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JEANNE DALY, POLISH AMERICAN
STRATEGIC INITIATIVE, INC., and
POLISH AMERICAN STRATEGIC
INITIATIVE EDUCATIONAL
ORGANIZATION, INC.,

Plaintiffs,

vs.

EXCHANGE PLACE ALLIANCE
DISTRICT MANAGEMENT
CORPORATION and JERSEY CITY
PLANNING BOARD,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION

Docket No.: HUD-L-2076-22

Civil Action

**FIRST AMENDED COMPLAINT IN
LIEU OF PREROGATIVE WRITS**

Plaintiffs, Jeanne Daly, Polish American Strategic Initiative, Inc., and Polish American Strategic Initiative Educational Organization, Inc. (collectively, “Plaintiffs”), by and through their attorneys, Lieberman Blecher & Sinkevich, P.C., by way of Complaint in Lieu of Prerogative Writs against Defendants, Exchange Place Alliance District Management Corporation and Jersey City Planning Board (collectively, “Defendants”), do hereby allege and say:

PARTIES

1. Plaintiff Jeanne Daly is a resident of Jersey City and resides at 110 Sussex Street, Apartment 1R, Jersey City, 07302.
2. Plaintiff Polish American Strategic Initiative, Inc. (“PASI”), P.O. Box 2771, New Britain,

CT 06050, is a registered 501(c)(4) nonprofit organization, incorporated in Delaware, with members in 26 states, including New Jersey.

3. Plaintiff Polish American Strategic Initiative Educational Organization, Inc. (“EDU”), 68 White Street, Unit 146, Red Bank, NJ 07701, is a registered 501(c)(3) nonprofit organization, incorporated in Delaware.
4. PASI and EDU are sister organizations which share some common board members.
5. Defendant Exchange Place Alliance District Management Corporation (“EPA”), located at Harborside 2, 200 Hudson Street, Suite 801, Jersey City, NJ, 07311, is a nonprofit corporation.
6. Defendant Jersey City Planning Board (the “Board”) is an agency created pursuant to the Municipal Land Use Law and is located at 360 Martin Luther King Drive, Jersey City, NJ 07302.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to Rule 4:69.
8. Venue is proper in Hudson County because the subject property is located in the City of Jersey City, Hudson County.

GENERAL ALLEGATIONS

9. This Complaint in Lieu of Prerogative Writs challenges the final decision of the Board to recommend EPA’s application for courtesy review on May 10, 2022.
10. The City of Jersey City created the Exchange Place Special Improvement District by vote of the City Council in December 2016, adopting City Ordinance 16.176.
11. The Exchange Place Special Improvement District includes Exchange Place Pedestrian Plaza, which is a pedestrian plaza in downtown Jersey City, facing the Hudson River

waterfront to the East.

12. Exchange Place Pedestrian Plaza is open to the public and provides pedestrian access to public transportation at the Exchange Place PATH station.
13. Exchange Place Pedestrian Plaza is the site of the Katyn Memorial, a bronze statue dedicated to the victims of the 1940 Katyn Massacre, in which thousands of Polish military officers and intellectuals were executed by the former Soviet Union.
14. Exchange Place Pedestrian Plaza is located in the Harborside District of the Exchange Place North Redevelopment Plan Area.
15. Jersey City Code 69-70 provides that the Special Improvement District shall be managed by a District Management Corporation.
16. Jersey City Code 69-74 provides that EPA operates as the district management corporation for the Exchange Place Special Improvement District.
17. As the district management corporation, EPA works in a private-public partnership with Jersey City.
18. Under Jersey City Code 69-73, EPA “shall conduct its business in accordance with the Open Public Meetings Law.”
19. Under Jersey City Code 69-73, EPA acts “as an Advisory Board to the Mayor and Council[.]”
20. Under Jersey City Code 69-74, EPA has the power to “[u]ndertake improvements designated to increase the safety or attractiveness of the district to businesses which may wish to locate there or to visitors to the District including . . . landscaping[.]”
21. Section 31 of the Municipal Land Use Law, N.J.S.A. 40:55D-31, provides that “[w]henver the planning board shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action

necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan[.]” This review by the planning board is commonly referred to as a “courtesy review.”

22. A planning board may either grant or deny recommendation of such a project under a courtesy review.
23. Under N.J.S.A. 40:55D-31, the governing body or public agency with jurisdiction over the master plan “shall not act” on such a project requiring public funds without the recommendation, “or until 45 days have elapsed after such reference without receiving such recommendation.”
24. On April 26, 2022, EPA appeared before the Board remotely for courtesy review on an application for the Exchange Place Pedestrian Plaza Improvements Project (the “Application”).
25. The Application proposed certain landscaping improvements and other alterations to Exchange Place Pedestrian Plaza.
26. During the hearing, the applicant’s attorney stated “I had not planned on presenting any testimony with respect to the compatibility with the master plan.”
27. At the remote hearing before the Board on April 26, approximately a dozen members of the public commented on the Application.
28. Plaintiff Jeanne Daly testified during the public comment period for the Application and stated that it did not comply with the Jersey City Master Plan.
29. Edward Jesman, President of Plaintiff PASI, testified during the public comment period for the Application.
30. At the conclusion of the courtesy review, the Board voted not to recommend the

Application.

31. On April 29, 2022, counsel for EPA submitted a letter to the Board requesting reconsideration of the decision not to recommend the Application.
32. The April 29 letter suggested that the Board’s deliberations had been “not appropriate in the context of a Section 31 review” and had “made no findings as to consistency with the City of Jersey City Master Plan[.]”
33. The April 29 letter provided significant substantive factual information that was not provided at the April 26 hearing.
34. The April 29 letter relied on Lambert v. Borough of Beach Haven, 2020 N.J. Super. Unpub. LEXIS 954 (App. Div. May 20, 2020), which is an unpublished case, in its argument that the decision could properly be reconsidered.
35. In the April 29 letter, EPA stated that “upon rehearing, the Applicant will introduce evidence demonstrating that . . . it met repeatedly with the Committee for the Conservation of the Katyn Monument & Historic Objects (“CCKMHO”) and others . . . and ultimately received not only the approval of the committee, but its gratitude for the level of cooperation.”
36. The CCKMHO does not represent the entire Polish and Polonia community in Jersey City.
37. The April 29 letter stated that EPA held a design meeting with the Historic Paulus Hook Association.
38. EPA did not hold a design meeting with the Historic Paulus Hook Association.
39. The April 29 letter included an attachment of a newspaper article about the Application which EPA said showed that EPA had met with CCKMHO and CCKMHO supported its Application.
40. The April 29 letter stated, “Had the Board been privy to this information at the prior

hearing, it would have been clear to the Board that any concerns over the treatment of the Katyn Monument were fully and satisfactorily addressed[.]”

41. The April 29 letter requested “that the matter be relisted for hearing and introduction of additional evidence[.]”
42. New comments from the board planners were submitted to the Board on May 10. A document titled “Development Application Review Staff Report,” dated May 10, 2022, addressed to Planning Board Commissioners from Mallory Clark-Sokolov, PP, AICP and Tanya Marione, PP, AICP, regarding “Exchange Place Plaza Section 31 Review,” was uploaded to the Jersey City Planning website on or after May 10, 2022.
43. The new planner comments provided substantive comments from Ms. Clark-Sokolov and Ms. Marione and stated that the Application was consistent with the Master Plan.
44. No prior comment documents from the board planners were submitted to the Board.
45. On May 10, 2022, the Board reconsidered the Application at its regularly held meeting.
46. The Board Attorney, Santo Alampi, stated that the Board was to make its decision based on the record before the Board on April 26.
47. The Board Attorney stated that the Board was not allowing any new testimony or evidence and that the Board was only in deliberation.
48. However, the Board considered the reconsideration letter sent on April 29.
49. The letter sent on April 29 constituted new evidence because the substantive information it contained, and the article attached to the letter, were not before the Board on April 26.
50. The Board also considered the board planners’ comments from May 10.
51. The Board Attorney stated, “We had some comments from Mallory on behalf of the planning division and they went through the master plan.”
52. The planners’ comments constituted new evidence because the substantive information

they contained was not before the Board on April 26.

53. The Board did not allow any public comment for the May 10 meeting.

54. On reconsideration, the Board voted to recommend the Application.

55. Some members of the Board stated that comments they previously made at the April 26 meeting may have been more appropriate for a site plan review than for a courtesy review.

56. Multiple Board members said that they had had concerns at the April 26 vote that the public had not been properly consulted for the Application.

57. Commissioner Gonzalez said that on April 26, he “was more concerned with the fact that the public did not have a lot of interaction, from what we were being told, with the client.”

58. Mr. Gonzalez stated, “When we hear things that the client did not meet with the public, or that the client – that the public’s concerns were not addressed appropriately, we take that very seriously and obviously you know that we don’t really like that much.”

59. Commissioner Torres stated, “The concern was more for what the public was asking about” at the April 26 meeting.

60. The April 29 letter told the Board that EPA had met with CCKMHO “and others” and CCKMHO supported its Application.

61. The April 29 letter asked the Board to consider this information which the Board had not “been privy to . . . at the prior hearing” and said the Board would have voted differently and recommended the Application if they had had this information.

62. After considering the April 29 letter and considering this information which the Board had not had before it at the prior hearing, the Board voted differently and recommended the Application.

63. OPRA requests to Jersey City requesting proof of publication of public notice, and notice to property owners within 200’, of the May 10 meeting have not returned any proof of

publication of notice or proof of 200' notice.

64. OPRA requests for proof of publication have returned only copies of internal memoranda circulated among Jersey City employees about the May 10 meeting.
65. In or about October-November 2022, EPA produced new graphic renderings of the project, produced by Dresdner Robin and Melillo Bauer Carman Landscape Architecture.
66. The new renderings are dated November 2, 2022 ("New Renderings") and are posted on EPA's website.
67. Plaintiff obtained a full copy of the New Renderings on November 30, 2022.
68. The New Renderings were posted on EPA's website on or after November 29, 2022.
69. The New Renderings show significant changes to the plans that were not presented to the Board and were not recommended by the Board.
70. The New Renderings show a bench on two sides of the Katyn Memorial, with the bench between the Memorial and the pedestrian mall removed.
71. In place of the bench that was removed, the New Renderings show a wall, apparently approximately five to six feet high.
72. There are spaces on either side of the wall to separate it from the benches.
73. The wall blocks direct pedestrian access to the Memorial.
74. The wall prevents people from gathering in front of the Memorial.
75. The wall is a material change from the documents submitted to the Board.
76. The site plan submitted to the Board, dated April 14, 2022, showed a bench surrounding the Katyn Memorial.
77. The site plan posted on EPA's website is dated April 14, 2022, last revised June 10, 2022 ("New Site Plan"), and shows the bench on two sides with a new wall between the Memorial and the pedestrian mall.

78. The New Site Plan was posted on EPA's website on or after December 7, 2022.
79. The New Site Plan was not shown to the Board.
80. The landscaping plans by Melillo & Bauer Associates submitted to the Board were dated April 14, 2022, and they showed the bench surrounding the Memorial.
81. The landscaping plans by Melillo & Bauer Associates posted on the EPA website are dated July 3, 2019, last revised June 10, 2022 ("New Landscaping Plans"), and they show the bench on two sides with the new wall.
82. The New Landscaping Plans were uploaded to the EPA website on or after December 7, 2022.
83. The New Landscaping Plans show a wall notated as "Memorial Plaque" that is 5 feet 1 inch high and says "MEMORY OF KATYN."
84. The New Landscaping Plans note, "Final plaque size, material, font, verbiage, mounting, etc. to be as directed by ownership in coordination with environmental designer."
85. The New Landscaping Plans do not give a final size for the wall, or a final determination of what wording will be on the wall
86. The New Landscaping Plans were not shown to the Board.
87. The materials submitted to the Board and recommended by the Board are in direct contradiction with the New Site Plan, New Landscaping Plans and New Renderings.
88. The new plans are materially different from the plans submitted to and recommended by the Board. The new plans have not been presented to the Board.
89. Ordinance 20-062, signed into law September 11, 2020, states that a Pedestrian Mall shall be created at "Exchange Place, between Hudson Street and the Hudson River Waterfront Walkway, as indicated on the street map on file in the Office of the City Clerk. This excludes Private Access Road."

90. Ordinance 20-062 incorporates the Exchange Place Pedestrian Mall Operating Plan.
91. The Exchange Place Pedestrian Mall Operating Plan, incorporated in Ordinance 20-062, states that the private access road is “[t]he street surface area at the southernmost edge of Exchange Place designated to be preserved and maintained as a fully functional vehicular access lane for activities related to the tenants, patrons and visitors of 1 and 15 Exchange Place.”
92. Ordinance 20-062 does not include any plans, dimensions, measurements, or limitation in scope for the “southernmost edge” of Exchange Place Plaza or for the private access road.
93. The City of Jersey City owns Exchange Place Plaza.
94. Only the tenants, patrons and visitors of 1 and 15 Exchange Place have access to the private access road.
95. Upon information and belief, the recorded current owner of 1 Exchange Place (Block 14502, Lot 1) is One Exchange JC Urban Renewal, LLC (f/k/a One Exchange JC LLC), a Delaware limited liability company, 4100 Regent Street, Suite G, Columbus, Ohio 43219, pursuant to the deed recorded at Deed Book 8834, Page 761 in Hudson County, New Jersey, February 24, 2012.
96. Upon information and belief, the recorded current owner of 15 Exchange Place (Block 14502, Lot 2) is 15 Exchange Owner LP, a Delaware limited partnership, 910 East County Line Road, Suite 202, Lakewood, NJ 08701, pursuant to the deed recorded at Deed Book 9650, Page 978 in Hudson County, New Jersey, March 18, 2022.
97. The private access road in the plans approved by the Board does not occupy only the southernmost edge of the Plaza.
98. The private access road in the plans approved by the Board extends diagonally across the Plaza and has two entrances/exits onto Hudson Street, which block pedestrian access to the

Plaza.

99. The two entrances/exits are each approximately 15 feet wide on the plans shown to the Board.

100. The two entrances/exits on the private access road have the effect of blocking nearly all pedestrian access between the Plaza and Hudson Street.

101. There is road access to 1 and 15 Exchange Place from York Street.

102. The private access road proposed in the plans occupies approximately 40 percent of the pedestrian plaza.

103. The private access road restricts the public's access to the pedestrian plaza.

104. No recorded deed conveys the area of the private access road from Jersey City to any private entity for use as an access road.

105. No recorded easement exists for vehicular access to 15 Exchange Place via the private access road.

106. No recorded lease exists for the private access road.

107. Ordinance 20-062 does not provide authorization for private limitation of approximately 40% of the public pedestrian plaza.

108. The Board approved the private access road without prior authorization from the governing body of Jersey City.

109. The private access road does not serve any public purpose.

110. The private access road prohibits the public from using approximately 40% of the plaza, which is public property.

COUNT I – ARBITRARY, CAPRICIOUS, AND UNREASONABLE CONDUCT

111. Plaintiffs repeat and incorporate by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.

112. Pursuant to N.J.S.A. 40:55D-31, “[w]henver the planning board shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan[.]”
113. Pursuant to N.J.S.A. 40:55D-10(a), “[t]he municipal agency shall hold a hearing on each application for development . . . or any review undertaken by a planning board pursuant to section 22 of P.L. 1975, c. 291 (C. 40:55D-31).”
114. Pursuant to N.J.S.A. 40:55D-10(b), any documents “for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing, during normal business hours in the office of the administrative officer.”
115. Pursuant to N.J.S.A. 40:55D-10(d), “all interested parties” have a right to comment and cross-examine witnesses at a hearing.
116. In considering an application, a municipal land use board must make its decision solely on the evidence in the record before the board.
117. The Board stated that it was limiting its decision to the information on the record at the April 26 hearing and did not accept public comment for this stated reason.
118. However, the Board considered information that was outside the record in its decision on May 10.
119. The May 10 board planners’ comments were outside the record of the April 26 hearing.
120. The Board considered the May 10 board planners’ comments in making its decision on reconsideration, which was outside the record of the April 26 hearing.

121. The Board Attorney noted at the hearing that the Board had received comments from the board planners before this meeting that addressed the compliance with the Master Plan.

122. The April 29 letter and attached article were outside the record of the April 26 hearing.

123. The Board considered the April 29 letter and attached article in making its decision on reconsideration, which was outside the record of the April 26 hearing.

124. The Board had to consider the April 29 letter and its attachment because this is the letter in which EPA requested reconsideration.

125. Because the Board reconsidered the decision on the request by EPA in the letter, the Board necessarily considered the April 29 letter.

126. The Board did not permit public comment on the new information presented or any public comment.

127. The EPA did not present sufficient evidence of compliance with the master plan in the April 26 record, which is the applicable record for the May 10 decision, for the Board to support recommendation of the application under the Jersey City Master Plan.

128. The Board approved the private access road although such access road had no previous authorization by the governing body.

The Board lacks the authority to approve the private access road without proper authorization from the governing body of Jersey City.

129. The Board violated N.J.S.A. 40:55D-10 and N.J.S.A. 40:55D-31 by making the decision to recommend the Application on reconsideration based on information that was not in the record.

130. The Board violated N.J.S.A. 40:55D-31 by denying the public, including Plaintiffs, an opportunity to comment or to view relevant documents before making its decision on reconsideration.

131. The Board acted arbitrarily, capriciously and unreasonably by making the decision on reconsideration to recommend the Application based on information that was not in the record.
132. The Board acted arbitrarily, capriciously and unreasonably by denying the public an opportunity to comment or to view relevant documents before making its decision on reconsideration.
133. The Board acted arbitrarily, capriciously and unreasonably in approving a private access road that was not previously authorized by the City of Jersey City.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. For a judgment declaring that the Board’s recommendation of EPA’s Application was arbitrary, capricious and unreasonable;
- b. For a judgment reversing and voiding the recommendation of EPA’s Application;
- c. For remand of the Application to the Board; and
- d. For an award of all such other relief as deemed just and equitable by the Court.

COUNT II – VIOLATION OF THE OPEN PUBLIC MEETINGS ACT,
N.J.S.A. 10:4-1 – 10:4-21

134. Plaintiffs repeat and incorporate by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.
135. Pursuant to the Open Public Meetings Act (“OPMA”), “no public body shall hold a meeting unless adequate notice thereof has been provided to the public.” N.J.S.A. 10:4-9(a).
136. Pursuant to the OPMA, “all meetings of public bodies shall be open to the public at all times.” N.J.S.A. 10:4-12(a).
137. Pursuant to the OPMA, “Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person

within 45 days after the action sought to be voided has been made public[.]” N.J.S.A. 10:4-15(a).

138. Under the OPMA, any person, “including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any action taken by a public body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the action was taken at a meeting which does not conform to the provisions of this act, the court shall declare such action void[.]” N.J.S.A. 10:4-15(b).

139. EPA did not provide adequate notice by publication of the May 10 meeting.

140. EPA did not provide adequate notice to property owners within 200’ of Exchange Place regarding the May 20 meeting.

141. EPA and the Board violated the OPMA because they did not provide adequate notice of the May 10 meeting under the OPMA.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. For a judgment declaring that the Board’s May 10 hearing on the EPA Application violated the Open Public Meetings Act;
- b. For a judgment reversing and voiding the recommendation of EPA’s Application;
- c. For remand of the Application to the Board; and
- d. For an award of all such other relief as deemed just and equitable by the Court.

III – VIOLATION OF THE MUNICIPAL LAND USE LAW

142. Plaintiffs repeat and incorporate by reference as if fully set forth herein each and every allegation contained in the preceding paragraphs of the complaint.

143. Section 31 of the Municipal Land Use Law, N.J.S.A. 40:55D-31, requires that before taking action requiring the expenditure of public funds, a public agency “shall refer the

action involving such specific project to the planning board for review and recommendation” in conjunction with the Master Plan. This review by the planning board is commonly referred to as a “courtesy review.”

144. Under N.J.S.A. 40:55D-31, the public agency “shall not act” on such a project without the recommendation of the planning board, “or until 45 days have elapsed after such reference without receiving such recommendation.”

145. EPA is a public agency under the Municipal Land Use Law.

146. EPA did not apply for a Section 31 courtesy hearing when they changed their plans for the Exchange Place Plaza project.

147. EPA’s new plans are materially different from the plans that were given to the Board for the courtesy review conducted in April and May 2022.

148. EPA’s new plans were not presented to the Board for a courtesy review.

149. EPA violated N.J.S.A. 40:55D-31 by undertaking the project of the Exchange Place Plaza renovation with its new plans without appearing before the Board for a new Section 31 courtesy hearing.

150. The public had no opportunity for notice and comment on the new renderings, new site plan or new landscaping plans.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. For a judgment declaring that the EPA violated the Municipal Land Use Law;
2. For a judgment instructing EPA to submit a new application to the Board; and
3. For an award of all such other relief as deemed just and equitable by the Court.

LIEBERMAN BLECHER & SINKEVICH, P.C.
Attorneys for Plaintiffs

Dated: February 20, 2023

/s/ Stuart J. Lieberman
Stuart J. Lieberman, Esq.

DESIGNATION OF TRIAL COUNSEL

Stuart J. Lieberman, Esq. is hereby designated as trial counsel for Plaintiffs in this matter.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, Plaintiff hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. To the best of Plaintiff's knowledge and belief, no other parties need to be joined at this time.

CERTIFICATION PURSUANT TO RULE 1:38-7

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

CERTIFICATION PURSUANT TO RULE 4:49-4

I certify that the transcripts of the proceedings before the Jersey City Planning Board have been ordered.

LIEBERMAN BLECHER & SINKEVICH, P.C.
Attorneys for Plaintiffs

Dated: February 20, 2023

/s/ Stuart J. Lieberman
Stuart J. Lieberman, Esq.