

Kevin Malanga
57 Ridge Road
West Orange, N.J. 07052

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E. Michael Taylor
250-252 Watchung Avenue
West Orange, N.J. 07052

2012 APR 20 AM 11:22

WEST ORANGE NJ

Superior Court of
New Jersey

Essex COUNTY
Law DIVISION

Docket No: L-2809-12

Kevin Malanga, pro se
E. Michael Taylor, pro se
Plaintiff(s)

Vs.
The Township Council of the Township of West Orange
Defendant(s)

CIVIL ACTION
SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

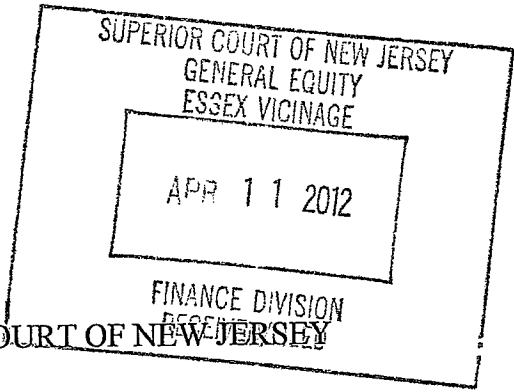
S/ Jennifer Perez
Jennifer M. Perez,
Clerk of the Superior Court

DATED: 04/19/2012

Name of Defendant to Be Served: Township Council, Township of West Orange

Address of Defendant to Be Served: 66 Main Street, West Orange

NOTE: The Case Information Statement is available at www.njcourts.com.



KEVIN MALANGA, and
E. MICHAEL TAYLOR,

SUPERIOR COURT OF NEW JERSEY

Plaintiffs

CHANCERY DIVISION

v.

ESSEX COUNTY

THE TOWNSHIP COUNCIL OF THE
TOWNSHIP OF WEST ORANGE

DOCKET NO. L-2809-12

Defendant

CIVIL ACTION

VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRIT

Plaintiffs herein, by way of Verified Complaint in Lieu of Prerogative Writ against the
defendant says as follows:

IDENTIFICATION OF THE PARTIES

1. Plaintiff Kevin Malanga resides at 57 Ridge Road, Township of West Orange, County of Essex, State of New Jersey ("Malanga").
2. Plaintiff E. Michael Taylor resides at 250-252 Watchung Avenue, Township of West Orange, County of Essex, State of New Jersey ("Taylor").
3. Defendant Township Council of the Township of West Orange (the "Council") is the governing body of the Township of West Orange ("Township").

FIRST COUNT

4. Plaintiffs repeat the allegations of Paragraphs 1 through 3 hereof and incorporate them herein as though set forth at length.

5. In 2003, the Council designated a portion of the Township in the vicinity of Main Street as “an area in need of redevelopment” in accordance with the New Jersey Redevelopment Law, N.J.S.A. 40A:12A-5.

6. The central feature of the redevelopment area is a former Thomas Edison factory building on Main Street that had been constructed in 1911 and had been used for the manufacture of lead storage batteries (the “Battery Building”).

7. The Battery Building was a commercial property and was occupied by numerous businesses including an upscale oriental rug store, a wicker furniture store, a wallpaper store, and a gym.

8. On April 13, 2006, the Council issued a Request for Qualifications and Concept Plans soliciting proposals for the development of the redevelopment area.

9. In May of 2006, Prism Greene Associates IV, LLC, a Delaware limited liability company (“Prism”) submitted a response to the Township’s request for qualifications.

10. On May 23, 2006, a representative of Prism, Eugene Diaz (“Diaz”), presented Prism’s proposal for the redevelopment area to the Council.

11. At the presentation of May 23, 2006, Diaz stated that Prism had available \$ 675 million of funding.

12. At the May 23, 2006 presentation, Prism proposed to construct 593 residential units in the Main Street redevelopment area , comprising market rate units and low income units, and 254 condominium apartments at a second redevelopment area more than three miles distant from Main Street.

13. On May 23, 2006, the Council approved a resolution designating Prism as the redeveloper of the redevelopment area.

14. On December 20, 2006, the Township and Prism entered into a Redevelopment Agreement (“Redevelopment Agreement”) for Prism to engage in a redevelopment project (“Redevelopment Project”) of Main Street in accordance with Prism’s proposal.

15. On March 8, 2007, an affiliate of Prism, GP 177 Main LLC, a Delaware limited liability company, acquired title to the Battery Building for \$ 14,650,000.00.

16. On information and belief, during 2007 and 2008 demolition and environmental remediation work was performed at the Battery Building.

17. On information and belief, at some point in time during 2008 all work at the Battery Building ceased.

18. On information and belief, at some point in time in 2009, Prism informed representatives of the Township that Prism lacked the funds for work on the Redevelopment Project to continue.

19. On information and belief, at some point in time in 2009, Prism held discussions with representatives of the Township regarding the Township issuing approximately \$ 28,900,000 of municipal bonds to provide financing for the Redevelopment Project.

20. In June and July of 2009, the Council held hearings on a proposed ordinance for the Township to issue approximately \$ 28,900,000 in municipal bonds to provide financing to the Redevelopment Project (“2009 Redevelopment Hearings”).

21. At the 2009 Redevelopment Hearings, public comment by residents of the Township was overwhelmingly opposed to the municipal bond issuance.

22. Because of the public opposition to the municipal bond issuance, the Council withdrew the proposed municipal bond issuance.

23. From the time Prism ceased work at the Battery Building in 2007 or 2008 until the present, no construction work has been performed at the Battery Building.

24. No residences have been constructed by Prism at the Battery Building or any surrounding property.

25. In or about February of 2012, the Council proposed to issue \$ 6.3 million of municipal bonds to provide financing to the Redevelopment Project.

26. There have been posted on the Township website numerous documents that pertained to the Redevelopment Project.

27. Among the documents related to the Redevelopment Project on the Township website is a Financial Agreement (“Financial Agreement”) pursuant to N.J.S.A. 40A:20-1, *et seq.* that the Township proposed to enter into with G.P. 177 Main Urban Renewal L.L.C. (“GP 177”), an affiliate of both Prism and the aforesaid GP 177 Main LLC.

28. The Financial Agreement has a proposed duration of 30 years.

29. N.J.S.A. 40A:20-11 requires that a financial agreement approved pursuant to the Long Term Tax Exemption Law include findings by the municipality, approved by the municipal governing body, setting forth appropriate tax exemption provisions and an appropriate annual service charge schedule based upon section 12 of the law and upon the municipality's determinations as to:

- a. The relative benefits of the project to the redevelopment of the redevelopment area when compared to the costs, if any, associated with the tax exemption;
- b. An assessment of the importance of the tax exemption to be granted in obtaining the development of the project and in influencing the locational decisions of probable occupants of the project or units of the project.

30. The recital on page 3 of the Financial Agreement reads as follows:

WHEREAS, the Township has made the following findings with respect to the Project:

A: Relative benefits of the Project:

- i. The Project will provide additional housing and retail space in the Township, along with the renewal and revitalization of the Redevelopment Area.
- ii. The Project will ease current parking difficulties in the Redevelopment Area, thereby increasing access to the existing downtown establishments as well as Improvements associated with the Project.

B. Assessment of the importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

- i. Tax Exemption permits better use of the Land through:
 - a. The completion of certain infrastructure;
 - b. The remediation of environmentally troubled property; and
 - c. The rehabilitation of historically significant property which is a local landmark[.]

31. On March 20, 2012, the Council approved Ordinance 2351-12 authorizing the Township to enter into the Financial Agreement with Prism.

32. The Financial Agreement contains hardly more than a net opinion and a recitation of the language N.J.S.A. 40A:20-11 and does not in any way provide findings in the nature of a cost / benefit analysis as required by the statute.

33. The Council's approval of Ordinance 2351-12 was arbitrary and capricious because the Council has failed to comply with the requirements of N.J.S.A. 40A:20-11.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant on this First Count as follows:

Repealing the approval of Ordinance 2351-12.

SECOND COUNT

34. Plaintiffs repeat the allegations of Paragraphs 1 through 33 hereof and incorporate them herein as though set forth at length.

35. Because of the anticipated public interest in the Council meetings regarding the Redevelopment Project, instead of holding its meeting in the Council's chambers in West Orange Town Hall, the Council meeting of February 21, 2012 was held in the auditorium of the Edison Middle School in West Orange.

36. The Financial Agreement provides that in lieu of taxes on the improvements on the Battery Building property, G.P. 177 would pay an Annual Service Charge to the Township.

37. At the Council meeting of February 21, 2012, Plaintiff Kevin Malanga asked the Council to provide a calculation of the amount of G.P. 177's real property taxes that would be abated by virtue of the Financial Agreement.

38. No member of the Council was able to provide an answer to Plaintiff Malanga's question.

39. In response to Malanga's question, Councilman Sal Anderton ("Anderton") left the Council table on the stage of the auditorium and had a conversation with Plaintiff Malanga in the vestibule of the auditorium.

40. Plaintiff Malanga expressed his surprise and disappointment that not one member of the Council was aware of the amount of the property taxes that would be abated by the Financial Agreement.

41. Anderton replied that it was not possible to calculate the amount of the abatement because such amount was speculative.

42. Plaintiff Malanga responded that it was easily possible to make a calculation of the abatement.

43. Anderton returned to the Council table on the stage of the auditorium and requested that Michael Hanley ("Hanley"), a financial advisor retained by the Township who was present at the meeting, provide a calculation of the amount of the abatement.

44. Despite not knowing the amount of the tax abatement, on February 21, 2012 the Council voted 5-0 on first reading to approve the \$ 6.3 million municipal bond issuance and the Financial Agreement.

45. Following the Council meeting of February 21, 2012, Plaintiff Malanga had numerous telephone conversations with Councilman Joe Krakoviak ("Krakoviak") during which Malanga expressed his concern for the lack of information regarding the tax abatement being granted by the Financial Agreement and requested that the Council provide a calculation of the tax abatement.

46. At the March 20, 2012 Council meeting Plaintiff Malanga again requested that the Council provide information as the amount of the tax abatement, but no complete or accurate information was provided by the Council.

47. No written report has been provided by the Council to the citizens of West Orange as to the amount of the tax abatement.

48. On March 20, 2012, despite not knowing the amount of the tax abatement, the Council, by a vote of 4-1 with Krakoviak being the dissenting vote, approved Ordinance 2351-12 authorizing the Township to enter into the Financial Agreement with GP 177.

49. The Council's approval of the Township's entering into the Financial Agreement was arbitrary and capricious because such approval was made in the absence of any financial information as to the amount of the tax abatement, such information being essential for an accurate and meaningful evaluation by the citizens of the Township of the Financial Agreement's impact on the Township's present and future financial condition.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant on this Second Count as follows:

Repealing the approval of Ordinance 2351-12.

THIRD COUNT

50. Plaintiffs repeat the allegations of Paragraphs 1 through 49 hereof and incorporate them herein as though set forth at length.

51. Though other documents related to the Redevelopment Project were posted on the Township's website, the Council failed to provide any document that set forth the amount of the taxes that were being abated by the Financial Agreement nor any written calculation as to the financial impact that the abatement would have on the Township.

52. The Council's failure to provide the financial information essential for an accurate and meaningful evaluation of the Financial Agreement's impact on the Township's present and future financial condition was arbitrary and capricious.

WHEREFORE, plaintiff demands judgment in their favor and against defendant on this Third Count as follows:

Repealing the approval of Ordinance 2351-12.

FOURTH COUNT

53. Plaintiffs repeat the allegations of Paragraphs 1 through 52 hereof and incorporate them herein as though set forth at length.

54. Related to the tax abatement's impact on the Township's finances is the number of children from the Redevelopment Project that would be attending the West Orange public schools.

55. Pursuant to the Financial Agreement, GP 177 will be paying an Annual Service Charge in lieu of taxes, and no taxes are paid by GP 177 to the West Orange Board of Education.

56. The West Orange Township public school expenses of educating the children living in the Battery Building are to be paid by the Township from the Annual Service Charge.

57. No reports or expert testimony estimating the number of school children that would be generated by the Battery Building apartments was provided at the Council meetings.

58. No reports or documents estimating the number of school children that would be generated by the Battery Building apartments was posted on the Township website.

59. Comments by the Council indicated that the estimated number of school children from the Battery Building varied greatly.

60. It is important for the number of school children from the Battery Building to be estimated based on a professionally accepted methodology in order to calculate the public school expenses that must be paid from the Annual Service Charge.

61. No testimony was offered at any Council hearing as to the amount that is estimated to be paid to the Board of Education from the Annual Service Charge for school children from the Battery Building.

62. The Council's approval of the ordinance of the Township's entering into the Financial Agreement was arbitrary and capricious because such approval was made in the absence of information utilizing an accepted methodology estimating the number of school children that would be generated by the Battery Building, such information being essential for an accurate and meaningful evaluation of the Project's impact on the Township's present and future financial condition.

WHEREFORE, plaintiffs demands judgment in their favor and against defendant on this Fourth Count as follows:

Repealing the approval of Ordinance 2351-12.

FIFTH COUNT

63. Plaintiffs repeat the allegations of Paragraphs 1 through 62 hereof and incorporate them herein as though set forth at length.

64. A report entitled "Traffic Impact Study" dated July 10, 2007 was prepared for Prism by Langan Engineering and Environmental Services ("Traffic Study").

65. The Traffic Study purports to analyze traffic conditions in the vicinity of the Battery Building from 2007 existing conditions to what is termed in the report as 2010 "Build Conditions".

66. The Traffic Impact Study indicated that key intersections in the vicinity of the Battery Building had levels of service of "D" and "F".

67. No traffic studies for the Project have been conducted since 2007.

68. No expert testimony as to traffic impacts was provided at the Council meetings of March 2012 and April 2012.

69. It is exclusively within the authority of the Council to require conditions to address offsite traffic conditions generated by any development project within a municipality in New Jersey.

70. The Council's approval of the ordinance for the Township's entering into the Financial Agreement was arbitrary and capricious because such approval was made in the absence of any information as to an updated traffic impact study, such information being

essential for an accurate and meaningful evaluation of Redevelopment Project's impact on the Township's traffic.

WHEREFORE, plaintiffs demands judgment in their favor and against defendant on this Fifth Count as follows:

Repealing the approval of Ordinance 2351-12.

SIXTH COUNT

71. Plaintiffs repeat the allegations of Paragraphs 1 through 70 hereof and incorporate them herein as though set forth at length.

72. At the 2009 Redevelopment Hearings in which the subject of the issuance of \$ 28,900,000 in municipal bonds for the Redevelopment Project was discussed, one of the issues of great concern to the citizens of West Orange was the lack of financial information pertaining to Prism.

73. At the 2009 Redevelopment Hearings, members of the public expressed the view that if the Township was considering issuing municipal bonds to provide financing for the Redevelopment Project, then the Council must demand audited financial statements from Prism in order to ascertain Prism's financial condition.

74. At no time during the 2009 Redevelopment Hearings was the Council willing to demand that Prism provide audited financial statements to the citizens of West Orange.

75. During the Council meetings of March and April 2012, the Council again refused to demand that Prism provide audit financial statements to the public.

76. The Township and Prism intend to enter into an agreement entitled Modification Agreement By and Between the Township of West Orange as Redevelopment Entity and Prism Green Associates, IV LLC, as Redeveloper ("Modification Agreement") that is intended to modify the Redevelopment Agreement.

77. Paragraph 13.4 of the Modification Agreement provides as follows:

The Parties hereto each hereby expressly acknowledge, represent, understand and agree that the Redeveloper would not undertake the Phase 1 Project but for the tax exemption that is the subject of the Phase 1 Financial Agreement and the issuance of the Phase 1 Bonds in accordance with the terms hereof.

78. It is implicit in the language of Paragraph 13.4 of the Modification Agreement that Prism is unable to undertake the Redevelopment Project without the financing provide by the currently proposed \$ 6.3 million in municipal bonds from the Township.

79. On the Bloomfield / East Orange border, Prism, or an affiliate of Prism, has undertaken a project similar to the Battery Building Redevelopment Project that involves the conversion of a former factory building into apartments.

80. Prism or its affiliate received approval for the Bloomfield / East Orange project in 2007 yet has not constructed a single apartment.

81. The inability of Prism to proceed with construction on the Battery Building Redevelopment Project in the absence of the financing from Township municipal bonds, and the apparent inability of Prism, or its affiliate, to have proceeded with construction on the

Bloomfield / East Orange project, should lead a prudent municipal governing body to carefully investigate the financial condition of Prism and provide such information to the citizens of the Township for their consideration.

82. Evaluating whether Prism has the financial ability to complete the Redevelopment Project is important information for the citizens of the Township to be provided.

83. Based on the facts and circumstances of Prism and the Redevelopment Project, the failure of the Council to demand and obtain audited financial statements from Prism in order that said financial statements may be reviewed by the citizens of the Township is arbitrary and capricious.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant on this Sixth Count as follows:

Repealing the approval of Ordinance 2351-12.

SEVENTH COUNT

84. Plaintiffs repeat the allegations of Paragraphs 1 through 83 hereof and incorporate them herein as though set forth at length.

85. At the 2009 Redevelopment Hearings, one of the issues of great concern to the citizens of West Orange was the lack of information as to the ownership of Prism.

86. At the 2009 Redevelopment Hearings, members of the public expressed the view that if the Township was considering issuing municipal bonds to provide financing for the

Project, then the Council must make public information as to the ultimate beneficial owners of Prism.

87. At no time during the 2009 Redevelopment Hearings was the Council willing to demand that Prism provide the names of the ultimate beneficial owners to the citizens of West Orange.

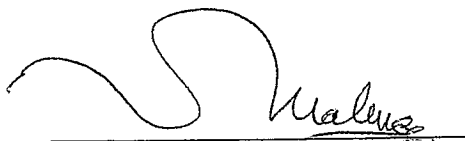
88. At the Council meetings of March and April 2012, the Council again refused to demand that Prism provide ultimate owner information.


89. The inability of Prism to proceed with construction on the Battery Building Redevelopment Project should lead a prudent municipal governing body to carefully investigate the ownership of Prism and provide such information to the citizens of the Township.

90. Based on the facts and circumstances of Prism and the Redevelopment Project, the failure of the Council to demand and obtain the ultimate beneficial ownership information from Prism in order that said information may be reviewed by the citizens of the Township is arbitrary and capricious.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant on this Seventh Count as follows:

Repealing the approval of Ordinance 2351-12.


Kevin Malanga, pro se
April 10, 2012


E. Michael Taylor, pro se