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

INSERRA SUPERMARKETS, INC.

Plaintiff,

CASE NO.

vs.

THE STOP & SHOP SUPERMARKET
COMPANY, INC., MUNICO ASSOCIATES, L.P.,
WYCKOFF RESIDENTIAL, LLC, ABC
CORPORATIONS 1-10 (names being fictitious and
unknown but identified as those companies
associated with Stop & Shop and/or Munico that
assisted with and promoted the use of sham petitions
and anti-competitive acts), and JOHN DOES 1-10
(names being fictitious and unknown but described
as those companies associated with Stop & Shop
and/or Munico that assisted with and promoted the
use of sham petitions and anti-competitive acts)

**COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Defendants.

Plaintiff Inserra Supermarkets, Inc. (“Inserra”), by way of Complaint against Defendants, The Stop & Shop Supermarket Company, Inc. (“Stop & Shop”), Munico Associates, L.P. (“Munico”), and Wyckoff Residential, LLC (“Wyckoff Residential”), along with defendants ABC Corporations 1-10 (names being fictitious and unknown but identified as those companies associated with Stop & Shop and/or Munico which aided and abetted and thereby assisted with and promoted the use of sham petitions and other anti-competitive acts), and John Does 1-10 (names being fictitious and unknown but

described as those companies associated with Stop & Shop and/or Munico that assisted with and promoted the use of sham petitions and other anti-competitive acts), says:

PREAMBLE

1. This antitrust action arises out of a series of anticompetitive actions and conduct of Defendant Stop & Shop, and its landlord, Defendant Munico, and Munico's affiliate, Wyckoff Residential. These actions together with the conduct of others, were without merit. They are prohibited, as set forth in *Hanover 2101 Realty LLC v. Village Supermarkets, Inc.*, 806 F.3d 162 (3rd Cir. 2015), "for the purpose of using the governmental process (as opposed to the outcome of that process) to harm a market rival and restrain trade," where said actions seek to monopolize the full service retail food store-grocery store-supermarket (sometimes referred to collectively as a "supermarket") business in Northwestern Bergen County, New Jersey, and, in particular, within the Township of Wyckoff.

2. As set forth herein, Defendants Stop & Shop, Munico, Wyckoff Residential and other unknown defendants, conspired to prevent, impede or delay Inserra's efforts to develop a full service supermarket in the Township of Wyckoff, Bergen County, New Jersey. The Defendants are engaged in an on-going illegal scheme designed to restrain trade and injure competition in the market for full service supermarkets in Wyckoff, Northwestern Bergen County, New Jersey, through the use of a series of sham petitions and other unlawful anticompetitive acts.

3. For over six years, Plaintiff Inserra has sought to develop a Shop Rite Supermarket ("Shop Rite") in Wyckoff, New Jersey, that would compete with Stop & Shop's existing store, also located in Wyckoff, New Jersey (sometimes referred to as the "Wyckoff Location"), and/or other Stop & Shops in the Northwestern Bergen County area.

4. To develop the Shop Rite supermarket in Wyckoff on the Property, Inserra required land use approval from the Township of Wyckoff Planning Board (the "Wyckoff Planning Board") and the Bergen County Planning Board (the "County Planning Board").

1 5. Stop & Shop's existing Wyckoff store is the only full service supermarket currently
2 operating in Wyckoff, New Jersey.

3 6. By intentionally delaying and seeking to prevent the development of a competing
4 Shop Rite in Wyckoff, the Defendants sought and continue to seek to prevent the entry of a
5 competitor into the market in the geographic area providing the goods and services associated
6 with a full service supermarket.

7 7. Defendants Stop & Shop, along with the other Defendants, including Munico and
8 Wyckoff Residential, have sought to preserve Stop & Shop's monopoly position in the
9 northwestern Bergen County marketplace, and in particular, the Township of Wyckoff, through a
10 series of intentional acts designed to frustrate, impede, delay and thwart Inserra's attempts to
11 develop a full service supermarket. These acts that comprise part of this six year campaign
12 include, but are not limited to, intentional efforts to improperly delay proceedings before and/or
13 involving (i) a number of governmental agencies; and (ii) appeals of each and every adverse
14 decisions experienced by the Defendants, in the Superior Court of New Jersey, Law Division
15 (hereinafter "Law Division").

16 8. Defendants Stop & Shop and Munico have filed and/or engaged in a series of sham
17 petitions and objections (hereinafter the "Series of Petitions;" the petitions are sometimes also
18 referred to as the "Petitions"), as opposed to an isolated or single petition or objection.

19 9. When a plaintiff alleges a series of legal pleadings and petitions, the federal line of
20 cases involving *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), as
21 reiterated in *Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162 (3d Cir.
22 2015), governs whether the defendant's conduct is protected from antitrust liability by the First
23 Amendment's right to petition.

1 10. The relevant inquiry is therefore also whether the Series of Petitions were filed with
2 or without regard to merit and for the purposes of using the governmental process to harm
3 Plaintiff as a market rival and to restrain trade.

4 11. It is also relevant whether the Series of Petitions and actions of Defendants involve a
5 high percentage of meritless and/or objectivity baseless petitions, which supports the finding that
6 the filings were not brought to redress an actual grievance.

7 12. Upon information and belief, Defendant Stop & Shop has a corporate policy of
8 filing anticompetitive sham petitions, which confirm that Defendants were more interested in
9 delay than redressing any particular grievances.

10 13. Said Defendants brought the Series of Petitions and actions to keep delay or impede
11 Plaintiff Inserra's efforts to develop a Shop Rite in Wyckoff for as long as possible.

12 14. The Third Circuit, in *Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806
13 F.3d 162 (3d Cir. 2015), recognized that while the defendant supermarket-objector had some
14 "victorious moments," those moments were insufficient to confer antitrust immunity under the
15 First Amendment's right to petition because that defendant's petitioning activity alleged in that
16 case was objectively baseless and undertaken without regard for the outcome.

17 15. The Series of Petitions by Defendant Stop & Shop, Munico and Wyckoff
18 Residential have resulted in no successes - not even limited successes. Each and every of the nine
19 petitions or objections comprising the Series of Petitions discussed in this Complaint have been
20 unsuccessful, with not one member of any administrative tribunal and not one judge in any court,
21 holding in favor of Defendants, on any substantive or material issue.

22 16. The nine petitions and objections comprising the Series of Petitions, where the
23 Defendants raised a multitude of sham arguments and objections, are as described herein as
24 follows:

25 A. Petitions Involving Administrative and/or Governmental Agencies:
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- i. Stop & Shop's objection to the Wyckoff Planning Board proceedings;
- ii. Munico and Wyckoff Residential's objection to the Wyckoff Planning Board proceedings;
- iii. The County Planning Board proceedings;
- iv. The Bergen County Board of Chosen Freeholders (the "Freeholders") hearing *de novo* (upon Stop & Shop's appeal of the County Planning Board's decision);
- v. Stop & Shop's Objection to the Responses of the County of Bergen and its Department of Planning (the "County") to its OPRA Requests;

B. Petitions Involving Sham Legal Challenges in the Law Division of Decisions Adverse to Defendants:

- vi. The appeal of the decision of the Wyckoff Planning Board by Stop & Shop to the Law Division ("the Stop & Shop Law Division Appeal");
- vii. The appeal of the Wyckoff Planning Board decision by Defendants Munico and Wyckoff Residential to the Law Division (the "Munico Law Division Appeal");
- viii. The action challenging the County of Bergen and its Planning Department on the OPRA challenge to the Law Division (the "County OPRA Litigation");
- ix. The appeal of the decision of the Bergen County Freeholders to the Law Division (the "Freeholder Law Division Appeal").

17. In particular, these Series of Petitions and objectively baseless actions involve the decisions of different governmental agencies. The Series of Petitions also involves sham lawsuits and appeals. In each, the Defendants have made sham objections for the purpose of delaying and impeding Inserra's proposed Shop Rite in Wyckoff. This is an unlawful and unreasonable restraint of trade.

18. The Defendants have been unsuccessful in each and every Petition.

19. In each and every instance of the multitude of petitions, objections, appeals and challenges comprising a series of nine petitions, appeals and challenges, every governmental

1 agency has ruled in favor of Plaintiff Inserra, on each and every major or substantive issue raised
2 by Stop & Shop and Munico.

3 20. The Defendants' actions, undertaken in concert and pursuant to an agreement
4 between them, were designed to achieve a single, unlawful objective – preventing Inserra from
5 developing a competing full service supermarket that would jeopardize Stop & Shop's monopoly
6 position.

7 **A. THE PARTIES**

8 **Plaintiff Inserra**

9 21. Plaintiff Inserra is a New Jersey corporation with its principal place of business
10 located at 20 Ridge Road, Mahwah, New Jersey. Inserra holds a leasehold interest in property
11 located at 430 Greenwood Avenue, Wyckoff, New Jersey (the "Property"). Plaintiff seeks to
12 develop and operate a Shop Rite on the Property, which was previously developed as a full service
13 retail-food – grocery store – supermarket, occupied by Defendant Stop & Shop, and thereafter
14 A&P.

15 **Defendant Stop & Shop**

16 22. Defendant Stop & Shop is a company licensed to do business in the State of New
17 Jersey with principal corporate offices located at 1385 Hancock Street, Quincy, Massachusetts.
18 Stop & Shop owns and operates a full service supermarket located at 327 Franklin Avenue,
19 Wyckoff, New Jersey.

20 23. Upon information and belief, Defendant Stop & Shop owns and operates full service
21 supermarkets throughout Bergen County, and in the northwestern Bergen County area.

22 24. Upon information and belief, Defendant Stop & Shop also owns supermarkets in
23 other areas of Bergen County, in Northern New Jersey, and in the Northeastern United States,
24 including in New York, Connecticut and Massachusetts.

Defendant Wyckoff Residential

31. Wyckoff Residential, LLC (“Wyckoff Residential”) is a New Jersey Limited Liability Company with offices located at 505 Main Street, Hackensack, New Jersey. Upon information and belief, Wyckoff Residential is owned and controlled by the same or similar principals those who control Munico. Wyckoff Residential owns four lots located at 401-405 Greenwood Avenue, and 343 Godwin Avenue, Wyckoff New Jersey. Those lots are located east of the Property and on the north side of Greenwood Avenue, opposite Boulder Run. For the purposes of convenience and ease of organization, although Wyckoff Residential is a separate and independent Defendant and participant in the unlawful conspiracy to restrain trade and is sometimes referred to separately from Munico, it is also collectively referred to, along with Munico Associates, LP, as part of “Munico,” unless the context of the reference to Munico provides or requires otherwise.

32. Defendants Wyckoff Residential and Munico, as the owners of five separate properties, were together involved in some of the Series of Petitions in addition to their support of Defendant Stop & Shop’s Petitions.

33. Defendants ABC Corporations 1-10 (names being fictitious and unknown but identified as those companies associated with Stop & Shop and/or Munico, which upon information and belief aided, abetted, and assisted with and promoted the use of sham petitions and anti-competitive acts) and John Does 1-10 (names being fictitious and unknown but identified as those companies associated with Stop & Shop and/or Munico that assisted with and promoted the use of sham petitions and anti-competitive acts), are corporations and individuals whose names and locations are not currently known to Inserra. Inserra will amend this complaint to allege their true names and capacities when ascertained.

B. JURISDICTION AND VENUE

34. The claims in this action arise under the federal antitrust laws, 15 U.S.C. §§ 1, 2 and 15, and New Jersey law.

35. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 15, and with respect to the violations of New Jersey law, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

36. Venue and personal jurisdiction is appropriate in this judicial district under 28 U.S.C. § 1391 and 15 U.S.C. § 15 with respect to Defendant Stop & Shop because Stop & Shop is licensed to do business in New Jersey, maintains multiple facilities in New Jersey, including in Wyckoff, New Jersey, has continuous and systematic contacts in New Jersey, including doing business in New Jersey, and is subject to the personal jurisdiction of this Court under the United States Constitution, the laws of the State of New Jersey and the Federal Rules of Civil Procedure.

37. Venue and personal jurisdiction are appropriate in this judicial district under 28 U.S.C. § 1391 and 15 U.S.C. § 15 with respect to Defendants Munico and Wyckoff Residential because Munico and Wyckoff Residential are citizens and residents of the State of New Jersey, maintain facilities in Wyckoff, New Jersey, have continuous and systematic contacts in New Jersey, including maintaining offices and doing business in New Jersey, and are subject to the personal jurisdiction of this Court under the United States Constitution, the laws of the State of New Jersey and the Federal Rules of Civil Procedure.

C. BACKGROUND AND FACTS

The Property

38. Inserra has entered into a lease with the owner of the Property, a partnership comprised of Solomon Grossman, Wyckoff-Grossman, LLC and the Kenneth Platzer Irrevocable Trust (the “Grossman Partnership”), which became effective in or about May of 2009 (hereinafter the “Lease”), for the purposes of developing and operating a full service retail-food – grocery store

1 – supermarket. Pursuant to the terms of the Lease, Inserra had the obligation to secure land use
2 approvals from all relevant governmental entities to develop the Property for its proposed full
3 service supermarket.

4 39. Inserra has been paying rent pursuant to the Lease since the inception of same and
5 Inserra has advised all Defendants on numerous occasions, including during the various
6 proceedings before the governmental agencies and/or appeals referenced in this complaint, that its
7 rental costs alone exceed \$100,000 per month, and Inserra has been making monthly payments in
8 excess of \$100,000 since the inception of the application referenced below, and during the period in
9 which said Defendants have delayed and/or unsuccessfully appealed each and every approval
10 throughout the approval process.

11 40. The Property was initially developed in the 1970s by the Defendant Stop & Shop for
12 use as a full service supermarket.

13 41. Upon information and belief, Defendant Stop & Shop operated a retail food store-
14 grocery store-supermarket on the premises until it subleased the premises to another supermarket,
15 A&P. A&P sometime thereafter ceased operations on the property.

16 42. Upon information and belief, once A&P's sublease expired in 2004, Stop & Shop
17 elected to continue paying rent on the Property but did not secure a replacement full service
18 supermarket tenant or other retail use. Stop & Shop's lease expired on May 8, 2009, immediately
19 prior to the commencement of Inserra's Lease on the Property.

20 43. The Property is approximately 7.4 acres in size.

21 44. The Property is currently developed with two buildings – a 59,504 square foot
22 building that was originally used by Stop & Shop and thereafter A&P (which also contained a
23 pharmacy), and an 11,640 square foot building that contained a variety of retail uses.

24 45. Collectively, the Property is therefore currently improved with 71,144 square feet of
25 retail floor area.

1 46. The Property is located in the Township of Wyckoff's B-5 Planned Community
2 Shopping Center Zone (the "B-5 Zone), which allows "retail food stores," and is the zone which
3 permits numerous other retail uses (*i.e.*, 52 specific retail uses, many of the uses of which would be
4 included in Inserra's proposed supermarket, as well as a catch-all use that authorizes "all other
5 similar retail uses").

6 47. The B-5 Zone has historically permitted and housed a retail-food – grocery store –
7 supermarket for the past four decades, including the one developed and operated by Defendant Stop
8 & Shop.

9 48. The Township of Wyckoff has not adopted any zoning ordinance that changed the
10 uses permitted in the B-5 Zone at any time between when A&P vacated the Property and the
11 present date.

12 49. The Property is adjacent to Boulder Run, where the Stop & Shop is located.

13 50. The Property is also adjacent to a railroad right-of-way that is owned and operated
14 by the New York, Susquehanna & Western Railway Corporation (the "Railroad"). The Railroad
15 tracks abut the Property's southern lot line and intersect Wyckoff Avenue south of the intersection
16 of Wyckoff Avenue and Greenwood Avenue.

17 **Full Service Supermarket; Involvement in Interstate Commerce**

18 51. Commercial activity in full service supermarkets is substantial and significantly
19 affects interstate commerce because such stores stock products that are transmitted across state and
20 international lines, as well as utilize the channels and instrumentalities of interstate commerce, such
21 as federally-funded interstate highways and long-haul commercial trucks.

22 52. Inserra's existing stores, including the proposed Shop Rite and Stop & Shop's
23 existing stores, including its store at Boulder Run, sell many identical or similar products.

24 53. Upon information and belief, the cost to purchase a great many items in Inserra's
25 existing stores (as well as the proposed Shop Rite on the Property, had it been operational) is, on
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1 average, lower than the cost to purchase a great many of the identical items in Stop & Shop's
2 existing stores, including its store at Boulder Run.

3 54. Upon information and belief, it is a key element of Stop & Shop's business strategy
4 in Wyckoff, and the Northwestern Bergen County area (as well as in other markets such as the
5 Northern New Jersey market, and/or the Northeastern United States market, including, New York,
6 Connecticut and Massachusetts), to hinder, impede, delay, obstruct and/or prevent competitors
7 from entering the full-service supermarket market.
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9 **D. THE NINE PETITIONS CONSTITUTE A SERIES OF PETITIONS WITH**
10 **NUMEROUS SHAM OBJECTIONS**

11 **I. First Petition - with Numerous Sham Objections: Stop & Shop's Objection**
12 **to Inserra's Application before the Wyckoff Planning Board**

13 55. When Stop & Shop and Munico applied for land use approval to develop the
14 Wyckoff Location, which is a 71,425 square foot supermarket at Boulder Run property, the
15 Wyckoff Planning Board conducted only two hearings – on November 8, 2006 and November 13,
16 2006 – before granting approval.

17 56. Inserra thereafter filed its application for preliminary and final site plan approval for
18 the Property with the Wyckoff Planning Board on September 9, 2009 (the "Application").

19 57. Inserra sought approval to develop a 62,042 square foot full service supermarket
20 (not including mezzanine space), which new building was substantially smaller in size than the
21 existing 71,144 square foot retail buildings on the subject Property, and also substantially smaller
22 than Stop & Shop's Wyckoff Location that the Wyckoff Planning Board had just approved.

23 58. Plaintiff Inserra's Application sought certain bulk variances from the Wyckoff
24 Zoning Ordinance, but most of the requested variances actually reduced non-conformities that
25 existed on the Property. Many other existing non-conformities, by virtue of the location of the
26 existing buildings (which were to be replaced by a single building with less total floor area), were
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1 eliminated in their entirety, including creation of a conforming landscaped buffer, eliminating a
2 deficiency in open space, eliminating nonconforming setbacks on Greenwood Avenue, and even
3 correcting the deficient rear and side setbacks closest to the Boulder Run property. In summary,
4 there was less building area, a smaller amount of retail space, and a more conforming project than
5 the existing development, and less of any adverse effect on Boulder Run and Munico from a land
6 use perspective.

7 59. Upon information and belief, attorneys representing Defendants Stop & Shop and
8 Munico submitted several requests to the Wyckoff Planning Board during the fall of 2009 and
9 spring of 2010 pursuant to New Jersey's Open Public Records Act, *N.J.S.A. 47:1A-1 et seq.*,
10 ("OPRA"), to monitor the Inserra application.

11 60. Between September 9, 2009 and the Wyckoff Planning Board's initial hearing on
12 the Application on July 14, 2010, Wyckoff's Shade Tree and Design Committee and the Wyckoff
13 Planning Board's professional consultants, including the Wyckoff Planning Board Engineer,
14 reviewed the Application and Inserra's site plan. The review resulted in several plan revisions.

15 61. Upon information and belief, Defendant Stop & Shop requested and conspired with
16 its landlord, Defendant Munico, to object to the Application for the purpose of eliminating or
17 delaying a potential competitor and preserving the competitive advantage it enjoyed.

18 62. Upon information and belief, Defendant Munico requested and conspired with
19 Defendant Wyckoff Residential, an affiliated entity owning property in the area, to also object and
20 become involved in the petitioning and objections.

21 63. Different representatives of Defendant Munico admitted to several representatives of
22 Inserra, on several different occasions, that Defendant Stop & Shop had exerted pressure on
23 Munico by virtue of its relationship with Munico and Munico's principals (who were involved with
24 other Stop & Shops in a landlord-tenant relationship), and a threat by Stop & Shop of not becoming
25 involved in future projects controlled by Munico's principals, and that Munico agreed to object to
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1 the Application and challenge the Application before the Wyckoff Planning Board. Munico's
2 representatives noted that this pressure had been exerted by Defendant Stop & Shop.

3 64. Upon information and belief, Defendant Stop & Shop utilized existing lease
4 relationships at the Wyckoff Location and at other properties controlled by Munico's principals,
5 and the potential future relationship on other projects, to pressure or coerce Munico to object to the
6 Application. That pressure also caused Munico to enlist its other affiliate, Wyckoff Residential,
7 and other third parties.

8 65. Upon information and belief, Defendants Stop & Shop and Munico entered into an
9 agreement to coordinate their objection efforts, which were designed to hinder, impede, delay,
10 obstruct, and/or prevent Inserra from promptly obtaining all necessary governmental approvals for
11 the construction of the proposed Shop Rite.

12 66. Upon information and belief, Defendant Stop & Shop also arranged to have flyers
13 and post cards sent to Wyckoff residents to urge them to object to the proposed project, in the
14 purported name of a citizens' group, "*Why Wyckoff?*"

15 67. Although having been aware of the Application, the Board's professional review,
16 and Inserra's revisions to its site plan for several months, Defendants' initial counsel, which
17 represented both Stop & Shop and Munico in the joint petition, waited until the "last minute"—the
18 afternoon of July 14, 2010, the day of the public hearing—to write to the Wyckoff Planning Board
19 to object to the Application, including on jurisdictional grounds, rather than present a reasonable
20 objection in a timely fashion. This would be the first of numerous other objections raised—on the
21 day of a public hearing or proceeding, or at the "last minute"—to adversely affect the orderly
22 processing of the Application, delay the proceedings, and/or cause postponements of the hearings
23 in furtherance of the anti-competitive actions of Defendants.

24 68. Defendants Stop & Shop and Munico alleged, among other things, that Inserra's
25 proposed full service retail-food – grocery store – supermarket was not permitted on the Property,
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1 despite the fact that Stop & Shop previously developed and operated such a business at that
2 location, and that retail food stores, along with numerous other retail uses, were permitted in the B-
3 5 Zone.

4 69. Defendants Stop & Shop and Munico asserted that the Application required a use
5 variance from the Wyckoff Zoning Board of Adjustment, despite the fact that a retail food store had
6 been operated on the site for decades, and despite the fact that Wyckoff's Master Plan specifically
7 contained provisions recommending a supermarket continue on the Property after A&P vacated the
8 Property when the store had been closed for a substantial period of time.

9 70. Joint counsel for both Defendant Stop & Shop and Defendant Munico entered an
10 appearance at the initial Wyckoff Planning Board hearing on the Application on July 14, 2010,
11 after sending the aforesaid letter the day of the hearing, and interposed the jurisdictional objections
12 to the Board's consideration of the Application again during the hearing.

13 71. Due to the obstructionist, anti-competitive actions of Defendants, the hearings on
14 Plaintiff Inserra's Application continued for 39 hearings over nearly three years.

15 72. By comparison, Stop & Shop's Wyckoff Location at Boulder Run was approved by
16 the Wyckoff Planning Board in only two public hearings.

17 73. The Defendants' conduct during the hearings on the Application evidenced a
18 pattern, practice, intention and desire to delay and impede Inserra's Application at all costs.

19 74. By way of example, and not by way of limitation, these procedural actions included,
20 but are not limited to, the actions identified in (a) – (d):

21 a. Untimely Public Notice Objection: The Defendants raised an objection to
22 Inserra's public notice approximately two hours into the sixth meeting on the Application, which
23 was held on February 9, 2011, after five public hearings had already occurred.

24 b. Delaying Tactics – Ambush by Additional Attorney: Another attorney was
25 sitting in the audience monitoring the Application from the time the hearings commenced on July
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1 14, 2010, without identifying whether he intended to participate in the proceedings or whether he
2 was representing a client. He did not formally enter an appearance and waited until March 10,
3 2011 to indicate he was now representing Munico (even though Munico had been represented by
4 Stop & Shop's attorneys since July 14, 2010). This occurred only after his presence was noted for
5 the record by counsel for Plaintiff's Landlord, the Grossman Partnership. Munico's new attorney
6 then disclosed he had jurisdictional objections to the Application that had not previously been
7 identified by Munico's prior counsel.

8 c. Delay in Placing Objections on Record: Moreover, Munico's counsel did
9 not place those objections on the record immediately (at the March 10, 2011 hearing) on the
10 application he had been monitoring for at least ten months, but instead proceeded to delay those
11 objections. Munico's new counsel then sent a letter to the Wyckoff Planning Board on March 14,
12 2011 – after the Wyckoff Planning Board had completed the March 10, 2011 hearing, raising
13 numerous jurisdictional objections for the first time, on behalf of Defendant Munico and Defendant
14 Wyckoff Residential, objections of which he was obviously aware during his monitoring of the
15 application at the prior meetings. Prior to that point, Wyckoff Residential had not entered an
16 appearance.

17 d. Strategy for Untimely and Last Minute Objections: Based upon the tactics
18 and strategy of said Defendants' counsel, who also raised during the appeals of the governmental
19 approvals issues not raised before the Wyckoff Planning Board, and who failed to allege issues in
20 his complaint only to raise them for the first time in Defendant Munico's brief, there was obviously
21 a strategy to withhold objections or issues until it was too late to address them, or even after a
22 decision was made and the matter was concluded and on appeal.

23 75. In addition to examples of the above procedural tactics and actions designed to delay
24 and hinder the Application, there are also numerous instances of false, incorrect, inaccurate
25 testimony, and/or improper actions also designed to delay the Application and/or the approval. By
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1 way of example, and not by way of limitation, these include, but are not limited to, the following
2 arguments, claims and objections set forth in (a) – (j) below:

3 a. Stop & Shop's Landscape Architect's Inaccurate Testimony: On October
4 27, 2011, Stop & Shop's landscape architect presented a 3-D model of Inserra's proposed building
5 that he called a "true perspective" of what would be built. However, that expert later admitted
6 upon questioning by the Board that "[t]he grading of the site was not incorporated" and that the
7 perspective was not as initially represented. Members of the Wyckoff Planning Board described
8 their reaction to that testimony as "doing a slow burn with what I heard on cross-examination;" that
9 Stop & Shop's witness had "bamboozled" the Board and had "distorted" his rendering to further his
10 client's objection.

11 b. Stop & Shop's Architect's Inaccurate Testimony: On November 30, 2011,
12 Stop & Shop's architect presented a massing diagram of the proposed building, and represented
13 that the diagram accurately represented the physical appearance of the building. It was later
14 revealed, through the rebuttal testimony of Inserra's architect, that the massing diagram depicted a
15 structure that was five feet taller than Inserra's proposed building. Stop & Shop never recalled its
16 architect to explain the prior incorrect representation.

17 c. Defendants' Failure to Timely Raise Board Traffic Expert's Alleged Conflict
18 of Interest so as to Infect and Taint the Proceedings and Cause Delay: During the middle of the
19 hearing on March 26, 2012, Defendants, Stop & Shop, Munico and Wyckoff Residential, now
20 through separate counsel, raised a conflict of interest objection to the Board's traffic expert, that
21 they were aware of before the commencement of the hearing. Defendant Stop & Shop's counsel,
22 with Munico's counsel about to make the objection, introduced evidence and testimony involving
23 the Board's traffic expert, before the objection was put on the record that the Board's traffic expert
24 allegedly had a conflict of interest.
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1 i. This evidence was presented before the Defendants asserted that the
2 entire proceedings (23 public Planning Board hearings, from July 14, 2010 to March 26, 2012),
3 were therefore tainted, and the hearings should start over from the beginning. This is further
4 explained below.

5 ii. Prior to the public hearing of the Wyckoff Planning Board held on
6 March 26, 2012, Munico's new counsel discovered that the partner of the Wyckoff Planning
7 Board's traffic expert was also the traffic expert for a developer who was seeking approval of a
8 shopping center with a supermarket in another municipality (the Borough of New Milford).
9 Defendant Munico's counsel contacted Defendant Stop & Shop's counsel, but no other counsel,
10 with this information. The primary purpose of the hearing scheduled for March 26, 2012 by the
11 Wyckoff Planning Board was to hear traffic testimony from the Board's traffic expert.

12 iii. Despite knowledge that they would allege a conflict of interest,
13 neither Defendant Munico's counsel nor Defendant Stop & Shop's counsel advised the Board's
14 attorney or Plaintiff Inserra's attorney or the attorney for any other interested party participating in
15 the Wyckoff Planning Board hearings, that they intended to allege a conflict of interest involving
16 the Wyckoff Planning Board's expert who was scheduled to testify during the hearings, or that the
17 hearing might not be able to move forward. Instead, they intentionally let the hearing start on the
18 traffic issues, knowing that an objection would be eventually raised sometime later during the
19 hearing.

20 iv. Defendant Stop & Shop's counsel introduced into evidence a
21 document that contained (i) prior comments or statements made by the Board's traffic expert during
22 the hearings, and (ii) the written responses of the Stop & Shop traffic expert (also utilized by
23 Munico), before Stop & Shop's traffic expert even testified to his written response on said exhibit.
24 Defendant Stop & Shop's traffic expert then further testified as to the exhibit, which exhibit and
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1 supporting testimony sought to interject into the proceeding additional information and/or
2 emphasize information relating to the Board's traffic expert.

3 v. Defendants Stop & Shop and Munico, prior to raising the conflict,
4 tried to taint and infect the record with the Board's traffic expert's comments, and Stop & Shop's
5 witnesses testimony on those comments, so as to cause the 23 hearings that already took place to
6 start over.

7 vi. Once the record had been further infused with discussions about the
8 Board's traffic expert, the conflict objection to the Board's traffic expert was eventually raised, but
9 approximately halfway through the hearing, by Defendant Munico, when the Board's traffic expert
10 was to start his testimony. Said objection was joined in by Defendant Stop & Shop. Defendants
11 thus attempted to sabotage the hearing and Application.

12 vii. The public hearing immediately stopped after the conflict was raised
13 so that the Defendants' allegation of a conflict of interest could be considered at a future meeting
14 after investigation and formal briefing submitted by the parties. This resulted in further delay.

15 viii. Defendants Stop & Shop and Munico then claimed in correspondence
16 submitted on March 29, 2012, as well as in supplemental briefing submitted to the Wyckoff
17 Planning Board and in argument at the April 23, 2012 Wyckoff Planning Board hearing, that the
18 Application was irrevocably tainted by the Board's traffic expert's partner's involvement in the
19 application for another developer not involved in Inserra's Application, which said Defendants
20 alleged was a conflict. Said Application had already been considered at 23 separate public hearings
21 of the Wyckoff Planning Board. The position of both Defendants, consistent with their pattern of
22 numerous other actions taken to delay the Application, was that Inserra needed to restart the
23 application from the beginning.

24 ix. The Wyckoff Planning Board, at the urging of the applicant's counsel
25 to avoid even the possibility of a taint and to eliminate an issue, and over the objections of
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1 Defendants Stop & Shop and Munico, determined that although there was no conflict of interest, it
2 was appropriate to retain a new traffic consultant and continue the hearings after a new traffic
3 expert was retained by the Board to avoid any perception of a conflict, and take the safest road.
4 This caused a substantial delay to the already lengthy proceedings, and at great additional cost to
5 Plaintiff, which now had to pay for another Board traffic expert to become familiar with the
6 application and review the proceedings and 23 hearings.

7 d. False Allegation that Property Could Not Accommodate Type of Tractor
8 Trailers: Stop & Shop's expert witnesses also improperly alleged that Inserra's site could not
9 accommodate certain types of tractor trailers. Defendants' traffic expert did not disclose that WB-
10 62 (wheel base 62") trucks are illegal on the roads of the State of New Jersey and could not, under
11 any circumstances, be utilized for delivery of goods and products to the proposed Shop Rite.

12 e. Position by Defendants that Inserra Should Install and Pay for Traffic Light
13 at Intersection: Throughout the course of the hearing, Stop & Shop and Munico claimed that the
14 Wyckoff Planning Board could not or should not permit Inserra to operate its store until an off-tract
15 traffic light was installed at the intersection of Wyckoff Avenue and Greenwood Avenue.

16 i. Upon information and belief, Stop & Shop and Munico were aware
17 that a requirement for the installation of a traffic light, as a precondition for the operation of
18 Inserra's proposed Shop Rite, would create significant delays to the eventual opening of the store if
19 it were required. Indeed, the Wyckoff Planning Board's traffic expert indicated there would be
20 substantial delays involved in construction of a traffic light where the County was not yet ready to
21 install same.

22 f. Position that Boulder Run Constituted Residential Property: Wyckoff's
23 Zoning Ordinance requires a minimum 100-foot setback between any commercial property and any
24 property utilized for residential purposes. Defendant Stop & Shop and Defendant Munico
25 contended during the proceedings before the Wyckoff Planning Board that Boulder Run was a
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1 “residential property” because there are second floor apartments located atop a building with retail
2 and commercial uses on the ground floor, approximately 500 feet from the Property.

3 i. Defendant Stop & Shop’s Wyckoff Location is between the Property
4 and the second floor apartments located elsewhere on Boulder Run.

5 ii. Defendant Stop & Shop and Defendant Munico alleged that the
6 proposed building required a 100-foot setback from Boulder Run.

7 g. Inciting Public Objections by Stop & Shop’s Use of Circulars and Flyers
8 Sent to Residents of Wyckoff: Upon information and belief, during the course of the hearings, Stop
9 & Shop and/or Munico, or persons affiliated with the Defendants through a purported citizens
10 group called “*Why Wyckoff?*”, a name created by a public relations firm affiliated with Stop &
11 Shop, caused numerous postcards and flyers to be mailed to substantially all of the residents,
12 property owners and/or taxpayers in Wyckoff prior to numerous public hearings scheduled before
13 the Wyckoff Planning Board. The flyers directed residents and taxpayers to contact the Wyckoff
14 Mayor and flood the Township Clerk’s Office and the Mayor’s Office with phone calls. Those
15 postcards and flyers contained numerous inaccurate statements, and repeated arguments previously
16 raised by the Defendants, without disclosing that Defendant Stop & Shop was responsible for the
17 circulation of the flyers.

18 h. Inciting Objections by Stop & Shop’s Employees: Upon information and
19 belief, Stop & Shop offered extra benefits to employees at the Wyckoff Location in exchange for
20 appearing and objecting to the Application, even though Stop & Shop knew that the employees at
21 the Wyckoff Location to whom it offered extra benefits, including but not limited to free food
22 and/or free lunches, were not citizens of the Township of Wyckoff or otherwise affected by the
23 Application.

24 i. Objection to Right of Parties to comment on Resolution: When the Board
25 sent a draft Resolution to counsel for all interested parties asking for their comments on same, even
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1 though Defendants had the chance to comment, they instead made no comment, objected to the
2 procedure and comments made by other counsel designed to ensure an accurate summary of the 39
3 hearings was set forth in the Resolution, and challenged it on appeal, despite clear case law
4 supporting that procedure.

5 76. During the middle of the 39 hearings, and also after Stop & Shop and Munico had
6 concluded their witness' testimony at the end of the hearings, the Wyckoff Planning Board allowed
7 members of the public who were interested in the Application and who had sat through the lengthy
8 proceedings, to provide their comments and opinions on the Application.

9 77. One member of the public made comments to the Wyckoff Planning Board on
10 September 24, 2012, as follows:

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12 Now for my request to this board and to the Wyckoff residents. For years
13 we have been given the runaround by Stop & Shop, wasting our time and
14 tax money. We have had traffic engineers, town planners, town officials,
15 local businesses, with the exception of Stop & Shop, and countless
16 Wyckoff citizens all echoing the same message. There is no reason to
17 disallow Shop Rite from opening up in Wyckoff on that property.
18 Meanwhile, we continue to get one feeble delay tactic after another from
the Stop & Shop Company obviously attempting to avoid the introduction
of competition. There could be no other motive, and I find its tactics
despicable. Stop & Shop clearly believes that it cannot go toe-to-toe with
Shop Rite and needs to resort to anticompetitive maneuvers instead.

[Emphasis supplied]

19 78. Another member of the public commented on September 24, 2012, that "a lot of the
20 rhetoric that you are hearing from Stop & Shop is probably based, solely based and motivated by
21 the fear of competition and not motivated by what's good for the town or what's bad for the town.
22 They are probably motivated by what's good or bad for Stop & Shop."

23 79. There were other members of the public and members of the Planning Board during
24 the course of the 39 hearings, that referred to the delay tactics of Defendants.

25 80. The Wyckoff Planning Board voted unanimously to approve the Application on
26 November 26, 2012, and voted to memorialize a resolution February 13, 2013.

II. Second Petition - with Numerous Sham Objections: Munico (and Wyckoff Residential) Objections to Inserra's Application to Wyckoff Planning Board

81. Defendant Munico and its affiliate, Wyckoff Residential, also raised sham objections in its opposition to the Wyckoff Planning Board application, as previously summarized in the First Petition discussion.

82. Defendant Munico acted in concert with Defendant Stop & Shop and supported and bolstered Stop & Shop's allegations and contentions with respect to the Application. The allegations set forth above with respect to Stop & Shop's petition to the Wyckoff Planning Board are incorporated herein by reference.

83. Plaintiff will not repeat the sham objections, arguments, petitions and actions discussed herein, as same would be duplicative.

84. The actions of Defendant Wyckoff Residential are also included in the sham objections of Defendant Munico because of its affiliation, and are not listed as separate and independent sham objections, even though Wyckoff Residential is a separate entity that entered its own appearance in the proceedings before the Wyckoff Planning Board.

III. Third Petition - with Numerous Sham Objections: Stop & Shop's Objections to Inserra's Application to the Bergen County Planning Board

85. Further efforts to delay the application thereafter occurred. In addition to the Application presented to the Wyckoff Planning Board, Plaintiff Inserra also filed on June 10, 2011 an application with the Bergen County Planning Board for site plan approval pursuant to the County Planning Act, *N.J.S.A. 40:27-6.1 et seq.* (the "County Application").

86. On July 7, 2011, Defendant Stop & Shop's counsel submitted an OPRA Request to the County Planning Board which sought a variety of documents concerning the County Application (the "2011 OPRA request").

1 87. Several months later, Defendants' counsel complained, by letter dated October 6,
2 2011, that the County Planning Board's response to its 2011 OPRA Request was inadequate.

3 88. Between October 6, 2011 and April of 2014, Defendant Stop & Shop submitted
4 numerous additional OPRA requests to the County Planning Board and its Department of Planning
5 (who would later become defendants in another series of petitions and objections discussed *infra*),
6 concerning documents related to the County Application. Defendant Stop & Shop was monitoring
7 the County Application continuously throughout this period of time.

8 89. On or about March 27, 2014, the County Planning Board advised representatives for
9 Defendant Stop & Shop by email that the County Planning Board would consider the County
10 Application at its public hearing on April 8, 2014, twelve days later.

11 90. Notice of a hearing to any interested party of a hearing to be held by a county
12 planning board is not required under the County Planning Act, *N.J.S.A. 40:27-6.1 et seq.*

13 91. Defendant Stop & Shop was afforded more notice – 12 days – than is legally
14 required for a hearing held pursuant to the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*,
15 which only requires notice be published and mailed at least 10 days prior to a hearing.

16 92. Although Stop & Shop had been monitoring the County Application for a long
17 period of time and since at least July 7, 2011, it requested by letter dated April 7, 2014, one day
18 before the scheduled County Planning Board hearing, that the County Planning Board adjourn the
19 hearing to allow Stop & Shop time to prepare for the hearing on the County Application, even
20 though it was thoroughly familiar with Inserra's plans because Stop & Shop had also opposed
21 Inserra's Application to the Wyckoff Planning Board for more than three years by challenging every
22 issue and offering testimony from every imaginable expert to slow the hearing process down.

23 93. Defendant Stop & Shop appeared, through counsel, and a representative of its client,
24 and reiterated its request to delay the proceedings until a later date to allow it to further prepare.
25 The County Planning Board denied that request.

1 94. During the hearing, Defendant Stop & Shop submitted to the County Planning
2 Board an analysis of whether a traffic light was justified near the Property, that Inserra's traffic
3 consultant had submitted to the Wyckoff Planning Board in early 2011.

4 95. Defendant Stop & Shop did not present the comments or testimony of any witnesses
5 on April 8, 2014.

6 96. Defendant Stop & Shop did not submit any expert reports on April 8, 2014.

7 97. Without the presentation of witnesses or an expert report, Inserra did not have the
8 opportunity to cross-examine or evaluate any such evidence.

9 98. As it had done before the Wyckoff Planning Board, Defendant Stop & Shop
10 contended that the County Planning Board should require Inserra to install an off-tract traffic signal
11 at the intersection of Wyckoff Avenue and Greenwood Avenue.

12 99. The Wyckoff Avenue – Greenwood Avenue intersection does not abut the Property
13 and is considered "off-tract" by the Municipal Land Use Law.

14 100. The Municipal Land Use Law limits a developer's maximum contribution for an off-
15 tract improvement to the developer's pro-rata share towards the cost of the improvement, and
16 restricts a developer from contributing more than its pro-rata share.

17 101. Traffic from the entire area, including vehicles travelling to and from Stop & Shop's
18 Wyckoff Location and Boulder Run, utilize the Wyckoff Avenue – Greenwood Avenue
19 intersection that Stop & Shop demanded Inserra was responsible for signalizing.

20 102. Inserra agreed to pay its pro rata share in the Wyckoff Planning Board proceedings
21 if a light was installed in the future.

22 103. Inserra also agreed to pay its pro rata share for the study and signalization in the
23 County Planning Board proceedings.

24 104. Rather than require installation of a traffic light as a condition of approval, the
25 County Planning Board required Inserra to contribute its pro-rata share of the cost of any such a
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1 study to determine same and/or the cost of what improvements were needed and then pay its pro-
2 rata share of whatever costs were determined necessary. The County Planning Board determined
3 that Inserra's pro-rata share for such study and/or improvements was \$175,000.

4 105. The County Planning Board voted to approve the County Application on April 8,
5 2014, with conditions, including the aforesaid payment.

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7 **IV. Fourth Petition - with Numerous Sham Objections:**
8 **The Freeholders Hearing *De Novo***

9 106. By letter dated April 17, 2014, nine days after the Bergen County Planning Board
10 approval (where there is a ten-day appeal period), Defendant Stop & Shop appealed the County
11 Planning Board decision to the Bergen County Board of Chosen Freeholders ("Freeholders"), and
12 sought a hearing *de novo* on the record below.

13 107. The Freeholders initially scheduled a public hearing for their *de novo* hearing on the
14 record for June 25, 2014.

15 108. As had been its consistent practice, Defendant Stop & Shop requested an
16 adjournment of the hearing on June 11, 2014.

17 109. The Freeholders granted the adjournment request, thereby causing additional delay
18 to the Plaintiff.

19 110. When Defendant Stop & Shop filed its brief with the Freeholders in support of its
20 appeal of the County Planning Board's decision prior to the rescheduled hearing date, it raised
21 numerous issues not raised during the April 8, 2014 County Planning Board hearing, even though
22 the Freeholders' review was *de novo* based on the record created at the County Planning Board.

23 111. Defendant Stop & Shop also submitted a traffic report to the Freeholders that was
24 dated June 24, 2014 – nearly three months after County Planning Board rendered its decision – in
25 an attempt to cause the Freeholders to consider new issues and/or prejudice Inserra.

1 112. Defendant Stop & Shop also sought to expand the record by handing out a package
2 of voluminous documents during the Freeholders' *de novo* on the record hearing without providing
3 them to Inserra or the Freeholders' counsel prior to the hearing, in an attempt to cause the
4 Freeholders to consider new evidence, cause further delay to the hearing, and/or prejudice Inserra.
5 This included an expert report by a traffic expert who had not testified before the County Planning
6 Board and who Inserra was unable to cross-examine because the Freeholders' hearing did not
7 include testimony.

8 113. Defendant's June 24, 2014 expert report, not previously submitted to the County
9 Planning Board and not provided to the Freeholders in advance of the *de novo* on the record
10 hearing, and not the subject of testimony by the Stop & Shop traffic expert, alleged as another sham
11 argument and objection that the County Planning Board had miscalculated Inserra's pro-rata share
12 of off-tract improvements.

13 114. In particular, the June 24, 2014 traffic expert report calculated Inserra's pro-rata
14 share of off-tract improvements at \$169,835. The County Planning Board required Inserra to pay
15 \$175,000 as its fair share of the study and/or improvement costs. Therefore, Stop & Shop's expert
16 asserted that the fair share was approximately 3% less than the County had imposed as a condition
17 of the County Planning Board approval.

18 115. The Freeholders considered Stop & Shop's appeal *de novo* on the record, inclusive
19 of the new issues and numerous new documents that Defendant Stop & Shop submitted improperly,
20 which included additional documents provided to the Freeholders and Inserra at the oral argument
21 on July 16, 2014.

22 116. The Freeholders rendered their decision on the appeal on August 20, 2014, and
23 independently determined to grant the approval.

24 117. Nonetheless, as a result of Defendants' obstructive tactics, Plaintiff's approvals were
25 delayed and caused significantly more expense to be incurred by Plaintiff.
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**V. Fifth Petition - with Numerous Sham Objections:
Stop & Shop Objects to the County OPRA Responses**

118. On June 26, 2014, a day after the original initial hearing date scheduled by the Freeholders, Defendant Stop & Shop, through its attorneys, submitted a new OPRA request to the County of Bergen and its Department of Planning, in an effort to obtain new evidence to challenge the County approval. That request was different in scope and the request for documents was different than previously-filed requests to the County, including the 2011 OPRA Request.

119. The County and its Department of Planning responded to that OPRA request on July 3, 2014.

120. As part of the response, the County and its Department of Planning produced four documents that Stop & Shop claimed had not previously been provided in the different 2011 OPRA Request, including a document that had been marked as an exhibit in the proceedings before the Wyckoff Planning Board that Defendant Stop & Shop already had in its possession. The other remaining documents also included several memos and emails between staff and the County Department of Planning that were likely exempt from production under OPRA (but were provided to Defendant Stop & Shop anyway).

121. As a result, Defendant Stop & Shop then claimed that it had been deprived of a fair hearing before the County Planning Board (the Third Petition described herein), which approval it had appealed to the Freeholders (the Fourth Petition described herein).

122. Defendant Stop & Shop then filed suit against the County in the Superior Court, Law Division (which is referred to as the Eighth Petition, and is discussed in Paragraphs 147-157 commencing on page 34 of this Complaint.

**VI. The Sixth Petition - with Numerous Sham Objections:
Stop & Shop's challenge of the Wyckoff Planning Board's Decision
(the "Stop & Shop Law Division Appeal")**

123. Defendant Stop & Shop filed an action in lieu of prerogative writs challenging the decision of the Wyckoff Planning Board, on the last day to file its complaint pursuant to New Jersey Court Rule 4:69-6(b)(3), on April 1, 2013. That action was captioned as "The Stop & Shop Supermarket Company, LLC v. Planning Board of the Township of Wyckoff and Insera Supermarkets, Inc." bearing docket number BER-L-2463-13 (the "Stop & Shop Law Division Appeal").

124. In its multi-count complaint filed in the Law Division, Defendant Stop & Shop pled numerous issues that were not properly raised or preserved in the proceedings before the Wyckoff Planning Board.

125. By way of example, and not by way of limitation, Stop & Shop claimed for the first time in the appeal, and without raising these issues during the Wyckoff Planning Board hearings (despite numerous requests by the Board and other interested parties in writing and placed on the record that all objections should be timely raised), that the Wyckoff Planning Board's approval of the Application should be overturned because (i) the Wyckoff Planning Board Chairman was biased; (ii) Insera's Application required another use variance because it originally involved subdivision of property belonging to the Railroad; (iii) the Wyckoff Planning Board improperly discussed scheduling issues during a work session; and (iv) the Wyckoff Planning Board discriminated against Stop & Shop. There were all new claims not raised below.

126. The general rule in an action in lieu of prerogative writs that challenges the decision of an inferior administrative, or quasi-judicial body, and/or land use board, in the Superior Court of New Jersey, Law Division, is that resolution of the challenge must usually be determined based solely on the record created before the inferior body and based upon issues and objections properly and timely raised before the governmental agency considering the application.

1 127. Notwithstanding the foregoing, Defendant Stop & Shop submitted a pretrial
2 memorandum in the Stop & Shop Wyckoff Law Division Appeal that omitted issues that it later
3 sought to raise at trial, including its claim that Inserra's Application required another use variance
4 because it originally involved subdivision of property belonging to the Railroad.

5 128. Then at trial, Stop & Shop sought to raise numerous arguments that were (i) not
6 raised before the Wyckoff Planning Board; (ii) not pled in its Complaint in the Law Division; and
7 (iii) not identified in its pretrial memorandum required by the Case Management Order.

8 129. Defendant Stop & Shop's central claim in Stop & Shop's Law Division Appeal was
9 that the Application required a use variance because supermarkets were not permitted in the B-5
10 Zone. To support that claim, Defendant Stop & Shop filed a brief in support of this argument that
11 claimed that the only location in Wyckoff that permitted supermarket use was Boulder Run. In
12 essence, Stop & Shop argued that it had an effective monopoly on that use within the municipal
13 boundaries of the Township of Wyckoff.

14 130. It is relevant in antitrust litigation involving sham objections as to whether the
15 claims raised by the defendants were adjudicated against the defendants by way of a summary
16 judgment.

17 131. Inserra filed a motion for partial summary judgment, and Stop & Shop cross-moved
18 for summary judgment, on the use issue. The trial court thoroughly rejected Stop & Shop's
19 position that there could only be one supermarket in Wyckoff and granted partial summary
20 judgment to Plaintiff Inserra.

21 132. The trial court also dismissed Defendant Stop & Shop's claims that the proceedings
22 were irrevocably tainted by the purported conflict of the Wyckoff Planning Board's first traffic
23 expert, by way of partial summary judgment (Plaintiff Inserra's initial request for summary
24 judgment was denied without prejudice to allow the Defendants to take limited discovery on the
25 claim). The trial court found, contrary to the claims of Defendant Stop & Shop (and Munico), that
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1 (i) the traffic consultant did not have a conflict of interest because of his partner's involvement, for
2 a different applicant, on a different project, in a different municipality (where Inserra had only been
3 mentioned as a potential tenant); and (ii) that even if the traffic consultant did have a conflict of
4 interest, that the Wyckoff Planning Board's decision – at Inserra's urging – to replace him with a
5 new traffic consultant and not allow him to testify – sufficiently remedied any potential taint.

6 133. With the two major issues disposed of, after a bench trial, the trial court rejected
7 each and every other allegation or claim raised by Stop & Shop. These claims also included many
8 other claims that Defendant Stop & Shop had not raised below, and had not pled in its Complaint
9 but improperly raised at trial. The trial court dismissed the Stop & Shop Law Division Appeal with
10 prejudice.

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12 **VII. The Seventh Petition – with Numerous Sham Objections:**
13 **Munico's Challenge of the Wyckoff Planning Board Decision**
(the "Munico Law Division Appeal")

14 134. Like Defendant Stop & Shop, Defendant Munico, together with Wyckoff
15 Residential, also filed an action in lieu of prerogative writs challenging the Wyckoff Planning
16 Board. Defendant, in furtherance of their objective of delay, with the use of sham objections,
17 arguments, and actions, coordinated with Defendant Stop & Shop, also on the last day of the appeal
18 period, to file its complaint on April 1, 2013. That action was captioned "Munico Associates, LP
19 and Wyckoff Residential, LLC v. Inserra Supermarkets, Inc. and the Planning Board of the
20 Township of Wyckoff" bearing docket number BER-L-2459-13 (the "Munico Law Division
21 Appeal").

22 135. In their multi-count complaint filed in the Law Division, Munico and Wyckoff
23 Residential pled numerous issues that were not properly raised or preserved in the proceedings
24 before the Wyckoff Planning Board (as had also been the case with Defendant Stop & Shop).

25 136. For example, Defendant Munico claimed that the Wyckoff Planning Board's
26 approval of the Application should be overturned because Inserra failed to identify certain
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1 variances in its public notice, even though Defendant Munico's initial counsel and subsequent
2 counsel failed to raise this claim in the proceedings before the Wyckoff Planning Board at a time
3 when the notice issue could be addressed by the Board and Plaintiff Inserra. Defendant Munico
4 waited until the appeal to raise the additional notice jurisdictional issue.

5 137. Like Defendant Stop & Shop, Defendant Munico filed a trial brief that raised
6 additional issues that were (a) not raised before the Wyckoff Planning Board; (b) not pled in its
7 Complaint; and (c) not identified in its pretrial memorandum. These new issues included (i) that
8 the Wyckoff Planning Board's grant of a parking stall size variance was inconsistent with other
9 approvals of the Board; (ii) that Inserra's public notice was also defective because it classified a
10 request for a subdivision as a "minor subdivision" rather than as a "major subdivision"—even
11 though the applicant's subdivision request was ultimately withdrawn; (iii) that all hearings
12 conducted prior to the elimination of the subdivision were invalid and the Wyckoff Planning Board
13 could not rely upon the record created during those hearings; (iv) that the Wyckoff Planning Board
14 had failed to give sufficient notice of its work sessions where scheduling and other administrative
15 matters were discussed; (v) Inserra's Landlord, the Grossman Partnership, through counsel,
16 submitted letters to the Board (even though copies were sent to counsel for Munico, Stop & Shop
17 and the Board), that persuasively influenced the Board to rule against Munico; and (vi) that the
18 Mayor improperly influenced the proceedings when he referenced the *Why Wyckoff* fliers during a
19 general comment period prior to the Wyckoff Planning Board's consideration of the Application at
20 a Wyckoff Planning Board hearing.

21 138. Defendant Munico also alleged the same use variance and conflict of interest claims
22 in the Munico appeal that Stop & Shop had advanced in the Stop & Shop appeal. Unlike Stop &
23 Shop, Munico did not seek summary judgment on these claims, but its claims on these issues were
24 nevertheless dismissed upon Inserra's motions for partial summary judgment against defendant
25 Munico in addition to the motion against defendant Stop & Shop.
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1 139. As in the proceedings before the Wyckoff Planning Board, Defendant Munico
2 continuously sought to delay the eventual resolution of the matter.

3 140. For example, although both Defendants Stop & Shop and Munico challenged the
4 same underlying action of the Wyckoff Planning Board, made numerous identical arguments, relied
5 upon the same facts, and would utilize the same administrative record, Defendant Munico initially
6 objected to the consolidation of its Complaint with the corresponding Complaint that Stop & Shop
7 filed, despite having advised the Plaintiff's counsel it would consent to the consolidation of the two
8 cases.

9 141. At the initial case management conference in the matter, which was held on May 22,
10 2014, wherein the above-referenced summary judgments were authorized to be filed and the two
11 actions were consolidated, counsel for Defendant Munico did not identify any objection to the trial
12 judge, the Hon. Joseph S. Conte, J.S.C., who had been assigned to the consolidated case. Judge
13 Conte had disclosed he had a prior involvement with a Grand Union that was later taken over by
14 Stop & Shop and a Shop Rite (not owned by Inserra) decades earlier when in private practice. No
15 counsel indicated any objection to the Judge's disclosure—during the conference, after he
16 requested counsel to advise him if there was an objection.

17 142. However, the following day, Defendant Munico, through counsel, then objected to
18 Judge Conte's consideration of the case because of Judge Conte's disclosure. This tactic was
19 similar to the one counsel for Munico utilized at the beginning of the proceedings before the
20 Wyckoff Planning Board, where counsel sat in the back of the hearing room without interposing
21 any jurisdictional or notice objections until much later in the proceedings. Ultimately, Judge Conte
22 transferred the case to another Judge. Inserra's partial summary judgment motions were not
23 considered on their original return date, and additional delay ensued.

24 143. Prior to the submission of trial briefs, the trial judge imposed a 60-page limitation on
25 the length of briefs each party was to submit. Defendant Munico filed a 60-page trial brief, but
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1 appended to it an additional 60-page document that it called “Summary of Proceedings Below,”
2 which constituted an end-run around the page limitation. This action forced Inserra to seek
3 intervention by the trial judge. The trial judge required Munico to remove the additional pages.
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5 144. Like Defendant Stop & Shop, Defendant Munico also raised numerous issues in its
6 trial brief that were (a) not raised before the Wyckoff Planning Board; (b) not pled in its Complaint;
7 and (c) not identified in its pretrial memorandum.

8 145. Like Defendant Stop & Shop, Defendant Munico’s central claim in the litigation
9 was that it held a monopoly on the right to develop property within the Township of Wyckoff with
10 a supermarket.

11 146. The trial court rejected each and every claim raised in Munico’s Complaint, as well
12 as many other claims that Munico had not pled in its Complaint but improperly raised at trial, and
13 dismissed the Munico Law Division Appeal with prejudice.

14 **VIII. Eighth Petition - with Numerous Sham Objections:**
15 **Stop & Shop’s OPRA Complaint**
16 **(the “County OPRA Litigation”)**

17 147. On August 18, 2014, Defendant Stop & Shop filed a complaint alleging that the
18 County of Bergen, Bergen County Planning Board, and the County of Bergen Department of
19 Planning and Economic Development violated OPRA by failing to disclose four documents in
20 response to an OPRA Request filed by Stop & Shop’s attorneys on July 3, 2011. That action was
21 captioned “The Stop & Shop Supermarket Company, LLC v. County of Bergen, Bergen County
22 Planning Board, and the County of Bergen Department of Planning and Economic Development”
23 bearing docket number BER-L-7943-14 (the “County OPRA Litigation”).

24 148. Defendant Stop & Shop alleged in that County OPRA Litigation that the denial of
25 access to certain documents had prejudiced its ability to present its case before the Bergen County
26 Planning Board in opposition to Plaintiff Inserra’s County Application (*i.e.*, in the Third Petition
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1 referred to herein), even though it was already in possession of the four documents (and one of
2 which it had received years earlier).

3 149. Defendant Stop & Shop knew or should have known that the only form of relief
4 available under OPRA was entry of an order directing the custodian of records to produce any
5 document that was improperly withheld from production, and the award of reasonable counsel fees
6 incurred in connection with litigation that resulted in the production of the requested documents.

7 150. Because Defendant Stop & Shop was already in possession of the documents it
8 claimed were improperly withheld in 2011 at the time it filed the OPRA County Litigation, it did
9 not seek the relief available to it under OPRA.

10 151. Instead, Defendant Stop & Shop improperly sought relief under New Jersey's
11 Declaratory Judgment Act statute that the Bergen County Planning Board had violated its rights
12 under OPRA in connection with the County Application (the Third Petition), with an obvious
13 objective to affect the Bergen County Planning Board approval and the Freeholder Law Division
14 Appeal (i.e., the Ninth Petition referenced herein).

15 152. Although implicating matters in which Inserra was an indispensable party, Stop &
16 Shop did not name Inserra as a defendant or identify Inserra as a party that needed to be joined in
17 the action.

18 153. Upon information and belief, Defendant Stop & Shop intended to utilize a favorable
19 decision in the County OPRA Litigation in its challenges of the County Planning Board and the
20 Freeholder decisions that approved the County Application, respectively.

21 154. Upon the motion for summary judgment filed by the defendants in the County
22 OPRA Litigation, the County and Department of Planning, the trial court found (i) the County
23 OPRA Litigation was filed nearly three years beyond the expiration of the limitations for OPRA
24 challenges; (ii) that the New Jersey Declaratory Judgment Act statute did not afford Stop & Shop
25 any measure of relief and that Stop & Shop could not use the Declaratory Judgment Act to seek a
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1 declaration that its rights were violated under OPRA; (iii) that the County OPRA Litigation was
 2 moot because the only relief available to Stop & Shop under OPRA and the common law – the
 3 production of documents improperly withheld in response to a lawful OPRA request – had already
 4 been achieved when the Bergen County Planning Board voluntarily produced the documents in
 5 response to an OPRA request.

6 155. An action seeking relief under OPRA is required to be filed within 45 days of the
 7 date an OPRA request is denied.

8 156. The trial judge noted that Stop & Shop, through counsel, had complained in October
 9 of 2011 and February of 2012 that a full response to its 2011 OPRA Request had not been
 10 provided, but nevertheless waited until August of 2014 to file the County OPRA Litigation.

11 157. The trial court dismissed the County OPRA Litigation. But as has occurred in each
 12 and every one of the other petitions referred to herein, that appeal is now pending in the Appellate
 13 Division.

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 15 **IX. Ninth Petition - with Numerous Sham Objections: Stop & Shop's Law Division**
 16 **Challenge to the Freeholder Decision**
 17 **(the "Freeholder Law Division Appeal")**

18 158. Defendant Stop & Shop filed a 13-count Complaint in lieu of prerogative writs
 19 challenging the Freeholder's *de novo* decision approving the County Application. That action was
 20 captioned "The Stop & Shop Supermarket Company, LLC v. The Bergen County Board of Chosen
 21 Freeholders, The Bergen County Planning Board, and Inserra Supermarkets, Inc." bearing docket
 22 number BER-L-9333-14 (the "Freeholder Law Division Appeal").

23 159. Defendant Stop & Shop, as in the case of every other petition or objection, had
 24 multiple procedural and substantive challenges to the decision. However, one of its main claims
 25 was that it asserted that the decision to approve the County Application without the requirement of
 26 an off-tract traffic light was improper.
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1 160. Defendant Stop & Shop knew or should have known that it had lacked a good faith
2 basis to challenge the decision of the Freeholders (including the Bergen County Planning Board
3 decision) with respect to the installation of an off-tract traffic signal on County property, because
4 decisions concerning roadway improvements on County roads are not a matter for judicial
5 investigation under a long line of New Jersey cases and involves a legislative action on how to
6 spend tax revenues.

7 161. Even if the County of Bergen required the installation of an off-tract traffic signal,
8 Plaintiff Inserra could only be required to pay its pro rata share for the cost of the study and/or
9 improvement.

10 162. Defendant Stop & Shop, in its Freeholder Law Division Appeal, also sued the
11 Freeholders for allegedly violating the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*
12 (“OPMA”). This was not a separate appeal, but was included in the Freeholder Law Division
13 Appeal, in an attempt to force the Freeholders to conduct a new hearing for the purposes of further
14 delaying the County Application.

15 163. The complaint alleged that the Freeholders violated the OPMA because a resolution
16 was placed upon the Freeholders’ August 20, 2014 agenda and because the Freeholders sent an
17 email to counsel for Stop & Shop and Inserra advising the parties of this fact shortly before the
18 Freeholders’ work session, and several hours before the Freeholders’ public hearing commenced on
19 that date.

20 164. In response to Defendant Stop & Shop’s unfounded claim that the Freeholders
21 violated OPMA, the Freeholders decided to take corrective remedial action, as authorized by
22 OPMA, to ensure the public’s confidence in the integrity of the process.

23 165. The Freeholders readopted the same resolution initially adopted on August 20, 2014,
24 at another Freeholder public hearing held on December 3, 2014. However, despite previously
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1 complaining about the late notice of the Freeholder's initial Resolution, Stop & Shop was given
2 more advanced notice of this remedial action.

3 166. Upon information and belief, neither Stop & Shop nor its representatives chose to
4 appear at that Freeholder meeting at which the remedial action was taken despite Defendant Stop &
5 Shop's original objection that it did not have enough time to attend the Freeholders' meeting.

6 167. Defendant Stop & Shop's complaint that it had not received enough notice of the
7 August 20, 2014 adoption of the initial resolution by the Freeholders was objectively baseless
8 because, as shown by its absence on December 3, 2014, Stop & Shop was not concerned by the fact
9 that it had not been present when the resolution was adopted, but instead sought merely to delay the
10 action by the Freeholders.

11 168. It is relevant in antitrust claims involving sham petitions and objections whether
12 amendments to complaints have been made or the taking of other action which delays disposition
13 of the petition.

14 169. Defendant Stop & Shop then moved to amend its complaint in the Freeholder Law
15 Division Appeal to re-allege an OPMA violation, notwithstanding the Freeholders' re-adoption of
16 its decision to affirm the County Planning Board's decision on December 3, 2014, and even though
17 the maximum relief afforded under OPMA, upon a determination of a violation, is requiring the
18 public body to take formal action at a subsequent meeting. The purpose of the amendment to the
19 Complaint was simply to further delay the Freeholder decision.

20 170. Defendant Stop & Shop also contended that the County Planning Board's decision
21 to approve the County Application and the Freeholders' affirmance of that decision created an
22 unsafe condition on the County's roads, even though it knew that there was no evidence presented
23 to the County Planning Board that any unsafe conditions would exist and the record was devoid of
24 any such information. It raised the lack of safety allegation for the first time during the appeal
25 process.
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1 171. The Law Division granted Plaintiff Inserra's motion for partial summary judgment
2 and dismissed Defendant Stop & Shop's OPMA challenge on December 18, 2014.

3 172. On April 8, 2015, the Law Division granted Plaintiff Inserra's motion for partial
4 summary judgment and dismissed Stop & Shop's allegations that the County Planning Board and
5 the Freeholders improperly approved and affirmed the County Application without requiring the
6 installation of a traffic light at the intersection of Wyckoff Avenue and Greenwood Avenue, as well
7 as several other procedural claims that the trial court found to be without merit. This is an example
8 of yet another summary judgment motion in which Inserra was successful, and Defendant was
9 unsuccessful because of its sham positions.

10 173. The Law Division dismissed the few remaining allegations in the Freeholder Law
11 Division Appeal after trial, on issues not properly the subject of the summary judgment motions, by
12 a decision issued on May 12, 2015.

13 174. The Law Division rejected each and every one of the thirteen separate causes of
14 action alleged by Defendant Stop & Shop, either by the series of partial summary judgments, or
15 after trial on the few counts that could not be dismissed by way of summary judgment.

16 175. Nevertheless, Defendant Stop & Shop, consistent with this past practice and pattern,
17 has filed another appeal in the Appellate Division, in addition to its Wyckoff Law Division Appeal
18 which is pending in the Appellate Division, the Munico Law Division Appeal in the Appellate
19 Division, and the County OPRA Litigation Appeal—of which Inserra is not a party—which is
20 pending in the Appellate Division.

21 **E. THE SHAM LITIGATIONS AGAINST INSERRA**

22 **I. General**

23 176. As a direct competitor with Inserra's proposed Shop Rite in the market for full
24 service supermarkets in the Township of Wyckoff, and the northwestern Bergen County area,
25 Defendant Stop & Shop, both individually and in conspiracy with Defendant Munico and other
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1 unknown individuals and corporations associated with said Defendants, engaged in a course of
2 conduct, including filing of sham petitions and objections designed to hinder, impede, delay,
3 obstruct, and/or prevent Inserra from promptly obtaining all necessary governmental approvals for
4 the construction of the proposed Shop Rite, which would be the only other full service supermarket
5 in Wyckoff, aside from Stop & Shop's existing store in Boulder Run.

6 177. Specifically, in direct response to Inserra's efforts to secure the necessary
7 governmental approvals, including but not limited to preliminary and final site plan approval from
8 the Wyckoff Planning Board and County site plan approval from the County Planning Board, Stop
9 & Shop, together with Munico on many (but not all) of the actions, has taken every opportunity to
10 interfere with, including but not limited to the submission of baseless and sham objections by
11 Defendants, including through their counsel, regarding Inserra's various applications, and the filing
12 of numerous actions in lieu of prerogative writs, and appeals, all with the intent to hinder, impede,
13 delay, obstruct and/or prevent Inserra from developing a competing full service supermarket in the
14 Township of Wyckoff, the northwestern Bergen County area, and the Northern New Jersey area.

15 178. While Inserra has received all necessary land use approvals from any board or
16 agency with jurisdiction over the proposed development, it has not yet commenced construction
17 upon the proposed Shop Rite because Stop & Shop and Munico have instituted numerous legal
18 challenges to the governmental approvals.

19 179. Defendant Stop & Shop and Munico have been unsuccessful in litigating any of the
20 Series of Petitions (i.e., the nine petitions and objections presented to the various governmental
21 agencies and the courts), and their challenges to Inserra's land use have been categorically rejected
22 in all respects in the Law Division.

23 180. Defendants Stop & Shop and Munico have elected to appeal each of the land use
24 approvals issued to Inserra to the Appellate Division, where they are all still pending.
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1 181. The ongoing appeals, despite lacking any good-faith basis in law or fact, represent a
2 continuous pattern of unsuccessful challenges and petitions designed only to delay and hinder
3 Inserra, and have caused Inserra to delay the commencement of construction and operation of the
4 proposed Shop Rite.

5 **II. Stop & Shop's Practice of Interfering with**
6 **Other Potential Competitors' Development Applications in Other Market Areas**

7 182. Defendant, Stop & Shop's objection to the Application, the County Application, the
8 Freeholder's separate trial *de novo* review of the County Planning Board's approval of the County
9 Application, and the County's OPRA Response (of not providing four documents, one of which it
10 had), have hindered, impeded, delayed, obstructed, and/or prevented Inserra from promptly
11 obtaining all necessary governmental approvals for the construction of the proposed Shop Rite.

12 183. Defendant Stop & Shop, and/or persons or entities affiliated with Stop & Shop, have
13 objected to numerous other applications for development that sought approval to construct full
14 service supermarkets elsewhere in the particular region of Bergen County, New Jersey, Northern
15 New Jersey, and/or the Northeastern United States (including Connecticut). This is in furtherance
16 of its strategy to block competitors from accessing the full service supermarket market and to
17 prevent and impede competition.

18 184. Upon information and belief, Stop & Shop's business strategy includes objecting to
19 applications for development near existing stores operated by Stop & Shop, without regard to the
20 merits of the application.

21 185. Upon information and belief, Stop & Shop's business strategy is designed to hinder,
22 impede, delay, obstruct and/or prevent competitors from entering the market for full-service
23 supermarkets through the use of the legal process, and thereby retain its position in the
24 marketplace.

III. The Pattern and Practice of Utilizing the Legal Process to Deny Competitors' Access to the Market is not Protected by the First Amendment's Right to Petition

186. The First Amendment of the United States Constitution guarantees the right to petition the government for the redress of grievances.

187. The First Amendment's guarantee of the right to petition extends to petitioning that would result in an anti-competitive outcome, provided that the petitioning activity is not objectively baseless or undertaken for the purpose of using the governmental process to harm a market rival and restrain trade.

188. Individually, the nine Petitions in (i) the Wyckoff Planning Board (by Stop & Shop), (ii) the Wyckoff Planning Board (by Munico and Wyckoff Residential), (iii) the Bergen County Planning Board, (iv) the Freeholders, (v) Stop & Shop's Objection to the County's OPRA Responses, (vi) Stop & Shop Law Division Appeal, (vii) the Munico Law Division Appeal, (viii) the Freeholder Law Division Appeal, and (xi) the County OPRA Litigation, were objectively baseless because neither Stop & Shop nor Munico had probable cause to file any or a substantial portion of these claims, and said petitions included sham objections and positions designed and intended to delay Inserra's Wyckoff project.

189. The Petitions represent a total of nine separate series of petitions and actions arising out of Inserra's attempt to develop the Property and secure the necessary governmental approvals from the Wyckoff Planning Board and the County Planning Board.

190. As the United States Supreme Court explained in *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), because Stop & Shop and Munico have filed "a whole series of lawsuits and other legal actions without regard to the merits, [there is a] far more serious implication" than had Defendants merely filed a single action.

191. As recently described by the Third Circuit in *Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162 (3d Cir. 2015), where "a series of petitions were filed with or

1 without regard to merit and for the purpose of using the governmental process (as opposed to the
2 outcome of that process) to harm a market rival and restrain trade”, the petitioning activity, such as
3 those instituted and perpetuated by Defendants Stop & Shop and Munico, are not, for the reasons
4 set forth herein, protected by the First Amendment’s right to petition.

5 192. The Petitions which were the subject of appeals to the Law Division were each
6 resolved against Stop & Shop and Munico, respectively.

7 193. For the reasons set forth herein, none of the Petitions involving appeals to the Law
8 Division had objective merit. The Petitions raised a multitude of sham objections, and/or positions.

9 194. Moreover, even though the Defendants filed a Series of Petitions that collectively
10 lacked merit, as set forth in *Professional Real Estate Investors, Inc. v. Columbia Pictures*
11 *Industries, Inc.*, 508 U.S. 49 (1993), because the Petitions were each, individually, objectively
12 baseless and Defendants did not have probable cause to file any or substantially all of these claims,
13 these petitioning activities are not protected by the First Amendment’s right to petition for the
14 redress of grievances (if the Defendants’ petitions were not somehow considered under *California*
15 *Motor* and *Hanover 3201* as a “series of petitions” for the purpose of assessing whether the First
16 Amendment’s right to petition sheltered their conduct).

17 195. Moreover, the said Petitions were objectively baseless because Defendants adopted
18 patently unreasonable positions in relation to the Township of Wyckoff Zoning Ordinance,
19 Township of Wyckoff Site Plan Ordinance, Bergen County Site Plan Resolution, the Municipal
20 Land Use Law, OPRA, and OPMA, and New Jersey law, as summarized herein, that lacked any
21 reasonable factual or legal basis.

22 196. By way of example, but not by way of limitation, Defendants, as summarized
23 previously, claimed that Plaintiff Inserra could not operate a full service retail-food – grocery store
24 – supermarket on the Property, even though Stop & Shop held a lease on the Property for that very
25 use until the day before Inserra’s Lease with the owner of the Property commenced, and a full
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1 service supermarket had operated on the Property for more than 30 years, and where Plaintiff was
2 seeking to reduce the retail building area on the Property and make the proposed replacement
3 building more conforming than the existing building.

4 197. Another example of their unreasonable and objectively baseless challenges was, as
5 summarized previously, their claim that the Wyckoff Planning Board's consideration of the
6 Application was tainted because the Wyckoff Planning Board had retained, but did not allow to
7 testify, a professional traffic consultant whose partner had a business relationship with a developer
8 that was considering entering into a lease with Inserra (but had not yet done so), in another
9 municipality. The Wyckoff Planning Board rejected this claim outright and declined the demands
10 of the Defendants to start the proceedings anew, which would have further delayed the Application,
11 and the Law Division found that their allegation of a conflict of interest was unwarranted as a
12 matter of law.

13 198. An additional example, but by no means the last example of Stop & Shop's
14 unreasonable and objectively baseless claims, as summarized previously, was its challenge of the
15 County Planning Board and Freeholders' separate decisions not to require Inserra to install an off-
16 tract traffic light at the intersection of Wyckoff Avenue and Greenwood Avenue. The installation
17 of a traffic light by a county is a purely legislative decision for which no relief is available, but Stop
18 & Shop made challenging that determination the centerpiece of the Freeholder Law Division
19 Appeal.

20 199. Upon information and belief, Stop & Shop and Munico commenced the Petitions
21 involving the appeals to the Law Division of every decision made by every governmental agency
22 involved, not for the purpose of seeking a justifiable legal remedy, but instead to impose an anti-
23 competitive injury upon Plaintiff Inserra by hindering, impeding, delaying, obstructing, and/or
24 preventing Inserra from promptly obtaining all necessary governmental approvals for the
25 construction of the proposed Shop Rite.
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1 200. The conduct of Defendants during the course of the proceedings before each and/or
2 substantially all the governmental agencies (*i.e.*, Wyckoff Planning Board, Bergen County Planning
3 Board, Bergen County Freeholders, and the County of Bergen) and the appeals of every adverse
4 decision to the Law Division, and the further appeals of each and every adverse Law Division
5 decision to the Appellate Division, is further evidence of the bad faith of these Series of Petitions.

6 201. For example, Defendants routinely withheld objections to the jurisdiction of the
7 Wyckoff Planning Board, only to raise them far into the administrative proceedings, or for the first
8 time in the Law Division actions, so as to inflict maximum delay on the application process. As
9 stated previously, the same conduct occurred during the County Planning Board's review of the
10 County Application and the subsequent hearing *de novo* held by the Freeholders.

11 202. Defendants routinely submitted duplicative testimony and asked duplicative
12 questions upon cross-examination of Inserra's witnesses, solely for the purpose of elongating the
13 hearing process before the Wyckoff Planning Board, which resulted in unnecessary delays to the
14 Application.

15 203. Defendants routinely submitted false and misrepresentative testimony and evidence
16 to the Wyckoff Planning Board and the other governmental agencies in an attempt to confuse the
17 issues and/or induce the Boards into making an improper decision on the Application in their favor.

18 204. Defendants routinely made arguments that were not preserved in the administrative
19 record, and submitted documents that were not part of the administrative record, which forced
20 Inserra and the respective trial courts to respond to those new arguments and new documents,
21 thereby delaying the outcome of the respective trials and further complicating the Petitions and
22 delaying the adjudicatory process.

FIRST COUNT

(Violation of 15 U.S.C. § 1; Conspiracy to Restrain Trade)

205. Plaintiff Inserra incorporates by reference all of the allegations previously set forth in this Complaint as if set forth at length herein.

206. Inserra's Shop Rite stores and Defendants' Stop & Shop's stores are direct competitors for customers in the full-service supermarket market. Defendants Stop & Shop and Munico entered into a direct agreement and/or arrangement to hinder, impede, delay, obstruct and/or prevent Inserra's attempts to secure land use approvals to develop the Property with a full service supermarket that would compete with Stop & Shop's store in Wyckoff. This unlawful agreement and/or arrangement has the effect of limiting competition in the market for full service supermarkets in the northwestern Bergen County area, and in particular, in Wyckoff market, where Stop & Shop is the only full-service supermarket that is currently operating. The consequence of this agreement is that it enabled Stop & Shop to restrain trade by charging higher prices and to avoid competition.

207. Defendants' conduct, as alleged above, and summarized in this Complaint, violates Section 1 of the Sherman Act, 15 U.S.C. § 1. Through an agreement and/or arrangement to hinder, impede, delay, obstruct and/or prevent Inserra from obtaining final, non-appealable land use approvals, the Defendants conspired to restrain interstate trade and commerce.

208. In particular, Defendants Stop & Shop and Munico agreed to jointly object to the Application in the proceedings before the Wyckoff Planning Board.

209. Upon information and belief, Defendants Stop & Shop and Munico coordinated their efforts in connection with their objection to the Application before the Wyckoff Planning Board.

210. Defendants Stop & Shop and Munico even agreed to initially share the services of legal counsel to facilitate their opposition to the Application and entered a joint appearance and raised joint objections to the Application for at least 8 months (July of 2010 to February of 2011) in

1 an effort to hinder, impede, delay, obstruct and/or prevent Inserra from obtaining final, non-
2 appealable land use approvals.

3 211. Furthermore, Defendant Munico did not present any of its own professional
4 witnesses during the proceedings before the Wyckoff Planning Board, but instead relied upon and
5 attempted to bolster the testimony and evidence presented by Stop & Shop and its expert witnesses
6 in an effort to hinder, impede, delay, obstruct and/or prevent Inserra from obtaining final, non-
7 appealable land use approvals.

8 212. Upon information and belief, Defendants Stop & Shop and Munico coordinated their
9 efforts in the preparation and prosecution of their objectively baseless complaints and petitions in
10 the Stop & Shop Law Division Appeal and Munico Law Division Appeal, including but not limited
11 to, working cooperatively on briefs, motions and other documents submitted to the Law Division
12 and Appellate Division and coordinated strategy, in an effort to hinder, impede, delay, obstruct
13 and/or prevent Plaintiff Inserra from obtaining final, non-appealable land use approvals.

14 213. By improperly and illegally hindering, impeding, delaying, obstructing, and/or
15 preventing Inserra from promptly obtaining all necessary governmental approvals for the
16 construction of the proposed Shop Rite though the institution and maintenance of unreasonable
17 legal proceedings, Defendants Stop & Shop and Munico restrained trade by preventing competition
18 in the market for full service supermarkets in the northwestern Bergen County area and maintaining
19 their monopoly hold on the full service supermarket market in Wyckoff.

20 214. Shoppers at full service supermarkets in northwestern Bergen County, and in
21 particular, in Wyckoff, have been injured and will continue to be injured by the absence of
22 competition in the market for full-service supermarkets through higher prices on a great many
23 number of items and products than would otherwise have been available had Stop & Shop and
24 Munico not conspired to illegally and unlawfully hinder, impede, delay, obstruct and/or prevent
25 Inserra from obtaining final, non-appealable land use approvals.

1 219. Upon information and belief, the Stop & Shop Law Division Appeal, the Munico
2 Law Division Appeal, the County OPRA Litigation, and the Freeholder Law Division Appeal, were
3 also objectively baseless because the claims alleged in those actions were merely an attempt by
4 Stop & Shop, with the aiding of the other Defendants, to interfere with Inserra's attempt to obtain
5 the land use approvals necessary to construct and operate the proposed Shop Rite on the Property.

6 220. Upon information and belief, when Defendant Stop & Shop brought the Petitions, it
7 knew or should have known that it did not have a legitimate basis in pursuing these challenges and
8 that they were filed without regard to their merit and for the purpose of using the governmental
9 process, as opposed to the outcome of that process, to harm Inserra and to restrain trade.

10 221. By pursuing these unfounded claims, Defendant Stop & Shop intended to acquire or
11 sought to preserve monopoly power in the northwestern Bergen County and Wyckoff geographic
12 market for full service supermarkets with the help and assistance of the other Defendants.

13 222. By preventing the proposed Shop Rite from operating as a full service supermarket,
14 Defendant Stop & Shop is excluding its only competitor in Wyckoff, resulting in monopolistic
15 power to Stop & Shop. It has admitted its position during the aforesaid appeals that the only
16 supermarket permitted in Wyckoff is in Boulder Run.

17 223. Defendant Stop & Shop intentionally and willfully conspired with Defendant
18 Munico and other currently unknown persons and entities to monopolize the full service
19 supermarket market by way of the acts set forth above, including, but not limited to developing a
20 business strategy with those other persons and entities that it associated with to gain and/or
21 maintain monopoly power in the market by utilizing the sham objections and litigations, as well as
22 other anti-competitive acts, to stall and delay the administrative and judicial processes. A
23 substantial amount of commerce has been affected by these efforts.

24 224. Shoppers at full service supermarkets in northwestern Bergen County, and in
25 particular, in Wyckoff, have been injured and will continue to be injured by the absence of
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1 competition in the market for full service supermarkets through higher prices for goods and
2 products for a great many goods and products than would otherwise have been available had Stop
3 & Shop not attempted to gain and/or maintain monopoly power, and had Stop & Shop and Munico
4 not conspired to gain and/or obtain monopoly power by hindering, impeding, delaying, obstructing
5 and/or preventing Inserra from obtaining final, non-appealable land use approvals.

6 225. As a result of the unlawful acts perpetuated by Defendants Stop & Shop and
7 Munico, Inserra has suffered and will continue to suffer antitrust injury in an amount to be proven
8 at trial, including hindering, impeding, delaying, obstructing, and/or preventing Inserra from
9 promptly obtaining all necessary governmental approvals for the construction of the proposed Shop
10 Rite and thereby hindering, impeding, delaying, obstructing, and/or preventing Inserra realizing the
11 financial benefits of operating a Shop Rite on the Property while forcing Inserra to, at the same
12 time, continue to pay money to lease the Property while being unable to develop the Property as
13 contemplated in its Lease with the owner of the Property.

14 **THIRD COUNT**

15 **(Violation of N.J.S.A. 56:9-3; Conspiracy to Restrain Trade)**

16 226. Plaintiff Inserra incorporates by reference all of the allegations previously set forth
17 in this Complaint as if set forth at length herein.

18 227. In addition to the violations of the Sherman Act, as alleged above, the unlawful acts
19 and conduct of Defendant Stop & Shop and Munico also violate the New Jersey Antitrust Act
20 prohibition on conspiracies in restraint of trade within the State of New Jersey.
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FOURTH COUNT

(Violation of N.J.S.A. 56:9-4; Monopolization, Attempted Monopolization, and Conspiracy to Monopolize)

228. Plaintiff Inserra incorporates by reference all of the allegations previously set forth in this Complaint as if set forth at length herein.

229. In addition to the violations of the Sherman Act, as alleged above, the unlawful acts and conduct of Defendant Stop & Shop and Munico also violate the New Jersey Antitrust Act prohibition against any attempts to gain or maintain monopoly power, as well as any conspiracy to monopolize trade within the State of New Jersey.

FIFTH COUNT

(Tortious Interference with Contract)

230. Plaintiff Inserra incorporates by reference all of the allegations previously set forth in this Complaint as if set forth at length herein.

231. Defendants knew or should have known that Inserra was a tenant or involved in the project and was planning on opening a Shop Rite full service supermarket on the Property.

232. The acts, conduct, and actions as well as the inactions of the Defendants, including their efforts to hinder, impede, delay, obstruct, and/or prevent Inserra from promptly obtaining all necessary governmental approvals for the construction of the proposed Shop Rite represent an interference with the Lease between Inserra Supermarkets, Inc., as Lessee, and the Grossman Partnership, as Lessor.

233. The actions and/or inactions of Defendants are willful and intentional and are undertaken by Defendants who are not parties to Inserra's contract with the Grossman Partnership.

234. The intentional and malicious actions and/or inactions of Defendants, especially as a result of the solicitation and participation of all Defendants in making objections, and taking

1 actions, individually and/or in concert, to hinder, impede, delay, obstruct, and/or prevent the
2 proposed project on the Property, caused damage, injury and harm to Plaintiff.

3 235. Plaintiff Inserra Supermarkets, Inc. has suffered damages as a result of said
4 interference of its Lease, including but not limited to, the lost rental it currently continues to pay to
5 its landlord of more than \$100,000 per month, as a result of the vacancy at the Property, which
6 represents annual rental payments of more than \$1,200,000.

7 236. Plaintiff Inserra has advised Defendants on numerous occasions before each
8 administrative and judicial proceeding that reviewed Inserra's applications of its damages just for
9 the rent payments, as aforesaid.

10 **SIXTH COUNT**

11 **(Interference with Prospective Economic Advantage)**

12 237. Plaintiff Inserra incorporates by reference all of the allegations previously set forth
13 in this Complaint as if set forth at length herein.

14 238. Inserra reasonably anticipated that it would be able to complete the development of
15 the Property, utilize the space at the Property and eliminate the existing vacancies at the Property
16 though the construction of a new, state-of-the-art Shop Rite full service supermarket. This
17 represents a substantial economic advantage.

18 239. The acts, conduct and actions, as well as the inaction and failure to disclose, by
19 Defendants, either together, individually, and/or in concert, represent an interference with Inserra's
20 prospective economic advantage.

21 240. The actions and/or inactions of Defendants are willful and intentional.

22 241. The actions and inactions of Defendants are also malicious, given the conduct of
23 intentionally utilizing the governmental process without regard to the merit of their claims for the
24 purpose of harming Inserra and restraining trade without achieving or advance any realistic or
25 reasonable goal because their series of Petitions other than for purposes of delay.

1 248. The purpose of this civil conspiracy was to inflict a wrong and injury against
2 Inserra.

3 249. Inserra has suffered damages and injury as a result of said civil conspiracy between
4 the Defendants and their overt actions and inactions. These damages are recoverable pursuant to
5 New Jersey law, including, in particular, under the holding of *Banco Popular N. Am. v. Gandi*, 184
6 N.J. 161 (2005).

7 250. The Defendants are further liable because they agreed to undertake a scheme to
8 hinder, impede, delay, interfere, obstruct, and/or stop Inserra's development of the Property with a
9 supermarket.

10 251. Said Defendants agreed either expressly and/or implicitly to each other and/or to
11 Stop & Shop, to do their part to further the aforesaid objectives, which is actionable.

12
13 WHEREFORE, Plaintiff Inserra Supermarkets, Inc. hereby demands relief against
14 Defendants The Stop & Shop Supermarket Company, LLC, Munico Associates, L.P., and Wyckoff
15 Residential, LLC, and ABC Corporations 1 – 10, and John Does 1 - 10, individually, jointly,
16 severally and alternatively, as follows:

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- 18 A. An award of compensatory, exemplary, incidental consequential and other damages in
19 an amount to be determined at trial;
 - 20 B. A finding that Defendants The Stop & Shop Supermarket Company, LLC, Munico
21 Associates, L.P., and Wyckoff Residential, LLC violated Sections 1 and 2 of the
22 Sherman Act, 15 U.S.C. §§ 1, 2, and awarding treble damages under 15 U.S.C. §15;
 - 23 C. A finding that Defendants The Stop & Shop Supermarket Company, LLC, Munico
24 Associates, L.P., and Wyckoff Residential, LLC violated the New Jersey Antitrust Act,
25 *N.J.S.A. 56:9-3* and *N.J.S.A. 56:9-4*, and awarding treble damages under *N.J.S.A. 56:9-*
26 12;
 - 27 D. A permanent injunction enjoining Defendant The Stop & Shop Supermarket Company,
28 LLC from monopolizing or attempting to monopolize the relevant geographic market, as
 provided for by 15 U.S.C. §26 and *N.J.S.A. 56:9-10*;

- 1
- 2 E. An award of punitive damages in an amount to be determined at trial as a result of the
- 3 willful, intentional and unlawful acts of Defendants The Stop & Shop Supermarket
- 4 Company, LLC, Munico Associates, L.P., and Wyckoff Residential, LLC, and their
- 5 representatives, agents and/or employees;
- 6 F. Awarding Plaintiff Inserra Supermarkets, Inc. its costs and attorneys' fees in connection
- 7 with this action; and
- 8 G. Such further and additional relief as the Court deems just and proper.

9 BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Inserra Supermarkets, Inc.

10 By: /s/ Arthur Chagaris
11 Arthur N. Chagaris, Esq. (AC-4713)
A Member of the Firm

12 By: /s/ John J. Lamb
13 John J. Lamb, Esq. (JL-6494)
14 A Member of the Firm

15
16 Dated: March 28, 2016
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DEMAND FOR JURY TRIAL

Plaintiff Inserra Supermarkets, Inc. hereby demands a jury trial on all issues so triable.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Inserra Supermarkets, Inc.

By: /s/ Arthur Chagaris
Arthur N. Chagaris, Esq. (AC-4713)
A Member of the Firm

By: /s/ John J. Lamb
John J. Lamb, Esq. (JL-6494)
A Member of the Firm

Dated: March 28, 2016

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that the matter in controversy is not the subject of any other action pending in this or any other court, except the following four pending appeals in the Superior Court of New Jersey, Appellate Division:

1. *The Stop & Shop Supermarket Company, LLC v. Planning Board of the Township of Wyckoff and Inserra Supermarkets, Inc.* bearing docket number A-701-14
2. *Munico Associates, LP and Wyckoff Residential, LLC v. Inserra Supermarkets, Inc. and Township of Wyckoff Planning Board*, bearing docket number A-613-14
3. *The Stop & Shop Supermarket Company, LLC v. The Bergen County Board of Chosen Freeholders, et al.*, bearing docket number A-4630-14
4. *The Stop & Shop Supermarket, LLC v. The County of Bergen, et al.*, bearing docket number A-2134-14

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Inserra Supermarkets, Inc.

By: /s/ Arthur Chagaris
Arthur N. Chagaris, Esq. (AC-4713)
A Member of the Firm

By: /s/ John J. Lamb
John J. Lamb, Esq. (JL-6494)
A Member of the Firm

Dated: March 28, 2016

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1

I hereby certify that the above-captioned matter is not subject to compulsory arbitration because Plaintiff seeks damages in excess of \$150,000 and injunctive relief.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Inserra Supermarkets, Inc.

By: /s/ Arthur Chagaris
Arthur N. Chagaris, Esq. (AC-4713)
A Member of the Firm

By: /s/ John J. Lamb
John J. Lamb, Esq. (JL-6494)
A Member of the Firm

Dated: March 28, 2016