Wolf, the Appellate Division also acknowledged the related nature of the statutes pertaining to zoning ordinances and general ordinances in La Rue v. East

Brunswick Tp., 68 N.J. Super. 435 (App. Div. 1961). Commenting on the prior version of N.J.S.A. 40:49-2 which required publication of the ordinance in full, the Appellate Division explained:

> The obvious design of the legislation is to insure that the public will be apprised of the proposed ordinance (or amendment) prior to its final passage in order that objections may be fully and freely raised and, if persuasive, honored.
>
> La Rue, 68 N.J. Super. at 451.

These published decisions make clear that notice has primary purpose to advise the general public of the "essence and scope" of the proposed legislation. Even if these decisions specifically concern zoning ordinance amendments, no reason exists why the same logic wouldn't apply to notices for all ordinances, including ordinances adopting redevelopment plans. Indeed, as a practical matter, no difference exists as between zoning standards created by the adoption of a zoning ordinance and superseding or overlay zoning standards created by a redevelopment plan. Cf Rockaway Shoprite Associates, Inc. v. City of Linden, 424 N.J. Super. 337, 348 (App. Div. 2011) (Appellate Division observing that with respect to notice requirements it discerned "no meaningful difference between the municipality's exercise of its quasi-judicial power over proposed development applications and its legislative power to enact zoning ordinances to regulate the use of land by local ordinance.").

In arguing for a contrary conclusion, defendants have previously cited and relied upon several distinguishable unpublished opinions.[5] For example, in Meredith v. Borough Council of the Borough of Somerdale, No. CAM-L-4946-19 (N.J. Sup. Ct. Law Div. May 5, 2020), aff'd, 2022 WL 1816530 (N.J. Sup. Ct. App. Div. June 3, 2022)[6], Somerdale published a notice following the first reading of the challenged ordinance which included **the entire ordinance**. The Appellate Division upheld the trial court's determination that "by including the full text of the ordinance, the notice informs the public of all of the applicable new design standards proposed." Meredith, No. CAM-L-4946-19, at 20. (Pa314). Similarly, in Gentless v. Borough of Stratford, No. CAM-L-3344-17 (N.J. Sup. Ct. Law Div. June 5, 2018, aff'd, 2019 WL 2563807 (N.J. Super. Ct. App. Div. June 21, 2019)[7], Stratford published a notice of an ordinance adopting a redevelopment plan

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[5] Of course, unpublished opinions neither constitute precedent nor are binding upon any court. See R. 1:36-3.

[6] Pursuant to R. 1:36-3, a copy of the unpublished opinion is attached. (Pa233-Pa239). A contrary opinion on this issue was issued by the court in Frye v. Harrison Township, No. GLO-2061-11 (N.J. Sup. Ct. Law Div. Feb. 3, 2012). Plaintiff does not have a copy of that opinion, but instead has a copy of the Order entered by the court as well as copies of the defective notice and the remedial notice published by the Township along with an explanatory letter from Township counsel. (Pa148; Pa149; Pa150-Pa155).

[7] Pursuant to R. 1:36-3, a copy of the unpublished opinion is attached. (Pa240). A contrary opinion on this issue was issued by the court in Frye v. Harrison Township, No. GLO-2061-11 (N.J. Sup. Ct. Law Div. Feb. 3, 2012). Plaintiff does not have a copy of that opinion, but instead has a copy of the Order entered by the court as well as copies of the defective notice and the remedial notice published by the Township along with an explanatory letter from Township counsel. (Pa148; Pa149; Pa150-Pa155).

amendment which "explicitly identified by title, every subsection of the plan that would be deleted, added, or amended" that included "design standards, proposed land use and building requirements, affordable housing, design standard[s] for two story buildings, bulk and area design standards for residential development, and affordable housing requirements." Gentless, No. CAM-L-3344-17, at 13-14. (Pa334-Pa335). Citing the Appellate Division's decision in Wolf, supra (which concerned the adequacy of a zoning ordinance notice), the trial court held that "a reasonable person would be informed of the essence and scope of the proposed changes" and noted that the "notice specifically listed both affordable housing and design standards as elements the ordinance would change. Id. at 14. (Pa335).

The notices in both Meredith and Gentless clearly conveyed the "essence and scope" of the proposed regulations. Those notices very obviously differed from the notice published by the Township in this case. Contrary to the trial court's finding, the notice published by the Township gave no hint whatsoever of its essential purpose, which **was to establish overlay zoning permitting warehouse buildings 50 times larger than those permitted by the underlying zoning and at almost double the permitted height**. Indeed, from a substantive perspective the notice did nothing more than recite Ordinance No. 13-2022's title which merely referenced the adoption of a generic redevelopment plan (and not the Kings Landing Redevelopment Plan) and certain affected blocks and lots on the

tax map (and not street addresses, common names or other identifiable landmarks[8]). It belies logic to charge a layperson with all that this legislation portended based on this content (or lack thereof). Put another way, an interpretation that the Township's notice complied with N.J.S.A. 40:49-2(a) effectively eviscerates the intent and purpose of the notice requirement.

D. Ordinance No. 13-2022 is void because its hearing and passage was preceded by defective notice. (Pa58-Pa61)

It has long been settled that notice is a jurisdictional issue and that publication requirements are to be strictly construed. See Kendrick v. City of Hoboken, 38 N.J.L. 113 (1875). In this same vein, courts have explained that "[f]ailure to substantially comply with the requirements of a statute requiring publication renders the ordinance invalid." Wolf, supra, 182 N.J. Super. at 295. As the Appellate Division has observed, "[w]hen the notice is inadequate, "'the conclusion is that failure to give adequate notice of pending legislation is generally fatal to the subsequent legislative enactment.'" Rockaway Shoprite Associates,

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[8] Cf. N.J.S.A. 40:55D-62.1 (which establishes the requirements for notices pertaining to zoning ordinance amendments and provides, "A notice pursuant to this section shall state the date, time and place of the hearing, the nature of the matter to be considered and **an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers** as shown on the current tax duplicate in the municipal tax assessor's office." [Emphasis supplied]).

supra, 424 N.J. Super. at 352 (quoting Patrick J. Rohan, 8–52 Zoning and Land Use Controls § 52.08[2] (2011) (footnotes omitted)).

Moreover, and despite any argument which defendants might attempt to make to the contrary, it cannot be said that the notice published by the Township "substantially complied" with N.J.S.A. 40:49-2 nor that any deficiency was a mere "technical violation". The defect – the failure to include a "clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance" – went to the core purpose of the notice requirement, which is to alert the public to the essence and scope of the proposed legislation so that they can make an informed decision whether to participate in hearing. This explains why no one appeared at the hearing conducted on Ordinance No. 13-2022 and only a few months later the public turnout at the hearing on the specific development application which it facilitated was so overwhelming that it required relocation to a building with a larger capacity. Accordingly, it is respectfully submitted that the trial court erred in determining the notice to be valid and that the trial court's decision should be reversed.

III. THE TRIAL COURT ERRED IN ITS APPLICATION OF THE STANDARD OF REVIEW FOR A MOTION TO DISMISS BROUGHT PURSUANT TO R. 4:6-2(e) (Pa54-Pa55; Pa62)

R. 4:6-2 permits a defendant to move for dismissal of the Complaint in lieu of filing an Answer where one or more of six specific defenses are applicable. Id. Failure of the plaintiff to state a claim upon which relief can be granted is one such defense. See R. 4:6-2(e). However, a motion to dismiss filed during the early stages of the litigation requires the court to proceed with caution and it is only in the rarest of instances where such a motion should be granted. Lieberman v. Port Authority, 132 N.J. 76, 79 (1993).

When a defendant files a motion to dismiss on the basis that the complaint fails to state a claim, the applicable standard requires only that a cause of action be suggested by the facts. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1993) (citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must limit its inquiry to "examining the legal sufficiency of the facts alleged on the face of the complaint." Id. (citing Rieder v. Dept. of Transportation, 221 N.J. Super. 547, 552 (App. Div. 1987)). In applying this extremely liberal standard, the court must afford the plaintiff every reasonable inference of fact and the court need not determine if plaintiff can ultimately prove the allegations contained in the complaint. Id. (citing Somers Constr. Co. v. Bd. of Education, 198 F. Supp. 732, 734 (D.N.J. 1961); Independent Dairy Workers

Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956)). The Supreme Court in Printing Mart explained:

> We approach our review of the judgment below mindful of the test for determining the adequacy of a pleading: whether a cause of action is "suggested" by the facts. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). In reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. Rieder v. Department of Transportation, 221 N.J. Super. 547, 552 (App. Div. 1987). However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary" DiCristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957). At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. Somers Constr. Co. v. Board of Edu., 198 F. Supp. 732, 734 (D.N.J. 1961). For purpose of the analysis plaintiffs are entitled to every reasonable inference of fact. Independent Diary Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.
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> Id. at 746.

The Supreme Court then summarized the standard:

> The importance of today's decision lies not so much in its explication of the principles of tortious interference and defamation as in its signal to the trial courts to approach with great caution applications for dismissal under Rule 4:6-2(e) for failure of a complaint to state a

> claim on which relief may be granted. **We have sought to make clear that such motions, almost always brought at the very earliest stages of the litigation, should be granted only in the rarest of instances**. If a complaint must be dismissed after it has been accorded the kind of meticulous and indulgent examination counseled in this opinion, then, barring any other impediment such as a statute of limitations, the dismissal should be without prejudice to a plaintiff's filing of an amended complaint.
>
> Id. at 771-772 [Emphasis supplied].

Applying these principles to the instant case, it is respectfully submitted that the trial court erred in dismissing Casella's Complaint. Casella's pleading sets forth three separate counts which respectively concern the defective notice published prior to Ordinance No. 13-2022's passage, the inconsistency of the King's Landing Redevelopment Plan with the Harrison Township Master Plan and the failure of Ordinance No. 13-2022 to include an explicit amendment to the zoning map as required by N.J.S.A. 40A:12A-7.c. Each of these claims on their own allege a basis to overturn the challenged municipal action and are backed by facts in the record, as are Casella's arguments for an enlargement of time.

Rather than limiting its examination to the legal sufficiency of the facts alleged in the Complaint and affording Casella every reasonable inference therefrom, the trial court engaged in an exacting analysis and gave the defendants the benefit of any doubt. For example, in considering the public interest justifying

an enlargement of the 45-day appeal period in this case as evidenced by the public turnout on WHDUR's site plan hearing, the trial court observed:

> Plaintiff's [sic] fail to establish whether the public who appeared were actually Township residents, how many people appeared, and whether the people that did appear represented a fair cross section of the Township as opposed to just homeowners who live close to a project. It is also important to note that those people who did appear were there to challenge a land use application and not the underlying Ordinance. There is nothing in the record to support the contention that the hearing attendees were challenging or had an interest in Ordinance No. 13-2022.
>
> (Pa56-Pa57).

It is respectfully submitted that the trial court's reasoning effectively inverted the Printing Mart standard of review. As an initial matter, the measure of public interest attendant to this situation does not require a geographic census and no published opinions suggest to the contrary. A reasonable inference of fact, however, would be that the people who appeared to oppose WHDUR's site plan application were Harrison Township residents and not residents of other municipalities as the trial court seemed to speculate. Regarding the number of people who opposed WHDUR's development proposal, again, no requirement exists to surpass a certain threshold. On the other hand, the trial court's opinion conspicuously omits mention of the fact that the site plan hearing had to be relocated to larger venue in order to accommodate the number of objectors.

Finally, as to the trial court's rationale that those who attended the site plan hearing were not challenging Ordinance No. 13-2022, the same unreasonably ignores the effect of the defective notice published prior to Ordinance No. 13-2022's passage. That notice left the public completely uninformed as to what Ordinance No. 13-2022 portended. It was not until WHDUR filed its subsequent site plan application which manifested the specific development that Ordinance No. 13-2022 made possible with the adoption of the Kings Landing Redevelopment Plan did the legislation's essence and scope become clear, most particularly with the superseding zoning which eliminated any square footage limitation for individual buildings and nearly doubled the permissible building height.

The trial court similarly erred when it reviewed Count I of the Complaint which specifically challenged the adequacy of the notice that preceded Ordinance No. 13-2022's passage. As exhaustively explained supra, N.J.S.A. 40:49-2(a) requires the notice to include "a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance". Id. The notice published in advance of Ordinance No. 13-2022's passage did not. Rather than applying a plain language reading to both the notice and the statute, however, the trial court engaged in an interpretation which was extremely indulgent to the defendants. The trial court specifically reasoned:

> [T]he title itself provides a sufficient summary of the purpose of the ordinance. An interested person would

> understand that the Township is adopting an ordinance, and that the Ordinance's purpose is to adopt a redevelopment plan for certain lands that are specifically identified. The publication also includes the lot and block, which is not required but provides additional information to the public and informs as to who may have an interest or may be affected by the adoption of the Ordinance.
>
> (Pa60).

It is respectfully submitted that the trial court erred in determining that the notice conveyed adequate information about the proposed legislation, particularly as adjudged against the Printing Mart standard of review. A reasonable inference of fact is that a layperson would not understand that the notice's generic reference to the adoption of a "redevelopment plan" intended the specific Kings Landing Redevelopment Plan and/or the superseding zoning which made a by-right site plan for a 2,000,000+ square foot warehouse complex with 60-foot high buildings possible. Another reasonable inference of fact is that a layperson would not associate a series of block and lot numbers with particular properties. Cf. N.J.S.A. 40:55D-62.1 (requiring block and lot numbers **and** street addresses, common names or other identifiable landmarks). The trial court's examination plainly did not incorporate a "generous and hospitable approach." Printing Mart, 116 N.J. at 746. Moreover, the trial court did not undertake any review of Counts II or III of Casella's Complaint at all. Accordingly, and particularly in light of the extremely

indulgent standard of review which applies in the context of a motion brought under R. 4:6-2(e), the Court should reverse the trial court's decision.

CONCLUSION

For all of the foregoing reasons, the Court should reverse the trial court's decision and invalidate and set aside Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan.

Respectfully submitted,

BARON & BRENNAN, P.A.

JEFFREY M. BRENNAN, ESQUIRE

Dated: October 13, 2023

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CASELLA FARMS HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. **MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON** and **WH DEVELOPMENT URBAN RENEWAL, LLC** Defendant/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003880-22 CIVIL ACTION On Appeal From the Superior Court of New Jersey, Law Division, Gloucester County Sat Below: Hon. Benjamin C. Telsey, A.J.S.C.

DEFENDANT/RESPONDENT, MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON'S MERITS BRIEF

On Brief:
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PRELIMINARY STATEMENT

Plaintiff's appeal fails for one simple reason: they are trying to apply the wrong statute. This appeal challenges the sufficiency of a public notice published by Harrison Township ("Harrison") prior to adoption of an ordinance adopting a redevelopment plan. The Trial Court applied the correct statute governing the notice requirements. At both the Trial Court and now on appeal, Plaintiff, Casella Farms Homeowners Association, Inc. ("Plaintiff"), seeks to engraft the more specific notice requirements for zoning ordinances onto the statute governing notice requirements for general legislation ordinances. This is a simple case of applying and interpreting the correct statute.

When adopting the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., the Legislature set forth specific standards for effectuating redevelopment. One such requirement is that redevelopment projects must be undertaken in accordance with a comprehensive plan known as a redevelopment plan. Redevelopment plans must contain, not only standards relating to appropriate land uses and bulk standards, akin to a zoning ordinance, but also must include provisions for property acquisition, relocation of residents, replacement of affordable housing and an analysis of the relationship of the redevelopment plan to the various master plans.

In adopting the notice requirements for redevelopment plans, the

Legislature stated in N.J.S.A. 40A:12A-7(c), "no notice beyond that required for adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan." Notice requirements for general ordinances are set forth in N.J.S.A. 40:49-2, which requires "a clear and concise statement … setting forth the purpose of the ordinance …" Redevelopment plans are required to be adopted by ordinance: the purpose of such an ordinance is to adopt a redevelopment plan for certain properties.

Despite clear language that ordinances adopting a redevelopment plan only have to set forth a statement of the purpose of the ordinance, Plaintiff is attempting to engraft onto N.J.S.A. 40A:12A-7(c) and N.J.S.A. 40:49-2 a requirement that the notice provide *a summary of* the redevelopment plan, which is the notice requirement for adoption of zoning ordinances. N.J.S.A. 40:49-2.1 requires that when adopting zoning ordinances, the notice include a "brief summary of the main objectives or provisions of the ordinance …"

The Legislature **did not** require that ordinances adopting a redevelopment plan provide the same notice that is required for zoning ordinances. Zoning notices must apprise the public of the "essence of the regulations" being adopted. When adopting a redevelopment plan, the law only requires that a statement of the purpose of the ordinance be provided in the notice. In this case, the notice provided by Harrison Township contains a statement of purpose: the

purpose is to adopt a redevelopment plan for specified properties.

Finally, Plaintiff failed to provide an acceptable basis for enlargement of the 45-day appeal period. Both Harrison and Defendant, WH Development Urban Renewal, LLC ("Redeveloper") expended funds in reliance on the validity of the redevelopment plan and will be negatively affected by enlargement of the appeal period. The interest in repose by these entities, and their interest in redeveloping a blighted area, on balance, outweighs any private interest Plaintiff has in challenging the Redevelopment Plan.

PROCEDURAL HISTORY

Plaintiff filed a Complaint on November 30, 2022 in the above captioned matter. (Pa1-Pa10). This Complaint was amended twice, on December 19, 2022 (Pa11-Pa21), and again on January 20, 2023 (Pa22-Pa32). A few days later, on January 23, 2023, the Trial Court signed a Consent Order allowing Redeveloper to Intervene. (Pa 44-Pa45). Redeveloper and Harrison separately filed Motions to Dismiss the Complaint in this case on February 15, 2023. (Pa46-Pa49).[1]

Oral argument was held on May 11, 2023, (T2) and thereafter the Trial Court requested supplemental briefing on the ordinance notice issue. On July 12, 2023, the Trial Court issued an Order and Memorandum of Decision granting

[1] A second, nearly identical Complaint was also filed by a different entity, Holding Smith, Inc., who did not appeal the lower Court's decision.

the Motion to Dismiss. (Pa51-Pa62). Plaintiff filed a Notice of Appeal thereafter on August 18, 2023. (Pa63-Pa66).

STATEMENT OF FACTS

This matter arises from a lawsuit filed by Plaintiff on November 30, 2022, challenging a redevelopment plan adopted by Harrison on April 8, 2022 in an effort to stop site plan approval received by Redeveloper for a warehouse use.

Redevelopment Designation/Redevelopment Area

On November 18, 2018, Harrison designated Block 46, Lot 2 and Block 47, Lots 1, 2, 3, 3.01 & 4 on the official tax maps of Harrison Township as a Non-Condemnation Redevelopment Area ("Redevelopment Area"). (Pa116 & Pa95). The Redevelopment Area contains approximately 73.03 acres and is located in the C-57 Flexible Planned Industrial-Commercial District ("C-57 Zone"). (Pa99 & Pa127). Permitted uses in the C-57 Zone include "warehousing and distribution." (Pa285). The C-57 Zone allows a minimum lot size of 3 acres on which a warehouse building of up to 20,000 square feet could be constructed. (Pa290). Under the C-57 Zone, by right, a developer could construct up to 480,000 square feet of warehouse space on 24 separate 3 acre lots.

The Redevelopment Area is bordered to the west by land within Woolwich Township ("Woolwich") that was also designated as a redevelopment area and is subject to a redevelopment plan ("Woolwich Redevelopment Area"). (Pa98).

The Redevelopment Area is located on State Route 322 and is located near Exit 2 on the New Jersey Turnpike. (Pa128).

Adoption of the Redevelopment Plan

In order to spur redevelopment, a redevelopment plan was prepared for the Redevelopment Area known as the Kings Landing Redevelopment Plan, dated March 30, 2023 ("Redevelopment Plan"). According to the Redevelopment Plan, "[t]he overall goal of the King's Landing Redevelopment Plan is to build a cluster of warehouse and distribution facilities in a location that provides easy access to regional truck corridors, including Route 322 and the New Jersey Turnpike. The development will span both sides of Swedesboro Road and include parcels in both Harrison and Woolwich Townships." (Pa101).

Included with the Redevelopment Plan is a discussion as to how the Redevelopment Plan is designed to effectuate the goals of the Master Plan. It notes that one of the Master Plan's major employment goals is to:

> [D]irect its [the Township's] efforts toward the location and development of planned office industrial warehouse areas in the immediate vicinity of the major regional traffic arteries in order to take advantage of the regional transportation network and to limit impacts within the critical portion of the Township.

(Pa97). To achieve this goal, the Township needs to "[p]romote the development of clear industrial uses, office warehouse uses, and commercial services uses in locations which have good regional roadway service which will not adversely

affect existing or proposed residential development." (Pa97). Economic Goals of the Master Plan include locating commercial enterprises "in the immediate vicinity of the limited access highway interchanges…" (Pa97).

To achieve these employment and economic goals of the Master Plan as well as Harrison's redevelopment goals, the Redevelopment Plan continued to allow warehouse and distribution use as permitted uses on the Redevelopment Area, but eliminated the maximum building size for warehouse buildings and increased the permitted height to 60 feet. (Pa102).

The Redevelopment Plan also included several provisions designed to protect neighboring residential uses. Under the existing C-57 Zoning, the minimum buffer to residential use is a 25-foot open space buffer plus a 25-foot landscape buffer/screen. (Pa290 & Pa292-Pa293). The landscape buffer/screen need only be 6 feet tall and screen 75% of the development after 5 years. (Pa293). By comparison, under the new Redevelopment Plan, a landscape buffer/screen of at least 50 feet is required which must provide a year round audio and visual screen to the residential neighbors. (Pa105). The buffer must include a 10-foot-high sound wall and 10 feet high evergreen trees. (Pa105).

At a public hearing on the Redevelopment Plan, Harrison's Mayor explained the reason for adopting the Redevelopment Plan, noting that while Harrison has been trying to discourage warehouses for years, there has been no

interest in office or retail uses within Harrison Township in recent years. (T1, 3:9-4:19).[2] As a result, Harrison decided to shift its approach to allow limited warehousing in strategic locations in order to encourage the construction of tax ratables. (T1, 4:19-5:7). Lack of sewer and the cost to extend the same have also been a limiting factor for development within the Township of smaller development projects and adoption of the Redevelopment Plan allows Harrison to tie into the new extension of the sewer system in Woolwich and coordinate redevelopment efforts with them. (T1,7:17-9:18).

On April 18, 2023, Harrison adopted Ordinance 13-2022, which adopted the Redevelopment Plan. (Pa89-91). Prior to adoption of Ordinance 13-2022, on April 8, 2022, Harrison published a notice stating that "Ordinance No. 13-2022 – An Ordinance of the Mayor and Township Committee of the Township of Harrison, County of Gloucester Adopting a Redevelopment Plan for Block 46, Lot 2; Block 47, Lots 1, 2, 3, 3.01, 4 in the Township of Harrison" was introduced on April 4, 2022. and would be considered for adoption on April 18, 2022. (Pa89 & Pa14, ¶18). It further stated that copies of the Ordinance were on file in Clerk's Office. (Pa89). After adoption of the ordinance, notice of adoption was published on April 27, 2022 in the South Jersey Times. (Pa14, ¶22).

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[2] References to "T1" are to the Transcript of the April 18, 2022 Harrison Township Committee Meeting and references to "T2" are to the May 11, 2023 Trial Court Hearing in this case.

Actions to Implement the Redevelopment Plan

After the 45-day appeal period expired on June 2, 2023, Harrison and Redeveloper took actions to implement the Redevelopment Plan. Redeveloper prepared revised site plans to conform to the requirements of the Redevelopment Plan and, on or about August 22, 2022, submitted the same to the Harrison Township Joint Land Use Board ("JLUB") (Pa118, ¶2b). In addition, Harrison and Redeveloper negotiated and executed a Redevelopment Agreement before the November 17, 2022 JLUB Hearing. (Pa145 & Pa116). On November 14, 2022, Harrison adopted Ordinance 36-2022 approving a financial agreement with the Redeveloper. https://ecode360.com/HA1928/laws/LF1788981.pdf.

Redeveloper's project consists of a combined 2,182,101 square foot warehouse complex consisting of four (4) buildings, 1,385 passenger vehicle parking spaces and 629 trailer parking spaces ("Warehouse Project"). (Pa117, ¶1). Building A contains 963,316 s.f. and is located partially in Woolwich and partially in Harrison. (Pa117, ¶1.a. & Pa118, ¶1.c.i). Building C is likewise located partially in Woolwich and partially in Harrison and consists of 312,317 s.f. (Pa117, ¶1.b.i. & Pa118, ¶1.c.i). Buildings B and D are located entirely in Woolwich, with Building B consisting of 639,578 s.f. and Building D consisting of 266,890 s.f. (Pa117-Pa118, ¶1.b.ii, ¶1.b.iii and ¶1.c.ii). Collectively, over half of the Warehouse Project is located in Woolwich.

Woolwich approved its portion of the Warehouse Project on July 1, 2021. (Pa118). Notice of the Woolwich portion of the Warehouse Project was published in the newspaper on May 10, 2021, which noted that Redeveloper was proposing a 2,182,101 s.f. warehouse project and stated the following:

> By way of a separate application, Applicant is also requesting approvals from Harrison Township Joint Land Use Board to allow the development of the same four proposed warehouse buildings and their related site improvements that also include 73.07 +/- acres of land located along the northern and southern sides of U.S. Route 322 (US 322 / CR 536) in the Township of Harrison, a portion of which is adjacent to Tomlin Station Road (607) and is more particularly known as Block 46, Lot 2 and Block 47, Lots 1, 2, 3, 3.01 & 4 on the Official Harrison Township Tax Maps.

(Da6). One property owner, Holding Smith, Inc., who filed a lawsuit below which was consolidated with the within matter, received direct notice of the Woolwich site plan application. (Da11). Several people from the Casella Farms area of Harrison received notice of the Woolwich application. (Da9-Da20).

The JLUB held meetings on the Harrison portion of the Warehouse Project on November 17, 2022 and December 15, 2022. (Pa116). Notice of the JLUB meeting was published in the newspaper on October 14, 2022. (Pa114). Several homeowners within Plaintiff's association organized a media circus in hopes of intimidating the JLUB into denying the application. (Pa26). Intimidation at the JLUB meeting turned to threats to both Redeveloper and JLUB members, which resulted in the denial of the Warehouse Project at the JLUB. (Pa281).

Redeveloper appealed and the Trial Court reversed the site plan denial. (Pa283).

Plaintiff's Lawsuit

Plaintiff did not file this lawsuit until November 30, 2022, which is 226 days after adoption of Ordinance 13-2022. (Compare Pa1-Pa10 with Pa90-Pa91). It is also 47 days after publication of the notice of the first JLUB hearing on the Harrison portion of the Warehouse Project, (Compare Pa1 to Pa114-Pa115), and thirteen (13) days after the first JLUB hearing on the Warehouse Project.

LEGAL ARGUMENT

I. Legal Standard on Appeal. (not raised below)

Appellate review of a motion to dismiss pursuant to Rule 4:6-2(e) is reviewed de novo using the same standard as is used by the trial court below. Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014). When considering a motion to dismiss, the complaint must be liberally reviewed to determine if it states a "'fundament of a cause of action.'" Mack-Cali Realty Corp. v. State, 250 N.J. 550, 553 (2022). In doing so, the Court may consider "'the facts alleged on the face of the complaint…'" Ibid. The Court may also consider "documents specifically referenced in the complaint..." and "matters of public record…" Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015). When undisputed facts show that there is a statute of limitations

defense, such a defense is "akin to failure to state a claim" and can be raised by way of Motion to Dismiss pursuant to Rule 4:6-2(e). CKC Condo. Ass'n, Inc. v. Summit Bank, 335 N.J. Super. 385, 387 n.1 (App. Div. 2000).

Review of requests to enlarge the time to file an action in lieu of prerogative writ pursuant to Rule 4:69-6(c) are based on an abuse of discretion standard. Point Pleasant Borough PBA Local No. 158 v. Borough of Point Pleasant, 412 N.J. Super. 328, 334 (App. Div. 2010). This is because the decision as to whether to enlarge the time under Rule 4:69-6(c) lies within a trial court's discretion. Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., L.P., 204 N.J. 569, 578 (2011). Under the abuse of discretion standard, reversal is only warranted where the decision was "'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011). "'[I]t is not the appellate function to decide whether the trial court took the wisest course, or even the better course' as we do not substitute our judgment for that of the trial court…" Id. at 174-175.

II. The Trial Court Properly Dismissed Plaintiff's Complaint Because it was Filed Out of Time. (T2, 5:23-6:7).

In granting Harrison's Motion to Dismiss, the Trial Court properly concluded that the Complaint was barred under Rule 4:69-6(a) because it was "well beyond" the 45-day appeal period. (Pa55). "Rule 4:69-6(a) provides that '[n]o action in lieu of prerogative writs shall be commenced later than 45 days

after the accrual of the right to … review….' Plaintiff's failure to comply with R. 4:69-6(a) bars this present action." Southport Dev. Grp., Inc. v. Twp. of Wall, 310 N.J. Super. 548, 555 (App. Div. 1998). Where a complaint is not timely filed, a motion to dismiss is appropriate because "the defendant should not be compelled to suffer the burdens of continued litigation." Milford Mill 128, LLC v. Borough of Milford, 400 N.J. Super. 96, 109 (App. Div. 2008).

The Trial Court correctly determined that Plaintiff's right to challenge the Redevelopment Plan accrued upon publication of the Notice of Adoption for Ordinance 13-2022. (Pa55). This is consistent with other cases deciding the issue of accrual. See Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 382 (App. Div. 2008

According to the Complaint, the Notice of Adoption for Ordinance 13-2022 occurred on April 27, 2022.[3] (Pa4, ¶22). Plaintiff's Complaint should have been filed on or before June 12, 2022. Since the Complaint was not filed until November 30, 2022, Plaintiff's Complaint was barred by Rule 4:69-6(a).

In response to a Motion to Dismiss below, Plaintiff asserted three (3) alleged justifications to the Trial Court to defeat application of Rule 4:69-6(a): (1) the 45-day period did not begin to run until Plaintiffs knew of the

[3] The Trial Court incorrectly states that the Notice of Adoption was published on April 8, 2022. (Pa55). This was publication of the Notice of Introduction.

Ordinance's purpose; (2) the Notice of Adoption for Ordinance 13-2022 was deficient; and (3) the time for filing the Complaint should be enlarged in the interest of justice under Rule 4:69-6(c). (Pa55). The Trial Court properly rejected each of these arguments.

III. Ignorance of Ordinance 13-2022 does not Toll the 45-Day Appeal Period under R. 4:69-6(a). (T2, 19:10-18 & 48:7-14).

The Trial Court properly rejected Plaintiff's argument that it was not required to file its Complaint until it understood the effect of Ordinance 13-2022. (Pa62). In rejecting this argument, the Trial Court quoted Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384, 402 (App. Div. 2009), which rejected a "'wait and see'" strategy by the plaintiffs in that case. (Pa62). The Court in Rocky Hill explained, "[t]o suggest that the right to challenge should accrue when the [agency's] interpretation [of an ordinance] is contrary to one's view subordinates the public interest in repose to the private interests of the objectors." Ibid.

Other Courts have been clear that ignorance of a cause of action does not prevent the running of the 45-day appeal period under Rule 4:69-6(a) absent some countervailing equity. See Hopewell Valley Citizens' Grp., Inc., supra 204 N.J. at 571 and DeRose, supra, 398 N.J. Super. at 401.

In fact, consideration of the countervailing equities is the very purpose of the enlargement provision set forth in Rule 4:69-6(c). "[R]elaxation depends on

all the relevant **equitable** considerations under the circumstances." Pressler & Verniero, Rules Governing the Courts of the State of New Jersey, comment 7.3 on R. 4:69-6, 1648 (2024 Ed.) (emphasis added). Thus, the Trial Court properly rejected Plaintiff's claims for tolling due to ignorance.

IV. Adequate Notice was Provided as the Trial Court Properly Concluded. (T2, 36:13-37:18)

Plaintiff's second argument regarding insufficient notice is essentially an allegation of concealment of the adoption of Ordinance 13-2022. Plaintiff claims it did not file its Complaint timely "because it did not learn that the Township passed Ordinance 13-2022 and adopted the Kings Landing Redevelopment Plan until many months after that action occurred." (Pb23). The Trial Court properly rejected this argument because the Notice gave sufficient information to indicate Ordinance 13-2022 was adopted and that Ordinance 13-2022 adopted the Redevelopment Plan. (Pa58-61). If Plaintiff wanted to learn about the specifics included within the Redevelopment Plan, it was Plaintiff's responsibility to obtain a copy of the Redevelopment Plan. (Pa61). Plaintiff's failure to do so does not excuse Plaintiff from timely filing its Complaint.

A. The Trial Court Properly Rejected Plaintiff's Attempt to Rewrite the Statute Governing Notice Requirements for Ordinances Which Adopt Redevelopment Plans. (T2, 38:9-39:19 & 50:11-22)

Plaintiff conflates the notice requirements applicable to adoption of zoning ordinances with the notice requirements for adoption of ordinances

adopting redevelopment plans. (Pb30-Pb35). This was properly rejected by the Trial Court. (Pa58).

Resolution of this issue comes down to a matter of statutory interpretation.

> When a court construes a statute, its "paramount goal" is to discern the Legislature's intent. We "look first to the statute's actual language and ascribe to its words their ordinary meaning." "'[T]he best indicator of [the Legislature's] intent is the statutory language,' thus it is the first place we look."

Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1, 18 (2020) (internal citations omitted). Moreover, "'[w]here available, "[t]he official legislative history and legislative statements serve as valuable interpretive aid[s] in determining the Legislature's intent."'" Id. at 19.

To start, examination of the differences in the language used between the notice requirements for ordinances adopted pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. ("LRHL"), general ordinances, and ordinances adopted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL") is critical. Under the LRHL, notice requirements for ordinances adopting a redevelopment plan are as follows:

> "[n]otwithstanding the provisions of the 'Municipal Land Use Law,' P.L.1975, c.291 (C.40:55D-1 et seq.) **or of any other law, no notice beyond that required for adoption of ordinances** by the municipality shall be required for the hearing on or the adoption of the redevelopment plan or subsequent amendments thereof." N.J.S.A. 40A:12A-7(c) (Emphasis added).

Based on the plain language of N.J.S.A. 40A:12A-7(c), notice for

adopting a redevelopment plan is governed solely by the notice requirements for general ordinances. N.J.S.A. 40:49-2 sets forth the notice requirements for general ordinances. Under N.J.S.A. 40:49-2(a), the notice is required to contain "a clear and concise **statement** prepared by the clerk of the governing body setting **forth the purpose of the ordinance**…" (Emphasis added).

Zoning ordinances have a different requirement. N.J.S.A. 40:49-2.1 sets forth the standard for ordinances adopted pursuant to the MLUL. The notice for zoning ordinances must contain a "**summary of the main objectives or provisions** of the ordinances…" (Emphasis added). N.J.S.A. 40:49-2.1.

Understanding the difference between the terms "statement" of "purpose" and "summary" is critical to understanding the statutory notice obligations. When interpreting statutes, Courts are required to give words their ""ordinary meaning and significance"" and will often refer to dictionary definitions to identify such meaning. Lippman v. Ethicon, Inc., 222 N.J. 362, 383 (2015).

"[P]urpose" has the same basic definition amongst the various dictionaries. Compare Merriam-Webster online https://www.merriam-webster.com/dictionary/purpose, last visited 6/2/2023 (defining "purpose" as "something set up as an object or end to be attained…"); Cambridge Dictionary online, https://dictionary.cambridge.org/us/dictionary/english/purpose, last visited 6/2/2023 (defining "purpose" as "why you do something or why

something exists...") and Oxford Learner's Dictionary online, found at https://www.oxfordlearnersdictionaries.com/us/definition/english/purpose?q=purpose, last visited 6/2/2023 (defining "purpose" as to "the intention, aim or function of something; the thing that something is supposed to achieve…"). Based on these definitions, the plain meaning of "purpose" of the ordinances is **the reason why** the Ordinance was adopted.

By contrast, "summary" has a completely different plain meaning. Several dictionaries provide similar definitions. Compare Cambridge Dictionary online, https://dictionary.cambridge.org/us/dictionary/english/summary, last visited 6/2/2023 (defining "summary" as "a short, clear description that gives the main facts or ideas about something...."); Merriam-Webster online, https://www.merriam-webster.com/dictionary/summary, last visited 6/2/2023 (defining "summary" as "comprehensive; especially: covering the main points succinctly…"); and Oxford Learner's Dictionary online, https://www.oxfordlearnersdictionaries.com/us/definition/english/summary?q=summary, last visited 6/2/2023 (defining "summary" as to "a short statement that gives only the main points of something, not the details…"). Based on these definitions, the plain meaning of "summary" of an ordinance is a **short, clear discussion** of the main points of the ordinance.

Caselaw has further explained the notice requirements for zoning

ordinances, indicating that a "summary" is a short, clear discussion of the main points of the zoning ordinance. "'The notice required by statute must reasonably apprise the public or parties interested **of the essence of the regulations** to be adopted, that is the changes to be made.'" Rockaway Shoprite Assoc., Inc. v. City of Linden, 424 N.J. Super. 337 (App. Div. 2011). (Emphasis added).

The cases cited by Plaintiff (Pb30-Pb32) discuss the notice requirements for *zoning* ordinances. In Colter, the Court explained that the requirement of a "summary" of the zoning ordinance mandates that the notice include a description of the "nature or scope" of the zoning changes. Colter v. Township of Pilesgrove, 393 N.J. Super 377, 387 (App. Div. 2007). Similar sentiments were set forth in Wolf v. Shrewsbury, 182 N.J. Super. 289, 296 (App. Div. 1981) (stating "notice of a proposed change in the zoning laws must be reasonably sufficient and adequate to inform the public of the essence and scope").

The use of two very different words in the requirements for N.J.S.A. 40:49-2 and N.J.S.A. 40:49-2.1 demonstrates a clear legislative intent for different notice requirements for zoning ordinances than for general ordinances. "When '"the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded."'" In re Plan for the Abolition of the Council on Affordable Hous., 214 N.J. 444, 470 (2013). This is because the omission of certain language in one section of a statute of a

larger act is presumed intentionally done. Cashin v. Bello, 223 N.J. 328, 340 (2015). Clearly, the Legislature determined that the heightened notice requirements necessary for zoning ordinances were not necessary for general ordinances, and more importantly, heightened notice were unnecessary for ordinances adopting a redevelopment plan. The Legislature specifically acknowledged the MLUL standard when it decided the general ordinance notice was sufficient. N.J.S.A. 40A:12A-7(c).

Courts will "presume that the Legislature intended the outcome dictated by the clear language of the statute" because "[t]he Legislature knows how to draft a statute to achieve that result when it wishes to do so." Zabilowicz v. Kelsey, 200 N.J. 507, 513 (2009). Neither Plaintiff nor the Court is permitted to rewrite N.J.S.A. 40A:12A-7(c) to require something more. See Lippman, supra, 222 N.J. at 388 (stating that the Court's job is not to "engraft requirements" into plainly written statutes; rather the Court's role is to "enforce the legislative intent as expressed through the words used by the Legislature").

At the May 11, 2023 hearing on the Motion to Dismiss, Plaintiff clearly argued that a "summary" of the provisions of the Redevelopment Plan was necessary. They claimed that the redevelopment plan allowed for a "more intense use than a traditional warehouse" and that "there's nothing in there [the notice] that says in essence, this allows for this intensity (sic) a development…"

(T2, 22:10-11 & 22:3-5). They also argued that "the Township failed to set forth the essential nature of what was being adopted…" (T2, 23:8-11). When the Court asked about the slippery slope that could occur with providing more detail regarding adoption of a redevelopment plan, Plaintiff's counsel responded, "I think there has to be some indication of what this ordinance ultimately facilitates on a large level, and that is all of those things which I just expressed, the greater intensity, the two-million plus for development that wasn't otherwise possible." (T2, 26:18-23).

Plaintiff clearly argues the ordinance notice should have included a summary of the Redevelopment Plan. Neither N.J.S.A. 40A:12A-7(c) nor N.J.S.A. 40:49-2 require such an extensive notice. The Trial Court properly rejected this argument.

B. Courts have Routinely Rejected Attempts to Conflate the Requirements of the MLUL and the LRHL. (Supplemental Brief).

Presumably because the MLUL and the LRHL both touch upon land use issues, Plaintiff is conflating the requirements of the MLUL and the LRHL. Such attempts have been routinely rejected by the Courts. "[T[he procedures of the Municipal Land Use Law do not apply to adoption of a redevelopment plan, including the zoning component." Hirth v. City of Hoboken, 337 N.J. Super. 149, 165 (App. Div. 2001). "[T]he Local Redevelopment Law contains its own procedures for adoption of a redevelopment plan." Ibid.

"The adoption of a redevelopment plan by ordinance follows the same procedure as the adoption of any municipal ordinance." Milford Mill 128, LLC, supra, 400 N.J. Super. at 110, quoting William M. Cox, Zoning and Land Use Administration, §38-4.3, at 906 (2008); see also William M. Cox & Stuart Koenig, Zoning and Land Use Administration, §11-5.3, at 239 (2022); Hirth, 337 N.J. Super. at 165 ("the only hearing required before adoption of a redevelopment plan, as with any other municipal ordinance, is a legislative hearing before the governing body").

Plaintiff's cited case law (Wolf, Colter, and Rockaway Shoprite) all involve land development ordinances rooted in and governed by the MLUL which are inapplicable here. (Pb30-Pb33). Plaintiff is attempting to apply the wrong standard; the Trial Court properly rejected this argument.

C. The Statutory Requirement of Noticing the Purpose of the Ordinance Was Met. (Pa61).

The legislative history of N.J.S.A. 40:49-2 demonstrates the legislative intent behind the statute. Historically, all ordinances were to be published in full in a locally circulated newspaper. See P.L. 1955, c. 121, §1; see also Wolf, supra, 182 N.J. Super. at 294; Rockaway Shoprite Assocs., Inc., supra, 424 N.J. Super. at 345. The reason for requiring publication prior to the adoption of an ordinance is simple: to effect "wide dissemination of notice throughout the municipality affected, so that citizens and interested parties may have an

opportunity to become informed and to be heard." City of Plainfield v. Courier News, 72 N.J. 171, 182 (1976) (emphasis added). See also Reisdorf v. Borough of Mountainside, 114 N.J. Super. 562, 573 (1971) (stating that the "purpose of requiring publication of an ordinance is to afford opportunity to the parties in interest and citizens to be heard on the subject matter") and Bruno v. Borough of Shrewsbury, 2 N.J. Super. 550, 554 (1949) (accord).

In 1977, the Legislature enacted N.J.S.A. 40:49-2.1, which only applied to ordinances adopted pursuant to the MLUL. N.J.S.A. 40:49-2.1 permitted the publishing of a summary of an ordinance in lieu of its entire content where the length of the ordinance exceeded six (6) pages. See P.L. 1977, c.395, §1; see also Rockaway Shoprite Assocs., supra, 424 N.J. Super. at 345.

In 1995, in response to pleas from municipalities for relief from "inexorable increases in burdensome mandates from Trenton," the Legislature amended N.J.S.A. 40:49-2, the statute applicable to the adoption of general municipal ordinances. This measure was taken in an effort to "reduce the costs associated with the publication of the ordinance in its entirety." (Pa198). The amendment permitted the publication of an ordinance "in its entirety or by title…together with…a clear and concise statement…setting forth the purpose of the ordinance," among other requirements. Ibid.

Based on this Legislative history, it is clear that the Legislature wanted

the notice to alert the public that an action was being taken by a municipality without having to provide a lengthy and costly notice. Providing a statement of purpose for adopting the ordinance accomplishes this goal.

As the Trial Court correctly found, the purpose of Ordinance 13-2022 was to adopt a redevelopment plan for specified properties. (Pa60). Before the Trial Court and now here, Plaintiff alleges that the "purpose" of Ordinance 13-2022 is to change the zoning standards applicable to the Redevelopment Area. (T2, 39:12-18 & Pb34-Pb35). That, however, is not the purpose. The sole reason for adopting the Ordinance is to adopt the Redevelopment Plan for specifically identified properties. (Pa90-Pa91).

The Notice provided by the Township satisfies the legislative purpose because it gave Plaintiff the **opportunity to become informed** and to be heard by alerting them to the fact that a redevelopment plan would be adopted, and that the redevelopment plan is on file with the Clerk's office for inspection. (Pa114-Pa115). The Notice further informed Plaintiff of the date and time of the public hearing on the Ordinance, which would allow them an opportunity to be heard. (Pa115). Plaintiff, however, did not take the opportunity to inform themselves of the contents of the Redevelopment Plan. Plaintiff's failure to do so is not a deficiency of the Notice.

The error of Plaintiff's argument as to the "purpose" of Ordinance 13-

2022 is evident from the fact that Harrison could have fully complied with the notice requirements of N.J.S.A. 40:49-2 by publishing the full text of the ordinance. Had the full text been published, it would not have contained any information as to the uses or building standards required under the Redevelopment Plan. In fact, the word "warehouse" does not appear anywhere in Ordinance 13-2022. (Pa90-Pa91). Even if the entire ordinance was published, Plaintiff would have no additional information than what was provided in the Notice that Harrison actually provided. (Compare Pa89 with Pa91-Pa92).

It is important to note that by accepting Plaintiff's arguments, the Court would be changing the notice requirements applicable to all general ordinances and not simply ordinances adopting redevelopment plans. N.J.S.A. 40A:12A-7(c) makes clear that the only notice that is required for adoption of a redevelopment plan is the notice applicable to general ordinances. To read the requirements of N.J.S.A. 40:49-2(a) as requiring more than the simple identification of the goal or aim of the Ordinance would require that standard to apply to all notices provided for any general ordinance that is adopted.

By way of example, if a municipality were to adopt an ordinance setting forth rules applicable to municipal parks or the use of facilities within a municipal park, under Plaintiff's interpretation, the municipality would have to summarize all of the proposed new rules applicable to municipal parks.

Likewise, before adopting a financial agreement authorized under N.J.S.A. 40A:20-9, the municipality would have to summarize the terms of the agreement. An ordinance authorizing acquisition of property would have to summarize the terms of the agreement of sale or lease. Such added expense is unnecessary when any member of the public who is interested in the contents of these documents can merely go to the municipal clerk's office and review these documents. Such an added expense runs counter to the very purpose behind amending N.J.S.A. 40:49-2, which was to reduce the costs to municipalities.

Requiring a municipality to summarize the provisions of a redevelopment plan in the notice of introduction will only lead to more litigation as invariably a plaintiff will argue that there was some provision of interest to that plaintiff that was omitted from the notice's summary. This is illustrated in the unpublished decisions cited in Plaintiff's Brief. (Pb33-Pb34). In Gentless, the plaintiff complained that the notice failed to contain a sufficient explanation of the changes in density and height for the proposed townhomes. (Pa334). This is true even though the Court found that the notice comprehensively "identified by title, every subsection of the plan that would be deleted, added, or amended" by the ordinance." (Pa334).

Because the Notice stated the purpose of Ordinance 13-2022, which was to adopt the Redevelopment Plan for specified properties, the Trial Court

correctly rejected Plaintiff's argument.

D. The Notice Provides a Clear and Concise Statement Setting Forth the Purpose of Ordinance 13-2022 and Substantially Complied with the Requirements of N.J.S.A. 40:49-2. (Pa60-Pa61)

The omission of a separate and distinct "statement of the purpose" for Ordinance 13-2022 is not fatal to the requirements of N.J.S.A. 40:49-2. The failure to include a separate "statement of purpose" did not inhibit in any way Plaintiff's opportunity to learn of the contents of the Redevelopment Plan, determine whether it applied to their property or a neighboring property, or to participate in the public hearing on the Ordinance.

An ordinance will only be declared invalid if it fails to "**substantially comply** with the requirements of a statute requiring publication." Wolf, supra, 182 N.J. Super. at 295 (emphasis added). See also Kirylak v. Edgewater, 131 N.J. Super. 461, 465 (Super. Ct. 1974) (upholding the validity of an ordinance because there was substantial compliance with N.J.S.A. 40:49-2). Plaintiff must show that the "notice was fatally deficient." Concerned Citizens of Livingston v. Twp. of Livingston, 2018 N.J. Super. Unpub. LEXIS 1356, at *1, *5 (App. Div. 2018). A "technical violation" is insufficient. Bonnabel v. Twp. of River Vale, 2013 N.J. Super. Unpub. LEXIS 1598, at *10 (App. Div. 2013).

In Bonnabel, the notice of the adoption for an ordinance related to affordable housing failed to include information as to "where and when the

public could obtain a free copy." Id. at *9. Accordingly, the plaintiff argued that the failure to provide such information as required by the statute rendered the notice "defective and the ordinance invalid." Ibid. The Appellate Division upheld the lower court's determination that "the Township's error did not inhibit an opportunity for the public to voice its opinions and/or objections to the proposed ordinance." Id. at *10-11.

In Concerned Citizens of Livingston, 2018 N.J. Super. Unpub. LEXIS 1356, the Council issued a public notice which included "the entire Ordinance, whose preamble stated its purpose." While the case was reversed on MLUL grounds, the Appellate Division held that the public notice complied with N.J.S.A. 40:49-2(a).

The title of the Ordinance in this case was

> "AN ORDINANCE OF THE MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON, COUNTY OF GLOUCESTER ADOPTING A REDEVELOPMENT PLAN FOR BLOCK 46, LOT 2; BLOCK 47, LOTS 1, 2, 3, 3.01, 4 IN THE TOWNSHIP OF HARRISON, GLOUCESTER COUNTY, STATE OF NEW JERSEY." (Pa90-Pa91).

Although there was not a separate statement of purpose, the title of Ordinance 13-2022 conveyed its purpose in a clear and concise manner: the adoption of a redevelopment plan for Block 46, Lot 2, and Block 47, Lots 1, 2, 3, 3.01, 4.

Plaintiff argues that to satisfy the notice requirement, the notice must contain the title of the ordinance and a separate and distinct statement of the

ordinance's purpose, even if the latter is completely redundant. (Pa29-Pa30). Utilizing the Plaintiff's logic, the following provision would have been acceptable to satisfy the clear and concise statement of purpose provision:

> An Ordinance of the Mayor and Township Committee of the Township of Harrison, County of Gloucester, Adopting a Redevelopment Plan for Block 46, Lot 2; Block 47, Lots 1, 2, 3, 3.01, 4 in the Township of Harrison (Gloucester County, State of New Jersey). The purpose of the ordinance is to Adopt a Redevelopment Plan for Block 46, Lot 2; Block 47, Lots 1, 2, 3, 3.01, 4 in the Township of Harrison (Gloucester County, State of New Jersey).

Yet, this notice provides no more information that the current Notice provides.

Plaintiff argued below that the Notice should have included "just something that said warehouse, some kind of indication other than we're amending the redevelopment plan because arguably somebody gets a notice… [about a] redevelopment plan and they said if it doesn't affect me, I don't know what it's about, I don't really care." (T2, 44:20-25). The specific blocks and lots affected by the Redevelopment Plan were identified in the title of the Ordinance. (Pa89). Had a member of the public viewed this notice and lived within proximity to the delineated properties or was curious as to the potential development of said properties, they were given not only the opportunity to, but also specific directions on how to obtain further information related to the Redevelopment Plan. (Pa89). The title of the Ordinance substantially complies

with the statement of purpose required in N.J.S.A. 40:49-2(a) because it advises the public of the purpose of the Ordinance.

Notice that a redevelopment plan is being adopted is sufficient notice that the municipality is taking legislative action that will affect specific parcels. N.J.S.A. 40A:12A-3 defines "redevelopment plan" as a "plan" which is "sufficiently complete to indicate its relationship to definite municipal objectives as to appropriate land uses, public transportation and utilities, recreational and municipal facilities, and the other public improvements; and to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both."

Even if Plaintiff was unaware of the legal definition of a redevelopment plan, under common parlance, the average person would understand that a plan is a proposal for doing or achieving something on specific properties. That alone should have alerted the Plaintiff to review the Redevelopment Plan.

Plaintiff contends that "notice is a jurisdictional issue" and must be strictly construed. (Pb35-Pb36). Again, Plaintiff conflates the requirements for zoning ordinances and land use boards with the requirements for general legislation ordinances. Case law is clear that for general legislation ordinances, substantial compliance with the notice requirements is all that is required.

The Trial Court correctly concluded that the notice substantially complied

with the requirements of N.J.S.A. 40:49-2 because the title of Ordinance 13-2022 contained its purpose and therefore, separate words, restating the statement of purpose was unnecessary.

V. The Trial Court Properly Determined that No Enlargement of the Appeal Period was Warranted. (Pa55-Pa58).

Pursuant to Rule 4:69-6(c) a court can enlarge the time for appeal under Rule 4:69-6(a) "where it is manifest that the interest of justice so requires." The grant or denial of an enlargement of time requires the exercise of judicial discretion and requires consideration of both the impact to the governmental entity and the plaintiff. Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 423-24 (App. Div. 2002). Here, the Trial Court properly denied Plaintiff's request for enlargement of time, finding that Plaintiff has raised predominately private interests. (Pa56). "While the residents whose homes are close to the Redevelopment Area might be opposed to the Ordinance or any applications that might be considered, that is not enough for this Court to find that a significant public interest is present that would warrant an exception to the filing of a complaint so far out of time." (Pa56).

Plaintiff simply did not present a sufficient basis to warrant enlargement under Rule 4:69-6 and the Trial Court properly denied their request. (Pa58).

A. Plaintiff has not Shown a Valid Reason for Their Delay. (T2, 36:23-38:8)

The interest of justice standard warranting enlargement must be viewed in light of the purpose for imposing the time limit on appeal. Courts have said, the "'statute of limitations is designed to encourage parties not to rest on their rights.'" Rocky Hill, supra, 406 N.J. Super. at 398. As a result, "[t]he longer a party waits to mount its challenge, the less it may be entitled to an enlargement." Tri-State Ship Repair, supra, 349 N.J. Super. at 424.

Consideration should be given to the past conduct of the plaintiff. Southport Development Group, Inc., supra, 310 N.J. Super. at 556. If a plaintiff "sat idly by in the past, its entitlement to the enlargement of the time is weakened." Ibid. For this reason, a court should consider the reason given for the delay and the length of time that the plaintiff has delayed. Tri-State Ship Repair, 349 N.J. Super. at 424. "[A]s a general proposition, 'ignorance of the existence of a cause of action will not prevent the running of a period of limitations except when there has been concealment.'" Hopewell Valley Citizens' Grp., Inc., 204 N.J. at 571.

Here, Plaintiff relies upon mere ignorance of the cause of action to justify its delay. They claim that they did not understand the impact of the Redevelopment Plan until Redeveloper's site plan application was filed. (Pa2 & Pa16). Typically, where enlargement has been granted, there has been some type of concealment to the plaintiff, as is seen in several cases cited by Plaintiff.

Plaintiff cites Estate of Dolente in support of its request for enlargement. (Pa12). Enlargement was warranted because the attorney in that case had made an inquiry as to whether any action had been taken by the municipality with respect to the plaintiff's property and was specifically advised by the municipality that the no action had bee taken. Estate of Dolente v. Borough of Pine Hill, 313 N.J. Super. 410, 417-18 (App. Div. 1998). The Court concluded that "[s]upplying partial information can be as misleading as supplying incorrect information" and that because of the municipality's failure to fully supply information in response to the attorney's inquiry, a valid reason existed to justify enlargement of the 45 day appeal period. Ibid.

Similarly, the Courts have said that where a municipality accidentally mislead the plaintiff as to the commencement date for the 45 day appeal period because of the incorrect information that was given to the plaintiff after calling the board secretary to request the same, enlargement of the 45 day appeal period was warranted. Hopewell Valley Citizens' Grp., 204 N.J. at 584-85.

In another case cited by Plaintiff, Adams v. Delmonte, (Pb12), the Court granted an enlargement of time because there was essentially a bait and switch situation. Plaintiff cites to this case because there, the Court enlarged the appeal period because the full aspect of the project did not become apparent until after the second board hearing. Adams v. Delmonte, 309 N.J. Super. 572, 581 (App.

Div. 1998). Unlike the case at hand, the facts in Adams relating to the operation of the business changed between the first board hearing and the second board hearing. At the first board hearing, the board concluded that the business would "'not store or transfer septic waste on the property.'" Ibid. When the applicant appeared at the second board hearing, the operation of the business changed to include a "'containment' area" for septic waste which would be located on the property, along with parking for vacuum containment tanker trucks. Id. at 582. Because the findings at the second hearing conflicted with the findings at the first hearing, the Court concluded enlargement was appropriate to allow a challenge to both approvals. Id.

Unlike Adams, there was no bait and switch here. Nothing in the Ordinance or the Notice indicated that there would be no warehouses within the Redevelopment Area. (Pa89-Pa91). In fact, the underlying zoning (in place for decades), C-57, specifically permits warehouse and distribution uses. (Pa285). Had Plaintiff simply requested a copy of the Redevelopment Plan, the extent of the proposed development would have been clear. (Da91-Da92 & Pa108-Pa109). Plaintiff cites to a statement made on YouTube by the Mayor of Harrison Township wherein he said that Harrison Township was "careful 'to balance what is good for the town and what can be an increase in revenue" and that "if we wanted to just completely sell out for tax ratables we'd be building warehouses

all over the place like you see in Logan." (Pb5). These words, however, do not say that there would be no warehouses in Harrison Township. The careful balance relating to warehouses is explained in the Township's Master Plan. In the Redevelopment Plan, it analyzes the goals of the Master Plan and notes that one of the Employment Goals is to:

> [D]irect its [the Township's] efforts toward the location and development of planned office industrial warehouse areas in the immediate vicinity of the major regional traffic arteries in order to take advantage of the regional transportation network and to limit impacts within the critical portion of the Township.

(Pa97). Similar language is used in the Economic Goals discussed in the Redevelopment Plan. (Pa97). Through this Redevelopment Plan, the Township did carefully balance the need for tax ratables with the good of its residents by keeping the warehousing in the C-57 Zone, and cluster such uses near the Exit 2 entrance to the New Jersey Turnpike, which is a major regional traffic artery. (Pa101). At no time was Plaintiff misled. Rather, Plaintiff was uninformed as a result of failing to request a copy of the Redevelopment Plan.

Because Plaintiff failed to provide any valid basis for its delay in filing its Complaint 226 days after the adoption of Ordinance 13-2022 (Compare Pa1 to Pa90-Pa91), the Trial Court correctly refused to grant enlargement.

B. Plaintiff Interest is Purely Private. (T2, 10:5-18 & 15:10-19).

As Plaintiff correctly points out, the cases in which enlargement of the 45-

day appeal period set forth in Rule 4:69-6 were granted usually involve three categories of cases: "(1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." (Pb10). Here, as the Trial Court noted, "[t]he exception advanced by Plaintiffs is the 'important public rather than private interests which require adjudication or clarification.'" (Pa56). The Court, however, was not convinced by Plaintiff's arguments. (Pa56). Plaintiff failed to show sufficient public interest.

1. Plaintiff Does Not Raise any Constitutional Claims. (T2, 9:20-10:4).

When a plaintiff seeks a private interest rather than a public interest, courts will deny requests for enlargement under Rule 4:69-6(c). One way to show an important public interest is through assertion of a constitutional claim. For example, in Tri-State Ship Repair, supra, the Court rejected an enlargement of time to challenge the adoption of a redevelopment plan because no constitutional or novel questions were presented.

While adoptions of a redevelopment plan often will not justify enlargement of the 45 day appeal period, redevelopment designations can justify enlargement. In Concern Citizens of Princeton, cited by Plaintiff (Pb11), the Court found that there was sufficient public interest to warrant enlargement of

time to challenge a redevelopment designation of municipally owned land. Concerned Citizens of Princeton, Inc. v. Mayor & Council of Borough of Princeton, 370 N.J. Super. 429, 435 (App. Div. 2004).

Redevelopment designations, like the one in Concern Citizens of Princeton implicate constitutional issues because the designation of municipal land carries with it the power to transfer said land at any price deemed reasonable by the municipality, even if that price is $0.00, without public bidding. N.J.S.A. 40A:12A-8(g).

Because Plaintiff's Complaint does not raise any constitutional questions, the Trial Court properly concluded no enlargement was warranted.

2. Plaintiff Raises Only Private Dissatisfaction of a Project Near It's Members' Properties. (T2, 15:12-19).

The Trial Court properly concluded that this case raises only private interests in the form of dissatisfaction with a proposed redevelopment project near their homes. (Pa57). In cases were the public interest was affected, it was clear that the outcome of the case affected a significant portion of the municipality.

For example, in Gregory v. Borough of Avalon, 391 N.J. Super. 181, 189-90 (App. Div. 2007), a case cited by Plaintiff (Pa12), the Court found significant public interest because the ordinance authorized private encroachment on a public beach area. This is because there is a "historic and fundamental principal

of public access to the beach." Susko v. Borough of Belmar, 458 N.J. Super. 583, 608 (App. Div. 2019). Blocking any portion of the public beach impacts the general public's right of access thereby creating public interest.

Similarly, in another case cited by Plaintiff (Pb11), the Courts enlarged the 45-day appeal period to challenge an ordinance that required, as a condition to issuance of a certificate of occupancy, payment of all taxes and water and sewer charges. Ocean Cty. Bd. of Realtors v. Beachwood, 248 N.J. Super. 241, 244 (Super. Ct. 1991). Moreover, a certificate of occupancy was required in order to sell property. Ibid. Enlargement was warranted because the ordinance affected every homeowner seeking a certificate of occupancy to sell their home, as well as every realtor. Id. at 247-248. Given the extensive reach of the ordinance and the potential for continuing violations, the Court found sufficient public interest to warrant enlargement. Ibid.

In Damurijan, another case cited by Plaintiff (Pb11), the Court found that enlargement was warranted to challenge a zoning ordinance that affected every property within the A-1, A-2, A-3 and AG zones of the municipality. Damurjian v. Bd. of Adj. of the Tp. of Colts Neck, 299 N.J. Super. 84, 98 (App. Div. 1997). In addition, the lawsuit challenged the constitutionality of a portion of the zoning ordinance, which together with the number of properties affected, created a substantial public interest. Id. at 97-98.

Finally, in Willoughby, cited by Plaintiff (Pa12-Pa13), significant public interest was found because the plaintiffs opposing the zoning ordinance mounted an election campaign in which the rezoning in question became the central issue, and ultimately, the candidates voting for the zoning ordinance were defeated by candidates who were willing to repeal the same. Willoughby v. Planning Bd. of Tp. of Deptford, 306 N.J. Super. 266, 277 (App. Div. 1997). Those new candidates ultimately repealed the ordinance at issue. Ibid. The issue was so important to the residents that they changed their elected officials.

Plaintiff contends that because they were able to garner media attention and residents spoke out at a JLUB hearing, then there is sufficient public interest to warrant enlargement. (Pb1). Numerosity alone is not the standard.

In Rocky Hill, the Court called into question "whether the number of plaintiffs in a lawsuit or signatures on a petition should impact on the true nature of defining 'public interest.'" Rocky Hill, supra, 406 N.J. Super. at 399-400. Likewise, in a concurring opinion, Justice Hoens noted in Concerned Citizens of Princeton, that "mere numerosity" does not necessarily create an important public interest requiring adjudication. Concerned Citizens of Princeton, 370 N.J. Super. at 473.

The Trial Court in this case properly concluded that the mere attendance of the public at the JLUB meeting did not create an important public versus

private interest to review Ordinance 13-2022. As the Trial Court explained,

> Plaintiff's failed to establish whether the public who appeared were actually Township residents, how many appeared, and whether the people that did appear represented a fair cross section of the Township as opposed to just homeowners who live close to the project. It is also important to note that those people who did appear were there to challenge a land use application and not the underlying Ordinance.
> …
> While the residents whose homes are close the Redevelopment Area might be opposed to the Ordinance or any applications that might be considered, that is not enough for this Court to find that a significant public interest is present that would warrant an exception to the filing of a complaint so far out of time.

(Pa56-Pa57 and see Da79).

Indeed, the record reflects that Plaintiff was only concerned about stopping a warehouse next to their homes. In its Brief, Plaintiff characterizes the ordinance as creating a warehouse complex "on a farm field located directly across from the street Casella residential development where many young families live." (Pb1 & see Da79). The Complaint also discusses that "area residents [were] concerned about the proposed warehouse development's potential conflict with and adverse impact on their community." (Pa26, ¶26).

Defense counsel explained at oral argument that Plaintiff's claims "boil down to their desire not to live or work near a warehouse development…" and this is exactly the type of private interest that the court in Rocky Hill rejected as being insufficient to enlarge time under Rule 4:69-6(c). (T2, 11:1-3). Counsel

for Harrison explained that warehouses have been a permitted use at the site for decades. (T2, 18:18-22 & Pa285). Once this was pointed out, Plaintiff changed their tune, suggesting that it was the intensity of the use that was now a problem. (T2, 22:6-23:6 & 28:19-29:16).

These are the very types of arguments rejected in Rocky Hill.

> Plaintiffs' primary argument is that the ordinance will undermine the "efficacy" of the District and that permissible scale, size, mass and arrangement of future construction in the District will be affected. While certainly the ordinance is of interest to this limited public, this is not the public interest envisioned by the Court in permitting limited expansion of the rule. The cited cases, Concerned Citizens, Willoughby, DeRose and Horsnall, must represent the exception rather than the rule.

Rocky Hill, supra, 406 N.J. Super. at 401. If mere traffic and intensity of development were sufficient to create "public interest," then every land use dispute would justify enlargement of the 45-day appeal period and the policy of repose would be meaningless. As the Supreme Court has pointed out, "one can always argue that development brings more traffic and that a commercial establishment brings more congestion and more intensive use of the nearby local roadways. … if concerns expressed by the neighboring residents about traffic congestion will suffice to support a rezoning ordinance [to eliminate an unpopular use], it may become impossible for any undeveloped parcel to be utilized, thus fueling faster and more intensive development as each property owner hurries to avoid being the owner of the last piece of undeveloped land."

Riya Finnegan Ltd. Liab. Co. v. Twp. Council of Tp. of S. Brunswick, 197 N.J. 184, 193-94 (2008).

Because the Trial Court properly found that a private interest existed the decision of the Trial Court to deny enlargement should be upheld.

C. The Policy of Repose Outweighs Any Interest Plaintiff has Asserted. (T2, 8:2-12:1 & 19:20-20:13).

Enlargement of the time for appeal is not warranted because the interest in repose in this case is very strong and outweighs any limited interest Plaintiff may have to challenge the Redevelopment Plan. "Whenever an application is made for such an enlargement, a court must weigh the public and private interests that favor an enlargement against 'the important policy of repose expressed in the forty-five day rule.'" Gregory, supra, 391 N.J. Super. at 189. It is only when there is a "clear potential for injustice" that the sound policy of repose should be disturbed. Hopewell Valley Citizens' Grp., Inc., 204 N.J. at 578 (noting that discretion to enlargement under Rule 4:69-6(c) can be exercised when the court "perceives a clear potential for injustice").

Repose is intended to give "stability and finality to public actions" and as a result, enlargements are not routinely granted. Tri-State Ship Repair, supra, 349 N.J. Super. at 423. Ensuring stability and finality for government action is critical to maintaining public confidence in government. Stability and finality are critical because landowners and developers expend considerable time and

money in reliance on municipal actions. Wash. Twp. Zoning Bd. of Adj. v. Wash. Twp. Planning Bd., 217 N.J. Super. 215, 225 (App. Div. 1987) (noting the developer expended considerable money to prepare plans during the time when the plaintiff was trying to decide whether to appeal). See also Rocky Hill, supra, 406 N.J. Super. at 402-03 (noting the significant costs assumed by the municipality and the developer and the lost opportunity to "timely address and make changes to the ordinance").

Repose is especially important in the context of redevelopment because, as the Legislature has recognized, there is already a disincentive for private investment in blighted areas. N.J.S.A. 40A:12A-2(a). See also 62-64 Main St., L.L.C. v. Mayor & Council of City of Hackensack, 221 N.J. 129, 163 (2015) (noting that the Blighted Areas Clause of the N.J. Constitution was designed to "'provide incentives for private investment'"). If a potential redeveloper is unable to rely upon the actions of the municipality in adopting a redevelopment plan, it will only serve to further disincentivize private investment in an area that is already struggling due to lack of private investment.

In a concurring opinion, Justice Hoens explained the importance of repose in the context of redevelopment:

> Viewed against this statutory framework, the purpose of the time limitation is apparent. Each step in the process depends upon the legitimacy of the original designation of the area as being one that is in need of redevelopment. Just as the underlying purpose of the

> limitation set forth in the court rule is to "give an essential measure of repose to actions taken against public bodies," even more so is repose to be honored in the redevelopment context.

Concerned Citizens of Princeton, 370 N.J. Super. at 474, HOENS, J.A.D., concurring (internal citations omitted). Because of the significant interest in repose in the redevelopment context, enlargement should be limited to constitutional challenges. See DeRose, supra, 398 N.J. Super. at 418 (noting that considerations of repose must give way to the Constitution).

Both Redeveloper and Harrison expended considerable resources in reliance on the Redevelopment Plan. Ensuring finality and stability in the redevelopment process is critical to effective redevelopment. Harrison and Redeveloper negotiated and executed a Redevelopment Agreement before the November 17, 2022 JLUB Hearing. (Pa145 & Pa116). On November 14, 2022, Harrison adopted Ordinance 36-2022 approving a financial agreement with the Redeveloper. https://ecode360.com/HA1928/laws/LF1788981.pdf. Moreover, Redeveloper prepared plans, retained experts and participated in at least one full JLUB hearing before Plaintiff finally decided to file their lawsuit. (T2, 8:8-16). As explained during oral argument, "the reasons for the forty-five days are clearly evident and laid out in what has happened since then, what the intervening has been, which is agreements have been signed. The Township has committed itself in contractual agreements, and is in reliance upon the plan that

was adopted…" (T2, 19:20-25).

Enlarging the time for appeal to appease the interests of the limited public in this case will negatively impact all redevelopment activities throughout the State. Implementing redevelopment plans will become significantly harder because developers will be discouraged from undertaking redevelopment projects for fear that after they invest substantial money and time into a redevelopment project, negotiating a redevelopment agreement and a PILOT agreement, and submitting a site plan, any member of the public who opposes it, can then mount a challenge to a redevelopment plan out of time. This lack of confidence in the redevelopment authority could leave municipalities powerless to correct blight in their neighborhoods.

The Trial Court properly found that enlargement was not warranted.

D. The Trial Court Properly Concluded that Rocky Hill Rather than Willoughby Provided the Proper Framework for Determining Enlargement in this Case. (T2, 10:19-11:9).

In deciding that enlargement was unnecessary, the Trial Court relied on Rocky Hill as setting forth the proper framework to analyze this case. (Pa57). Plaintiff contends, however, that Willoughby is the "appropriate reference and framework for the analysis of this case." (Pb15). Review of the particulars of each case reveal why the Trial Court's decision was correct.

1. Willoughby is Significantly Factually Distinguishable. (T2, 14:24-15:9).

Three critical areas which Willoughby differ from this case are the public interest, reason for the delay and lack of reliance on the policy of repose. First, as to the reason for the delay, in Willoughby, the Court found that the plaintiffs had not slumbered on their rights. "Although plaintiffs did not file a prerogative writ action challenging the rezoning of Wolfson's property within forty-five days of publication of the ordinance, they did immediately mount a well-publicized political campaign to elect candidates for municipal council who were committed to repeal of the ordinance." Willoughby, 306 N.J. Super. at 278.

By comparison, Plaintiffs here took no action after Ordinance 13-2022 was adopted. Rather, Plaintiff waited until after public notice of the land use application for the Harrison portion of the Warehouse Project before they took action. Notice of the hearing was published on October 14, 2022, which was 170 days after publication of the notice of adoption for Ordinance 13-2022. (Compare Pa114 with Pa25, ¶23). Even then, they appeared at the November 17, 2022 hearing to object to the application (Pa26, ¶25 & ¶26). They then filed this action after that hearing.

The second difference is that in Willoughby, the entire community was impacted. After mounting "a well-publicized campaign" against the candidates who voted for the zoning change, the candidates who opposed the zoning change won the election and ultimately rezoned the property back to its original zoning.

Willoughby, 306 N.J. Super. at 271 & 278.

In this case, Plaintiff is a group of homeowners who live near the Redevelopment Area and live closest to the proposed development. (Pa26, ¶26 & Pb1 & Da79). Plaintiff contends "this case involves a public dispute over a proposed development which stands to significantly impact the adjacent residential neighborhood in various way[s] including by substantially increasing traffic in the area." (Pb15). While the issue in Willoughby affected the entire municipality, the issue in this case predominately affects one neighborhood.

While Plaintiff may be impacted, there is no contention that there will be a significant impact to Harrison as a whole. As the Trial Court noted, "Plaintiff's [sic] also reference the potential for an increase in traffic. This may be accurate, but there is nothing in the record to suggest that there will be a 'significant impact' on traffic or that the traffic situation will affect most of the Township or just the small area around the project." (Pa57).

To support their intensity arguments, Plaintiff characterizes the overlay zoning as permitting warehouses that are 50 times larger than what was permitted in the underlying zoning and refers to the project as a 2,181,101 s.f. warehouse complex. (Pb1). Such a characterization is misleading. The true facts indicate that the intensity of the Warehouse Project is not so significantly different to what was permitted without the Redevelopment Plan.

Importantly, over half of the Warehouse project is located within Woolwich, has been approved, and can be built regardless of what is permitted in Harrison. The Warehouse Project is comprised of four (4) buildings: (1) "Building A" (a 963,316 s.f. warehouse); (2) "Building B" (a 639,578 s.f. warehouse); (3) "Building C" (a 312,317 s.f. warehouse); and (4) "Building D" (a 266,890 s.f. warehouse). (Pa117-118). Buildings B and D are entirely within Woolwich and are collectively 906,468 s.f. (Da91-Da92 & Pa117 & Pa108-Pa109). Under Harrison's C-57 Zone, warehouses of up to 20,000 s.f. may be constructed on a minimum lot size of 3 acres. (Pa290). Under the C-57 Zone, by right, a developer can construct up to 480,000 square feet of warehouse space on 24 separate 3 acre lots. While there may be more traffic from a 2.1 million s.f. warehouse complex than from the nearly 1.4 million s.f. warehouse complex that could be built without the Redevelopment Plan, there is nothing to suggest it would have a significant impact.

"[O]ne can always argue that development brings more traffic and that a commercial establishment brings more congestion and more intensive use of the nearby local roadways." Riya Finnegan Ltd. Liab. Co., supra, 197 N.J. at 193. The Trial Court agreed: "[m]any Ordinances, if not most, have some effect on the public, but that does not justify an extension of filing deadlines. There must be something significant that has an effect on a larger portion of the Township,

not potentially just some of the roads around the project." (Pa58).

Finally, Willoughby differs from the present case because in Willoughby, there was no detrimental reliance by the developer or the municipality. The Court in Willoughby found that the interest in repose was not implicated because the developer was aware of the well-publicized political campaign to rezone the property and that a zoning change was imminent. Willoughby, 306 N.J. Super. at 278. Despite this knowledge, the developer pressed forward with its development application. Ibid.

Here, Plaintiff sat idly by while Harrison adopted Ordinances and Resolutions to enter into a Redevelopment Agreement and a Financial Agreement with the Redeveloper and while Redeveloper proceeded with its site plan application. (T2, 8:8-16 & 19:20-25). It was not until the Redeveloper was halfway through the public hearings on the land use application that Plaintiff filed its Complaint. Given the reliance by Harrison and the Redeveloper, the interest in repose is strong.

2. Rocky Hill Provides the Correct Framework for Analysis. (T2, 10:19-14:14)

The Trial Court properly concluded that this case is akin to Rocky Hill. (Pa57). Like the Plaintiff in this case, the plaintiffs in Rocky Hill did not have a valid reason for their delay. In Rocky Hill, the Court rejected the plaintiffs' claims that they did not understand the planning board's decision, finding that

the plaintiffs had adopted a "'wait and see'" attitude. Rocky Hill, supra, 406 N.J. Super. at 402. "To suggest that the right to challenge should accrue when the interpretation is contrary to one's view subordinates the public interest in repose to the private interests of the objectors. That is what is suggested here, and it is unacceptable as an appropriate outcome." Id. at 403.

Here too, Plaintiff sat on its rights by failing to at least review the Redevelopment Plan that was on file with Harrison and waited until it saw the proposed development before it was motivated to action.

Another similarity between Rocky Hill and this case is that they both have only limited public interest. In Rocky Hill, the Court rejected a claim of public interest despite the plaintiffs' allegations that there were diverse individual plaintiffs, there was a significant turnout at the public meetings on the subject and that "the number of units in the application, represent[ed] a significant percentage of the Borough's housing stock." Id. at 398-399. Instead, the Court concluded that the arguments raised by the plaintiffs all pertained to the "permissible scale, size, mass and arrangement of future construction in the District" and while these things were of an interest to a "limited public," it was not the type of public interest sufficient to justify enlargement. Id. at 401.

Finally, in Rocky Hill, the Court found that the interest in repose was strong and outweighed any limited public interests held by the plaintiffs,

because the developer and the municipality had assumed significant costs and the municipality lost an opportunity to timely make changes to the ordinance. Id. at 402-403. Similarly, in this case, both the Redeveloper and Harrison expended time and money and made contractual commitments in reliance on the validity of the Redevelopment Plan. (T2, 8:8-16 & 19:20-25). The interest in repose is strong in this case, just as it was in the Rocky Hill case. The Trial Court properly concluded that Rocky Hill was the proper framework for analyzing this case. The Trial Court did not abuse its discretion in denying enlargement of the 45-day period under Rule 4:69-6(c).

CONCLUSION

For the reasons set forth above, Defendant, Mayor and Township Committee of the Township of Harrison respectfully request that the decision of the Trial Court be upheld.

Respectfully submitted,

MALEY GIVENS, P.C.

Dated: December 8, 2023

By: _____
M. James Maley, Jr.
Attorneys for Mayor and Township Committee of the Township of Harrison

CASELLA FARMS HOMEOWNERS ASSOCIATION, INC. Plaintiff/Appellant, v. MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON and WH DEVELOPMENT URBAN RENEWAL, LLC, Defendants/Respondents. HOLDING SMITH, INC. and HOLDING SONS & DAUGHTERS, INC., Plaintiffs/Respondents, v. MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HARRISON and WH DEVELOPMENT URBAN RENEWAL, LLC, Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003880-22 CIVIL ACTION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, GLOUCESTER COUNTY SAT BELOW: HON. BENJAMIN C. TELSEY, A.J.S.C. ARCHER & GREINER A Professional Corporation 1025 Laurel Oak Road Voorhees, NJ 08043 (856) 795-2121 *Attorneys for Respondent, WH Development Urban Renewal, LLC*

BRIEF OF DEFENDANT/RESPONDENT WH DEVELOPMENT URBAN RENEWAL, LLC

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PRELIMINARY STATEMENT

The issue before the Court is whether Plaintiff/Appellant Casella Farms Homeowners Association, Inc. ("Casella") timely challenged the adoption of Ordinance No. 13-2022 by the Harrison Township Committee (the "Committee"). Casella filed its Complaint in Lieu of Prerogative Writs nearly two hundred (200) days beyond the Committee's Rule 4:69-6(b)(3) publication of the ordinance's introduction in a newspaper circulating in the municipality. The trial judge considered submissions and supplemental submissions; however, the facts did not support enlargement of the forty-five (45) day period to submit a challenge. Moreover, the legal authority asserted was considered and rejected as inapposite.

On appeal, Casella presents a mix of arguments: some previously considered and rejected by this Court, the trial court, and other trial courts; others are improperly raised on appeal for the first time. None overcome the procedural bar or warrant an enlargement of time to challenge the Committee's ordinance, including Casella's suggestion to treat its parochial challenge as "a matter of public interest," and the suggestion that the Committee's action was improperly noticed.

The trial court correctly rejected Casella's arguments and granted the motions to dismiss. In doing so, the court held as a matter of law Casella's

interest in challenging this ordinance is not a matter of "public interest," as that exception has been interpreted under prevailing case law. The trial court further recognized Casella improperly sought to apply a heightened standard of pre-adoption notice, inconsistent with the plain language of the governing statute, case law interpreting it, and legislative history. Finally, the trial court noted adoption of Casella's arguments would set alarming precedents. These include: effectively allowing the "public interest" exception to swallow the forty-five day rule by inverting the policy of repose; allowing a small segment of the community that sleeps on its rights to bring untimely complaints so long as it purports to represent "the public;" increasing burdens on municipalities throughout the state by heightening pre-publication notice requirements for all ordinances; and immediately exposing countless ordinances noticed according to existing standards to collateral attack.

Casella asks this court to change the rules of the game, regardless of the larger consequences, solely to allow it to try and prevent WH Development Urban Renewal, LLC ("WHDUR") from engaging in a by-right use of its own property that has been duly approved by the elected representatives of Harrison Township. The trial court properly rejected this invitation, and for the reasons set forth in greater detail below, WHDUR respectfully submits this Court should do the same and affirm.

PROCEDURAL HISTORY

WHDUR concurs with Casella's recitation of the procedural history of this matter, and expressly incorporates such recitation as if set forth at length herein. (See Pb3 – Pb4).

STATEMENT OF FACTS

The background regarding the development of the subject property aids understanding of the municipality's objectives and reveals Casella's challenge as nothing more than a singular attempt to delay or derail redevelopment. The subject property is seventy-three (73) acres of real property owned by WHDUR and located in the Township of Harrison, more commonly known as Block 46, Lot 2, and Block 47, Lots 1, 2, 3, 3.01 and 4 on the Official Harrison Township Tax Maps (the "Property"). The Committee designated the Property as an Area in Need of Development via Resolution No. 49-2018 on October 18, 2018. (Da1). Resolution No. 190-2018 adopted on November 19, 2018, designated the Property a non-condemnation Redevelopment Area pursuant to the New Jersey Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1, et seq. (Da5).

The Harrison Township Joint Land Use and Planning Board ("JLUB") commissioned a redevelopment plan for the Property titled the "King's Landing Redevelopment Plan," (the "Redevelopment Plan"). (Pa92 – Pa113). The

Redevelopment Plan calls for construction of four warehouses on the Property. (Pa101). Each warehouse is subject to height restrictions and incorporates a variety of site improvements. (Pa101 – Pa110).

The Redevelopment Plan aligns with the "Industrial" zoning of the Property, permitting warehousing as a land use since the 1980s. (Da7) (2T, 18:15-25).[1] The Property falls within the C-55 Flexible Planned Industrial-Commercial District and later the C-57 Special Gateway District, both of which expressly permit warehouses. (Id.). Thus, any Harrison Township resident that cared to view the tax maps since the 1980s would have been well aware that warehouses could be constructed on the Property.

The project subject to the Redevelopment Plan straddles the municipal boundary between Harrison Township and neighboring Woolwich Township and is ideal for warehouses. (Pa98, Pa101). The Harrison Township portions of the project are located on 73.07 +/- acres of land along both the north and south side of U.S. Route 322 (US 322 / County Route 536) and are adjacent to Tomlin Station Road (County Route 607), while the Woolwich Township portions are located on 87.26 +/- acres along the north and south side of U.S. Route 322. (Id.). These properties are ideally located on the peripheries of the

[1] Citations to "1T" refer to the Transcript of the April 18, 2022 Harrison Township Committee Meeting and citations to "2T" refer to the Transcript of the May 11, 2023 trial court hearing in this case.

respective municipalities, away from major town thoroughfares, and are adjacent to major regional highways, including U.S. Route 322 and the N.J. Turnpike. (Id.). Indeed, the Harrison JLUB noted in the Redevelopment Plan that it commissioned, reviewed, and adopted, the "Township should direct its efforts toward the location and development of planned office industrial-warehouse areas in the immediate vicinity of the major regional traffic arteries in order to take advantage of the regional transportation network and to limit impacts within the critical portion of the Township." (Pa98). The Redevelopment Plan accomplishes that goal.

The Redevelopment Plan was first approved in Woolwich, by that Township's governing body which adopted the plan and granted WHDUR site plan approval, after conducting numerous hearings over the three-year period of 2019 through 2021. (Da8 – Da25). These meetings were well attended by the public, and it was well known a warehouse project was coming to Woolwich and Harrison Townships. (Id.).

The Committee on April 4, 2022, introduced and passed on first reading Ordinance No. 13-2022, entitled "An Ordinance of the Mayor and Township Committee of the Township of Harrison, County of Gloucester Adopting a Redevelopment Plan for Block 46, Lot 2; Block 47, Lots 1, 2, 3, 3.01 and 4 in the Township of Harrison, County of Gloucester, State of New Jersey." (Pa90).

On April 8, 2022, the Committee published a notice of Ordinance No. 13-2022's introduction in the *South Jersey Times* pursuant to the LRHL (the "April 8 Notice"). (Pa89). The April 8 Notice complied with the LRHL by including the ordinance's title, which concisely states the ordinance's purpose is to adopt a redevelopment plan, as well as the date of introduction, the date, time, and location of the public hearing wherein final passage would be considered, and the time and location in which a copy could be obtained by any interested member of the public at no cost. (Id.). The Committee unanimously adopted Ordinance No. 13-2022 following a public hearing on April 18, 2022. (Pa90 – Pa91). Notice of that adoption was published in the *South Jersey Times* on April 27, 2022. (Da26).

No appeal of Ordinance No. 13-2022 was filed until Casella filed its Complaint in Lieu of Prerogative Writs on November 30, 2022, nearly 200 days following the publication of the ordinance's introduction on April 8. (Pa1).

On November 14, 2022, the Committee proceeded to adopt Resolution 202-2022 authorizing the execution of a Redevelopment Agreement with WHDUR and the same day adopted Ordinance No. 36-2022, authorizing execution of a Financial (PILOT) Agreement to allow WHDUR to make payments to the Committee in lieu of conventional ad valoreum taxes. (Da27, Da30).

With these agreements in place, WHDUR then applied to the JLUB for site plan approval to implement the Redevelopment Plan. (Pa244 – Pa256, Pa268 – Pa271). After two public hearings were held on November 17 and December 15, 2022, the JLUB denied the application and memorialized that denial via JLUB Resolution No. 10-2023. (Pa116). WHDUR filed a Complaint in Lieu of Prerogative Writs in the Superior Court of New Jersey, Law Division, Gloucester County, docket number GLO-L-266-23. (Pa241). Following a trial, the Honorable Benjamin C. Telsey, A.J.S.C. entered an Order and Memorandum of Decision reversing the JLUB's denial, concluding that it was arbitrary, capricious, and unreasonable. (Pa268). The judge exercised original jurisdiction to grant the application. (Id.).

This appeal of the trial court's dismissal of Casella's untimely complaint is the only legal challenge to Ordinance No. 13-2022 and the multi-town redevelopment project it facilitates.

ARGUMENT

The trial court, following a lengthy review, dismissed Casella's Complaint as untimely. The court found Casella filed one-hundred and ninety-one (191) days after the forty-five day appeal period established by Rule 4:69-6(b)(3)[2] to

[2] Rule 4:69-6(b)(3) states that no prerogative writs action shall be brought "to review . . . a resolution by the governing body . . . after 45 days from the publication of a

challenge the adoption of Ordinance No. 13-2022 expired on May 23, 2023. In doing so, the trial court considered and rejected all of Casella's arguments for enlargement, including: (1) the interests of justice required enlargement of the forty-five-day appeal period under R. 4:69-6(c); and (2) the April 8 Notice was defective. Casella's appeal of that Order is factually and legally unsupported. Accordingly, the trial court Order should be affirmed.

I. THE TRIAL COURT CORRECTLY DETERMINED THE INTERESTS OF JUSTICE DO NOT REQUIRE AN ENLARGEMENT OF THE FORTY-FIVE DAY APPEAL PERIOD. (Pa55 – Pa58).

The deadline to file a prerogative writ action is fixed at forty-five days to "give an essential measure of repose to actions taken against public bodies," Harrison Redev. Agency v. DeRose, 398 N.J. Super. 361, 401 (App. Div. 2008), and to "encourage parties not to rest on their rights." Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384, 398 (App. Div. 2009) (quoting Horsnall v. Washington Twp. Fire Div., 405 N.J. Super. 304, 313 (App. Div. 2009)). Recognizing it missed its deadline, Casella attempts to enlarge the permitted forty-five day appeal period, arguing "it is manifest that the interest of justice" requires such an extension under R. 4:69-6(c). (Pb10). Although

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notice once in the official newspaper of the municipality or a newspaper of general circulation in the municipality."

the law permits this exception to the forty-five day appeal period, application is very narrow.

Reflecting this narrow scope, courts have generally cabined the exception's application to circumstances involving "important and novel constitutional questions," "important public rather than private interests which require adjudication or clarification," or "a continuing violation of public rights." In re Ordinance 2354-12 of West Orange, Essex Cnty. v. Twp. of West Orange, 223 N.J. 589, 601 (2015) (citing Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 152 (2001), and quoting in part Reilly v. Brice, 109 N.J. 555, 559 (2018)).

Casella argues unpersuasively its challenge falls within the line of cases discussing "important public rather than private interests which require adjudication or clarification." (Pb12 – Pb23). Casella's suggestions to apply that exception ignore the law established by this court in Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384, 398 (App. Div. 2009). Rocky Hill sets forth the controlling law on what type of "public interest" is contemplated under this limited exception. In this matter, the trial court correctly applied Rocky Hill and rejected Casella's assertion this matter is analogous to Willoughby v. Planning Bd. of Twp. of Deptford, 306 N.J. Super. 266 (App. Div. 1997). The court held Casella's private

interest "is not the type of interest contemplated under the limitation's exception." (Pa57). On appeal of this ruling, Casella maintains this case is more analogous to Willoughby, and now claims even if Rocky Hill controls, this case implicates the public interest, as set forth therein. For the reasons set forth in detail below, the trial court correctly rejected these arguments and that Order should be affirmed.

A. The Trial Court Correctly Applied Rocky Hill in Determining that this Matter Does Not Implicate the Public Interest Exception to the Forty-Five Day Appeal Period. (Pa55 – Pa58).

Casella claims this matter is analogous to Willoughby, and this court should reach the same conclusion that court did, namely, that enlargement is necessary in the public interest. (See Pb12 – Pb16). This case is not like Willoughby. Rather, it is analogous to Rocky Hill and distinct from Willoughby, both for reasons the Rocky Hill court itself laid out in rejecting the same argument from the untimely plaintiff seeking enlargement in that case, and for additional reasons unique to these facts.

A brief summary of the facts of Rocky Hill is instructive. The Borough of Rocky Hill adopted an ordinance that permitted submission of applications to construct thirty-four residential units. Rocky Hill, 406 N.J. Super. at 389-91. The proposed development generated considerable interest from a group of citizens who lived adjacent to the project and claimed the project's nature and

size demonstrated a "lack of respect for the Borough's historic character." Id. at 395. The group filed an untimely action in lieu of prerogative writs challenging both site plan approval for the development and the adoption of the underlying ordinance. Id. at 396-97. The plaintiffs argued for enlargement of the forty-five day filing period, citing public interest grounds because the project threated to undermine the "efficacy" of the town's historic character, and because "the gravity of the public interest [in the ordinance was] evidenced by" the number and diversity of the plaintiffs and large turnout at public hearings. Id. at 398-99. The Rocky Hill plaintiffs also attempted to fall within the confines of Willoughby to state "important public rather than private interests" justified enlargement of the filing period. Id. at 399-402.

The facts in Willoughby are distinguishable. In that case, the Deptford Township Council adopted an ordinance rezoning undeveloped woodland to permit a shopping center including a 120,000 square foot super Wal-Mart. Willoughby, 306 N.J. Super. at 270-71. A citizens group opposed the development and mounted an organized campaign to unseat members of the Township Council who voted for the ordinance and "replace them with candidates committed to returning the zoning of . . . the property . . . ." Id. at 271. That effort was successful, and the newly comprised Council passed an ordinance reverting the property to its former zoning. Id. at 271-72. Before that

ordinance took effect, however, the Township Planning Board quickly passed a resolution granting site plan approval to the developer under the revised zoning. Id. The Willoughby court found the matter to be a public rather than private dispute that justified enlargement because the public's interest was evidenced by the centrality of the significant rezoning in the municipal election, in combination with substantial impacts on an adjoining neighborhood due to increased traffic on a major town thoroughfare. Id. at 277-79.

In distinguishing Willoughby, the Rocky Hill court noted its decision to enlarge the writs' filing period on the basis of a public interest abided the well-documented role the major zoning change played in political campaigns and municipal elections. See Rocky Hill, 406 N.J. Super. at 401; Willoughby, 306 N.J. Super. at 277 ("The extent of the public interest in this matter is underscored by the fact that the rezoning . . . was a central issue in the municipal election held two months after adoption of the ordinance and that the members of the council who voted for the change were defeated by candidates committed to repealing the ordinance"). No such organized political campaign existed in Rocky Hill, nor did the "diversity amongst the individual plaintiffs, the number of public meetings surrounding the application, [or] the turnout at those meetings" manifest actual political activity or consequence. Rocky Hill, 406 N.J. Super. at 399. As such, there was no evidence the Rocky Hill residential

development was truly of interest to the general public, as opposed to merely a concern of the specific group of plaintiffs claiming to represent the public.

Further, the Rocky Hill court noted in Willoughby, the fundamental change in the underlying zoning would have a significant impact on residents of an adjoining neighborhood and impact traffic on a major town thoroughfare. Id. at 400-01. By contrast, the claims in Rocky Hill advanced by "eight plaintiffs, five who live within 200 feet of the development and three who live within walking distance,"[3] were found to revolve around "their own subjective displeasure with the size, scale and footprints of the units allowed under the ordinance." Id. at 399.

The Rocky Hill court cautioned trial courts to avoid reflexively finding a "public interest" where a few interested parties claim to represent the public, saying:

> This case is distinguishable from *Concerned Citizens*, *Willoughby*, *DeRose* and *Horsnall*. None of the factors present in those cases are apparent here. ***There are no public funds involved, no political upheavals, no***

[3] Casella—like the Rocky Hill plaintiffs—supports its numerosity argument by pointing to the turnout at meetings considering WHDUR's site plan application. (2T, 28:3-9) (Pb1 – Pb2, Pb6 – Pb8, Pb20 – Pb21); Rocky Hill, 406 N.J. Super. at 399. In any event, as the trial court recognized, this court made clear that "mere numerosity" should not be equated with "important public rather than private interests that require adjudication." Concerned Citizens v. Mayor and Council of Princeton Borough, 370 N.J. Super. 429, 447 (App. Div.), certif. denied, 182 N.J. 139 (2004) (Hoens, J.A.D., concurring); Rocky Hill, 406 N.J. Super. at 400.

> ***significant impact on density, traffic, ratables or any interest other than the concerns expressed by the individual plaintiffs and their supporters and no constitutional implications***. Plaintiffs' primary argument is that the ordinance will undermine the "efficacy" of the District and that permissible scale, size, mass and arrangement of future construction in the District will be affected. ***While certainly the ordinance is of interest to this limited public, this is not the public interest envisioned by the Court in permitting limited expansion of the [forty-five day] rule. The cited cases,*** **Concerned Citizens, Willoughby, DeRose and Horsnall,** ***must represent the exception rather than the rule***.
>
> [Id. at 401 (emphasis added)].

In this matter, the trial court correctly recognized Casella's interests in challenging Ordinance No. 13-2022 reflected the private interest of a limited public found in Rocky Hill, making such interest "not the type of interest contemplated under the limitation's exception." (Pa57). Indeed, just as the Rocky Hill plaintiffs' "primary argument [was] that the ordinance will undermine the 'efficacy' of the District" because it was purportedly inconsistent with that town's "historic" character, here Casella argues warehousing use permitted by the Redevelopment Plan will undermine Harrison Township's "agricultural" character. Rocky Hill, 406 N.J. Super. at 399; Pb5 – Pb6, Pb15.

In Harrison Township, warehousing has been permitted on the Property since at least the 1980s. (Da7) (2T, 18:15-25). Thus, the permissible nature of this land use was of record and available for inspection when the development

was constructed and/or its members purchased homes. (Id.). Furthermore, the Redevelopment Plan, as commissioned, reviewed, and adopted by the JLUB and the Committee, states: "this Redevelopment Plan is compatible and consistent with the goals and objectives of the Harrison Township Master Plan." (Pa98). That same Redevelopment Plan also advises the Township should "direct its efforts toward the location and development of planned office industrial-warehouse areas in the immediate vicinity of the major regional traffic arteries in order to take advantage of the regional transportation network and to limit impacts within the critical portion of the Township." (Id.). In other words, Harrison Township's elected officials specifically selected WHDUR's Property, which is strategically located on the periphery of town and adjacent to major regional highways, including the NJ Turnpike and US 322, to house this development.[4] This same project Casella portrays as invasive could have been built on this property *at any time since at least the 1980s*. (Da7) (2T, 18:15-25). As such, Casella's suggestion the public has an interest in vindicating a purported affront to the "efficacy" of its town character in the form of this ordinance is soundly refuted by the facts, which demonstrate the historic and

[4] That the Property is strategically located on the edge of town and near regional highway networks specifically to "limit impacts within the critical portion of the Township" is also a distinguishing factor from Willoughby. See Willoughby, 306 N.J. Super. at 277.

current consistency of this land use with applicable zoning and show it was selected for that purpose.

Moreover, Casella emphasizes large crowds appeared at hearings on WHDUR's later proposed site plan application as evidence of a public interest, much like the Rocky Hill plaintiffs. (Pb7 – Pb8, Pb20). However, as the trial court correctly noted, the hearings referenced by Casella on November 17 and December 15, 2022, were unrelated to the ordinance it now seeks to challenge on appeal. Those hearings addressed WHDUR's *site plan application*, and were the subject of entirely separate municipal action by the JLUB, an entirely separate municipal body from the Committee. (See Pa56) ("It is also important to note that those people who did appear were there to challenge a land use application and not the underlying ordinance"). The trial court understood Rocky Hill's caution against reflexively equating the number of purported objectors with a "public interest" in this context and rejected Casella's claims. See Rocky Hill, 406 N.J. Super. at 400 ("We, too, question whether the number of plaintiffs in a lawsuit or signatures on a petition should impact on the true nature of defining 'public interest'"). See also Concerned Citizens, 370 N.J. Super. at 447 ("I would not equate mere numerosity with 'important public rather than private interests that require adjudication'") (Hoens, J.A.D., concurring).

Next, relying on Adams v. DelMonte, 309 N.J. Super. 572, 582 (App. Div. 1998) and Gregory v. Borough of Avalon, 391 N.J. Super. 181, 191 (App. Div. 2007), Casella urges the JLUB hearings (to consider the separate site plan application) are relevant because the "full nature and extent" of the Redevelopment Plan "did not become apparent" until those hearings. (Pb12). The argument is specious.

Adams involved a situation where a municipal board's initial adoption of an ordinance was "based on information that later turned out to be false." Adams, 309 N.J. Super. at 582. Thus, enlargement of the time to appeal was necessary to give the plaintiff an opportunity to challenge that false information. Id. This court distinguished Adams in Rocky Hill, concluding it was not relevant because "[t]here was no deception here; the ordinance was the subject of intense debate at all times." Rocky Hill, 406 N.J. Super. at 402.

Also, Gregory is factually distinct, as the issue in that case was the municipality allowing a private business to utilize public property, including beachside parking spaces, street right-of-way's, and sand dunes. Gregory, 391 N.J. Super. at 185. The Gregory court found a "close relationship" between varying municipal agencies involved in the challenged decision, which may favor an enlargement of time to challenge the first acting agency. Id. at 190. Here, WHDUR owns the Property upon which the proposed warehousing is to

be built, so there is no similar encroachment upon municipal property. Further, Casella is challenging the actions of a single municipal entity, the Committee, in adopting Ordinance No. 13-2022, not multiple agencies. Accordingly, neither case supports Casella's proposition of a public interest component in its challenge to this ordinance.

Like the small group of challengers in Rocky Hill who lived directly adjacent to the property and whose claims "revolve[d] around their own subjective displeasure with the size, scale and footprints" of a development project, here too Casella is a private homeowners association located directly adjacent to the Property that disapproves of the proposed development. See Rocky Hill, 406 N.J. Super. at 399; Pb1. Moreover, unlike Willoughby, the "adjoining neighborhood" that stands to be most substantially impacted by the proposed development is not the challenger Casella, but non-party Woolwich Township, which has fully approved its version of the Redevelopment Plan and has expended considerable sums already in preemptory excavation and sewer installation work. (See 1T, 8:12-21). That project, like its counterpart in Harrison Township, cannot be completed so long as Casella continues to pursue this untimely complaint. Thus, the trial court correctly found Casella's singular desire to not have a warehouse development adjacent to it represents only the

private interests of a limited public, which is not the type of public interest contemplated under this limited exception.

Finally, the trial court recognized finding a "public interest" and enlarging the forty-five day appeal period on these facts would directly contravene Rocky Hill's warning that cases like Willoughby "must represent the exception rather than the rule." Rocky Hill, 406 N.J. Super. at 401. Indeed, enlarging the appeal period in this matter would effectively allow any interested, small sect of the community, dissatisfied with a particular municipal action, to bring a challenge beyond the forty-five day appeal period claiming to represent the "public interest." Far from advancing the public interest, allowing suits to proceed months after the lawful adoption of ordinances injures the public interest because it obstructs local government's ability to function efficiently, which is the paramount policy goal underlying the limitations period of R. 4:69-6. See In re Ordinance 2354-12 of West Orange, Essex Cnty., 223 N.J. at 601 ("[A]ny expansion of the limitation period must be balanced against the important policy of repose expressed in the rule"); Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 423 (App. Div. 2002) ("Because of the importance of stability and finality to public actions, courts do not routinely grant an enlargement of time to file an action in lieu of prerogative writs")

(citing County of Ocean v. Zekaria Realty, 271 N.J. Super. 280 (App. Div.), cert. denied, 513 U.S. 1000 (1994)).

This case perfectly illustrates the identified danger. All land use decisions made by a local government inevitably affect certain nearby property owners. Here, the Committee did everything it could to minimize the impact of the proposed Redevelopment Plan by specifically locating it on property on the periphery of town "to limit impacts within the critical portion of the Township." (Pa98). In effectuating this Redevelopment Plan the Committee followed all dictates of the LRHL. In reliance upon this duly enacted, intently constructed ordinance, WHDUR and the Committee proceeded to negotiate and enter into Redevelopment and Financial Agreements, and WHDUR in turn expended millions in crafting a site plan application based thereon that has now been approved. (Pa268 – Pa283; Da27 – Da33). To allow Casella to challenge this ordinance nearly two hundred (200) days beyond the close of the appeal period would thwart the public interest by inverting the policy of repose. The result would be the needless frustration of time, resources, and reasonable expectations of WHDUR and the Committee who rightly relied upon these actions, merely because Casella disagrees with this by-right use of WHDUR's Property. Such a result would "subordinate the public interest in repose to the private interest of the objectors," which Rocky Hill forcefully rejected as "unacceptable as an

appropriate outcome." See Rocky Hill, 406 N.J. Super. at 403. It is an equally unacceptable outcome here, allowing this court to affirm the July 12, 2023 Order and Memorandum of Decision dismissing Casella's complaint.

B. Casella's Newly Raised Arguments Regarding Public Funds, Political Upheaval, and Density and Traffic Also Fail to Establish a Public Interest Meriting Enlargement. (Pa55 – Pa58).

In its opinion, the trial court noted the bases for enlargement of the time to appeal a municipal governing body's determination and found no facts present such a basis in this case. Seizing on that comment, Casella for the first time on appeal[5] attempts to interject speculative facts, in the hope of saving its late filing. Not only is this issue procedurally improper, see Neider v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973), it is also unsupported and should be rejected as erroneous.

1. Public Funds and Ratables (Pa55 – Pa58; Pb17 – Pb20).

Beginning with public funds and tax ratables, Casella first relies upon a small portion of the April 18, 2022 Committee meeting at which Ordinance No. 13-2022 was adopted.[6] (Pb17 – Pb18). In the cited portion, Mayor Louis Manzo

[5] Below, Casella relied on the mere numerosity of individuals at site plan hearings before the JLUB, and argued Willoughby was the controlling standard as opposed to Rocky Hill, with only limited references to increases in traffic and tax ratables. (2T, 28:3-9) (Pb1 – Pb2, Pb6 – Pb8, Pb20 – Pb21). Casella presented no claim this matter involves the use of public funds or "political upheaval" as set forth and analyzed in Rocky Hill.

[6] Notably, this transcript was not presented or relied upon by Casella below. See Selective Ins. Co. of America v. Rothman, 208 N.J. 580, 586 (2012) (noting that

discusses how warehousing and the Redevelopment Plan factor into the Committee's overall long-term fiscals plans for Harrison Township. (Id.) (citing 1T, 2:23-25, 3:15-20). He also mentions the anticipated PILOT agreement later reached with WHDUR. (Id.). Casella suggests this comment "effectively constitutes a choice with the direction of public funds because, unlike real estate taxes, school districts do not share in this revenue." (Pb18) (citing 1T, 9:19-24). Casella asserts the anticipated PILOT agreement and Mayor Manzo's comments demonstrate "this matter implicates both public funds and ratables." (Pb18). This is incorrect on both counts.

First, Casella's unavailing attempt to bootstrap the PILOT agreement into the "public interest" factors ignores the agreement was the subject of an entirely separate municipal act. The PILOT agreement between Harrison Township and WHDUR was adopted by the Committee via Ordinance No. 36-2022 on November 11, 2022, *nearly seven (7) months after the adoption of Ordinance No. 13-2022*. (Da30). Casella offers no support to link this act, entered more than one half year after the ordinance it challenges, as justifying a public interest. See Washington Twp. Zoning Bd. of Adj. v. Washington Twp. Planning Bd., 217 N.J. Super. 215, 225 (App. Div. 1987) ("'[E]ven where an act

"appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available").

of a municipal body may be regarded as so 'utterly void' as to be subject to collateral attack at any time, a direct review thereof must be 'within the time prescribed by law'") (quoting Marini v. Borough of Wanaque, 37 N.J. Super. 32, 40 (App. Div. 1955)). Moreover, while Casella quotes the transcript of the hearing when Ordinance No. 13-2022 was adopted, the cited comments from Mayor Manzo were made in the context of discussing Harrison Township's larger fiscal strategies, which generally include a transition away from traditional retail stores. Contrary to Casella's proffered inference, the Mayor did not state the town's financial viability or ratables are tied to this ordinance. (Pb17 – Pb18). A review of the entirety of his remarks reveal that Mayor Manzo also identified other sources of ratables the Committee was contemplating as alternatives to traditional retail, including medical offices, gas stations, and car washes. (See 1T, 4:11-19).

Precedent elaborating how the use of public funds may be a public interest meriting enlargement of the filing period is found in Concerned Citizens v. Mayor and Council of Princeton Borough, 370 N.J. Super. 429 (App. Div.), certif. denied, 182 N.J. 139 (2004). Concerned Citizens involved a challenge to a municipality's designation of valuable municipally-owned lands as an area in need of redevelopment. Concerned Citizens, 370 N.J. Super. at 435-36. More specifically, the Princeton Borough Council adopted a

development plan for construction of a "five-story parking garage, a public plaza, and seventy-five housing units" upon 2.13 acres of municipally-owned land located in the middle of Princeton's downtown. Id. at 436. In addition to fundamentally altering the town's popular downtown, the $13.5 million-dollar project was funded through the issuance of bonds and notes. Id. at 442. This court in Concerned Citizens held the project "implicated the expenditure of public funds through the issuance of bonds." Id. at 447. This court found the large number of citizen signatures opposing the project in combination with this use of public monies demonstrated a strong public interest. Id.

Here, there is no municipally-owned property involved or bonds or other forms of public investment utilized to fund this project. The PILOT agreement Casella now seizes upon represents money WHDUR will be paying directly to the town—not funds the town is raising to finance the challenged project.[7] These facts distinguish Concerned Citizens. Finally, the Redevelopment Plan is intentionally designed to be built on the perimeter of Harrison Township, away from town centers and at the border of its adjoining municipality Woolwich Township (which has already approved the project) and is adjacent to the New Jersey Turnpike and US

[7] Moreover, how the Committee later decides to allocate those funds will be the subject of separate municipal decision-making and financial planning that simply has no bearing on the legal question presented of whether the public has an interest in *this ordinance* that justifies enlarging the filing period.

322, major regional highways. (Pa98). Its purposeful location eliminates claims of intrusion within Harrison Township.

There simply is no support in the facts or the law for the proposition that this ordinance involves the use of public funds such that Casella should be excused from its failure to adhere to the limitations period of the court rules.

2. Political Upheaval (Pa55 – Pa58; Pb18 – Pb21).

Casella now claims error in the trial court's finding this matter involves no "political upheaval" that would evince a public interest. Casella supports this argument by (1) noting Mayor Manzo made 2020 YouTube comments criticizing warehousing, but two years later voted to adopt Ordinance No. 13-2022, and (2) citing crowds appeared at the November 17 and December 15, 2022, JLUB hearings on WHDUR's site plan application. (Pb18 – Pb21). Again, it bears repeating that, as the trial court recognized, the "substantial public opposition" Casella relies on during the November and December 2022 hearings related to WHDUR's *site plan application*, not Ordinance No. 13-2022. (Pa56). Moreover, those hearings were before the JLUB, an entirely separate municipal body, unrelated to the redevelopment ordinance.

Furthermore, Casella's focus on the purported inconsistency of Mayor Manzo's 2020 comments on warehousing is misplaced. As with the concept of public funds, Rocky Hill's reference to "political upheaval" identified the specific

facts of Willoughby, it was not a universal statement. Willoughby involved a political and legal quagmire in which the plaintiffs mounted an organized, successful campaign to unseat members of the Planning Board who supported the relevant ordinance—the new Board passed a new ordinance restoring the prior zoning. Willoughby, 306 N.J. Super. at 271-72. However, before that ordinance took effect the developer's site plan application (based on the old zoning) was rushed to approval. Id. Faced with this mess and an incomplete record, the court determined the interests of justice supported enlarging the period to challenge the municipal action. Id. at 277-78.

There is no comparison with the facts at hand. This case lacks complicated procedural history as well as the "well-publicized political campaign to elect candidates for municipal council . . . committed to repeal of the ordinance" found in Willoughby. Id. at 278. Rather, here we have only the vocal and disorganized opposition of Casella—a private entity—and its membership, advancing a parochial interest, well after Ordinance No. 13-2022 was adopted. The Mayor and Township Committee, as the elected representatives of the citizens of Harrison Township as a whole, passed Ordinance No. 13-2022 on April 18, 2022. (Pa90). Mayor Manzo's 2020 YouTube statements are immaterial and certainly not analogous to "political upheaval." (Pb18 – Pb19). Appellant cannot successfully maintain that one

official changing his mind on an issue over a three-year period is equivalent to a town voting out an entire municipal board. Rather, Casella merely "slumbered on [its] rights" by failing to file its appeal anywhere near the required forty-five day deadline of May 23, 2022, and offers no justification for its delay beyond purported ignorance as to the existence of its cause of action. See Southport Dev. Group, Inc. v. Twp. of Wall, 310 N.J. Super. 548, 556 (App. Div.), certif. denied, 156 N.J. 384 (1998) ("It is also appropriate to look to the previous actions or inactions of the plaintiff; if it sat idly by in the past, its entitlement to enlargement of the time limit is weakened").

3. Density and Traffic (Pa55 – Pa58; Pb21 – Pb23).

Casella attempts to conjure another "public interest" issue regarding density and traffic.

First, Casella overstates the "density" of the warehouses permitted by the Redevelopment Plan, stating WHDUR's site plan application "proposed four supersized buildings including one approaching 1,000,000 square feet . . . ." (Pb21). This purposefully misrepresents the nature of WHDUR's site plan application (which, again, is not the subject of Casella's challenge here). The Redevelopment Plan itself makes clear that only two of the four proposed buildings are located in Harrison Township, and the footprints for buildings "B" and "D" are *located entirely in Woolwich Township*. (Pa92 – Pa113). Additionally, of the other two buildings,

"A" (which will have 963,316 square feet in area and is presumably the "one approaching 1,000,000 square feet" Casella references) and "C" are bisected by the municipal boundary. (Id.). Thus, only a portion of two of the proposed four buildings will be located in Harrison Township, thus revealing the disingenuous and misleading inference fostered by Casella.

Next, Casella quotes a portion of JLUB Resolution No. 10-2023 that discusses alleged traffic issues related to the site plan application as evidence of the same. However, Casella there fails to mention that Resolution No. 10-2023 was overturned as arbitrary, capricious, and unreasonable by Judge Telsey in August 2023, following a trial on WHDUR's prerogative writs complaint. (See Pa267 – Pa283). That opinion specifically took the JLUB to task for its failure to support these alleged "traffic issues" with *any evidence*, saying in relevant part:

> Clearly, where there are four experts in the field [all put forth by WHDUR], versus unsupported questioning by a layperson with no apparent expertise, it is arbitrary, capricious, and unreasonable for the Board to accept the layperson's suggestions over the scientific testimony and reports of the experts.
>
> . . .
>
> The issue of [traffic] ingress and egress was a last-minute attempt to find some reason to deny the application but was not supported by any evidence. [The JLUB's] decision was based entirely on a last-minute, unsupported colloquy held between Deputy Mayor DeLaurentis and [WHDUR's Traffic Engineer] Michael Brown.

> . . .
>
> [T]he Resolution itself only generally refers to the fact that WHDUR failed to meet its burden without detailing any specifics regarding the actual concerns of ingress and egress. Absent an ordinance to rely upon, and absent any specific reason why the ingress and egress is dangerous, the Court is left with no alternative but to find that the Board's decision is arbitrary, capricious, and unreasonable. Essentially, the Board concluded that it is denying the application simply because it says so. There is no reference to the WHDUR's failure to comply with any ordinance or the [Municipal Land Use Law]. This is contrary to the law.
>
> [Pa278, Pa279, Pa281, Pa282].

By citing the now-overturned Resolution No. 10-2023 as evidence of purported "traffic issues," Casella seeks to piggy-back on the JLUB's failed attempt to do the same, which the court held was "not supported by any evidence." (Pa281). In fact, that WHDUR's site plan application ran afoul of any documented traffic standard is directly contradicted by its traffic impact report, which was reviewed and approved by experts from Harrison and Woolwich Townships, Gloucester County, and the New Jersey Department of Transportation. (Pa278). Casella's attempt to use an arbitrary, capricious, unreasonable, and since-reversed JLUB Resolution to support its ill-defined traffic argument should be viewed with deep skepticism.

Finally, although Casella does not provide any case law to support its contention these alleged density and traffic issues represent a public interest, notably Willoughby and Concerned Citizens are both distinguishable on this point. Indeed,

those courts were concerned about likely traffic impacts on *critical portions* of the town. In Willoughby, it was an impact on traffic flow on a major town thoroughfare, see Willoughby, 306 N.J. Super. at 277-78, and in Concerned Citizens it was the impact of developing a multi-level parking facility with related improvements in the middle of Princeton's downtown. Concerned Citizens, 370 N.J. Super. at 437-38.

Here, the Property upon which the Redevelopment Plan is located sits on the periphery of town "in order to take advantage of the regional transportation network and to limit impacts within the critical portion of the Township." (Pa98). As a matter of law this is plainly not the type of density and traffic concerns the Willoughby and Concerned Citizens courts took note of. Even if it were, those courts found density/traffic concerns there were additional public interest concerns to justify enlargement. See Willoughby, 306 N.J. Super. at 277-79 (noting substantial traffic impacts, as well as political upheaval related to municipal elections and an usurpation by the town planning board of the municipal governing body's zoning authority); Concerned Citizens, 370 N.J. Super. at 446-47 (noting traffic issues, as well as improper redevelopment designation of public lands, the "expenditure of public funds through the issuance of bonds," and "numerous violations and misapplication of the LRHL"). As set forth above, there are no traffic concerns and no other issues present in this case to support a public concern. Therefore, the trial court

correctly held as a matter of law that speculative density and traffic concerns do not justify an enlargement of the 45-day appeal period.

II. THE TRIAL COURT CORRECTLY DETERMINED THE APRIL 8 NOTICE OF THE INTRODUCTION OF THE REDEVELOPMENT ORDINANCE SATISFIED THE REQUIREMENTS OF N.J.S.A. 40:49-2. (Pa58 – Pa62).

On this point, Casella renews its arguments that (1) N.J.S.A. 40:49-2(a) requires a "clear and concise statement of purpose" that must be "separate and apart" from the ordinance's title; and (2) even if it does not, the April 8 Notice fails to substantively provide the required notice. The trial court correctly ruled Casella's assertions of enhanced notice requirements is not correct, as a matter of law.

A. The Trial Court Correctly Held that N.J.S.A. 40:49-2(a) Permits Publication by Title Where the Ordinance's Title Provides a Sufficient Statement of the Purpose of the Ordinance. (Pa58 – Pa62).

Casella's first statutory interpretation argument seeks enhanced notice under N.J.S.A. 40:49-2(a). For context, the statute requires:

> a. Every ordinance after being introduced and having passed a first reading, which first reading may be by title, shall be published in its entirety or by title or by title and summary at least once in a newspaper published and circulated in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality, together with a notice of the introduction thereof, the time and place when and where it will be further considered for final passage, a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, and the time and place when and where a copy of the ordinance can be

> obtained without cost by any member of the general public who wants a copy of the ordinance.
>
> [N.J.S.A. 40:49-2(a) (emphasis added)].

Casella suggests use of the words "together with" means everything following that phrase, including the requirement of a "clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance" must "exist separate and apart from any of the alternatives provided for in the first part of the statute." (Pb25 – Pb26). In other words, even if a publication of notice is "by title," as permitted by the first part of N.J.S.A. 40:49-2(a), the clear and concise statement of purpose must be set forth separately from the title, even if that title itself clearly and concisely states the purpose of the ordinance. This court has consistently rejected such an argument.

For instance, in Meredith v. Mayor and Borough Council of the Borough of Somerdale, No. CAM-L-4946-19 (N.J. Sup. Ct. Law Div. May 5, 2020) (Pa295 – Pa321), aff'd, 2022 WL 1816530 (N.J. Super. Ct. App. Div. June 3, 2022) (Pa233 – Pa239), the Appellate Division affirmed substantially for the reasons expressly set forth by Assignment Judge Silverman Katz, who held:

> ***Plaintiff argues that the clear and concise statement of purpose is inadequate because it is included within the text of the ordinance itself . . . Plaintiff, however, misstates the requirements of the notice statute. N.J.S.A. 40:49-2 does not require that the statement of purpose be wholly separate and independent of the text of the ordinance. It merely requires that the notice include a***

> ***statement setting forth the purpose of the ordinance***, which this notice clearly does since the Evergreen Project area was designated as such for the construction of a grocery store at this exact location.
>
> [Meredith, slip op. at 20 (Pa314) (emphasis applied)].

Similarly, in Gentless v. Borough of Stratford, No. CAM-L-3344-17 (N.J. Super. Ct. Law Div. June 5, 2018) (slip op. at 13) (Pa322 – Pa342), aff'd, 2019 WL 2563807 (N.J. Super. Ct. App. Div. June 21, 2019) (Pa240), the court rejected this argument, and explained that under N.J.S.A. 40:49-2, "the Council had an option between publishing the ordinance in its entirety, by title only, or by title and summary" and "*could have minimally published only the title of the ordinance . . .* ." (See Pa334) (emphasis added). This holding was also affirmed by this court "for the reasons stated in the judge's comprehensive written opinion" and because "Defendant's arguments are without sufficient merit to warrant further discussion." Gentless, 2019 WL 2563807, at *1 (Pa240).[8]

[8] Casella tries to sweep these opinions under the rug merely by noting the opinions are unpublished and the notices at issue in those cases were different. (Pb33 – Pb35). Of course, no two published notices are the same. The value of these opinions is this court's affirmance of trial court rejections of Casella's claim that N.J.S.A. 40:49-2(a) requires the statement of purpose be "separate and apart" from the title or text of the ordinance itself. As such, they are relevant and persuasive authority regarding Casella's instant attempt to again make this claim. See Sauter v. Colts Neck Vol. Fire Co. No. 2, 451 N.J. Super. 581, 600 (App. Div. 2017) ("*Rule* 1:36-3 does not prevent a party from properly calling an unpublished opinion to the attention of the court . . . nor prevent the court from acknowledging the persuasiveness of a reasoned decision on analogous facts") (internal citations omitted).

The trial court here rejected this interpretation, doing so in the strongest terms, holding:

> In addition to the purpose being clear in the Title itself, Plaintiffs argument that a separate explanation of purpose is required, does not make sense under a plain reading of the statute. If the title of the Ordinance sufficiently explains the purpose of the Ordinance (which it does in the present matter), it would make no sense to state the purpose a second time, which is what the Plaintiff's reading of the statute would require. If anything, this could confuse the reader.
>
> [Pa61].

The courts—both trial and appellate—have noted requiring a notice to restate the ordinance's purpose where, as here, the title of the ordinance clearly does so "does not make sense under a plain reading of the statute." (Pa61). This conclusion forecloses Casella's attempt to now engraft an additional qualification absent from, and contrary to, the statute's plain language. See DiProspero v. Penn, 183 N.J. 477, 494 (2005) ("We cannot write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment, or engage in conjecture . . . which will circumvent the plain meaning of the act . . . [o]ur duty is to construe and apply the statute as enacted") (internal quotation and citation omitted).

Casella adds an assertion suggesting the legislative history of N.J.S.A. 40:49-2,[9] reflects an intent justifying its interpretation. (Pb27 – Pb29). It clearly does not. In fact, nothing in the legislative history supports this claim. (See Pa156 – Pa232). Casella cites the Senate Community Affairs Committee Statement to Senate Bill No. 7 that "[t]he Bill further provides that if the publication of the ordinance is by title, the publication must contain a clear and concise statement setting forth the purpose of the ordinance . . . ." (Pb27) and a similar Statement from the Senate Budget and Appropriations Committee that "Sections 30 and 31 amend R.S. 40:49-2 . . . to permit the publishing of proposed municipal ordinances by title, rather than in their entirety, with a concise statement of the purpose of the ordinance and a notice of the time and place for obtaining copies." (Pb28). Neither of these statements express an intent for the notice statute to require a statement of purpose "separate and apart" from the publication by title, a publication method these two quotes explain is permissible. The legislative history supports the conclusion that publication by title

[9] Casella provided these same legislative history materials below. Therefore, while the trial court's opinion does not address them, its rejection of Casella's proffered interpretation of the statute it claims this legislative history supports reflects its rejection of Casella's characterization of that history. (See Pa58 – Pa61). Furthermore, the trial court's holding a plain reading of the statute belies Casella's interpretation thereof demonstrates there is no ambiguity in the statute, rendering Casella's resort to legislative history improper in any event. See State v. Hoffman, 149 N.J. 564, 578 (1997) ("When construing a statute, the first consideration is the statute's plain meaning"); State v. Marchiani, 336 N.J. Super. 541, 546 (App. Div. 2001).

is permissible and sufficient under N.J.S.A. 40:49-2(a) so long as that publication by title clearly states the purpose of the ordinance, as it does in this case. (Pa60 – Pa61).

B. The Trial Court Correctly Held the April 8 Notice Sufficiently Conveyed the Purpose of the Ordinance Was to Adopt a Redevelopment Plan. (Pa58 – Pa62).

Casella also suggests if the title of Ordinance No. 13-2022 can serve as the statement of purpose under N.J.S.A. 40:49-2(a), it fails to do so. Casella cites as support a line of cases interpreting an entirely separate provision, N.J.S.A. 40:49-2.1, which the trial court correctly held does not apply to this case. (See Pa58) ("The Court does not find that N.J.S.A. 40:49-2.1 applies to this case. N.J.S.A. 40:49-2.1 applies to publication of ordinances that create zoning changes under the Municipal Land Use Law"). Indeed, N.J.S.A. 40:49-2.1 applies to "any ordinance adopted pursuant to the [MLUL] . . . which is in length six or more octavo pages of ordinary print . . . ." N.J.S.A. 40:49-2.1. Ordinance No. 13-2022, however, is only two (2) pages in length, see Pa90 – Pa91, and adopts a redevelopment plan—the adoption of redevelopment plans is instead governed by the LRHL. See N.J.S.A. 40A:12A-7(c) ("Notwithstanding the provisions of the [MLUL] or of other law, no notice beyond that required for the adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan or subsequent amendments thereof") (emphasis added). The statutory provision that sets forth the general notice

requirements for the adoption of ordinances is N.J.S.A. 40:49-2. See Hirth v. City of Hoboken, 337 N.J. Super. 149, 165 (App. Div. 2001) ("[T]he procedures of the [MLUL] do not apply to adoption of a redevelopment plan, including the zoning component . . . the [LRHL] contains its own procedures for adoption of a redevelopment plan").

Casella seeks to maneuver around this, arguing the cases cited interpreting zoning ordinance amendments should logically "apply to notices for all ordinances, including ordinances adopting redevelopment plans." (Pb32). The reason the same standard does not apply, as recognized in Hirth, 337 N.J. Super. at 165, is because the Legislature in the LRHL clearly and specifically stated that "*[n]otwithstanding the provisions of the [MLUL] or of other law,* no notice beyond that required for the adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan . . . ." N.J.S.A. 40A:12A-7(c) (emphasis added). Therefore, Casella's assertion the same standard should apply to both N.J.S.A. 40:49-2.1 and N.J.S.A. 40:49-2 is neither supported by the Legislature, nor appellate case law.

N.J.S.A. 40:49-2.1 sets forth a higher standard of notice, requiring the published notice provide a "brief summary of the main objectives or provisions of the ordinance," whereas N.J.S.A. 40:49-2(a) merely requires a "clear and concise statement . . . setting forth the purpose of the ordinance." One need not resort to

anything beyond the plain text of the statutes to see that a "brief summary of the main objectives or provisions" is more onerous than a "clear and concise statement of purpose." Moreover, that N.J.S.A. 40:49-2.1 imports a higher "summary" standard makes sense because the provision applies to ordinances of at least six (6) pages in length and replaced a predecessor statute that required publication in full of all land use ordinances. See Rockaway Shoprite Assocs., Inc. v. City of Linden, 424 N.J. Super. 337, 345 (App. Div. 2011). As such, the "'summary' being substituted for the full text of the ordinance" by this provision has been interpreted to require a higher standard of "appris[ing] interested readers throughout the municipality of the zoning changes contemplated as well as their nature and import." Id.

Casella ignores these important distinctions set forth in the case law. For example, in Wolf v. Mayor and Borough Council of Borough of Shrewsbury, 182 N.J. Super. 289, 292-96 (App. Div. 1981), certif. denied, 89 N.J. 440 (1982), the Borough of Shrewsbury passed a 75-page ordinance that rezoned three tracts representing approximately 20% of the town's land mass. The pre-adoption notice published by the town stated only that "[t]he main objectives of these revisions are to comply with the requirements of said [MLUL] by conforming to the provisions of the Master Plan of the Borough of Shrewsbury . . . ." Id. at 292. The court held this notice failed under N.J.S.A. 40:49-2.1 to adequately provide a "brief summary of the main objectives or provisions of the ordinance" because it was "not sufficient

to alert a reasonably intelligent reader as to the nature and import of the *substantial changes in the zone plan* proposed by the borough." Id. at 295-96 (emphasis added). Further, a "*notice of a proposed change in the zoning laws* must be reasonably sufficient and adequate to inform the public of the essence and scope of the proposed changes." Id. (emphasis added).

Similarly, in Rockaway Shoprite, the municipality substantially changed the relevant existing zoning in addition to creating two entirely new zoning districts to allow development of forty-five acres fronting two major highways. 424 N.J. Super. at 340-42. In publishing notice of that ordinance's introduction, the municipality only identified the ordinance being amended, and the location of the relevant properties. Id. Applying N.J.S.A. 40:49-2.1, the court held such a notice "was legally deficient in apprising the public of the substantive changes to the municipality's zoning effected by the proposed ordinance." Id. at 344.[10]

[10] Casella also cites Cotler v. Twp. of Pilesgrove, 393 N.J. Super. 377, 379-78, 386-88 (App. Div. 2007) and La Rue v. East Brunswick Twp., 68 N.J. Super. 435, 449-52 (App. Div. 1961). These cases are similarly not instructive, as both dealt with zoning ordinances, not redevelopment ordinances, with Cotler applying the higher standard of N.J.S.A. 40:49-2.1 and citing Wolf. The issue in La Rue was a municipality's complete failure to publish any notice in anticipation of a hearing, which, in addition to having no relevance to this case factually, implicated a separate (since-repealed) statutory provision "applicable solely to zoning legislation and extending the advance publication date to a minimum of 10 days prior to public hearing." La Rue, 68 N.J. Super. at 450.

Here, the standard of N.J.S.A. 40:49-2.1 discussed in Wolf and Rockaway Shoprite, put forth as controlling by Casella, does not apply because Ordinance No. 13-2022 is two (2) pages long and does not incorporate "substantial changes in the zone plan" of the relevant Property. Wolf, 182 N.J. Super. at 295-96. Indeed, warehousing has been a permitted land use within the relevant zoning since at least the 1980s. (Da7) (2T, 18:15-25). Therefore, the Redevelopment Plan adopted a land use that was *already permitted* under the applicable zoning for *decades*, undercutting Casella's reliance upon these authorities, which discuss significant changes in zoning in conjunction with other municipal action. See Rockaway Shoprite, 424 N.J. Super. at 344; Cotler, 393 N.J. Super. at 379-78, 386-88; Wolf, 182 N.J. Super. at 292-96.

Most simply, Casella's position is based upon an inapplicable statutory provision and cases interpreting it that are neither instructive nor dispositive. The heightened notice standard of N.J.S.A. 40:49-2.1 is designed to ensure that long, complicated land use ordinances that effectuate significant changes in municipal zoning schemes, outside of the adoption of redevelopment areas, are noticed in a way the average citizen can understand. Rockaway Shoprite, 424 N.J. Super. at 344; Wolf, 182 N.J. Super. at 292-96. It is not meant to apply to Ordinance No. 13-2022,

which adopts a redevelopment plan subject to N.J.S.A. 40A:12A-7(c) that involves only a land use consistent with longstanding permissible zoning.[11]

Casella's issue with the April 8 Notice is it did not specifically use the term "warehouse" or summarize the "type of warehouse" the Redevelopment Plan would ultimately facilitate. (Pb34) (2T, 22:5-17). Yet, as the trial court correctly noted: "This argument conflates the actual purpose of the Ordinance. The only purpose of the Ordinance is to adopt a redevelopment plan. The redevelopment plan has warehousing implications, but the Ordinance does not. The Township is required to publish the purpose of the Ordinance not the purpose of the redevelopment plan." (Pa61). The reason for this is simple—the other information in the April 8 Notice as required pursuant to N.J.S.A. 40:49-2(a), includes "the time and place when and where [the ordinance] will be further considered for final passage . . . and the time and place when and where a copy of the ordinance [and the Redevelopment Plan] can be obtained without cost by any member of the general public who wants a

[11] Casella suggests the Redevelopment Plan's implementation of superseding zoning removes this ordinance, as a redevelopment plan ordinance, from the ambit of the LRHL and makes it subject to provisions such as N.J.S.A. 40:49-2.1 or N.J.S.A. 40:55D-62.1 that specifically deal with zoning ordinances. (Pb32, Pb35 n.8). This, however, is contrary to this Court's decision in Hirth, 337 N.J. Super. at 165, and the Legislature's decision in the LRHL to assign a different notice standard to redevelopment plan ordinances.

copy,"[12] which made the purpose of the Redevelopment Plan abundantly clear to any interested citizen. The April 8 Notice additionally identified the relevant Property by block and lot number, which the trial court noted was "not required but provides additional information to the public and informs as to who may have an interest or be affected by the adoption of the Ordinance." (Pa60).

Finally, the trial court correctly noted the troubling, slippery slope policy implications were Casella's argument that the April 8 Notice needed to provide more detailed information about the substance of the Redevelopment Plan adopted. (Pa61). Namely, the issue is "[o]rdinances can be very nuanced, and some may have numerous purposes[;] [t]o identify this information and include it in a concise statement of purpose could be an extremely difficult task and goes beyond what is contemplated in the statute." (Id.). Indeed, municipal ordinances, particularly land use ordinances and especially those like this one adopting a redevelopment plan, often contain numerous and complex land uses and conditions that extend well beyond a mere recitation of a type of use. Requiring a municipal clerk to parse through such plans and synthesize them into a substantive summary beyond a simple statement of purpose both improperly conflates the higher standard of N.J.S.A. 40:49-2.1 and defeats the Legislature's intent in enacting N.J.S.A. 40:49-2(a). Most

[12] Casella does not dispute the April 8 Notice contained all information required under the notice statute, with the exception of the clear and concise statement of purpose it alleges was lacking. (Pb6).

alarmingly, imposing the higher summary standard for redevelopment ordinances at Casella's request would raise the standard of notice for *all municipal ordinances*, as the same standard of N.J.S.A. 40:49-2(a) applies to both redevelopment ordinances and all other non-zoning ordinances. Ultimately, to a challenger like Casella who simply objects to the ordinance on a substantive level, no amount of notice will be "enough." The trial court properly denied Casella's invitation to heighten the notice standard as something that would frustrate the Legislature's intent, and unduly burden municipalities across the state.

III. THE TRIAL COURT CORRECTLY APPLIED THE STANDARD OF REVIEW FOR A MOTION TO DISMISS PURSUANT TO R. 4:6-2(e). (Pa52 – Pa62).

Casella finally suggests the trial court erred in its application of the standard of review on a motion to dismiss pursuant to R. 4:6-2(e). Casella complains it did not get to brief the merits of its other challenges to Ordinance No. 13-2022, including that the ordinance was allegedly inconsistent with the Harrison Township Master Plan and failed to include an explicit amendment to the zoning map. (Pb39). Casella also claims the trial court "inverted the Printing Mart standard of review" by affording defendants the "benefit of any doubt." (Pb39 – Pb40). Finally, Casella reiterates its arguments regarding insufficiency of notice under N.J.S.A. 40:49-2 and claims the trial court failed to make certain "reasonable inference[s] of fact" in its favor on that issue.

A. The Trial Court Correctly Applied the Motion to Dismiss Standard. (Pa52 – Pa62).

Under R. 4:6-2(e), a complaint may be dismissed where, as here, the facts alleged in the complaint fail to state a viable claim as a matter of law. New Jersey courts "ordinarily take a liberal view in determining whether a complaint states a cause of action." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). This "liberal view" seeks to determine "whether a cause of action is 'suggested' by the facts." Id. (quoting Velantzas v. Colgate–Palmolive Co., 109 N.J. 189, 192 (1988)). Courts search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned . . . opportunity being given to amend if necessary." Id. (internal quotation omitted).

However, while a court at the motion to dismiss stage is "not concerned with the ability of plaintiffs to prove the allegation contained in the complaint," id., a court "must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). This standard protects defendants from the time and expense of defending against meritless claims. See Horton v. Am. Inst. for Mental Studies, 145 N.J. Super. 550, 552 (Law Div. 1976) (noting in the summary judgment context that "[a] defendant is as entitled to be speedily rid of baseless claims as a plaintiff is entitled to raise them"). Moreover, even the Printing Mart court added the caveat that dismissals without prejudice are the appropriate remedy for a complaint that

fails to state a claim "*barring any other impediment such as a statute of limitations . . . .*" Printing Mart, 116 N.J. at 772 (emphasis added).

Therein lies the problem for Casella—the trial court did not consider its other challenges because Casella was procedurally barred from bringing them due to its failure to comply with the forty-five day appeal period of the prerogative writ rules. See Howell Props., Inc. v. Twp. of Brick, 347 N.J. Super. 573, 587 (App. Div. 2002) ("For whatever reason, defendants chose not to appeal, and thus were procedurally barred from challenging the ordinance") (citing R. 4:69-6(a)); City of Hoboken v. City of Jersey City, 347 N.J. Super. 279, 299 (Law Div. 2001) (noting that municipal actions falling "outside of this jurisdictional window" of the prerogative writ forty-five day appeal period are "not susceptible to collateral attack"). Casella acknowledges its complaint was filed out-of-time, and thus its only opportunity to receive a merits review of its challenges to this ordinance were if the court exercised its discretion under R. 4:69-6(c) to lift the procedural bar. As set forth at length above, the trial court did not err in determining, as a matter of law, that such enlargement was not justified in this case. Cf. Milford Mill 128, LLC v. Borough of Milford, 400 N.J. Super. 96, 109 (App. Div. 2008) (affirming trial court's grant of motion to dismiss under R. 4:6-2(e) because prerogative writs complaint was untimely and stating "if a plaintiff's complaint is manifestly untimely or procedurally deficient, the defendant should not be compelled to suffer the burdens

of continued litigation"). Appellate courts will not interfere with a trial court's exercise of such discretion unless the trial judge "pursue[d] a manifestly unjust course." Gillman v. Bally Mfg. Corp., 286 N.J. Super. 523, 528 (App. Div.), certif. denied, 144 N.J. 174 (1996). Dismissing Casella's complaint filed nearly two hundred (200) days out of time was not "manifestly unjust." Id.

To support its claim the trial court "inverted" the standard of review, Casella quotes out of context a single paragraph from the trial court's Memorandum of Decision wherein the court provides certain examples demonstrating Casella's pleadings do not demonstrate a "public interest." (Pb40) (citing Pa56-Pa57). Specifically, the trial court noted Casella's pleadings did not establish things like whether the public who appeared "were actually Township residents, how many people appeared, and whether the people that did appear represented a fair cross section of the Township as opposed to just homeowners who live close to the project." (Pa56). Casella conveniently omits the following paragraph, which begins by stating: "Even assuming the public had an interest in Ordinance 13-2022, the Court finds such interest to be akin to the public's interest in Rocky Hill, thus such interest is not the type of interest contemplated under the limitation's exception." (Pa57).

This clearly demonstrates the alleged "fact issues" the trial court identified were simply illustrative of the *types of allegations* that could possibly reflect a public

interest, and were not relied upon or dispositive to the court's holding. In other words, in accord with the "indulgent" standard of review required by Printing Mart, the trial court assumed for purposes of the motion the truth of Casella's allegations that the public had an interest in Ordinance No. 13-2022. It then decided, *as a matter of law*, the nature of this interest, as alleged by Casella and interpreted under controlling appellate case law, was private, not public, and thus not did not merit an enlargement of time under prevailing standards. As such, the complaint failed to state a claim upon which relief can be granted, and the court correctly applied the standard of review for a motion to dismiss.[13]

Finally, Casella attempts to dress up as a standard of review issue new claims regarding alleged insufficient notice. Specifically, Casella claims the trial court should have inferred a "layperson would not understand" the April 8 Notice's reference to "adopting a redevelopment plan" referred specifically to warehousing implications and superseding zoning, and should have inferred a layperson "would not associate a series of block and lot numbers with particular properties." (Pb42). For one, Casella did not present these issues to the trial court below, and thus has waived them here. See Nieder, 62 N.J. at 234; Selective Ins. Co. of America, 208

[13] Even if the trial court did err by citing "fact issues" in the one paragraph Casella quotes, such error was harmless as it was not "clearly capable of producing an unjust result." R. 2:10-2. The trial court's determination the interests of justice did not merit an enlargement of the filing period under R. 4:69-6(c) was a question of law correctly decided within the trial court's discretion.

N.J. at 586. Even if it had, this again misconstrues the trial court's opinion. The court did not "assume" an interested person would understand these things, it merely held the notice statute only required the notice to "provide the public sufficient information so they will know the purpose of the Ordinance and may further inquire if they choose to do so." (Pa60). As the court went on to explain in the opinion:

> The reason for requiring publication prior to the adoption of an ordinance is to give residents the opportunity to learn that there may be something that they may want to become more informed about and to advise them how to do so. If a resident is interested in the redevelopment plan being adopted, it is their responsibility to conduct the necessary research into the substance of the plan and the publication informs them of how to obtain a copy of the plan. To require governing bodies to include specific phrasing that goes to the substance of a plan being adopted would be a slippery slope.
>
> [Pa61].

As the above demonstrates, the trial court did not infer a layperson would understand the implications of the Redevelopment Plan or how to associate lot and block numbers with particular properties. The court held the notice statute only required the published notice to give residents enough information to decide if they should become more informed about the subject of the ordinance, and provide the means to do so should they desire. Casella did not accept this invitation, and it only has itself to blame.

CONCLUSION

For all the aforementioned reasons, the Court should affirm the trial court's July 12, 2023 Order and Memorandum of Decision granting the Defendants' Motions to Dismiss.

Respectfully submitted,

ARCHER & GREINER, P.C.

/s/ Christopher M. Terlingo

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Dated: December 15, 2023

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LETTER BRIEF IN LIEU OF FORMAL REPLY BRIEF ON BEHALF OF PLAINTIFF/APPELLANT CASELLA FARMS HOMEOWNERS ASSOCIATION, INC.

December 29, 2023

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

Re: Casella Farms HOA v. Harrison Tp., et al.
Docket No. A-003880-22
Civil Action: On Appeal from a Final Judgment of the Superior Court of New Jersey, Law Division, Gloucester County
Sat Below: Hon. Benjamin C. Telsey, A.J.S.C.

To the Honorable Judges of the Appellate Division:

This firm represents plaintiff/appellant Casella Farms Homeowners Association, Inc. ("Casella") in the above-referenced matter. Pursuant to R. 2:6-2(b), please accept this letter brief in lieu of a more formal brief in reply to the opposition briefs submitted by defendants/respondents Mayor and Township Committee of the Township of Harrison ("Township") and WH Development Urban Renewal, LLC ("WHDUR").

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PROCEDURAL HISTORY

Casella incorporates the Procedural History set forth in its previously filed Brief in Support of Appeal as if the same were fully set forth at length herein.

STATEMENT OF FACTS

Casella incorporates the Statement of Facts set forth in its previously filed Brief in Support of Appeal as if the same were fully set forth at length herein.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THIS MATTER DID NOT IMPLICATE THE PUBLIC INTEREST EXCEPTION WARRANTING AN ENLARGEMENT OF THE 45-DAY APPEAL PERIOD PURSUANT TO R. 4:69-6(c) (Pa55-Pa58)

Notwithstanding defendants' strained arguments to the contrary, the interest of justice (as contemplated by R. 4:69-6(c) and the relevant decisional law) clearly militates in favor of an enlargement of time and allowing Casella's challenge to Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan to proceed on its merits. The record in this matter demonstrates that the legislation in question touches the public interest in a variety ways, including through the expenditure of public funds, the generation of ratables, political upheaval, density and traffic. Moreover, this is not a situation where Casella adopted a "wait and see" approach prior to commencing litigation. The Township's publication of a statutorily-deficient notice left Casella and the public at large completely in the dark as to Ordinance No. 13-2022's purpose until the hearing conducted by the Harrison Township Joint Land Use Board on WHDUR's site plan application a half a year

later, which site plan application was based upon the newly-established zoning standards. See Gregory v. Borough of Avalon, 391 N.J. Super. 181, 190 (App. Div. 2007) ("[A] close relationship between the actions of different agencies of municipal government is a circumstance that weighs in favor of an enlargement of time for challenging the action of the agency that acted first."). But for the Township's deficient notice, Casella would have known of Ordinance No. 13-2022's purpose and would have timely filed this lawsuit.[1]

WHDUR devotes a significant portion of its opposition brief contending that the instant case is more analogous to Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384 (App. Div. 2009) than Willoughby v. Planning Board of Tp. of Deptford, 306 N.J. Super. 266 (App. Div. 1997). (WHDURb10-12). The attempted distinction is ineffective, however, because, as explained in Casella's initial Brief in Support of Appeal, the circumstances in the present case warrant an enlargement of time under the

[1] This of course assumes, arguendo, that the governing body would have still adopted Ordinance No. 13-2022 and would not have acted differently with more robust public participation as the trial court observed subsequently occurred when Mayor Manzo participated in the consideration of and voiced opposition to WHDUR's site plan application as a member of the Harrison Township Joint Land Use Board. The notion that this public participation somehow rose to the level of "intimidation," however, as the Township suggests in its opposition brief is completely unsupported by the record and is patently ridiculous. (Townshipb9).

principles endorsed in both Rocky Hill and Willoughby. In this same vein, defendants' efforts to argue that this case must fall within the exact parameters established by Rocky Hill compel rejection. The Supreme Court has made clear that the potential considerations justifying an enlargement of time are much more flexible and far broader. See Hopewell Valley Citizens' Group, Inc. v. Berwind Property Group Development Co., L.P., 204 N.J. 569, 583-584 (2011).

Disappointingly, in arguing their positions on the issue of timing defendants make several statements in their briefs which go beyond zealous advocacy and are demonstrably false and/or misleading. For example, in an attempt to minimize the impact of the new zoning regulations created by Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan, WHDUR argues that "[t]his same project Casella portrays as invasive could have been built on this property *at any time since at least the 1980s*." (WHDURb15) [emphasis original]. This is simply not true. The new overlay zoning established by the Kings Landing Redevelopment Plan enabled WHDUR to submit a by-right site plan application with warehouse buildings 50 times larger than those permitted by the underlying zoning and at almost double the permitted height. (Pa114-Pa115). Put another way, the Township's passage of Ordinance No. 13-2022 allowed WHDUR to avoid

substantial use variance relief which would have otherwise been required pursuant to N.J.S.A. 40:55D-70.d.

To be clear, the warehouses that WHDUR seeks to develop bear no resemblance whatsoever to those permitted by the underlying C-57 Flexible Planned Industrial-Commercial District. These types of industrial-scale, so-called "high cube" warehouses with automated racking systems are a recent invention spurred on by e-commerce businesses such as Amazon. In fact, and further underscoring the public interest at issue in this case, the proliferation of these new massive warehouses has caused concern throughout the State and led the New Jersey Office of Planning Advocacy to issue a 48-page guidance document in September 2022. https://nj.gov/state/planning/assets/pdf/warehouse-guidance.pdf. This document specifically observes that "[w]hat once was a less conspicuous land use limited to industrial parks in peripheral areas, distribution warehouses have become a much more recognizable feature on the landscape in towns across New Jersey, as logistics companies pursue more and increasingly larger projects." Id. at 4. Sufficed to say, and despite any suggestion to the contrary, WHDUR could not have built this project in the 1980s.

The Township similarly attempts to minimize the impact of the new overlay zoning suggesting that the greater development intensity facilitated by Ordinance

No. 13-2022 "is not so significantly different to what was permitted without the Redevelopment Plan". (Townshipb46). Focusing only on the two dimensional controls and not the enhanced height component which is essential to the function of a high cube warehouse with an automated racking system, the Township calculates that the C-57 zoning would enable a by-right plan with 480,000 square feet of warehouse space on the Harrison side of the development comprised of 20,000 square foot buildings spread over 24 separate 3-acre lots. Whether purposely or otherwise, the Township's overly-simplistic hypothetical yield plan neglects to account for the internal roads and other access drives that would consume much of this acreage and be needed in order to facilitate ingress and egress to and from these 24 separate lots to the adjacent right-of-way. The Township similarly omits mention of other space-saving benefits accruing from larger buildings, such as a lesser number of stormwater management facilities as well as the ability to avoid the loss of entire lots because of environmental constraints such as wetlands and wetlands buffer areas. (Townshipa091a). In sum, and even without accounting for the difference in cubic feet enabled by the near-double permitted height standard, no comparison exists between the new and the old zoning insofar as the types of warehouses and the intensity of development which the new zoning enables.

The defendants' arguments concerning an alleged need for repose in this case similarly lack a basis in fact and are rife with hyperbole. For example, WHDUR claims that following Ordinance No. 13-2022's passage it entered into agreements with the Township and "in turn expended millions in crafting a site plan application based thereon". (WHDURb20). Notwithstanding the complete absence of any proof for this alleged expenditure of "millions," the feasibility studies, engineering and design work for this project were conducted and completed years prior to this time. As WHDUR itself points out in its brief, the project spans two municipalities – Harrison Township and Woolwich Township – and WHDUR obtained site plan approval in Woolwich Township "after…numerous hearings over the three-year period of 2019 through 2021." (WHDURb5; WHDURa13-25). Put another way, WHDUR spent "millions" without even having the Harrison Township zoning necessary for its project in place! WHDUR did so because it knew that the adoption of the same was a *fait accompli* after lengthy negotiations and its acquiescence to certain *quid pro quo* concessions sought by the Township which occurred behind closed doors and out of the public eye. (1T, 7:5-16). In any event, the record in this matter confirms that WHDUR made the decision to proceed with the project and spend "millions" years prior to the Township's adoption of Ordinance No. 13-2022 and the Kings Landing

Redevelopment Plan and without any regard whatsoever to the prospect of a challenge being filed, whether timely or otherwise.

For its part, the Township frets that "[e]nlarging the time for appeal to appease the interests of the limited public in this case will negatively impact all redevelopment activities through the State." (Townshipb44). Without commenting on the sheer overbreadth of such a statement, the Township fails to explain precisely how or why this would occur. This case specifically involves a statutorily-deficient notice which left the public without knowledge of new overlay zoning until it manifested itself in the form of a site plan application and hearing that occurred half a year later. Allowing Casella's challenge to proceed on the merits under these very narrow circumstances will plainly not result in the sea change which the Township envisions. To the contrary, it would only serve to reinforce the longstanding jurisprudence in this State which underscores the critical nature of public notice and the strict construction applied to publication requirements. See Kendrick v. City of Hoboken, 38 N.J.L. 113 (1875).

The defendants' opposition briefs include a number of other fallacies related to the issue of timing but the page constraints applicable to this reply brief allow only one more to be addressed. Specifically, WHDUR's contention that Casella has raised new arguments with this appeal is manifestly false. (WHDURb21-31).

WHDUR goes even further, suggesting that Casella relies upon facts taken from a transcript which "was not presented or relied upon by Casella below." (WHDURb21). Contrary to this statement, the transcript was both filed with the trial court and referenced in the opposition filed by Casella to defendants' Motions to Dismiss and the same can be produced if deemed necessary. Although a seemingly trivial matter, it further reveals the nature of defendants' contentions in this case. In any event, and contrary to WHDUR's suggestions, responding to specific points made in the trial court's decision does not constitute new argument. Rather, an explanation of why the trial court erred in its reasoning is the very essence of an appeal.

II. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE NOTICE PUBLISHED BY THE TOWNSHIP FOLLOWING THE INTRODUCTION OF ORDINANCE NO. 13-2022 COMPLIED WITH N.J.S.A. 40:49-2 (Pa58-Pa61)

Defendants urge the Court to endorse an interpretation of N.J.S.A. 40:49-2 which neuters a significant portion of that statute in order to uphold the trial court's decision in this matter. N.J.S.A. 40:49-2's requirement for a notice of introduction to include the title of the ordinance "together" with "a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance" is unmistakably unambiguous as to its meaning and intent for the notice

to have at least two separate components, i.e., the title of the ordinance and a statement of purpose prepared by the clerk. Yet, defendants insist that the Court should reject the statute's plain language and legislative history and should instead meld the two separate requirements together so that they can be satisfied by mere publication of title alone. Defendants base their argument on little more than two factually-distinguishable unpublished opinions. See Meredith v. Borough Council of the Borough of Somerdale, No. CAM-L-4946-19 (N.J. Sup. Ct. Law Div. May 5, 2020), aff'd, 2022 WL 1816530 (N.J. Sup. Ct. App. Div. June 3, 2022); Gentless v. Borough of Stratford, No. CAM-L-3344-17 (N.J. Sup. Ct. Law Div. June 5, 2018, aff'd, 2019 WL 2563807 (N.J. Super. Ct. App. Div. June 21, 2019). It is respectfully submitted that long-settled principles of statutory construction compel the Court to reject defendants' contention out of hand.

Putting aside the issue of its statutorily-defective composition, the notice published by the Township in advance of the hearing and passage of Ordinance No. 13-2022 in this case lacked even minimal substantive information from which an ordinary layperson could have made an informed determination as to whether to participate or even look more closely into the matter. Cf. Perlmart of Lacey, Inc. v. Lacey Tp. Planning Bd., 295 N.J. Super. 234, 237-238 (App. Div. 1996). The notice simply indicated the Township's intent to adopt a generic "redevelopment

plan" for certain specified blocks and lots. (Pa89). The notice made no mention of the Kings Landing Redevelopment Plan, the proposed overlay zoning or the street addresses or other identifiable landmarks near the affected properties. Cf. N.J.S.A. 40:55D-62.1. Consequently, even if the title of Ordinance No. 13-2022 could have subsumed N.J.S.A. 40:49-2's separate requirement for a statement of purpose, it fell woefully short in that regard.

N.J.S.A. 40:49-2's notice requirement reflects legislative solicitude for the public interest and it should be construed in that fashion. Cf. Brower Development Corp. v. Planning Bd. of Tp. of Clinton, 255 N.J. Super. 262, 269 (App. Div. 1992). Defendants' proffered interpretation, on the other hand, directly contradicts such a notion and wrongly elevates the protection of the governmental and private concerns to the position of primary importance. Although a dearth of published opinions exist specifically construing N.J.S.A. 40:49-2's notice requirement, analogous cases involving N.J.S.A. 40:49-2.1 support the need for far more information than was provided by the Township's notice in this matter.

For example, in Rockaway Shoprite Associates, Inc. v. City of Linden, 424 N.J. Super. 337, 348 (App. Div. 2011), the Appellate Division held in construing N.J.S.A. 40:49-2.1 that "New Jersey requires at a minimum that published notice of a zoning ordinance creating new zones and uses applicable to an area identify

and briefly describe those new zones and uses." Id. at 346. Again, starting with the premise that the essential purpose of notice – regardless of context – is to provide the public with a basic modicum of information from which a decision can be made as to whether to take further action, it would be a logically anomalous result for a lesser standard to apply to a notice concerning an ordinance adopting a redevelopment plan with overlay zoning than a notice concerning a zoning ordinance of the ordinary variety. While legal distinctions unquestionably exist as between the two, the same cannot be said with respect to their practical implications. Put another way, a layperson discerns no difference between development facilitated by overlay zoning or by traditional zoning.

Tacitly acknowledging the logical inconsistency of their position, defendants make a series of arguments attempting to distinguish Ordinance No. 13-2022 from land use ordinances subject to N.J.S.A. 40:49-2.1. In this regard, WHDUR observes that N.J.S.A. 40:49-2.1 exclusively applies to ordinances that are "in length six or more octavo pages of ordinary print". (WHDURb36). This attempted distinction ignores that Ordinance No. 13-2022 actually incorporates the Kings Landing Redevelopment Plan as an attachment and far exceeds that numeric threshold. (Townshipa072a-096a).

Similarly, despite defendants' contentions to the contrary neither Hirth v. City of Hoboken, 337 N.J. Super. 149 (App. Div. 2001) nor N.J.S.A. 40A:12A-7(c) compel a different result. The latter's refrain that "[n]otwithstanding the provisions of the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.) or of other law, no notice beyond that required for adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan or subsequent amendments thereof" has no bearing in this case. The notices required by N.J.S.A. 40:49-2 and N.J.S.A. 40:49-2.1 both apply to the adoption of ordinances by the municipality and neither are part of the Municipal Land Use Law. Even if that was not the case, however, no statute or published decision countenances a notice which so greatly deviates from unambiguous statutory requirements such as the notice published by the Township in this case.

III. THE TRIAL COURT ERRED IN ITS APPLICATION OF THE STANDARD OF REVIEW FOR A MOTION TO DISMISS BROUGHT PURSUANT TO R. 4:6-2(e) (Pa54-Pa55; Pa62)

Defendants do not and cannot dispute the long-standing decisional law in this State which requires a trial court to apply an extremely liberal standard of review in favor of the non-moving party when considering a motion to dismiss made pursuant R. 4:6-2(e). See Printing Mart-Morristown v. Sharp Electronics

Corp., 116 N.J. 739 (1993). Rather, defendants insinuate that this standard is somehow modified when the matter involves a statute of limitations issue or a request for an enlargement of time under R. 4:69-6(c). That is not the case. Cf. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 120 (2019). The trial court must continue to apply a "generous and hospitable approach." Printing Mart, 116 N.J. at 746. Unfortunately, the trial court failed to undertake such an analysis in this case, particularly with the facts demonstrating the public interest, the deficiencies of the Township's notice and the various considerations otherwise warranting an enlargement of time. (Pa56-Pa57; Pa60).

CONCLUSION

For all of the foregoing reasons, as well as the reasons expressed in Casella's initial Brief in Support of Appeal, the Court should reverse the trial court's decision and invalidate and set aside Ordinance No. 13-2022 and the Kings Landing Redevelopment Plan.

Respectfully submitted,

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