ASSOCIATION OF CONCERNED CITIZENS OF NEW BRUNSWICK,

Appellant,

v.

CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC,

Respondents.

ASSOCIATION OF DISENFRANCHISED BIDDERS OF REDEVELOPMENT WORK IN THE CITY OF NEW BRUNSWICK,

Appellant,

v.

CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC,

Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-001613-24

On Appeal From:

Orders of the Superior Court, Law Division, Middlesex County, dated December 19, 2024, January 31, 2025, March 7, 2025, and March 12, 2025

Trial Court Docket Nos.: MID-L-2242-24
MID-L-2243-24

Sat below:

Hon. J. Randall Corman, J.S.C.

BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

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Date submitted: May 28, 2025

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PRELIMINARY STATEMENT

Plaintiff-Appellants, the Association of Concerned Citizens of New Brunswick ("Citizens Association") and the Association of Disenfranchised Bidders of Redevelopment Work in the City of New Brunswick ("Bidders Association") (collectively, "Plaintiffs"), are unincorporated associations. In April 2024, they filed companion actions seeking to vacate a resolution designating Defendant-Respondent, NB Plaza Urban Renewal LLC ("NB Plaza"), as redeveloper under the Lower George II Redevelopment Plan (the "Plan").

The legal basis for their request was clear and straightforward: Defendants, the City of New Brunswick (the "City") and New Brunswick Housing Authority (the "Housing Authority"), failed to comply with their statutory obligations and the express requirements of the redevelopment plan. The undisputed record below proved these claims, a fact which the trial court itself acknowledged on the record. This notwithstanding, the trial court went to great lengths to prevent Plaintiffs from having their proverbial day in court. Without any party making a motion, the trial court dismissed both cases for lack of standing based upon unsupported factual findings and heightened legal standards that simply do not exist.

First, the trial court dismissed *sua sponte* the Complaint of the Concerned Citizens, and in the process, ignored unrefuted evidence of the composition of the association, the number of its members, and their common interests in this action.

Second, the trial court then decided to give the Bidders Association an opportunity to "prove" standing at a plenary hearing, an unusual procedure not extended to the Concerned Citizens action. Following that hearing – and despite credible testimony meeting the low bar of standing – the trial court also dismissed the Complaint of the Bidders Association. *Third*, and even more troubling, the trial court also denied an application by James Byrne, the member of the Bidders Association who testified at the plenary hearing, to join the case as an individual plaintiff, based on an erroneous interpretation of the legal standard applicable to such motions. The trial court inexplicably characterized this basic motion to amend as one made "*nunc pro tunc*" and applied a heightened standard to its legal analysis.

Effectively, the trial court took what it otherwise found to be meritorious cases challenging a city resolution and dismissed them on erroneous grounds. In the process, the trial court substituted its own legal standards for longstanding precedent, and gave substantial weight to its own professed unease with members of the associations bringing the claims "anonymously" – which entirely missed the mark.

Accordingly, this panel should reverse: (1) the December 19, 2024 Order dismissing the Concerned Citizens Complaint; (2) the March 7, 2025 Order dismissing the Bidders Association Complaint and denying Mr. Byrne's motion to amend; and (3) the related orders entered on January 31, 2025 and March 12, 2025.

PROCEDURAL HISTORY[1]

I. The Complaints, Consolidation, And Case Management

Plaintiffs each filed a Complaint in Lieu of Prerogative Writ on April 12, 2024, seeking an order (1) setting aside and vacating the Resolution appointing NB Plaza as redeveloper; (2) compelling the City Defendants to solicit bids for potential redevelopers on adequate notice as contemplated by the Plan; (3) compelling the City Defendants to properly vet and investigate any bids submitted by prospective redevelopers in a commercially reasonable manner; and (4) counsel fees and costs of suit. *Pa000014-32; Pa000034-52*. In May and June 2024, Defendants filed responsive pleadings and simultaneously requested an initial case management conference with the Court. *Pa000054-149*. The matter was ultimately assigned to the Hon. Randall J. Corman, J.S.C. (the "Trial Court").

On July 26, 2024, the Trial Court entered an Order quashing subpoenas Plaintiffs had served on various names that had been mentioned in the proposed redeveloper's application. *Pa000504*. By that same Order, the Trial Court directed Defendants to produce a copy of the record below no later than August 19, 2024. *Pa000504*.

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[1] Due to the complex procedural history of the two matters consolidated below, but which were ultimately decided separately, this Procedural History is presented with greater detail and with subheadings for the Court's ease of reference.

On August 26, 2024, the Trial Court then entered a Case Management Order determining that there would be no discovery in the matter beyond production of the documents of record before the Housing Authority. *Pa000733*. It also set forth briefing deadlines and directed the parties to submit a consent order consolidating the two pending matters. *Pa000733*.

II. The Motion To Vacate The Resolution, Opposition, And Reply

On October 4, 2024, Plaintiffs jointly filed their brief and certifications in support of their Motion to Vacate the Resolution. *Pa000151-515*. On October 18, 2024, Plaintiffs filed an Order to Show Cause to forestall a proposed sale of a large portion of the land subject to the redevelopment plan at issue to NB Plaza, which the Court entered with temporary restraints. *Pa000729*.

Defendants filed their opposition papers to the Motion to Vacate the Resolution on November 11, 2024. *Pa000519-636*. By docket entry dated November 22, 2024, the Trial Court permitted Plaintiffs to file reply papers limited to the question of standing, which had been referenced in NB Plaza's Opposition papers *1T 5:2-9*.[2]

[2] "1T" refers to the Trial Court transcript dated December 17, 2024; "2T" refers to the Trial Court transcript dated January 31, 2025; "3T" refers to the Trial Court transcript dated February 26, 2025; "4T" refers to the Trial Court transcript dated March 7, 2025.

Plaintiffs filed reply papers on December 12, 2024. These reply papers included: (1) a Certification of Counsel providing signed statements from ten (10) members of the Concerned Citizens Association setting forth their opposition to the proposed redevelopment plan and the subject resolution; (2) a Certification of James Byrne confirming he is a member of the Bidders Association whose development company retained counsel to challenge the Resolution; and (3) a Certification from a member of the Citizens Association identified as "J.R." describing his interest in the subject redevelopment and his objections to it. *Pa000637-664*.

III. The December 17, 2024 Hearing And December 19, 2024 Orders

The Trial Court held oral argument on the application to vacate the resolution on December 17, 2024. Argument never moved beyond the question of standing. The Trial Court raised various "concerns" about the submissions relating to standing, including: (1) the basis for the allegations of embezzlement in the Complaint and in the documents signed by the Concerned Citizens; (2) why nobody was interested enough to attend the court hearings in the these actions; (3) the Trial Court's own pre-judicial experience gathering petitions, suggesting the statements gathered by the Concerned Citizens Association were not reliable; (4) whether either of the Associations had ever conducted a meeting; and (5) the Trial Court's own pre-judicial experience suggesting that public redevelopment projects often are not

realized beyond the planning stage. *1T 18:4-20:17; 1T 21:6-24:25; 1T 28:25-30:1; 1T 30:19-31:16; 1T 38:7-39:7.*

At the conclusion of the December 17, 2024 hearing, the Trial Court dismissed the Complaint filed by the Concerned Citizens Association. *1T 39:8-43:5.* The Trial Court's reasons included concerns regarding the reliability of the signed statements, on which no discovery was ever requested, and on which no hearing was ever conducted. *1T 39:8-21.* The Trial Court also cited the statute governing unincorporated associations, noting its requirements for seven members and a recognized name. *1T 42:17-43:5* And despite the statute containing no such requirements, the Trial Court found without any supporting evidence that the Concerned Citizens "never had an organizational meeting" and "never elected officers." *1T 39:22-40:2* The Trial Court went on to find that "if you really want to affect change, you have to stand up and be counted," pointing out that when James Madison wrote the Federalist Papers he did so under an alias, but that when he ran for office he was required to do so in his own name. *1T 41:10-43:5.*

As to the Bidders Association, the Trial Court suggested that the standing question was different because someone (James Byrne) had "stepped out of the shadows" and stated their desire to bid on being designated redeveloper. *1T 43:6-9.* However, the Trial Court was not comfortable finding standing for reasons which, again, should speak for themselves:

> I'm not quite prepared to grant standing just yet. I have to say, it's obvious to me that one of the motivations of this litigation is to settle a score with Mr. Jacobowitz (phonetic).

1T 43:10-24.

The Trial Court then decided to set the Bidders Association matter down for a hearing, where it would examine Mr. Byrne's work experience and hear his testimony. *1T 44:17-19* The Trial Court clarified the purpose of the hearing, which was to demonstrate that Mr. Byrne "came to this cause before the 45 days for which an action in lieu of prerogative writ can be filed. If you just dug him up last month, no standing." *1T 44:17-23*.

The Trial Court refused to hold in abeyance its ruling on the Concerned Citizens action, but invited a "live body" to come forward on reconsideration. *1T46:23-48:23*. It did not wish, however, to "breathe life" into the Concerned Citizens Association. *1T 48:20-23*. Accordingly, the Trial Court entered an Order on December 19, 2024, setting forth additional findings of fact and dismissing the Citizens Assocation Complaint. *Pa000001*. ***This Order is under appeal in this matter***.

On that same date, the Trial Court entered an Order in the Bidders Association case ordering Mr. Byrne to testify regarding: (1) when he learned of the proposed redevelopment project; (2) when he joined the Bidders Association; and (3) when he learned of plans to file this lawsuit. *Pa000003*. Mr. Byrne was also asked to "provide

contemporaneous documentation of same, if such documentation exists." *Pa000003*.

IV. The Motion For Reconsideration

On January 7, 2025, Plaintiffs moved for reconsideration of the dismissal of the Citizens Association case. *Pa000666*. Counsel submitted a Certification outlining the background of Brach Eichler LLC's retention by the Citizens Association, and the fact that the signed statements from the members of the Citizens Assocaition pre-dated the filing of the actions – contrary to the insinuations made by the Trial Court to the contrary. *Pa000659*. The Certification also explained that the finding that the Concerned Citiznes Associations conducted no meetings was incorrect. *Pa000060*. Rather, counsel had only stated during oral argument that it was unaware of any such meetings, and further, that it was surprised by the question since there is no such requirement under the statute. *Pa000660*. The Certification also noted that the Concerned Citizens Association was prepared to bring forward testimony or certifications establishing the founding of the Citizens Association and describing how the signed stateements were circulated and gathered. *Pa000660*.

V. The Motion To Amend The Bidders Complaint To Add James Byrne As As An Individual Plaintiff

On January 15, 2025, Plaintiffs moved to amend the Bidders Association Complaint to add James Byrne as an individual plaintiff. *Pa000671*. In his Certification, Mr. Byrne confirmed his membership in the Bidders Association;

confirmed his willingness to testify at the plenary hearing ordered by the Trial Court; and confirmed that he was willing to be joined as a party. *Pa000693*. He also certified that he originally joined the Bidders Association to be part of a group with common rights and grievances relating to the redevelopment at issue, but was now willing to be joined as a party to address the Trial Court's concerns regarding anonymity. *Pa000694-695*.

On January 17, 2025, counsel for the City and the Planning Board wrote a letter to the Trial Court urging it to address the merits of the challenge to the Resolution and bypass the standing issue. *Pa000701-702*.[3] They reasoned that the Resolution constituted a policy decision that was neither arbitratry nor capricious – a premise with which Plaintiffs strongly disagree – and expressly asked the Trial Court to address that question rather continuing to address "extraneous matters" such as standing or the ethics of the proposed redeveloper. *Pa000701-702*.

VI. The Trial Court's January 31, 2025 Hearing

On January 31, 2025 the Trial Court heard oral argument on both the motion for reconsideration and the motion to amend the Bidders Association Complaint.

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[3] This letter is provided with the appendix because it demonstrates that Defendants joined Plaintiffs in asking the Trial Court to move past the question of standing and decide the merits of the questions presented below. See R. 2:6-1(a)(2)

As to the motion to amend, the Trial Court held its ruling in abeyance pending the plenary hearing and Mr. Byrne's testimony on the standing issue. The Trial Court explained its rationale as follows:

> THE COURT: Yeah, in all honesty, if I was satisfied with his testimony, I will – would have added him as a co-plaintiff sua sponte. But I'm not doing it beforehand.

2T 6:17-20.

As to the motion for reconsideration, the Trial Court denied the application and upheld its dismissal of the Citizens Association Complaint. The Trial Court made this decision based on its unsupported assumption that there was a "hidden hand behind this complaint that's pulling the strings. It's quite plain to me at this point." *2T 50:42-51:1*. The Trial Court recited many allegations regarding the conduct of Jacobowitz, discussed the earlier effort by Plaintiffs to serve subpoenas on the alleged the funding sources and character references named by NB Plaza in its Application, and then concluded that the discovery previously sought was "really punitive in nature" – ***despite the fact that discovery was never conducted***. *2T 55:9-12*.

The Trial Court then attempted to explain the difference in treatment between the Citizens Association – whose claims were summarily dismissed outright on standing – and the Bidders Association – which was ordered to present testimony and evidence on standing:

> So yeah, I'm not gonna – actually –well counsel, will – you let us bring in Mr. Byrne on the dis – Disenfranchised Bidders case.
>
> Well, you know, the difference there is, what we have in – what they want to do in this case is, they don't want to sue in their own names.
>
> They want to sue anonymously. And that – that's why I can't allow it. That's why I can't allow it.
>
> And once the issue of standing came up, well somebody did step forward on the other case. And I'll listen to them. See if I find any of that stuff credible.

2T 63:5-17. The Trial Court then concluded that it could not accept any new certification on the fear that someone might just "concoct minutes of non-existent meetings." *2T 63:5-17*. The Trial Court then told Plaintiffs' counsel "if you want to continue to beat this dead horse, go to the Appellate Division perhaps they'll resurrect it for you." *2T 64:11-65:12*.

VII. The February 26, 2025 Plenary Hearing

On February 26, 2025, the Trial Court conducted its plenary hearing and heard testimony from Mr. Byrne regarding the standing of the Bidders Association and his individual standing as a plaintiff. *See 3T*. As the Trial Court previously explained, this plenary hearing was to determine whether Mr. Byrne "came to this cause before the 45 days for which an action in lieu of prerogative writ can be filed. If you just dug him up last month, no standing." *1T 44:17-23*.

To that end, Mr. Byrne described his background, which consisted of an Honor's Degree in construction management and engineering from a university in Ireland, as well as his considerable experience in construction and development since he was a small child learning from his father, who himself was a real estate developer. *3T 12:2-18*. Mr. Byrne explained that he presently does large scale projects throughout New Jersey and New York with Source Construction and SCI, firms in which he is an owner. *3T 13:8-14:2*. His firms are currently pursuing various projects in New Jersey. *3T 14:19-15:1*.

As to the Bidders Association, he testified regarding its formation, in which he was an active participant. *3T 18:9-24*. The Bidders Association was formed in early 2024, and its various members had conducted numerous informal meetings. *3T 19:4-11*. The Bidders Association consists of ten or more members, many of which Mr. Byrne identified in his testimony. *3T18:9-19:21*. On cross-examination, Mr. Byrne confirmed the identity of two of those members who were present in the courtroom. *3T 24:25-25:8*.

Mr. Byrne and his firm were directly involved in hiring counsel in or around March 17, 2024, and he participated in reviewing and filing the Bidders Association Complaint. *3T 19:22-20:13*. In fact, Mr. Byrne's firm signed the engagement letter through his partner, Vinny Clancy, a redacted version of which was presented at the hearing. *3T 20:21-21:2*. The Bidders Association had met long before retaining

counsel, during which they vetted a number of firms before signing with the Brach Eichler firm. *3T 27:7-22*.

As for the reason for filing the suit – and doing so by way of an unincorporated association – Mr. Byrne explained that the group were all hurt by the fact that project was not put out to bid, so decided it would be better to approach it together as an association to share costs. They also did not want to put their names on the lawsuit considering government entities were involved. *3T 22:9-22*.

Finally, Mr. Byrne confirmed his desire to be joined to the case as an individual plaintiff, and believed he had a right to do so as someone who was deprived of the ability to pursue designation as redeveloper. *3T 23:4-19*. At this point, the Motion to Amend the Bidders Association Complaint remained pending.

VIII. The March 7, 2025 Hearing

On March 7, 2025, the Trial Court conducted oral argument on the question of standing in the Bidders Assocation case and the Motion to Amend the Bidders Association Complaint to name Mr. Byrne as an individual plaintiff. *See 4T*. The Trial Court dismissed the Bidders Association Complaint for lack of standing and denied the motion to amend.

The Trial Court framed its decision again on its view that there is no provision under the law for complaints to be prosecuted anonymously. This time, however, the Trial Court was armed with case law it had found that morning which had not

been cited in any of the briefing before the Court, namely ABC v. XYZ Corp., 282 N.J. Super. 494 (App. Div. 1995). *4T 23:2-15*. Supposedly following the rationale of this ABC opinion, the Trial Court determined that perhaps it should have also dismissed the Bidders Association Complaint without a hearing, but again framed the purpose of that hearing, such that if Mr. Byrne "was involved at the beginning, I would grant standing and add him as a named party plaintiff." *4T 23:10-15*.

As to the motion to amend, but without the benefit of any precedent, the Trial Court found:

> Now because of the nature of the action in lieu of prerogative writ, this is not just a motion – a garden variety motion to amend the pleadings to add Plaintiff. This is a motion to amend *nunc pro tunc*. This is to amend to add James Byrne as a Plaintiff retroactive to last April. So the quantum of proof must necessarily be greater than what would usually be required in something like this.

4T 23:16-23.

The Trial Court found Mr. Byrne's testimony credible, but could not understand and would not credit his testimony regarding the reasons for not wanting to place his name on a matter adverse to the City. *4T 25:11-26:23*. The Trial Court also expressly made an adverse inference from the absence of any cancelled check showing payment of the Bidders Association's legal fees to confirm the date and payor of those funds, despite the fact that the retainer letter was produced showing

that Mr. Byrne's development company had actually signed the letter through his partner, Mr. Clancy. *4T 26:24-30:5*.

On the strength of that adverse inference, the Trial Court apparently completely discredited Mr. Byrne's entire testimony, finding:

> And if I don't have anything that connects Mr. James Byrne to this case in July – in April of last year, I think I need to dismiss this for the same reason that I've dismissed the companion case.

4T 30:1-5. Therefore, the Trial Court found that the Bidders Assocation Complaint "was an attempt by these parties to prosecute their claim anonymously, which is not permitted under the ABC v. XYZ Corp. case." *4T 30:6-13*. The Trial Court did not further opine on the Motion to Amend, tacitly ruling that Mr. Byrne did not meet the Trial Court's heightened standard (which it applied without any legal authority) to a motion to amend filed in a prerogative writ action, which the Trial Court described as "*nunc pro tunc*." *4T 23:16-23*.

Remarkably, before concluding oral argument the Trial Court chose to provide its thoughts on the merits of the underlying actions. *4T 30:14-36:6*.

The Trial Court later entered an Amended Order on March 12, 2025, which confirmed dismissal of the Bidders Association Complaint and the denial of the Motion to Amend to join Mr. Byrne. *Pa000012*. The March 12, 2025 Order also extended the restraints the Trial Court had previously ordered for an additional three

weeks in anticipation of an application to the Appellate Division for further relief. ***This Order is under appeal.***

On April 22, 2025, this Court continued the restraints pending resolution of this accelerated appeal.

STATEMENT OF FACTS[4]

I. The Lower George Street Redevelopment Area

In the mid-1970s – following a commitment by Johnson & Johnson to build its world headquarters in New Brunswick – the City's downtown area began a resurgence. Not surprisingly, the Lower George Street Corridor a few blocks to the south then began to garner some attention. In 1998, the Housing Authority applied for and received a HOPE VI block grant through the U.S. Department of Housing and Urban Development in the amount of $7.5 million. The HOPE VI monies were earmarked for a four-phase, $43 million redevelopment program targeting the Lower George Street Corridor. *Pa000158-162*.

To that end, the City – in conjunction with the Housing Authority – developed and approved a plan to revitalize the Lower George Street Corridor by acquiring "by purchase, eminent domain or otherwise" certain delineated parcels in need of redevelopment. *Pa000164-192*. The City Council adopted The Lower George

[4] Due to the complex facts giving rise to these two consolidated matters, this Statement of Facts is presented with subheadings for the Court's ease of reference.

Street Redevelopment Plan on April 5, 2017 ("Plan I"), which identified as objectives the "deconcentration of density on the site of the New Brunswick Homes public housing project. . .through the demolition of the existing high rise housing and the development of new low-rise housing on this site and on scattered in-fill sites through the area." *Pa000186*.

The Lower George Redevelopment Area covers numerous blocks and lots in this corridor. Plan I contains a map setting forth its boundaries. *Pa000166*. As reflected by the map, the redevelopment area encompasses Block 120, Lots 4, 5.01, and 7 – the location of the Abundant Life Family Worship Church, Inc. (the "Church"), a not-for-profit religious organization with approximately 3,000 members.[5]

II. The City Adopts The Lower George II Redevelopment Plan

On October 2, 2023, the Planning Board held a public meeting at which it considered the redevelopment at issue in this case – The Lower George II Redevelopment Plan. *Pa000194*. This redevelopment area is located within the boundaries of the existing Lower George Street Redevelopment Area and consists of the real property occupied by the Church, located at Block 120, Lots 4, 5.01, and 7. *Pa000196*.

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[5] The Church does not own Block 120, Lots 4 and 7.

At the October 2, 2023 meeting, the Planning Board heard from various individuals regarding the proposed Lower George II Redevelopment Plan. *Pa000198-224*. Dan Dominguez, PP, AICP, the Director of Planning, Community and Economic Development for the City of New Brunswick ("Dominguez"), served as the primary witness. During his testimony, Mr. Dominguez made clear that among the City's objectives were to ensure that the not-for-profit Church would not be "taken advantage of" in connection with the proposed redevelopment. *Pa000216*. Other participants at the meeting expressed concern that the redevelopment partner identified by the Church had not previously done business in the City and was largely unknown. *Pa000222*.

On November 1, 2023, the City Council adopted an ordinance for the "Redevelopment Plan for the New Brunswick Lower George II Plan Area" despite initially rejecting it. *Pa000226-227*. The City Council found that the proposed redevelopment plan "provides guidelines for the development of the redevelopment area" and "supports the goals and objectives" of "development, redevelopment and economic growth" within the state. *Id*. On November 15, the City Council fully and finally adopted the ordinance, with the written approval of the Mayor, City Administrator, and City Attorney taking place the following day. *Pa000230-231*.

III. The Lower George II Redevelopment Plan Includes Specific Requirements For Selecting A Prospective Redeveloper

Under N.J.S.A. 40A:12A-7, redevelopment projects in the State of New Jersey "shall be undertaken or carried out" in accordance with "a redevelopment plan adopted by ordinance" of the municipality.

Here, the Lower George II Redevelopment Plan outlines how the various municipal agencies will carry out the subject redevelopment. *Pa000234-262*. To that end, the Plan sets forth detailed requirements for selecting a redeveloper, including the specific materials that a prospective redeveloper must submit to the Housing Authority for consideration with its application. *Pa000252-253*.

Initially, the Plan makes clear that the Housing Authority "***shall consider both solicited and unsolicited proposals***" for redeveloper designation. *Pa000252* (emphasis supplied). On its face, this language plainly suggests that the Housing Authority ***must*** solicit proposals from prospective redevelopers for this project. Section 8 of the Plan states, in relevant part, that the "Redevelopment Agency shall consider both solicited and unsolicited proposals for designation of a redeveloper." *Pa000252* (emphasis supplied).

Section 8 then states that "to be considered for designation as a redeveloper, a prospective redeveloper will submit the following information and materials" to the Housing Authority for consideration. The list of required items includes documentation evidencing the financial responsibility and capability of the proposed

redeveloper to carry out the proposed redevelopment project, including comparable projects completed, financing plan and a financial profile of the proposed redeveloper and its parent, if applicable. *Pa000252* (emphasis supplied).

As a result of this unambiguous language, ***all*** prospective redevelopers were ***required*** to submit (1) documents "evidencing the financial responsibility and capability of the proposed redeveloper to carry out the redevelopment project," (2) a "financing plan" for the redevelopment, and (3) a "financial profile of the proposed redeveloper and its parent, if applicable." *Pa000253*. ***And these requirements were not optional***. Indeed, the Plan contains no provision stating or even suggesting that the Housing Authority has the discretion to waive or ignore these requirements under any circumstances. *Pa000234-262*.

Notwithstanding Section 8 of the Plan, the Housing Authority proceeded with the selection process as if no rules existed at all – starting with its failure to solicit proposals.

IV. The Housing Authority Fails To Solicit Proposals For The Redevelopment As Contemplated By The Plan

Practically speaking, the Housing Authority could only consider ***solicited*** proposals if it engaged ***in a solicitation process*** for this redevelopment. But no solicitation process took place. *Pa000252*. The Housing Authority did not send out a Request for Proposals or Notice to Bidders for this project – common methods of soliciting proposals from developers and contractors. Nor did the Housing Authority

use any other method to engage in a fair and open bidding process. In fact, the exact opposite happened. The Housing Authority received exactly ***one unsolicited proposal*** from an unknown entity with no prior business relationship with New Brunswick – NB Plaza Urban Renewal LLC.

But it gets worse. Despite only considering one application and proposal, the Housing Authority did not even obtain the materials from NB Plaza required by Section 8 of the Plan. And the underlying record makes this clear.

V. NB Plaza's Application Fails To Include A Financial Profile Of The Proposed Redeveloper Or A Financing Plan For the Project – Among Other Deficiencies

On December 21, 2023, NB Plaza submitted its Application for Redeveloper Designation (the "Application") to the Housing Authority along with a handful of supporting documents. *Pa000316-000328*. Aside from the Application itself, NB Plaza submitted exactly ***four pages*** of materials in response to the financial disclosures required by the Plan: (1) a letter from Seraphim Equities ("Seraphim"); (2) a letter from Jade Capital ("Jade"); (3) a letter from M&CF Investments LLC ("M&CF"); and (4) a Disclosure of Ownership identifying three entities which own a 10% interest or more in the prospective redeveloper. *Pa000316-320*; *Pa000322*; *Pa000324*; *Pa000326*; *Pa000328*.

Incredibly, the Application and supporting materials ***contain no information about the financial condition of NB Plaza or its members***. As explained above, the

Plan expressly states that a prospective redeveloper must submit a "financial profile of the proposed redeveloper and its parent" to be considered for designation. *Pa000253*. The record demonstrates that NB Plaza provided no documents that satisfy this requirement for itself or its two members, Ifany, LLC (owned by Shimon Jacobowitz) and SDG NB Plaza LLC (owned by George C. Searight, Jr., son of the church's pastor).

At the very least, a "financial profile" would include a corporate financial statement from the redeveloper and its parent companies (NB Plaza, Ifany, and SDG) along with a personal financial statement from the two controlling members (Jacobowitz and Searight). Upon review of these standard financial documents, the Housing Authority could ascertain whether the prospective redeveloper has the wherewithal to take on a large-scale municipal redevelopment project – or whether additional financial disclosures are needed to make this determination. Given the City's stated objective of protecting the not-for-profit Church from being "taken advantage of" in connection with the proposed redevelopment, it should have been of paramount importance for the Housing Authority to obtain this basic financial information from the proposed redeveloper. *Pa000216*. But in this case, NB Plaza provided nothing at all. *Pa000264-314*.

To make matters worse, the Application and supporting documents do not include anything that resembles a "financing plan" for the project. *Pa000264-314*.

While NB Plaza lists an estimated cost of $300 million for this redevelopment, it does not explain how the entire project will be financed or the full source of funds. *Pa000316-320*. Rather, NB Plaza includes three one-page "letters of support" from purported financiers in which two of them (Jade and M&CF) suggest that they will invest a total of $90 million in the project and the third (Seraphim) expresses interest without making any financial commitment. *Pa000322-326*. Importantly, these "letters of support" provide no specific information regarding the financial capability of these companies or their experience funding New Jersey real estate projects of this size and scale. *Pa000322-326*. Nor do they describe what these purported financiers would receive in exchange for their investment. *Pa000324-326*. People do not give away millions of dollars for free.

But even assuming that Jade and M&CF had the ability to honor their proposed investment in the project, these funds only account ***for 30% of the total project cost***. The Application and supporting documents provide ***no explanation*** for how NB Plaza plans to finance the remaining $210 million needed to complete the project based on the initial cost estimates. *Pa000264*. And remarkably, the Application and supporting documents do not disclose the amount of money that NB Plaza intends to invest in the project as redeveloper – if any.

On February 23, 2024, NB Plaza supplemented the Application – five days before the City Council was scheduled to consider its request for redeveloper

designation. *Pa000330-334*. But this submission did not address any of the missing financial disclosures required by the Plan. NB Plaza again failed to produce any documents demonstrating the financial wherewithal of Ifany/Jacobowitz and SDG/Searight. *Id*. And NB Plaza again failed to explain how it planned to account for the remaining $210 million needed to complete the project. *Id*. Rather, NB Plaza submitted a fourth one-page "letter of support" from a financier owned by one of Jacobowitz's relatives (Howard Wieder of CW Funding) and a one-page letter from a company (Galaxy Capital) providing a "high-level evaluation and analysis" of the financing needed for the project. *Id*. Notably, neither CW Funding nor Galaxy Capital committed a single penny of financing to the redevelopment project. *Id*.

It also bears noting that while NB Plaza included a "Disclosure of Ownership" with its Application, this document failed to disclose the specific ownership interests of each member. *Pa000328*. As a result, NB Plaza has not disclosed to the Housing Authority – or the general public – the amount of ownership interests this not-for-profit church transferred to Ifany/Jacobowitz and SDG/Searight as part of the deal. NB Plaza has also failed to disclose the identity of its members owning less than 10% of the company. *Id*.

Under Section 8 of the Plan, a prospective redeveloper had an obligation to make certain financial disclosures with its application. The record demonstrates that NB Plaza did not meet these requirements here. But unfortunately, this is not the

only part of its Application that was lacking. As discussed further below, publicly available records show that NB Plaza made multiple misrepresentations regarding its real estate development experience.

VI. Publicly Available Documents Show That NB Plaza's Application Contains Misrepresentations Regarding Ifany's Real Estate Development Experience

In the Application, Ifany/Jacobowitz identified the following three comparable real estate projects to demonstrate their development experience: The Pine, an 8-story residential project in Jersey City, New Jersey; Bridgeport Manor in Memphis, Tennessee; and New Horizons in Memphis, Tennessee. *Pa000319*. As discussed below, these disclosures are false.

With Google and an internet connection, the Housing Authority could have ascertained that Ifany/Jacobowitz did not build these projects. Public tax assessor records show that the "Bridgeport Manor" and "New Horizon" projects in Memphis ***were built in 1967 and 1971,*** respectively. *Pa000336-347*; *Pa000350-362*. Jacobowitz is ***33-years old*** and formed Ifany ***in 2021***. *Pa000364-369*. ***This means that "Bridgeport Manor" and "New Horizon" were built approximately two decades before Jacobowitz was born and five decades before he formed Ifany***.

Further internet searches reveal that Ifany/Jacobowitz appear to be passing off development projects built by others as their own. Public tax assessor records confirm that the "Bridgeport Manor" and "New Horizon" projects are owned by

third parties. *Pa000336-362*. Other public records show that Mendel Fischer – who is a friend of Jacobowitz and signed one of the letters of support contained in his application for designation – may have performed some minor contracting work at these projects. *Pa000372-374*. But none of these public records mention Ifany/Jacobowitz anywhere. *Pa000336-374*.

NB Plaza's misleading statements do not end there. Contrary to the Application, the "Bridgeport Manor" and "New Horizon" projects are nowhere near "comparable" to what NB Plaza and its members propose to build in the City. Both of these Memphis projects are run down, low-rise, garden apartment complexes that look severely in need of redevelopment themselves. And here again, the Housing Authority could have figured this out in an instant. Pictures of these projects are readily available online and a cursory glance reveals that they are not comparable to the high-rise contemplated by the Plan here. *See Pa000432-436*.

Had the Housing Authority done any due diligence into NB Plaza's submission, it easily could have discovered this critical information about the redeveloper and its parent companies. The Housing Authority chose willful blindness instead.

VII. The Housing Authority Adopts Resolution 2024-2/28 #3 Appointing NB Plaza As Redeveloper Despite The Housing Authority's Failure To Comply With The Plan's Financial Disclosure Requirements

As outlined above, the Plan specifically required any prospective redeveloper to make various financial disclosures: (1) a "financial profile" of the proposed redeveloper and its parent companies; (2) documents evidencing "financial responsibility and capability" of the proposed redeveloper to carry out the project; and (3) a "financing plan" for the project. The underlying record produced by the Housing Authority simply does not contain this information. *Pa000316*.

Nevertheless, the Housing Authority met on February 28, 2024 to consider NB Plaza's request to be designated as redeveloper for "the largest residential development" in New Brunswick history. *Pa000489 at 52:10-14*.[6] During the hearing, the Housing Authority did not question Jacobowitz or Searight regarding their financial wherewithal or the lack of financial disclosures required by the Plan. *Pa000438*. But the Housing Authority did ask questions regarding the financing for the project, noting that only $90 million out of the required $300 million had been ***informally*** accounted for as of that date. *Pa000471 at 34:7-15*.

[6] New Brunswick's zoning ordinance mandates that no structure shall exceed a height of 300 feet or 30 stories. See NEW BRUNSWICK ORDINANCE NO. O-082307, § 1 (2023). As a result, the proposed redevelopment will be ***at least*** 50% larger than any existing structure in New Brunswick.

In response, NB Plaza ***admitted that it had not secured financing for the entire project*** or obtained a construction loan commitment as of that date. *Pa000473 at 36:5-10, 37:18-22*. The relevant portions of the transcript make this clear. *Pa000471-474 at 34:7-15, 36:5-10, 37:18-22*.

Thereafter, at least two members of the public expressed concern about the lack of transparency and public participation – as well as the Housing Authority's failure to engage in a competitive bidding process to ensure the Church got the best deal. *Pa000479 at 42:12-16, 45:7-21*. One member of the public also noted that the City Council had previously rejected the proposed redevelopment "before changing their mind and voting it in" without explanation. *Pa00479*.

Despite having no information regarding the financial wherewithal of Ifany/Jacobowitz and SDG/Searight – and the lack of a coherent financing plan for the project – the Housing Authority unanimously approved NB Plaza as the designated redeveloper by way of Resolution 2024-2/28 #3. *Pa000494*. In the Resolution, the Housing Authority inexplicably claimed that NB Plaza had submitted the materials required by Section 8 of the Plan, while omitting any reference to the "financial profile" requirement. *Pa00494-495* (emphasis supplied). Therefore, the Housing Authority adopted the resolution based on a misstatement of the facts, which demonstrate that the proposed redeveloper had not followed the rules in its application.

The Resolution required NB Plaza to enter into a Redevelopment Agreement with the Housing Authority within ninety (90) days. *Pa000496*. But this did not occur. Without advance notice to the public, the Housing Authority extended this deadline by way of "walk-on resolution" on May 22, 2024. *Pa000500-501*.

LEGAL ARGUMENT

I. Standard Of Review

The issue of standing is a legal question subject to *de novo* review. See Courier-Post Newspaper v. Cnty. of Camden, 413 N.J. Super. 372 (App. Div. 2010). Therefore, the Trial Court's findings are entitled to no special deference. This Court may also exercise discretion in ruling on the substantive issue raised below as it is a matter of significant public importance which was fully briefed and developed. See id. (citing Madden v. Twp. of Delran, 126 N.J.591, 597 n.1 (1992)).

II. The Trial Court Erred In Dismissing Both Complaints On Standing Grounds (Pa1)

A. The Law Applicable To The Standing Of Unincorporated Associations

The standing for an unincorporated association to sue is interpreted broadly and liberally under New Jersey law, such that cases are not generally dismissed on that basis. Garden State Equality v. Dow, 434 N.J. Super. 163, 197 (Law Div. 2013). As this Court has ruled:

> In the overall we have given due weight to the interests of individual justice, along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural

> frustrations in favor of just and expeditious determinations on the ultimate merits. Thus, courts hold that where the plaintiff is not simply an interloper and the proceeding serves the public interest, standing will be found. These principles comport with the proposition that standing rules and other justiciability norms 'are not to be applied in a wooden fashion to preclude expeditious relief from uncertainty with respect to rights when claims are in genuine conflict.

New Jersey Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 415 (App. Div. 1997) (internal citations and quotations omitted).

This liberality is even more pronounced in cases of great public interest, where an individual plaintiff's "slight additional private interest" is sufficient to confer standing. See Salorio v. Glaser, 82 N.J. 482, 491 (1980). This is the same rationale for permitting with liberality the standing of an association of stakeholders to sue for relief. See N. Haledon Fire Co. No. 1 v. Borough of N. Haledon, 425 N.J. Super. 615, 627-628 (App. Div. 2012). While our courts cite favorably to federal case law in support of the liberality of associational standing, see Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977), New Jersey courts follow an even broader definition of associational standing since they are not bound by the federal court "case or controversy" requirement under Article III of the United States Constitution. See Salorio, 82 N.J. at 490.

Specifically, an association has standing if (1) it has a real stake in the outcome of the litigation, (2) there is a real adverseness in the proceeding, and (3) the complaint applies to matters of common interest. New Jersey Citizen Action,

296 N.J. Super. at 416 (finding advocacy group has standing because it has "genuine interest in the accessibility of places of public accommodation" in Bergen County). Also, New Jersey land use law provides that any interested party has standing to challenge municipal action under a master plan, with "interested party" being defined as follows:

> 'Interested party' means: (a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under P.L.1975, c.291 (C. 40:55D-1 et seq.), or whose rights to use, acquire, or enjoy property under P.L.1975, c.291 (C. 40:55D-1 et seq.), or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under P.L.1975, c.291 (C. 40:55D-1 et seq.).

See N.J.S.A. 40:55D-4.

B. The Citizens Association Has Standing To Pursue Its Complaint

The Citizens Association easily vaulted the liberal legal standard for associational standing. This notwithstanding, the Trial Court summarily dismissed the case *sua sponte* based on a finding that the association was a "sham" without conducting any fact finding, and based on the irrelevant and incorrect conclusion that the association had not held any meetings after its inception or appointed any

officers. The statute governing unincorporated associations requires no such meetings nor the appointment of officers. See N.J.S.A. 2A:64-1.

Even if the statute required meetings – which it does not – the Trial Court's finding that counsel represented that there were no such meetings is flatly incorrect. To the contrary, counsel only represented that it was ***not aware*** of any organizational meetings. *1T 30:19-23*. Counsel then immediately told the Trial Court that, now that the Citizens Association was aware that the Court required certifications from at least one member of the association (aside from those of J.R. and Mr. Byrne), it would go about gathering that information. Indeed, the Citizens Association was prepared to bring forward such a certification, or testimony, if required. That testimony would include a description of the meetings between and among the members of the Citizens Association both at inception (*i.e.*, prior to the filing of the Complaint) and periodically since then. *Pa000659.*

N.J.S.A. 2A:64-1 states, in pertinent part, that any "unincorporated organization or association, consisting of 7 or more persons and having a recognized name, may sue or be sued in any court of the state by such name in any civil action affecting its common property, rights and liabilities[.]" Here, the Citizens Association filed documents with the Trial Court establishing that it had at least seven members at the time the suit was filed, and a recognized name under which they brought their suit. *Pa000640.*

Importantly, in researching these issues, the Citizens Association ***could not find a single case, either published or unpublished***, in which a court rejected associational standing based on the association not having a "recognized name." Rather, the cases under this statute reinforce the liberal standard for standing under our law. In a 1971 opinion, the New Jersey Supreme Court reversed the dismissal of a complaint on standing grounds by an unincorporated association which had ostensibly been formed ***for the sole purpose*** of challenging a landlord's actions, after the trial court incorrectly found that those claims belonged only to the individual tenants themselves. See Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 108 (1971). The Court stated:

> No one before us questions the tenants' stake and adverseness and admittedly there would have been no attack on standing if individual tenants had joined in the complaint. However they understandably chose to act instead entirely through their Association ***which was formed to help balance the bargaining power of the landlord and to enable them to deal from a position of strength with the acknowledged strength of their landlord***.
>
> Though the tenants here are in a luxury apartment, their Association is hardly to be differentiated for present purposes from tenant associations generally, or from other associations whose standing to litigate has been upheld. It is true that the suits by those associations were generally aimed at wrongful governmental action or inaction whereas here the wrongful action or inaction is nongovernmental. But the adverseness and private interest are present in at least as abundant measure and the public interest also is served by an expeditious determination of the merits of the charges which involve matters of health and safety as well as comfort and convenience.

> It must be borne in mind that the complaint of the Crescent Park Tenants Association is confined strictly to matters of common interest and does not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual tenant and the landlord. So far as the common grievances are concerned they may readily and indeed more appropriately be dealt with in a proceeding between the Association, on the one hand, and the landlord, on the other, thus incidentally avoiding the procedural burdens accompanying multiple party litigation. ***Surely, technisms aside, no one may question that the Association has a real stake in the outcome of the litigation nor many anyone question that there is real adverseness in the proceeding. All that being so, it is difficult to conceive of any policy consideration or any consideration of justice which would fairly preclude the Association from maintaining, on behalf of its member tenants, the present proceeding between itself as plaintiff and the landlord and its parent company as defendants***.

Id. at 108–09 (internal citations omitted) (emphasis supplied).

Crescent Park cited favorably to an earlier Appellate Division case in which an unincorporated association of taxpayers ***was formed expressly for the purpose of challenging an announced increase in a property tax rate***. See generally Taxpayers Ass'n of Cape May, New Jersey v. City of Cape May, 2 N.J. Super. 27 (App. Div. 1949) (emphasis supplied). In each of these cases, the plaintiff association was formed in reaction to conduct by either a common adversary (the landlord in Crescent Park) or a public entity (the County Commissioners in Cape May). There is simply no authority supporting the Trial Court's finding that the "recognized name" language somehow forbids an unincorporated association from being formed for the purpose of challenging government action.

Despite the bevy of cases cited above, the Trial Court found in its dismissal order that the law does not allow for anonymous individuals to sue "under the guise" of a "sham" association. In addition to having no support in the record, this finding flies in the face of the precedent cited above. The Crescent Park court explained some of the reasons why allowing unincorporated associations to proceed in matters of common interest was permissible and in fact ***encouraged*** under our broad and liberal standing rules. 58 N.J. at 109. Adding to that list, the use of an association protects its members from facing backlash from the powerful people who run the public entities whose conduct is under challenge. See id. at 108. Therefore, it is clear that the law does allow for such associations to sue as long as they have seven members and are pursuing matters of common interest as opposed to matters of unique interest to an individual or certain individual members.

The case Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22 (App. Div. 2006), reversed on other grounds, 192 N.J. 344 (2007), further highlights why the Trial Court improperly dismissed the Citizens Association action *sua sponte* in the face of disputed issues of material fact. In Twin Rivers, the Appellate Division found that the trial court erred in rejecting standing by the plaintiff committee which had been formed to vindicate speech rights by condominium owners who were allegedly being infringed upon by their condominium association. Id. at 56-57.

The trial court had dismissed the matter on standing grounds because the unincorporated association had only six members at the time of the Complaint, but that number had dwindled to three by the time of dispositive motion practice. Id. In reversing that decision, this Court found:

> We not only reject the motion judge's reliance upon the idea that this case involves no 'public interest ... but only the private rights of individuals within a contractual relationship,' but we also hold that the question of CBTR's standing could not appropriately be decided on summary judgment because the number of persons who were members of CBTR at critical times was a fact in dispute. We leave it to the trial court and the parties to determine on remand whether it is necessary to decide any questions raised by CBTR in the circumstances, since it appears that all issues raised on CBTR's behalf could validly be raised by one or more of the individual plaintiffs.

Id. at 57. The Trial Court here committed ***the same error*** as the trial court in Twin Rivers, but worse: it simply dismissed the Citizens Association matter *sua sponte* by rejecting documents showing the existence of numerous members of the Citizens Association without making any factual finding on the number of members at the time of the filing of the Complaint.

Contrary to the Trial Court's haphazard rulings, the Citizens Association has the required number of members, held meetings, and was appropriately formed for the purpose of challenging the designation of the redeveloper. Accordingly, it has standing to pursue relief in this case.

C. The Bidders Association Also Has Standing

The Bidders Association also satisfied the low standard applicable to associational standing – and the issue is not particularly close.

As explained above, the Trial Court conducted fact finding in the form of a plenary hearing where it heard testimony from Mr. Byrne, a founding member of the Bidders Association whose development company retained counsel to file this action. During his testimony, Mr. Byrne addressed many of the concerns raised earlier by the Trial Court, describing the many meetings among the members of the Bidders Association, his extensive background in construction and development, as well as his interest in the redevelopment project at issue.

Without belaboring the substance of his testimony – which is addressed in the Statement of Facts – Mr. Byrne confirmed that he was a founding member of the Bidders Association, which consisted of at least ten members.[7] The Bidders Association had met informally numerous times both in person and by virtual means, and had together decided to retain counsel and pursue its claims as a unit both to defray costs and to avoid exposing any individual's name to a suit against the City.

Recall that the Trial Court originally stated that it was holding the plenary hearing simply to confirm that Mr. Byrne was involved in this matter since before

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[7] See *supra* at pp. 31-33.

the Bidders Complaint was filed. Mr. Byrne testified that this was the case, and further, provided substantial detail into his involvement, the origins of the Bidders Association, and the retention of counsel. This notwithstanding, the Trial Court completely discredited his testimony because written proof of payment to counsel was not produced, and because Mr. Byrne's partner had signed the retainer letter on behalf of their company, and not Mr. Byrne himself.[8]

None of that mattered below, of course, because the Trial Court dismissed the Complaint as an anonymous pleading in violation of this Court's precedent in ABC v. XYZ Corp., 282 N.J. Super. 494 (App. Div. 1995). To be clear, the ABC case does not apply here, and the Trial Court's analysis was far afield. ABC involved an individual employee who unsuccessfully sought to anonymously bring state law discrimination claims against its employer. This Court found that such claims for money damages or reinstatement could only be brought anonymously under very narrow circumstances demonstrated by clear and convincing evidence, including

[8] There is no precedent for taking an adverse inference against a party for not providing proof of payment ***to its own attorney*** or providing correspondence with counsel ***that would otherwise be privileged***. Since there was no discovery permitted in these actions, the Trial Court effectively dismissed the Bidders Complaint as a discovery sanction, which was wholly improper under the circumstances. See Abtrax Pharm., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 514-516 (1995) (dismissal to be used "sparingly" and only where order for discovery goes to heart of case or where refusal to comply is "deliberate and contumacious").

genuine risk of physical harm or possible revelation of highly private information. See id. at 505.

Here, of course, the matter is not brought anoymously, but in the name of an unincorporated association. Such associations are authorized to file suit pursuant to statute. See N.J.S.A. 2A:64-1. As such, the Trial Court's reliance on ABC to find that the Bidders Association Complaint is an improper anonymous pleading – and disregarding Mr. Byrne's testimony on that basis – was clearly erroneous.

For these reasons, this Court should avoid the grievous error made by the Trial Court – *i.e.*, ignoring the entire body of law surrounding associational standing – and find that the Bidders Association has standing to pursue its claims.

III. The Motion To Amend The Bidders Association Complaint To Name James Byrne Was Improvidently Denied (Pa5; Pa7; Pa10; Pa12)

Pursuant to Rule 4:9-1, after a responsive pleading is filed, a plaintiff seeking leave to amend must do so on motion, which "shall be freely given in the interest of justice" and without consideration of the ultimate merits of the amendment. See Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-501 (2006); Kernan v. One Washington Park, 154 N.J. 437, 456-457 (1998). Moreover, the "broad power of amendment should be liberally exercised at any stage of the proceedings, including on remand after appeal unless undue prejudice would result." Kernan, supra at 457 (internal quotations omitted).

Courts are instructed to deny motions to amend pleadings only where (1) the amendment would be futile such that a motion to dismiss pursuant to Rule 4:6-2 would be granted, or (2) where the non-moving party would suffer prejudice. See Notte, supra at 501. The proposed amendment here was neither futile nor prejudicial to Defendants. Furthermore, the liberality of amendment is especially appropriate in matters which affect the public interest. See Springfield Twp. v. Bd. of Educ. of Springfield Twp., 217 N.J. Super. 570, 576 (App. Div. 1987).

As to the so-called futility prong, the proposed amendment simply added an individual plaintiff – whose company hired counsel for the Bidders Association, and who has been involved in the case from day one – and was otherwise identical to the initial Complaint. No party moved to dismiss that pleading pursuant to Rule 4:6-2, and therefore its merits had already passed that procedural hurdle.

For these same reasons, Mr. Byrne's claims relate back to the original Complaint both pursuant to Rule 4:9-3 and binding precedent of the New Jersey Supreme Court. This rule states, in pertinent part:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading[. . .]

Id. Therefore, any argument that Mr. Byrne's claims are barred by a statute of limitations would be misplaced.

The Appellate Division made this same finding in Siligato v. State, 268 N.J. Super. 21 (App. Div. 1993) (Pressler, J.A.D.). There, certain public officials executed a search warrant on a bar and deli business owned by Siligato, which proved to be based on false information. Siligato sued the State of New Jersey and one of those officials pursuant to 42 U.S.C. §1983 based on the damage to the bar. Id. at 26-27. After discovery concluded but prior to trial, the State searched title records and discovered that the real estate was owned by Silly Gator, Inc. Id. at 27. The defendants moved to dismiss the claims by Siligato based on a lack of standing, and the trial court denied that motion and directed Siligato to amend the Complaint to add Silly Gator as a plaintiff. Id. at 28.

The Appellate Division affirmed the lower court and added the following thoughts:

> We also agree with Judge Connor that the amendment of the complaint to add Silly Gator, Inc. as a plaintiff properly related back to the date of its filing. Under the circumstances here, the amendment was the functional equivalent of a routine substitution pursuant to *R.* 4:34–3 (transfer of interest). We also point out that *R.* 4:9–3 expressly provides for relation back of a germane claim. Beyond that, that rule also expressly provides for the relation back of an amendment changing the party against whom a claim is made provided that party knew of the suit and knew that he would have been joined but for plaintiff's error concerning identity of the proper party, and provided he will not be unduly prejudiced in maintaining his defense. While we understand that that rule applies, in terms, to parties-defendant, we are satisfied that its rationale applies equally to parties-plaintiff. Obviously, an error made by plaintiff in identifying itself should be no less curable than an error in identifying the adversary. Defendants here are not prejudiced by the amendment. Relation back was proper.

Id. at 28–29. The New Jersey Supreme Court later validated Siligato in allowing a plaintiff to be added to a Tax Court Complaint where it had originally been misidentified, which allowed the plaintiff to avoid dismissal for lack of subject matter jurisdiction. See Prime Accounting Dep't v. Twp. of Carney's Point, 212 N.J. 493, 513 (2013).

Similarly here, Mr. Byrne moved to be joined as an individual plaintiff after having been involved in this case throughout. His claims were identical to the claims of the Bidders Association, and his addition would have changed nothing other than to address the Trial Court's concern regarding the standing of the Bidders Association, of which Mr. Byrne is a member. As the Trial Court stated, it would have granted that relief *sua sponte* had it found the Bidders Association had standing following the plenary hearing. *2T 6:17-20*. Therefore, the proposed amendment had serious merit, was not prejudicial, and should have been allowed.

As noted above, the Trial Court mistakenly applied a heightened standard to Mr. Byrne's amendment motion. The Trial Court's theory was that for a time-sensitive claim like an action in lieu of prerogative writ, the application was *nunc pro tunc* and therefore required greater scrutiny. The Trial Court simply did not consider the relation back doctrine for which an established body of case law exists, and which dictates that there was no harm in permitting Mr. Byrne to assert his

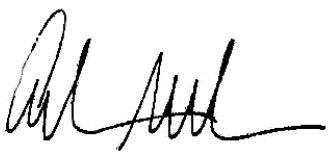
claims in his own name after having already been required to come forward and testify in open court anyway.

For these reasons, the Trial Court's decision to deny the Motion to Amend the Bidders Association Complaint should be reversed.

CONCLUSION

For these reasons, the Trial Court's Orders dismissing the Complaints in both consolidated matters should be reversed, along with the Order denying the Motion to Amend the Bidders Association Complaint to name James Byrne as an individual plaintiff. The matter should be remanded to the Trial Court for a decision on the ultimate merits.

BRACH EICHLER LLC



By: _____
Thomas Kamvosoulis, Esq.
Andrew R. Macklin, Esq.

Dated: May 28, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001613-24

ASSOCIATION OF CONCERNED CITIZENS OF NEW BRUNSWICK, Plaintiff, v. CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants.	Sat Below: Hon. J. Randall Corman, J.S.C. Trial Court Docket Nos.: MID-L-2242-24, MID-L-2243-24 Civil Actions
ASSOCIATION OF DISENFRANCHISED BIDDERS OF REDEVELOPMENT WORK IN THE CITY OF NEW BRUNSWICK, Plaintiff, v. CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants.	

BRIEF OF DEFENDANT-RESPONDENT, NEW BRUNSWICK HOUSING AUTHORITY IN OPPOSITION TO APPEAL

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PRELIMINARY STATEMENT

Defendant, Housing Authority of the City of New Brunswick ("NBHA") submits this brief in opposition to Plaintiffs' appeal from the trial court's dismissal of the Complaints in these consolidated matters. Plaintiffs also have asserted claims against NB Plaza Owner Urban Renewal, LLC ("NB Plaza Owner") and both the City of New Brunswick ("City") and the Planning Board of the City of New Brunswick ("Planning Board"). The trial court properly determined that neither purported plaintiff satisfied the requirements for associational standing and dismissed this matter.

This matter concerns a redevelopment project to be situated largely on property owned by the Abundant Life Family Worship Church, Inc. ("Abundant Life Church") located on lower George Street in New Brunswick. The project includes a 45 story building with 800 residential units (at least 160 units of which will be set aside for low and moderate income housing), retail space, amenities, and a parking deck ("Project"). NBHA received an application from NB Plaza Owner, reviewed it and all the materials submitted in connection with it, heard the application, and determined to conditionally designate NB Plaza Owner as the redeveloper of the Project.

In their effort to invalidate that designation, Plaintiffs raise a host of baseless claims. They argue that the designation was procedurally improper

because NBHA did not solicit multiple proposals, when there is no law requiring it to do so and the nature of the Project, for which the City has not authorized the use of condemnation, requires any redeveloper to gain site control of the property owned by the Abundant Life Church. Plaintiffs also argue that based on various "outside research," none of which was put before NBHA at its February 28, 2024 hearing (at which Plaintiffs did not even appear), the redeveloper designation was improper, even though under the controlling authorities the trial court cannot consider items that were not part of the record before NBHA.

Plaintiffs' arguments demonstrate a complete misapprehension of the redevelopment process. That process is based on a public - private partnership, in which a private redeveloper finances and constructs an improvement to achieve a public purpose. A redevelopment project must evolve through preliminary conceptual design phases, to more detailed engineering and design, to final plans and drawings. As that process evolves, details like financing plans also evolve.

NBHA followed the requisite procedures, considered the information provided to it, and approved the designation of NB Plaza Owner as a conditional redeveloper. Then NB Plaza Owner and NBHA negotiated the terms of a redevelopment agreement governing their relationship, and

embodying the former's commitment to develop the Project. Upon the approval and execution of that agreement, the conditional designation became final. NBHA's actions were consistent with applicable statutes, the redevelopment plan, and common law.

The trial court properly determined that Plaintiffs lack standing to bring these matters. Neither purported "association" contained members that were aligned with the group's purported mission, but instead served as a device through which unknown parties sought to proceed anonymously. In the case of the purported Association of Concerned Citizens of New Brunswick ("Citizens Association"), the purported members were concerned primarily about the "embezzlement of their church," not a matter cognizable in an action in lieu of prerogative writs.

Likewise, the Association of Disenfranchised Bidders of Redevelopment Work In The City Of New Brunswick ("Bidders Association") failed to demonstrate that any of its purported members could actually gain control of the property and develop the Project. And, the trial court correctly concluded that the proposed amended complaint failed to tie the proposed individual plaintiff to the subject matter of the original complaint, and it would be futile to permit the amendment.

Accordingly, the trial court's decision should be affirmed.

PROCEDURAL HISTORY

Plaintiffs filed their Complaints in Lieu of Prerogative Writs seeking to invalidate the Resolution on April 12, 2024. (Pa 0014-0032; Pa 0034-0052). Defendants City and Planning Board, NBHA, and NB Plaza filed their answers between May and June, 2024. (Pa 0053-0091, Pa 0115-0148, and Pa 0092-0114, respectively).

Thereafter, Plaintiffs subpoenaed various persons and entities, seeking discovery beyond the record established before NBHA, which the Court quashed by Order entered on July 26, 2024. (Pa 504-505). Then, the trial court entered an order on August 26, 2024 reaffirming that additional discovery is not permitted, setting dates for briefing on the merits, and indicating that argument would be scheduled thereafter. (Pa 0733 – 0744).

On October 18, 2024 the trial court entered an Order to Show Cause relating to the sale of an undersized piece of land from the City to NB Plaza Owner. (Pa 0729-0732). Defendants filed their papers addressing both the merits of the Complaints and the Order to Show Cause on November 11, 2024. (Pa 0519-0636). The trial court permitted Plaintiffs to file reply papers relating to the standing issue, which were submitted on December 12, 2024. (1T 5:2-9; Pa 0637-0664).

On December 17, 2024 the trial court conducted a hearing on the matter, indicating at the beginning that the hearing would focus on Plaintiffs' standing to bring both Complaints. (Pa 0519-0636). After argument, the trial court dismissed the Citizens Association's Complaint. (1T 39:8-43:5).

Then, the trial court turned to the Bidders Association. Based on a certification submitted by the Bidders' Association addressing the standing issue, the trial court noted that the issue was different for the Bidders Association because one of its purported members, James Byrne, had come forward and submitted a certification, and it directed that the Bidders Association produce Mr. Byrne to testify in Court. (1T 44:17-23).

The trial court's decisions on December 17, 2024 were subsequently reflected in two orders entered on December 19, 2024. In the Citizens Association matter, the trial court detailed findings of fact and conclusions of law, and then ordered that the matter be dismissed. (Pa 0001-0002). In the Bidders Association matter, the trial court entered an order requiring Mr. Byrne to testify and directing the Bidders Association to furnish documents relating to the alleged association prior to that testimony. (Pa 0003-0004).

On January 7, 2025, the Citizens Association moved for reconsideration of the December 19, 2024 Order dismissing its case. (Pa 0665).

Subsequently, on January 15, 2025, the Bidders Association moved to amend its complaint to add Mr. Byrne as an individual plaintiff. (Pa 0697-0698).

On January 31, 2025, the trial court conducted a hearing on Plaintiffs' motions. (2T 4:5-6; 5:3-12). The trial court deferred the Bidders Association's motion until after hearing Mr. Byrne's testimony. (2T 5:13-6:11; Pa 0005). The trial court denied the Citizens Association's Motion for Reconsideration. (2T 50:18-20; Pa 0007).

The trial court conducted a hearing on February 26, 2025 at which Mr. Byrne testified. (3T).

Subsequently, on March 7, 2025 the trial court heard argument on the Bidders Association's standing to bring the litigation and its motion to amend the complaint to make Mr. Byrne a named plaintiff. (4T). By order entered on March 7, 2025 the trial court dismissed the Complaint filed by the Bidders Association for lack of standing and denied the motion to amend the complaint. (Pa 0010). Subsequently, on March 12, 2025 the trial court entered an amended order that also extended the temporary restraint for a period of three weeks. (Pa 0012).

STATEMENT OF FACTS

I. Facts Relating To Substantive Matter

A. The Redevelopment Plan

On November 15, 2023, the City adopted the Lower George II Redevelopment Plan ("Plan"). (Pa 0226). The Plan addresses three lots (4, 5.01 and 7) in Block 120 on the City's Tax Map ("Property"), and serves as an overlay upon the existing development regulations applicable to the Property. (Pa 0237). That means that any existing zoning of the Property is supplanted by the Plan. (Pa 0240).

Importantly, the Plan is a non-condemnation redevelopment plan:

> **Acquisition**
>
> No property within the plan area shall be subject to condemnation pursuant to the authority in section 8(c) of the Local Redevelopment and Housing Law.
>
> * * *
>
> **Displacement & Relocation**
>
> This redevelopment plan is based on the redevelopment plan area being in an area in need of rehabilitation. As such, this plan is a non-condemnation plan, and as such, acquisition of property by the Redevelopment Agency for redevelopment purposes to effectuate this redevelopment plan in this area is not permitted unless this plan were to be converted into a condemnation redevelopment plan… .

(Pa 0246)(emphasis added).

The Plan also contains provisions aimed at creating additional affordable housing in the City:

> This plan creates a voluntary affordable housing incentive for the area whereby the redeveloper may achieve a height bonus for their project by providing a minimum of 10% of affordable housing in their project.

(Pa 0256).[1]

The Plan also addresses the role of a redeveloper in its implementation:

> In order to assure that the vision, goals, and public purposes of the Redevelopment Plan are implemented in a comprehensive and timely manner, the Redevelopment Plan shall only be implemented by a designated redeveloper(s). Designation of a prospective redeveloper(s) shall be made by the City of New Brunswick's designated redevelopment agency, the New Brunswick Housing and Urban Development Authority, or any successor agency. The Redevelopment Agency shall consider both solicited and unsolicited proposals for designation of a redeveloper. All designated redevelopers are required to enter into a Redevelopment Agreement with and satisfactory to the Redevelopment Agency.
>
> The designated redeveloper shall be responsible for carrying out this Redevelopment Plan and will obtain all necessary approvals from the City Council, Planning Board, Zoning Board, City agencies and outside agencies to legally effectuate and carry out the Redevelopment Plan, including but not limited to

[1] In the subsequent Redevelopment Agreement, the affordable housing component has been doubled. (Pa 0548).

> zoning changes, easements, permits, licenses, or approvals, and any and all street vacation proceedings.

(Pa 0252)(emphasis added).

The Plan also sets forth a specific process for the designation of a prospective redeveloper:

> **Redeveloper Designation:**
>
> In order to be considered for designation as a redeveloper, a prospective redeveloper will submit the following information and materials to the Redevelopment Agency:
>
> - Preliminary plans sufficient in scope to demonstrate compliance with the design standards and guidelines of the Redevelopment Plan.
> - Documentation evidencing the financial responsibility and capability of the proposed redeveloper to carry out the proposed redevelopment project, including comparable projects completed, financing plan, disclosure of ownership interests in the proposed redeveloper including general and limited partners, financial profile of the proposed redeveloper and its parent, if applicable.
> - Estimated total development cost for the proposed redevelopment project.
> - Estimated timeline for the start and completion of development.
>
> **Other Redeveloper Requirements:**
>
> The estimates referred to above shall be finalized by the designated Redeveloper(s) at the time of execution of the Redeveloper Agreement.

* * *

(Pa 0253).

The Plan also contains various other provisions relating to the proposed development of the Property, including provisions affirming that the redevelopment project is subject to normal site plan and subdivision review (Pa 0254); a bulk table setting forth the specific building limitations applicable to the Property (Pa 0240); and a statement that "When this plan conflicts with the standards of the underlying zoning, this plan shall control" (Pa 0245).

B. Conditional Redeveloper Designation

By letter dated December 21, 2023, NB Plaza Owner applied to NBHA to be designated as redeveloper of the Project. (Pa 0316-317). That letter was accompanied by the following documents:

- A completed Redeveloper Designation Application (Pa 0318-320);
- A letter dated December 7, 2023 from Seraphim Equities (Pa 0322);
- A letter dated December 11, 2023 from Jade Capital (Pa 0324);
- A letter dated December 18, 2023 from M & CF Investments, LLC (Pa 0326);
- An Ownership Disclosure form, listing those with ownership interests in NB Plaza Owner II greater than 10% (Pa 0328);
- A site plan dated May 24, 2023; and
- Architectural Plans.

(Pa 0316-317).

Thereafter, NB Plaza Owner amended its application by letter dated February 23, 2024, to reflect that the Project will only utilize that portion of the Property designated as Lot 5.01. (Pa 0330). It also submitted additional letters regarding debt and equity financing (Pa 0331-334), and revised architectural and site plans (Pa 0281-304). The Property is owned by the Abundant Life Church, which is a member of NB Plaza Owner II. (Pa 0444, l. 1-11). The application submitted by NB Plaza Owner indicates that, with respect to ownership of the Property, it is in a venture agreement with the owner, meaning that it has site control over the Property. (Pa 0275).

NBHA considered NB Plaza Owner's application at its February 28, 2024 meeting. The introduction of the application made it clear that at that meeting, NBHA was considering the first step in a multi-step process for designation of NB Plaza Owner as redeveloper:

> What we're requesting is the approval of NB Plaza as the redeveloper. And it's subject to a redevelopment agreement which will come back -- which must be completed within 90 days.

(Pa 0443, l. 8-11). This is especially true with respect to financing, as was made evident during a discussion with Shimon Jacobowitz, a principal of NB Plaza Owner:

> COMMISSIONER WOLDE: On the financing side, I think there is a commitment of 60 million by [inaudible], 30 million by Equity M Plus, and Equity

financing by [inaudible]. And the total development cost is like 300 something million.

MR. KELSO: A little over 300 million.

COMMISSIONER WOLDE: Yeah. What I see here is only 90 million. So I don't know, maybe I missed something.

MR. KELSO: Shimon, you might want to maybe fill that out a little bit for us.

MR. JACOBOWITZ: Yeah. I think what you're seeing is more the financial the equity besides the construction loan. The construction loan is the galaxy that was provided to you.

* * *

MR. HOFFMAN: I said we got some recent indication from two different financial entities that they would be giving a construction loan what I think is $275 million.

* * *

CHAIRPERSON WRIGHT: Do we have those letters, Dan, on the rest of the capital stack, the construction loan to match the equity?

MR. KELSO: Yeah. I think that we provided the equity at $90 million.

MR. TOTO: Yes.

MR. KELSO: And you know, the potential for equity may be a little over a hundred million, but I thank that's still, you know, what Shimon is doing is they're, you know, they're out in --

CHAIRPERSON WRIGHT: Significant.

> MR. KELSO: Yeah. We just wanted to show you they got $90 Million.
>
> MR. HOFFMAN: And also, we have a letter of construction commitment for I believe, Shimon, of $275 million.
>
> MR. KELSO: Yes.
>
> COMMISSIONER WOLDE: Would we be able to get the letter of commitment?
>
> MR. HOFFMAN: This is conditioned on a redevelopment agreement coming back to you. And when the redevelopment comes back we'll have more of the financing plan and the actual commitments.

(Pa 0471, l. 7 – Pa 0473, l. 10)(emphasis added).

At the close of the presentation, NB Plaza Owner's counsel explained the routine process with respect to financial information at the initial, conditional stage of a redeveloper designation:

> MR. KELSO: Yeah. What we typically do in these kind of agreements, you know, this is a preliminary stage right now because I mean the reality is you're not going to have all of your financing in place before you [inaudible] designated because you got to go through a process. At some point [inaudible] provide a full financial plan which is called for in the redevelopment agreement. And that may be within nine months or a year where we have a full financial plan in place. By that time we have a better understanding of the overall cost of the project, able to project out what their revenue projections are. And that allows them to get their construction and permit and financing in place and likely additional equity participation. But it's important for you to see that we're sitting on $90 million right now in equity which

> makes this, you know, a viable project at this stage and then to be pulled out with a full financial plan down the road.
>
> MR. HOFFMAN: And that's all going to be required in the redevelopment agreement.
>
> MR. KELSO: Yeah. I mean it's no different than even when DEVCO does the Helix project. They're not showing you a construction commitment. They're still applying for tax credits. You know, all of that is in a process, but we're showing you the path. And then when we get to the end of the path, and you get the plan.

(Pa 0474, l.4 – Pa 0475, l. 6)(emphasis added).

Plaintiffs did not appear at the February 28, 2024 hearing. (Pa 0438-0492). Nor did they submit any written objection or materials relating to the action considered by NBHA at that hearing. (Pa 0263-0314). Therefore, the record before NBHA as of February 28, 2024 contained only those items submitted by NB Plaza Owner and the record of the hearing.

Based on the record before NBHA, on February 28, 2024 it voted unanimously to approve NB Plaza Owner as the conditional redeveloper for the Lower George II Redevelopment Plan Area. (Pa 0438, 0490-0491). That decision is memorialized in Resolution 2024-2/28 #3, adopted on the same date ("Resolution"). (Pa 0494). The operative portion of the Resolution states:

> NB Plaza Owner Urban Renewal LLC is designated as Redeveloper for the mixed-use residential/commercial

> project as described in the Preamble of the Resolution in the Lower George II Redevelopment Plan Area subject to the approval and execution of a Redevelopment Agreement within ninety (90) days of the date of this Resolution.

(Pa 0496)(emphasis added). The whereas clauses in the Resolution refer to the concept plan submitted, evidence of other projects in which NB Plaza Owner was involved, evidence of construction debt financing, $90 Million in equity, and the discussion at the February 28, 2024 meeting, concluding:

> [B]ased upon a review of the submitted information and the presentation made by the Redeveloper at the public meeting held on February 28, 2024, including the answering of any questions by the Commissioners and the public, the Redevelopment Agency has found that the documentation and presentation to be acceptable and in conformity with the requirements of Section 8 of the Redevelopment Plan therefore, determining that it is appropriate to designate NB Owner Urban Renewal, LLC as the Redeveloper of the redevelopment project pursuant to Section 8 of the Redevelopment Plan[.]

(Pa 0494-0495).

C. Redevelopment Agreement

By Resolution 2024-5/22 #32, NBHA extended the time for it and NB Plaza Owner to negotiate a redevelopment agreement through August 20, 2024, in part because of the litigation brought by Plaintiffs. (Pa 0500-0501). Thereafter, by Resolution 2024-7/24 #39, NBHA approved the execution of a redevelopment agreement with NB Plaza Owner. (Pa 0542-545). The

Redevelopment Agreement, dated as of August 1, 2024, was executed thereafter. (Pa 0547).

II. Facts Relating To Standing

A. Citizens Association

The Citizens Association's Complaint alleges that it is an unincorporated association formed in the State of New Jersey. (Pa 0037). It further alleges that the Citizens Association is "comprised of residents of the City of New Brunswick and other interested parties impacted by the improper enactment of New Brunswick Housing Authority Resolution 2024-2/28 #3… ." (Id.). That complaint fails to allege how many members belong to the Citizens Association, who leads them, details as to meetings (if any) or virtually any other information with respect to that association. (Pa 0037-0038).

In an effort to support their claim of standing, the Citizens Association provided an anonymous certification from a person known only as "J.R." who, while opposed to the Project, wished to remain anonymous. (Pa 0658). The Citizens Association also provided pre-printed statements for persons to fill in their names and addresses, some with unclear names and all uncertified, without providing any information as to who gathered the statements. And, the statements have nothing to do with this litigation, but appear to relate to the internal governance of the Abundant Life Church, as they provide:

> I _____, hereby join the Association of Concerned Citizens of New Brunswick, founded to prevent the embezzlement of the Abundant Life Family Worship Church located at 259 George Street, in New Brunswick.
>
> I want clear transparency, proper community involvement and knowing what our not-for-profit Church is getting out of this mystery deal, and what the Church constituents are getting from this deal. And what the community is getting out of this. This Church and property that our donations help build over the years.
>
> I wholly oppose the 450-foot-high luxury-rental skyscraper being developed to be built on the non-for-profit Church property.
>
> I have made donations to this Church. I want to be legally represented by the Association legal team, to investigate and to bring clear transparency to what's going on here, and find out the secret dealings and or looting of the not-for-profit Church assets of over $100 Million Dollars.
>
> Signing this document will not make me liable for any fees.

(Pa 0644-0653).

Plaintiffs' counsel also submitted a certification in which they reiterated that the purported members of the Citizens Association acted based on "what they perceive as the embezzlement of the property of the 3,000 member non-profit church… ." (Pa 0662).

B. Bidders Association

The Bidders Association's Complaint alleges that it is an unincorporated association formed in the State of New Jersey. (Pa 0017). It further alleges that the Bidders Association is "comprised of residents of the City of New Brunswick and other interested parties who are real estate developers impacted by the improper enactment of New Brunswick Housing Authority Resolution 2024-2/28 #3… ." (Id.). That complaint fails to allege how many members belong to the Bidders Association, who leads that association, whether it holds any meetings or virtually any other information with respect to that purported association. (Pa 0017-0018).

As noted in the Procedural History below, Plaintiff Bidders Association filed a motion to amend its complaint on January 15, 2025 to add James Byrne as a plaintiff. (Pa 0693). The trial court deferred consideration of that motion until it could hear the testimony of Mr. Byrne. (Pa 0005).

Mr. Byrne testified that he and others "thought it would be a good idea to retain counsel, form the association, and that way[] it divided costs, spread costs out." (3T 22:12-16). He further testified: "When you're going up against government municipalities, it's not a good idea to make enemies so I didn't want my name brought up." (3T 22:20-22). Mr. Byrne also testified that neither he or any organization he is a member of has ever been designated

as a redeveloper by any municipality in New Jersey. (3T 55:18-21). Similarly, Mr. Byrne testified that he has never done work on a municipal redevelopment project in New Jersey. (3T 56:4-7).

With respect to the Project, Mr. Byrne testified that the Abundant Life Church Property was a significant component of the Lower George II Redevelopment Plan. (3T 56:21-24). He also admitted that he was aware that the Abundant Life Church had entered into a contract to form the designated redeveloper for the Abundant Life Church. (3T 57:18-21).

LEGAL ARGUMENT

POINT I

THE STANDARD OF REVIEW

A trial court determination to dismiss claims for lack of standing is subject to de novo review. Courier-Post Newspaper v. County of Camden, 413 N.J. Super. 372, 381 (App. Div. 2010). A trial court decision to grant or deny a motion to amend the complaint is subject to an abuse of discretion standard. Grillo v. State, 469 N.J. Super. 267, 275 (App. Div. 2021). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015), quoting Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002). Plaintiffs, as appellants, bear the burden to show that the

trial court failed to meet the applicable standard. Committee for a Rickel Alternative v. City of Linden, 214 N.J. Super. 631, 637 (App. Div. 1987).

POINT II

THE TRIAL COURT PROPERLY APPLIED THE LEGAL PRINCIPLES OF ASSOCIATIONAL, REPRESENTATIVE AND UNINCORPORATED ASSOCIATION STANDING, SO THE TRIAL COURT'S DECISION DISMISSING THE COMPLAINTS FOR LACK OF STANDING SHOULD BE AFFIRMED

A. The Trial Court Correctly Determined That The Citizens Association Lacks Standing To Bring Its Claims

While the Citizens Association claims to have "associational" standing it has, as the Court correctly determined, failed to even establish that it is an "association." The Court based this determination on the lack of any evidence of meetings, internal leadership, and a lack of a recognizable name. December 17, 2024 was to be the trial in this matter, and the Citizens Association's representations to provide evidence of same afterward is simply too late.

The Citizens Association also fails to prove that it meets the necessary requirements to establish associational standing (even if there was a qualifying "association.") To do so, it "must demonstrate that its members would have standing to sue; the interests it seeks to maintain are germane to the purpose of the organization; and neither the claim asserted nor the relief requested requires individual participation by the association's members." North

Haledon Fire Co. No. 1 v. Borough of North Haledon, 425 N.J. Super. 615, 627-628 (App. Div. 2012). The Citizens Association's proofs at the trial of this matter fell woefully short of meeting these requirements.

Instead, the Citizens Association simply presented hearsay (unsworn statements of purported "members") claiming that the "association" is comprised of individuals and founded "to prevent the embezzlement of the Abundant Life Family Worship Church." The Citizens Association never explained how this objective can even be addressed in an action against defendant municipal entities and a private redeveloper, that does not even include the church in question as a party. Of course, such an action is not even appropriate to bring via an action in lieu of prerogative writs seeking the review of governmental, and not church, action. Thus, the individuals' objective, to address "embezzlement" of their church, does not equate to the group purpose of challenging the redeveloper designation, failing to satisfy a key element of the test for standing. Likewise, the Citizens Association fails to demonstrate how the municipal defendants in this action in lieu of prerogative writs may even be chargeable with addressing "embezzlement" of their church.

Lastly, the Citizens Association purports to challenge the action designating a redeveloper of a portion of their church property, by challenging

the appointment of that redeveloper pursuant to the Plan, which mandates selection of a redeveloper, but does not provide for condemnation of the church property. In actuality, the Citizens Association is challenging the wisdom of the underlying redevelopment plan, which is not the subject of either of the above consolidated actions, and could not be, because the Plan was adopted more than 45 days prior to the commencement of these actions.

The trial court considered the foregoing legal principles and properly applied them to the facts before it. Initially, the trial court observed an inherent conflict between the objectives of the two association Plaintiffs:

> First, I'm going to observe that the plaintiffs in these two matters really are working at cross-purposes. The Association of Concerned Citizens doesn't want this skyscraper to be built. But, the Association of Disenfranchised bidders does want it to be built. They just want to be the people--they just want to have a chance to be the people that build it.

(1T 37:17-24). The trial court did not resolve this conflict between the two Plaintiff associations.

The trial court did address the ten unsworn statements provided by the Citizens Association and reached the following conclusions:

> Now, turning to the Association of Concerned Citizens, we're presented with a stack of signed statements where ten people signed something that said, they're joining the Association of Concerned Citizens and they're against this big building they're going to build here in New Brunswick.

> We don't know who gathered the signatures. It wasn't J.R., the anonymous person who submitted a certification that's only to be considered in camera and I have not looked at that and not asked to look at it. It was somebody else who gathered these signatures. We don't know what these individuals were told. In certain cases, we don't know if they understood what they were signing.

(1T 39:8-21)(emphasis added). The trial court properly rejected the unsworn statements, concluding:

> I can't say that the signed statements can count as competent evidence really of anything without knowing who circulated these forms for people to sign.

(1T 40:23-41:1).

The trial court then addressed N.J.S.A. 2A:64-1, which requires an unincorporated association to have seven or more members and a recognized name:

> Well, if this Association has no organ--has no officers, someone would have to sign. It has to have somebody who steps into daylight to say that they have gathered these signatures. Somebody has to say that we have organized this and we have some common purpose. There's no evidence of that.

(1T 40:17-22). The trial court determined that, based on the evidence before it, there was no proof as to the purpose, number of members, or anyone else relating to the alleged unincorporated association.

The trial court therefore found that the Citizens Association failed to meet the test for common law associational or representative standing, and failed to meet the requirements of the unincorporated associations statute. As the trial court further stated:

> You've got somebody wants to, you know, file an action in lieu or file whatever they want to file, that's fine. But they can't file a complaint anonymously. And, by the same token, they can't gin up some sham association ….

(1T 42:8-12). Subsequently, the trial court cited A.B.C. v. XYZ Corporation, 282 N.J. Super. 494, 503-505 (App. Div. 1995) for the proposition that a plaintiff cannot proceed anonymously, absent special circumstances. (4T 23:2-9).

Because the trial court's decision is based on case law relating to associational and representative standing, the statute governing unincorporated associations, and case law recognizing that a plaintiff cannot proceed anonymously, the decision properly applied the controlling legal authorities and should be affirmed.

B. The Trial Court Properly Determined That The Bidders Association Lacks Standing To Bring Its Claims

1. The Motion To Amend Was Properly Denied

The Bidders Association's motion to amend was properly denied because it was untimely and because the claims asserted in the proposed

amended complaint, like those in the initial complaint, were baseless and it would be futile to permit the action to be brought (and maintained). This action in lieu of prerogative writs was scheduled for trial on December 17, 2024. At that time, the Court determined that there was an issue with respect to the Bidders Association's standing to bring this matter, and directed it to produce Mr. Byrne (who had submitted a certification prior to December 17, 2024) to appear for testimony before January 31, 2025. It was not until several weeks later that the Bidders Association filed a motion to amend its complaint.

Here, the trial court correctly required that the Bidders Association present evidence to show that Mr. Byrne was involved at the very beginning, at the time the Complaint was filed challenging NBHA's designation of NB Plaza Owner as conditional redeveloper for the Project. (4T 23:10-15). That requirement recognized that, pursuant to Rule 4:69-6, any proposed additional plaintiff must necessarily have been part of the process within the 45 day limitation period for bringing an action in lieu of prerogative writs.

A motion to amend a complaint should be denied as untimely and devoid of merit when a case has been concluded. Grimes v. City of East Orange, 285 N.J. Super. 154,167 (App. Div. 1995) (affirming denial of motion to amend after jury returns verdict). Although the trial court did not conclude this case,

it was to have been tried on December 17, 2024, and a motion to amend made nearly a month after that is untimely.

A motion to amend should also be denied if the proposed amendment is futile and not sustainable as a matter of law. Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 500-501 (2006). Here, as addressed more fully at page 7, supra, under the terms of this particular Redevelopment Plan, NBHA has no power to condemn the property at issue and convey it to a redeveloper, which means that a prospective redeveloper must, like NB Plaza Owner, obtain control over the site to apply for the redeveloper designation. Otherwise, the right to develop the property (and all other property rights) remains with the property's owner, the Abundant Life Church. In addition, contrary to Plaintiffs' arguments, there is no statutory requirement that it solicit bids in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-8f, and under these facts, it is impracticable to do so.

Both Mr. Byrne's December 11, 2024 Certification and the proposed amended complaint are silent on how he or an entity controlled by him has already gained site control over the property owned by the Church of Abundant Life to even qualify as a prospective redeveloper. It is therefore futile for Disenfranchised Bidders to even maintain this action, as

demonstrated in Point III, below, and equally as futile to attempt to add Mr. Byrne as a plaintiff.

Mr. Byrne's testimony did not dictate that the trial court reach a contrary result. As the trial court stated, the standing issue became a concern because no purported member of the Bidders Association wanted to come forward, and instead "they all wanted to proceed anonymously through these unincorporated associations." (4T 25:9-10).

The trial court carefully considered Mr. Byrne's testimony, and found:

> [N]ow one thing I have to say is not plausible about Mr. Byrne's testimony is his fear of suing the government. He does no work in the New Brunswick area, it's not like he has some small business here that some inspectors might come in and start issuing violations. He does no work here.

(1T 25:11-16). Then, the trial court noted that it had requested Plaintiffs provide contemporaneous documentation with respect to Mr. Byrne's involvement in the Bidders' Association, and observed that the only document provided failed to address that issue:

> And the only thing that was produced was a letter of engagement, not with Mr. Byrne, but with Mr. Clancy, Vincent Clancy.

(1T 27:9-11).

The trial court also observed that, while Mr. Byrne testified that he or his companies paid Plaintiffs' attorneys, there was no corroborating evidence:

"But there's no cancelled check, no proof of payment." (1T 27:22-28:24). The trial court then concluded: "And if I don't have anything that connects Mr. James Byrne to this case in … April of last year, I think I need to dismiss this for the same reason that I've dismissed the companion case."

The trial court therefore determined that the proposed amendment was also insufficient to show that Mr. Byrne was a participant in the Bidders Association at the time the complaint was filed. Consequently, the trial court dismissed the Bidders Association's case for the same reasons (set forth above) that it dismissed the Citizens Association's case. Because the trial court's reasoning is based on established legal principles applied to the evidence (or lack thereof) before it, the trial court determination should be affirmed.

2. The Trial Court Properly Determined That The Bidders Association Lacks Standing

In applying the authorities set forth above, the trial court properly determined that the Bidders Association does not have standing. That association is essentially a group of contractors that sought to "bid" on a job. These are not redevelopers, and Mr. Byrne candidly admitted that neither he nor his companies had ever been designated as a redeveloper in New Jersey. Particularly here, where no member of the purported association has any right

to develop the Abundant Life Church's property, the trial court properly determined that the Bidders Association lacks standing.

POINT III

NBHA'S DESIGNATION OF NB PLAZA OWNER AS REDEVELOPER FOR THE LOWER GEORGE II REDEVELOPMENT PLAN IS PRESUMPTIVELY VALID, SUPPORTED BY AMPLE EVIDENCE IN THE RECORD, AND SHOULD BE AFFIRMED[2]

NBHA's action at issue here, like all municipal actions, is presumed to be valid. Plaintiffs have failed to rebut that presumption through any of the arguments they advance, or the content of the actual record established before the NBHA, which is more than ample to support NBHA's designation of NB Plaza Owner as redeveloper. Consequently, Plaintiffs are unable to demonstrate that the NBHA's action is arbitrary, capricious, or unreasonable, and that action should be affirmed.

[2] This point, addressing the substance of the matter raised below, is included because of Plaintiffs' statement that "This Court may also exercise discretion in ruling on the substantive issue raised below… ." (Pb at 29). Plaintiffs, however, fail to even brief the substantive issue, and this point demonstrates that the facts and law on the substance favor defendants, not plaintiffs.

A. NBHA's Conditional Designation Of NB Plaza Owner Is Presumptively Valid And Supported By The Record

In Vineland Construction Co. v. Twp. of Pennsauken, 395 N.J. Super. 230, 255 (App. Div. 2007) the Court addressed the applicable standard for reviewing municipal action designating a redeveloper:

> Given the absence of any legislated selection criteria, the designation of a redeveloper, like all municipal actions, is a discretionary act, vested with a presumption of validity, that will be upheld where any set of facts may reasonably be conceived to justify the action.
>
> The challenger of municipal action bears the "heavy burden" of overcoming this presumption of validity by showing that it is arbitrary, capricious, or unreasonable. A challenger can overcome this presumption "'only by proofs that preclude the possibility that there could have been any set of facts known to the legislative body … [that] would rationally support a conclusion that the enactment is in the public interest.'"

395 N.J. Super. 230, 255-256 (citations omitted)(emphasis added).

1. There Is No Requirement That NBHA Seek Bids For The Project; Under These Facts A Redeveloper Must Have Site Control To Implement The Project

Plaintiffs' claims rest on an argument that there should have been a public bidding process prior to designation of NB Plaza Owner as redeveloper of the Property. (Pb at 24). Of course, no such requirement exists under the applicable legal authorities. The realities of a non-condemnation project such as this preclude other potential redevelopers with no interest in the property

from redeveloping the property, because here neither NBHA nor a private redeveloper can take the right to develop the property from its owner.

There is no requirement for competitive bidding of redeveloper agreements in the Local Redevelopment & Housing Law, N.J.S.A. 40A:12A-1. et. seq. ("LRHL"). See Bryant v. Atlantic City, 309 N.J. Super. 596, 616-620, 624-625 (App. Div. 1998). Nor could such a requirement be imposed here, given that the Plan precludes the use of condemnation to acquire the Property. A "Non-Condemnation Redevelopment Area" like that chosen by the City here, is expressly permitted pursuant to N.J.S.A. 40A:12A-6. The LRHL also expressly authorizes a redevelopment agency, like NBHA, to contract with redevelopers to undertake a redevelopment project, without any requirement for public bidding. N.J.S.A. 40A:12A-8f.

So, to the extent that the Plan refers to "both solicited and unsolicited proposals," only a developer with site control over the Property, whether by joint venture agreement, purchase, or otherwise, could undertake to redevelop the Property. Consequently, Plaintiffs' argument that NBHA should have obtained and reviewed competitive bids is without factual and legal basis, and should be rejected.

2. Plaintiffs' Reliance On Materials Outside The Record Before NBHA To Challenge the NBHA's Decision Is Improper In This Action In Lieu Of Prerogative Writs

Ignoring the basic principle that an action in lieu of prerogative writs fundamentally involves a review of municipal action, based on the record made before the municipal body, Plaintiffs claim that their "outside research" should be used to invalidate NBHA's decision to designate NB Plaza Owner as conditional redeveloper for the Project. But, Plaintiffs did not appear before NBHA to object to NB Plaza Owner's application and did not even attempt to put any of the items on which they seek to rely into the record before NBHA.

Plaintiffs' submissions to the Court contain numerous items that were not before NBHA during its review of the NB Plaza Owner application and thus do not comprise part of the record in this matter. See New Brunswick Cellular Telephone Co. v. Borough of South Plainfield Board of Adjustment, 160 N.J. 1, 14 (1999)("The issue for a reviewing court is whether the board's decision 'is supported by the record and is not so arbitrary, capricious, or unreasonable as to amount to an abuse of discretion.'")(emphasis added). This means that matters outside of the record of the proceedings before a municipal body may not be considered by the Court on appeal. See, e.g. Tomko v. Vissers, 21 N.J. 226, 240 (1956); Kempner v. Edison Twp., 54 N.J. Super. 408, 417 (App. Div. 1959).

Applying these principles, here, Exhibits A, B, C, D, E, P, Q, R, S, T, U, V, W, X, and Y (A-Pa 00157, B-Pa 00163, C-Pa 00193, D-Pa 00195, E-Pa 00197, P-Pa 00335, Q-Pa 00349, R-Pa 00363, S-Pa 00371, T-Pa 00375, U-Pa 00393, V-Pa 00411, W-Pa 00425, X-Pa 00427, and Y-Pa 00431) submitted by Plaintiffs to the trial court are all items that were not before NBHA. Consequently, these items, which are incorporated into Plaintiffs' Appellate Brief and Appendix, are not properly considered part of the record before the Court, and should not be considered in this matter.

3. The February 28, 2024 Designation Of NB Plaza Owner As Redeveloper Of The Project Is A Conditional Designation, Expressly Requiring The Redeveloper To Negotiate And Agree To A Subsequent Redevelopment Agreement Containing Additional Details

The redeveloper designation reflected in the February 28, 2024 Resolution is plainly a conditional designation. It is designed to allow for a period of negotiations in which specific terms including project development, timing, financing, and other items are addressed and agreed upon. Ultimately, such items are to be reflected in a redevelopment agreement between NBHA and NB Plaza Owner. This context was explained at the February 28, 2024 NBHA meeting, and is consistent with the actual practice of choosing and contracting with redevelopers.

In the redevelopment context, initial designations of a redeveloper are typically made as conditional designations, with the parties then turning to negotiate the terms of an agreement and flesh out project specifics, including financing details. See, e.g. Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386, 396 (2011)(designation of conditional redeveloper); Tradewinds Marina, Inc. v. Bor. of South Toms River, 2017 WL 5895785, *1 (App. Div. November 28, 2017)(same)(Pa 0582); Shore Memorial Health Foundation, Inc. v. City of Somers Point, 2006 WL 1642638, *2 (App. Div. June 15, 2006)(redeveloper designation conditioned upon execution of a redevelopment agreement satisfactory to both parties)(Pa 0589).

Viewed in the foregoing context, it is apparent that NBHA had sufficient information to act on NB Plaza Owner's Redeveloper Application at the February 28, 2024 meeting. It had concept drawings, an estimate of approximately $300 Million in project costs, letters supporting a $90 Million equity interest in the Project, a letter of interest for a $275 Million construction loan, and additional letters indicating interest in additional equity financing. (Pa 0263-0313). Given that, by its terms, the February 28, 2024 Resolution conditionally appointed NB Plaza Owner as Redeveloper, there was no need to have complete details at that time, nor could all such details have been provided at that time.

4. The Redevelopment Agreement Provides Additional Information Regarding The Project And The Financing Plan

With respect to financing, Section 2.10 of the Redevelopment Agreement provides:

> Financing of Project. The total project cost, including construction costs and soft costs, is to be approximately $350 Million. Redeveloper represents that it is proceeding to obtain private financing for the construction of the Project (including an equity investment of approximately $70 Million, debt financing of approximately $184 Million and $96 Million through the Aspire Program). The final financing plan submitted by the Redeveloper is satisfactory to the Authority and will be finalized and submitted to the Authority within nine (9) months from the full execution of this Agreement. A subsequent extension of six months may be granted in the Redevelopment Agency's reasonable discretion if the Redeveloper establishes good cause to extend the time for obtaining the required financing for the Project. Failure to submit a financing plan will be a violation of this Agreement.

(Pa 558)(emphasis added).

The terms of the Redevelopment Agreement, which as demonstrated above, is a part of the record regarding the designation of NB Plaza Owner as redeveloper, further demonstrate that there is substantial credible evidence in the record supporting that designation. Accordingly, Plaintiffs' effort to invalidate that designation should be rejected.

POINT IV

BECAUSE THE TRIAL COURT'S DECISION TO DISMISS BOTH COMPLAINTS WAS CORRECT, THE PROJECT SHOULD BE PERMITTED TO PROCEED

Currently, the Court's order precludes anything from being done to effectuate the Project. Because of the public importance of the Project, that Order should be vacated and all aspects of the Project, including the City's potential sale of a small sliver of property to NB Plaza Owner and NB Plaza owner's application to the Planning Board should be permitted to occur.

While neither of these issues directly involves NBHA, the Project is in the public interest. To the extent that the property to be conveyed to NB Plaza Owner by the City is part of moving the Project forward, the NBHA's interest in the completion of the Project provides more than sufficient justification for it to request this relief.

CONCLUSION

For all of the foregoing reasons, and those set forth in the submissions of NB Plaza Owner, the City, and the Planning Board, the trial court's dismissal of Plaintiffs' Complaints In Lieu of Prerogative Writs should be affirmed.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Defendant, New
Brunswick Housing Authority

By: ***/s/ RICHARD J. BYRNES***
RICHARD J. BYRNES

Dated: July 11, 2025

itASSOCIATION OF CONCERNED CITIZENS OF NEW BRUNSWICK, Plaintiff, v. CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001613-24 TEAM 4 DOCKET NO. IN COURT BELOW: MID-L-2242-24 MID-L-2243-24 Sat Below: HON. J. Randall Corman, J.S.C. CIVIL ACTION
ASSOCIATION OF DISENFRANCHISED BIDDERS OF REDEVELOPMENT WORK IN THE CITY OF NEW BRUNSWICK, Plaintiff, v. CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants.	

MEMORANDUM OF LAW OF RESPONDENTS-DEFENDANTS CITY OF NEW BRUNSWICK AND THE NEW BRUNSWICK PLANNING BOARD IN OPPOSITION TO APPEAL

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PRELIMINARY STATEMENT

Defendants-Respondents the City of New Brunswick (the "City"), and the New Brunswick Planning Board ("Planning Board") (collectively the "City Respondents") submit this Memorandum of Law in opposition to the appeal filed by Plaintiffs Association of Concerned Citizens of New Brunswick (the "Citizens Association") and Association of Disenfranchised Bidders of Redevelopment Work in the City of New Brunswick (the "Bidders Association," and collectively, "Appellants") who challenge the Trial Court's decision dismissing their claims for lack of standing.

Appellants challenged New Brunswick Housing Authority's ("Housing Authority") decision to adopt Resolution 2024-2/28 #3 (the "Resolution") appointing the URE as the redeveloper of a 45-story mixed-use building consisting of 800 residential units (the "Redevelopment Project") in a (completely futile) effort to compel the Housing Authority to accept bids for the Redevelopment Project.

The "members" comprising Appellants' two associations are anonymous and, therefore, before the Trial Court could address the substance of Appellants' challenges, the Trial Court first properly examined and determined that they lacked standing.

Although not at issue on this appeal substantively, Appellants challenges would fail on the merits as their allegations ignore two basic and critical facts. First, the Plan does not identify property as "to be acquired" and therefore does not authorize condemnation. Any redevelopment therefore would require the cooperation of the property owner. Second, the property owner is the joint venture partner of the Redeveloper, obviating the need for the exercise of eminent domain even if that power existed in the first instance.

Appellants assert that the procurement process used by the Housing Authority was arbitrary and capricious because the Housing Authority did not solicit proposals. Appellants fail to acknowledge that the Redeveloper designated by the Housing Authority is a joint venture consisting of: i) Ifany LLC, owned and controlled by Shimon Jacobowitz; ii) SDG NB Plaza, LLC, owned and controlled by George Seabright; and iii) the Abundant Life Family Worship Church, Inc. (the "Church") a New Jersey non-profit corporation that owns Block 120, Lot 5.01 (the "Property").

The Church, as owner of the Property, formed the joint venture and applied to the Housing Authority to be designated Redeveloper of the Property, presenting the Housing Authority with a simple choice: approve the application in fulfillment of its mission under the redevelopment plan; or reject the application and let the Property continue to be blighted. The Housing Authority chose the former, and

their choice is presumptively valid. Had the Church's application been rejected perhaps the *Church* as owner of the Property would have had a prerogative writ claim against the Housing Authority; Appellants have none.

According to Appellants' pleadings, the Citizens Association includes residents of the City and the Bidders Association includes "real estate developers," and alleges both groups are negatively impacted by the adoption of the Resolution.

Appellants' vague and conclusory allegations are not sufficient, however, to confer associational standing. Instead, to possess associational standing, Appellants were required to present *evidence* that the Resolution negatively impacted at least one of their respective members and that that the action relates to a common interest that can be pursued by the Appellants. Appellants failed to offer any information, nor any evidentiary showing that their members were negatively impacted by the Resolution. The Trial Court properly dismissed the actions for lack of standing.

Accordingly, the City Respondents respectfully request that this Court affirm the Trial Court's decision which determined that the Appellants lacked standing.

PROCEDURAL HISTORY

On April 12, 2024, Appellants each filed Verified Complaints in Lieu of Prerogative Writs (collectively, the "Complaints") challenging the adoption of the Resolution and seeking to compel the Housing Authority to accept bids for the Redevelopment Project. *Pa0000014 and Pa0000034.*

On May 21, 2024, City Respondents filed an Answer to the Complaint and a request for an initial case management conference. *Pa000054 and Pa000073.*

The matter was ultimately assigned to the Honorable J. Randall Corman, Judge of the Superior Court (the "Trial Court").

On August 26, 2024, the Trial Court conducted an initial case management conference and entered a Case Management Order setting forth a briefing schedule and directing the parties to submit a consent order consolidating the two pending matters. *Pa000516.*

On October 4, 2024, Appellants jointly filed their brief and certifications in support of their Motion to Vacate the Resolution and an Order to Show Cause to forestall a proposed sale of land subject to the Redevelopment Plan. *Pa000729*.

On November 11, 2024, City Respondents filed their opposition papers to the Motion to Vacate the Resolution. The City Respondents raised the issue that at the outset the "members" of the two Appellant associations are anonymous and,

therefore, before the Trial Court could address the substance of Appellants' challenges, the Trial Court should first address standing.

On December 12, 2024, Appellants filed reply papers limited to the question of standing. For the first time during the proceedings Appellants presented, through the certification of counsel, statements from individuals purporting to be members of the Citizens Association, a Certification of James Byrne, alleging that he is a member of the Bidders Association, and a Certification of "J.R." alleging to be a member of the Citizens Association. *Pa000647-000664.*

On December 17, 2024, the Trial Court heard oral argument regarding the issue of standing. On December 19, 2024, the Trial Court entered an Order setting forth findings of fact and dismissing the Complaint filed by the Concerned Citizens Association. *Pa000001*.

The Trial Court initially observed:

> [t]hat the [P]laintiffs in these to matters really are working at cross-purposes. The Association of Concerned Citizens doesn't want the skyscaper to be built. But the Association of Disenfranchised [B]idders does want it to be built. They just want to be the people -– they just want to have a chance to be the people to build it.

1T 37:17-24

On December 19, 2024, the Trial Court also ordered that Mr. Byrne should appear and testify. *Pa000003*.

On January 7, 2025, Appellants moved for reconsideration of the order dismissing the Complaint filed by the Citizens Association. *Pa000666*.

On January 15, 2025, Appellants further moved to Amend the Bidders Association Complaint to add James Byrne as an individual plaintiff. *Pa000671*.

On January 31, 2025, the Trial Court heard oral argument on the Motion for Reconsideration and the Motion to Amend the Bidders Association's Complaint.

The Trial Court denied the Motion for Reconsideration and held in abeyance the Motion to Amend the Complaint. *Pa000005 and Pa000007*.

On February 26, 2025, James Byrne testified at a plenary hearing regarding the alleged standing of the Bidders Association and his standing to be added as a named plaintiff.

On March 7, 2025, the Trial Court heard oral argument on the issue of standing in the Bidders Association case and the Motion to Amend the Complaint.

Based on Mr. Byrne's testimony the Trial Court rejected each of the Appellants' arguments and determined that:

> And if I don't have anything that connects Mr. James Byrne to his case in July – in April of last year, I think I need to dismiss this for the same reason that I've dismissed the companion case.

4T 30:1-5.

On March 11, 2025, Appellants filed a Notice of Appeal.

Appellants applied to this Court for emergent relief, which was denied. Thereafter Appellants moved on a regular motion schedule to "maintain the status quo" by extending the temporary restraints that expired on April 2, 2025

On April 22, 2025, per Order of this Court, the restraints imposed by the trial court were continued pending final disposition of this appeal. The Court noted that this appeal is accelerated, and the Appellate Clerk entered an accelerated briefing and scheduling Order.

Dispute such accelerated Schedule, Appellants' counsel requested an extension of time to file its brief, which was ultimately granted.

Appellants filed their brief on May 7, 2025. On May 13, 2025, the Appellate Clerk issued a Deficiency letter.

Appellants filed an Amended Brief in this expedited matter on May 28, 2025.

STATEMENT OF FACTS

On October 2, 2023, as directed by an ordinance introduced by New Brunswick City Council, the Planning Board held a hearing to review and discuss the adoption of a proposed redevelopment plan for the Lower George II Plan Area (the "Redevelopment Area") encompassing the Property. *Pa000194*. The Planning Board forwarded a report to the City Council regarding the Board's finding regarding the Lower George II Redevelopment Plan (the "Redevelopment Plan"). *Id.*

On November 15, 2023, the New Brunswick City Council adopted Ordinance No. 0-112301, "An Ordinance to Adopt a Redevelopment Plan for the New Brunswick Lower George II Plan Area in the City of New Brunswick". Pa000226 The Housing Authority was designated as the "redevelopment entity" charged with implementation of the Redevelopment Plan, including identifying and approving redevelopers. *Id.*

On December 21, 2023, NB Plaza submitted to the Housing Authority an application seeking to be designated as redeveloper of the Property. *Pa000263-Pa000314*. On February 23, 2024, NB Plaza supplemented its application. *Pa000329 – Pa000334*. Included in this latter submission was a letter of support from an additional source of funding, CW Funding, as well as an opinion letter from Galaxy Capital regarding a construction loan that could be issued to NB Plaza

for $275 million. *Id. and Pa000437- Pa000492.* NB Plaza also provided information on the number and type of affordable housing units that would be included in the development and a letter of support and commitment from its construction partner, Ray Builders, Inc. *Pa000263-Pa000314.* On February 28, 2024, the Housing Authority unanimously approved NB Plaza as the designated redeveloper by way of adoption of the Resolution. *Pa000493-Pa000498.*

On October 16, 2024, the City of New Brunswick's Municipal Council adopted a Resolution, R-102434 (the "Property Sale Resolution") approving the sale of an unimproved and undersized vacant lot, which upon information and belief was previously owned by the Church (the "City Property") to the Redeveloper for $275,000. *Pa000635.* The City Property is adjacent to the Property and two sides abut two City streets on the other sides.

It should be noted that the Local Lands and Buildings Law, *N.J.S.A.* 40A:12-1, *et seq.,* exempts undersized properties from the otherwise applicable bidding requirements and could have been sold to the Church regardless its redevelopment status. *See N.J.S.A.* 40A:12-13(b)(5).

LEGAL ARGUMENT

POINT I

THE APPROPRIATE STANDARD OF REVIEW

As the Appellant is appealing the decision of the Trial Court, as a general rule, orders that dismiss claims for lack of standing are subject to *de novo* review. *Courier-Post Newspaper v. Cnty. of Camden*, 413 *N.J. Super.* 372 (App Div. 2010).

Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence." *Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am.*, 65 *N.J.* 474 (1974); *see also Sager v. O.A. Peterson Constr., Co.*, 182 *N.J.* 156, 163-64 (2004). "While we will defer to the trial court's factual findings ..., our review of the trial court's legal conclusions is de novo." *30 River Ct. E. Urb. Renewal Co. v. Capograsso*, 383 *N.J. Super.* 470, 476 (App. Div. 2006)

Appellant bears the burden to show error by the Trial Court. *Comm. for a Rickel Altern. v. City of Linden*, 214 *N.J. Super.* 631, 637 (App. Div. 1987) (citing *Bowen v. Olesky*, 37 *N.J. Super.* 19, 25 (App. Div. 1955). "Thus, an appellant ordinarily has the burden to show error in the judgment under review." *Id.*

POINT II

THE TRIAL COURT CORRECTLY HELD THAT BOTH THE CITIZENS ASSOCIATION AND THE BIDDERS ASSOCIATION LACKED STANDING PURSUANT TO *N.J.S.A.* 2A:64-1

Before addressing the merits of Appellants' claims, the Trial Court properly resolved the threshold issue of standing. Appellants, two unincorporated associations, asserted in conclusory fashion that their members had a "real stake" in the outcome of this litigation. However, they failed to present any credible evidence identifying even a single member or demonstrating how any individual was adversely affected by the challenged Resolution.[1]

The Trial Court correctly dismissed the Complaints pursuant to *N.J.S.A.* 2A:64-1 because Appellants failed to meet the statutory requirements for standing. Despite multiple opportunities—including motions, a motion for reconsideration, and a plenary hearing — Appellants did not produce a shred of admissible evidence that the purported "Associations" actually exist or qualify under the statute.

A. The Citizens Association Lacks Standing

N.J.S.A. 2A:64-1 outlines specific requirements for an unincorporated association to have standing:

[1] Why either Appellant needed secrecy as to its alleged members was never explained in any pleading or even in the argument of counsel.

"Any unincorporated organization or association, consisting of 7 or more persons and having a recognized name, may sue or be sued..."

To assert standing on behalf of its members, an association must demonstrate that: (1) its members would have standing to sue individually, (2) the interests it seeks to protect are germane to its purpose, and (3) neither the claims nor the requested relief require individual member participation. *See N. Haledon Fire Co. No. 1 v. Borough of N. Haledon*, 425 *N.J. Super.* 615, 627-28 (App. Div. 2012).

As the sole plaintiff, an association must also show a "sufficient stake in the outcome of the litigation, a real adverseness ... and a substantial likelihood of harm." *N.J. Citizen Action v. Riviera Motel Corp.*, 296 *N.J. Super.* 402, 409-10 (App. Div. 1997).

i) The Citizens Association Does Not Have a Recognized Name

The Citizens Association's Complaint fails to establish that the Citizens Association is a valid legal entity. It merely states that it is an "unincorporated association" formed in New Jersey, without offering any evidence to support this assertion. There is no indication of legal formation, no evidence of members, and no indication of formal organization. A search of the New Jersey Department of Treasury records yield no results for an entity named "Association of Concerned Citizens of New Brunswick." *Pa000728.*

ii) The Association Fails to Show It Has Seven or More Members

The statute requires seven or more identifiable members. Appellants presented no evidence to show that the Citizens Association meets this requirement. Without proof of even a single identifiable member, let alone seven, the association cannot invoke standing under the statute.

Proof of membership of the Citizens Association is limited to a redacted signature from an individual known as "J.R." who purports to oppose the redevelopment project but wishes to remain anonymous.[2] *Pa000658.* In addition, 10 non dated and non-certified statements of individuals purporting to join the Citizens Association were submitted. *Pa000644 through Pa000653.* The Trial Court noted, and Appellant does not dispute, that there is no" indication that the signatories understood what they were signing" and the "identity of the individuals who drafted the pre-typed forms and who obtained the signatures on these forms is unknown to the Court." *Pa000002*.

iii) Alleged Members Failed to Provide Addresses

The documents submitted by Appellants fail to list addresses for alleged members. This omission prevented the Trial Court from determining whether these individuals are residents of New Brunswick or have any legitimate interest in the outcome. *Pa000644–Pa000653.*

[2] Again, need for secrecy remains a mystery.

iv) Alleged Members Failed to Provide Sworn Statements

The only documentation purporting to establish membership consisted of unsworn and uncertified forms stating that individuals joined the Citizens Association to investigate alleged embezzlement at a local church. These statements made no reference to the challenged Resolution or the redevelopment project. They instead reveal a different motive—namely, a desire to pursue claims unrelated to the litigation. *Pa000644–Pa000653.*

Appellants' counsel even confirmed that the Citizen's Association was formed due to perceived misconduct at the Church, not to oppose the Resolution. *Pa000662.* These statements confirm that the alleged members lack the necessary legal interest in the redevelopment matter.

The Trial Court's Findings

During oral argument on December 17, 2024, the Trial Court stated in its decision:

> Well, if this Association has no organ - - has no officers, someone would have to sign. It has to have somebody who steps forward into daylight to say that they have gathered these signatures. Somebody has to say that we have organized this and we have some common purpose. There's no evidence of that. There's no evidence of that. I can't say that the signed statements can count as competent evidence really of anything without knowing who circulated these forms for people to sign.

1T 40:17-25 and 41:1.

The Trial Court further properly determined that the Citizens Association did not have standing because:

> You've got somebody wants to, you know, file an action in lieu or file whatever they want to file, that's fine. But they can't file a complaint anonymously. And, by the same token, they can't gin up some sham association and pretend it's really all these people who have just signed something outside the bravo supermarket next door to the church without being told what this is really what they're really signing.

1T 42:8-16.

On December 19, 2024, the Trial Court issued an order dismissing the case for lack of standing. It found that:

- The Citizens Association had never held an organizational meeting.
- No officers had been elected.
- No meetings had occurred.

Pa000001

The Trial Court rightly concluded that because the Citizens Association never met the statutory requirements — never formed, never organized, and never identified genuine members — it lacks standing under *N.J.S.A.* 2A:64-1. *Pa000002.*

B. Bidders Association Lacks Standing

On March 7, 2025, the Trial Court heard oral argument on the Motion to Amend the Pleadings. The Trial Court denied the Motion to Amend the Pleadings *nunc pro tunc* to add James Byrne as a named plaintiff in the lawsuit challenging

the appointment of the Redeveloper. The decision emphasized that because the motion seeks a retroactive change to the record — not merely a routine amendment — it requires a higher threshold of proof and compelling justification**.** *4T 23:16-23.*

i) Byrne's Narrative and Credibility

James Byrne testified about how he became involved in the litigation: he was informed by another contractor about concerns over a no-bid development deal involving the church, and he, along with other similarly concerned contractors, decided to challenge the matter legally. This group, according to Byrne, met in Brooklyn around St. Patrick's Day to discuss filing suit. Byrne testified that he paid legal fees for this action through one of his companies but chose not to be listed as a plaintiff due to a fear of **"**governmental retaliation**."** *4T 24:10-25, 25:1-2.* No further explanation as to when or why this retaliation might occur is offered.

*T*he Trial Court found this claim of fear implausible**.** Byrne has no business operations in New Brunswick**,** the City where the project and dispute are based. His ongoing or potential projects are located in West New York and Bayonne, which are in different counties and significantly distant from New Brunswick. The Trial Court rejected the idea that New Brunswick officials could realistically influence or retaliate against Byrne in those jurisdictions, calling such fears

irrational and unsupported by evidence**.** *4T 25:11-25, 26:1-1*i) Lack of Documentation and Proof

The Trial Court emphasized its prior orders, specifically one from December 17**,** requiring the submission of contemporaneous documentation showing Byrne's involvement in the lawsuit. Despite multiple reminders and opportunities — including in hearings and notices from the court clerk—the only document submitted was a letter of engagement between the law firm and Vincent Clancy, not Byrne. *4T 27:1-9*

Although Byrne claimed Clancy was his partner, the Trial Court noted that no documentation was submitted to substantiate that relationship or to link Byrne to the retainer agreement. Byrne also testified that he personally paid legal fees**,** yet no cancelled checks, financial records, or corporate documentation were provided to confirm this. The Trial Court expressed frustration and confusion as to why such straightforward and essential evidence was never produced**,** particularly when the court had explicitly requested it on multiple occasions**.** *4T 27:9-25, 28:1-2*5.

ii) Judicial Reasoning and Conclusion

The Trial Court found that while Byrne's story lacked credible documentation**,** combined with the implausibility of his stated reasons for anonymity**,** fatally undermined the Motion seeking to add Mr. Byrne as a party. *4T 29:1-11.*

The Trial Court concluded that Byrne did not meet the elevated burden of proof required to amend the pleadings retroactively. It emphasized that the deficiencies in evidence and rationale—especially in light of clear procedural guidance from the court—prevented the court from granting such a significant amendment to the case record. *4T 29:11-25; 30:1-13.*

In the final analysis there is no showing that the Appellants' members have suffered or are even exposed to any harm as a result of the City Respondents' actions which they challenged. Therefore, the Trial Court properly determined that the Bidders Association's Complaint "was an attempt by the parties to prosecute their claim anonymously, which is not permitted under the *ABC v. XYZ Corp.* case." *4T 30:6-13.*

POINT III

COMPELLING THE SOLICITATION OF BIDS IS A USELESS AND FUTILE ACT

The courts have long held that the law does not require the performance of acts that are futile, useless, or incapable of achieving their intended result. Compelling such acts would offend both judicial economy and principles of fairness. This doctrine underlies various areas of jurisprudence, from equity to administrative law, and protects litigants from being forced into actions that serve no purpose under the circumstances. In *U.S. v. Scurry*, 193 *N.J.* 492 (2008), the New Jersey Supreme Court recognized the time-honored maxims that "the law does not compel one to do a useless act[,] and that equity follows the law." *Scurry*, 193 *N.J.* at 506 (quoting *Albert v. Ford Motor Co.*, 112 *N.J.L.* 597, 603 (E. & A. 1934) *Scurry* reinforces that when the outcome of an action is predetermined or the legal benefit is illusory, courts should not require the act to be performed.

Despite the underlying matters having been dismissed for lack of standing, even on this appeal, Appellants continue to focus their arguments on the substantive claim that the Housing Authority was supposed to "solicit bids". Even if bids were solicited, without control of the Property, the project was dead before it began. Appellants arguments that the City and the Housing Authority are taking a risk appointing NB Plaza as redeveloper is irrelevant and in any event is a risk

that the City is charged with taking. Unless shown to be arbitrary and capricious their decision cannot be overturned and is presumed valid.

New Jersey courts are guided by a commitment to substantive justice over rigid formalism. When a legal or procedural requirement becomes a useless act — such as requiring a municipal governing body to solicit bids to develop a property that it does now own and control — it is a waste of resources, both public and private to enforce that requirement.

If parties are allowed to insist on formalities that serve no purpose — particularly when done strategically — it incentivizes bad faith litigation tactics**.** Here the anonymous citizens and anonymous bidders are taking action that is futile, simply to delay proceedings and are seeking remedies that are foreclosed.

CONCLUSION

The Trial Court correctly determined that neither the Citizens Association nor the Bidders Association satisfied the statutory or constitutional requirements for standing. The Appellants failed to produce credible evidence of legal existence, membership, harm, or actual interest in the challenged Resolution, not to mention the futility of the relief they seek. Their efforts to proceed anonymously through unverified associations are contrary to established law. Accordingly, City Respondents respectfully request that this Court affirm the Trial Court's dismissal of Appellants' Complaints.

McMANIMON, SCOTLAND & BAUMANN, LLC
Attorneys for Defendants City of New Brunswick and New Brunswick Planning Board

By:*/s/ William W. Northgrave*
William W. Northgrave

Dated: July 18, 2025

ASSOCIATION OF CONCERNED CITIZENS OF NEW BRUNSWICK, Plaintiff-Appellant, -against CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-1613-24 On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO.: MID-L-002242-24 *Consolidated with*
ASSOCIATION OF DISENFRANCHISED BIDDERS OF REDEVELOPMENT WORK IN THE CITY OF NEW BRUNSWICK, Plaintiff-Appellant, -against CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO.: MID-L-2243-24 Sat Below: Hon. J. Randall Corman, J.S.C. **CIVIL ACTION**

BRIEF OF DEFENDANT-RESPONDENT NB PLAZA OWNER URBAN RENEWAL LLC

DATE SUBMITTED: JULY 18, 2025

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PRELIMINARY STATEMENT

Plaintiffs-Appellants, the Association of Concerned Citizens of New Brunswick (the "Citizens Association") and the Association of Disenfranchised Bidders of Redevelopment Work in the City of New Brunswick (the "Bidders Association," and together, "Plaintiffs"), are two purported unincorporated associations who filed actions in lieu of prerogative writs below challenging Resolution 2024-2/28 #3 (the "Resolution") passed by the New Brunswick Housing Authority (the "NBHA"), which designated Defendant-Respondent NB Plaza Owner Urban Renewal LLC ("NB Plaza") as the redeveloper of property designated as Block 120, Lot 5.01 on the New Brunswick City Tax Map (the "Property"). The parties ultimately submitted trial briefs, with Plaintiffs framing theirs as a dispositive motion seeking to vacate the Resolution. As such, the merits of the case were fully briefed by the parties below.

Before addressing the merits of Plaintiffs' claims, however, the Trial Court properly found that Plaintiffs had failed to satisfy their threshold burden to establish standing to sue. According to their pleadings, the Citizens Association includes unnamed residents of the City, and the Bidders Association includes unspecified "real estate developers," but the Complaints did not recite any specific facts as to the Associations' addresses, membership or recognized names that would allow the court to determine if they were valid unincorporated associations entitled to sue

under N.J.S.A. 2A:64-1 et seq. When given the opportunity to provide those identifying details, Plaintiffs failed to present any competent evidence to remove the cloak of anonymity surrounding their identities. Weighing all the facts and circumstances before it, the Trial Court reasonably found that the Associations were anonymous parties and thus had no right to proceed with their actions under precedent of this Court.

Furthermore, to possess associational standing, Plaintiffs had to present evidence that the Resolution negatively impacted at least one of their respective members and that the actions related to a *common interest* that could be pursued by the Associations. Plaintiffs failed to do so. Instead, Citizens Association provided an anonymous certification and ten inadmissible undated, pre-printed "fill in the blank" unsworn member statements of unknown origin which did nothing to prove that the Citizens Association was a legitimate unincorporated association. Likewise, the Bidders Association presented a certification and, later, testimony from an alleged member, James Byrne, which failed to confirm that the Bidders Association had a place of business or functioned as a valid unincorporated association entitled to associational standing. For these additional reasons, the trial court correctly dismissed Plaintiffs' actions for lack of standing.

But even if the court finds that Plaintiffs demonstrated standing, it should affirm the judgment because Plaintiffs failed to meet their heavy burden to show that

the appointment of NB Plaza as the redeveloper of the Property was arbitrary, capricious or unreasonable. Well-settled precedent governing review of municipal actions compels deference to the NBHA's decision when, as here, it is supported by substantial credible evidence in the record. Longstanding precedent also requires this court to disregard Plaintiffs' efforts to go beyond the record that was before the NBHA in its attempt to discredit the NBHA's decision to designate NB Plaza as redeveloper of the Property.

None of the arguments advanced by Plaintiffs to establish arbitrary or capricious action by the municipal defendants has merit. The Local Redevelopment and Housing Law does not require redevelopment agencies to engage in competitive bidding to select a redeveloper, and the City could not alter this rule by ordinance even if it wanted to. Nor does the Redevelopment Plan require the submission of formal financial records at the time the initial conditional designation of a redeveloper is made. The Redevelopment Plan called only for preliminary information prior to designation, after which NB Plaza was required to—and did—submit more detailed information when it negotiated a redevelopment agreement with the NBHA. Plaintiffs failed to meet their burden to overcome the presumptive validity of the NBHA's discretionary decision to designate NB Plaza as the redeveloper of the Property. As a result, the orders for dismissal should be affirmed.

PROCEDURAL HISTORY

Plaintiffs commenced these actions on April 12, 2024 by filing Verified Complaints in Lieu of Prerogative Writs, challenging the adoption of the Resolution and seeking to compel the NBHA to solicit bids for redevelopers. (Pa000014-32; Pa000034-52.) Although each Complaint alleges that the respective plaintiffs are unincorporated associations formed in New Jersey, neither Complaint identifies a principal place of business of the Plaintiff Association, its number of members, nor any facts indicating that the Association has a "recognized" name as required by N.J.S.A. 2A:64-1.

On May 23, 2024, NB Plaza submitted its Answer to the Bidders Association Complaint, and on June 7, 2024, submitted its Answer to the Citizens Association Complaint. (Pa000093; Pa000105.) The matter was assigned to the Honorable J. Randall Corman, J.S.C. (the "Trial Court").

On July 26, 2024, the Trial Court entered an Order quashing subpoenas Plaintiffs had served on various individuals and entities that had been mentioned in NB Plaza's application. (Pa000504-505). On August 26, 2024, the Trial Court conducted an initial case management conference and entered a Case Management Order setting forth a briefing schedule for trial briefs and directing the parties to submit a consent order consolidating the two pending matters. (Pa000516.) With the consent of all parties, the Trial Court consolidated both actions. (*Id.*)

On October 4, 2024, Plaintiffs filed their trial brief – in the form of a motion to vacate the Resolution that designated NB Plaza as Redeveloper under the Lower George II Redevelopment Plan (the "Plan"). (Pa000513.) On October 18, 2024, Plaintiffs filed an Order to Show Cause with temporary restraints seeking to restrain Defendants from closing on the sale of Block 120, Lot 5.01, an empty, undersized lot, to NB Plaza for $275,000 (hereafter, the "Undersized Lot") from the City to NB Plaza. (Pa000729.) The Court entered the Order to Show Cause which included temporary restraints entered on an *ex-parte* basis,[1] that enjoined Defendants from:

1. Selling any city-owned land within, adjacent to or surrounding Block 120, Lot 5.01 on the tax map of the City of New Brunswick;

2. Executing any agreement(s) to sell any city-owned land within, adjacent to or surrounding Block 120, Lot 5.01 on the tax map of the City of New Brunswick; and

3. Taking any and all further actions, conduct, or approvals toward consummating the Lower George II Redevelopment Plan

(Pa000729.) With consent from Defendants, the Trial Court agreed to consider Plaintiffs' Order to Show Cause at the same time as the merits of Plaintiffs' underlying case because it was a summary proceeding and Plaintiffs' success on the merits of its case would determine whether they were entitled to any relief.

[1] Over NB Plaza's objection, the Order to Show Cause and temporary restraints were entered without a hearing or opportunity for NB Plaza to address the standards for preliminary injunctive relief.

(Pa000003.)

On November 11, 2024, NB Plaza filed its opposition to Plaintiffs' motion to vacate the Resolution. In Point I of its opposition brief, NB Plaza argued that Plaintiffs lacked standing to challenge the NBHA's Resolution.

On December 12, 2024, Plaintiffs filed reply papers limited to the question of standing. As part of the reply, Plaintiffs presented for the first time, through a certification of counsel, ten, identical, unsworn and undated statements of individuals purporting to be members of the Citizens Association, each of whom asserted they joined the Association to prevent the "embezzlement" of the Abundant Life Family Worship Church, Inc., a non-for-profit corporation (the "Church"); a Certification of James Byrne ("Byrne"), alleging that he is a member of the Bidders Association; and a Certification by "J.R.," who claims to be a member of the Citizens Association but who seeks to remain anonymous because of "fear of reprisal". (Pa000647-000664.)

On December 17, 2024, the Trial Court heard oral argument on the trial briefs. Finding that the Citizens Association failed to meet its burden to demonstrate standing, the Trial Court entered an Order on December 19, 2024 dismissing the Citizens Association's Complaint for lack of standing. (Pa000001.) The Court found, among other things, that:

- Plaintiffs failed to present evidence of any meetings or election of any officers (Pa000001, ¶ 2);

- The ten signed and unsworn statements accuse the Church of "embezzlement" without any details (Pa000001, ¶ 3); and

- None of the unsworn statements are dated or certified and there is no indication on who created the pre-typed forms and obtained the signatures. (Pa000001, ¶¶ 5-6.)

Based on these fact findings, the Trial Court held that the Citizens Association failed to demonstrate it was an unincorporated association under N.J.S.A. 2A:64-1 and lacked standing to bring the action. (Pa000002.) The December 19, 2024 Order also ordered that Plaintiffs' witness Byrne provide testimony on the issue of standing as it related to the Bidders Association. (Pa000003.)

On January 7, 2025, the Citizens Association moved for reconsideration of the dismissal of its Complaint (Pa000665), and on January 15, 2025 the Bidders Association moved to amend its Complaint to include Byrne as a named plaintiff. (Pa000697.)

In support of reconsideration, Plaintiffs relied on a Certification of Plaintiffs' counsel, Thomas Kamvosoulis. (Pa000659.) Mr. Kamvosoulis certified that his firm was retained by the Citizens Association "in early April 2024," shortly after which his firm "received from the Citizens Association the signed statements of ten members of the association." (Pa000660, ¶¶ 3-4.) He further certified that "[v]arious members of the Citizens Association did in fact meet both in person and by telephone to discuss their dismay, not only about the manner in which this redevelopment

project was approved, but also the manner in which the redeveloper was handed both the designation and the church property at a steep discount" and "[t]hose members decided to proceed in the name of an association so that they would not be required to proceed in their own names, and so they could share in the cost of litigation, all of which is permissible pursuant to applicable law." (Pa000661, ¶¶ 11- 12.) These facts could have been presented to the Trial Court during the original motion to vacate, and Mr. Kamvosoulis did not explain how he has personal knowledge of those purported meetings and decisions.

More critically, other than those facts stated by Mr. Kamvosoulis, the reconsideration motion did not offer any new facts to demonstrate the Citizens Association's standing, instead promising that it ***could*** offer such facts in the future because counsel was "prepared to bring forward testimony, or at the very least certifications," on a variety of topics about the Citizens Association and its members. (Pa000661-662, ¶¶ 10, 13, 17.)

At oral argument on both motions on January 31, 2025, the Trial Court denied the Citizens Association's reconsideration motion. (Pa000007.) The Court reserved on the motion to amend until after Byrne testified before the Court, which finally occurred on February 26, 2025.[2] (3T.) Following his testimony, the Trial Court

[2] All references to the Transcript are referred to as follows: (1) "1T" refers to the Trial Court transcript dated December 17, 2024; (2) "2T" refers to the Trial Court transcript dated January 31, 2025; (3) "3T" refers to the Trial Court transcript dated

conducted a final hearing on March 7, 2025. (4T.) The Court concluded that Byrne's testimony failed to establish the Bidders Association's standing. At the close of the hearing, the Trial Court also dismissed the Complaint filed by the Bidders Association bearing Docket No. MID-L-2243-24. The Court did not find Byrne to be a credible witness,[3] stating, with respect to his claimed fear of bringing suit openly, that

> "…now one thing I have to say is not plausible about Mr. Byrne's testimony is his fear of suing the government. He does no work in the New Brunswick area, it's not like he has some small business here that some inspectors might come in and start issuing violations. He does no work here."

4T 25:11-16. As to the merits, the Court found that there may have been a failure by the NBHA to follow its own ordinance in not issuing an RFP for developers, but he found no case law that held such an action was arbitrary and capricious. 4T 34:17-21. Especially here, where the Court acknowledged that "to force the church to accept a redeveloper other than the one that they want, that runs afoul of U.S.

February 26, 2025; and (4) "4T" refers to the Trial Court transcript dated March 7, 2025.

[3] It is notable that Byrne testified that he works for Folxco, LLC, (3T 26:7-24; 3T 29:1-8), a disgruntled former business associate of NB Plaza, who has sued NB Plaza and/or its principals in several other lawsuits. One pending lawsuit involves the Property here, and claims that Folxco, LLC should have been a part of the development. See, Folxco, LLC v. Shimon Jacobowitz, et al., MID-L-1179-25.

Supreme Court of Kaiser Esther v. United States," 444 U.S. 164, 176 (1979). 4T 33:7-11.

Plaintiffs initiated this appeal by filing a Notice of Appeal on February 4, 2025. They filed an Amended Notice of Appeal on February 6, 20205, and, again, on March 11, 2025. (Pa0010). They also applied to the court for emergent relief, which was denied. Thereafter, Plaintiffs moved to "maintain the status quo" by extending the temporary restraints that expired on April 2, 2025. On April 22, 2025, per order of this Court, the restraints imposed by the Trial Court were continued pending final disposition of this appeal. The Court accelerated the appeal, and the Appellate Division Clerk entered an accelerated briefing and scheduling order.

COUNTERSTATEMENT OF FACTS

I. Designation of NB Plaza as Redeveloper for the Property.

The Property is owned by the Church. (Pa000015.)[4] The Church formed a joint venture with Ifany, LLC, a developer, which created the NB Plaza entity for purposes of developing the Church's property into a mixed-used building with 800 residential units (at least 10% of which will be affordable units), a retail component, and surface and covered parking. (Pa000019, *see also* Pa000443-444 at 6:21-7:14; 11:6-16.)

[4] "Pa" refers to Plaintiff-Appellants' Appendix.

On November 16, 2023, the City adopted the Lower George II Redevelopment Plan, with respect to the Property.[5] (Pa000234-262). As the Redevelopment Plan explains:

> This site may have once been developed but has only the site of one main building (currently a church), coupled with an empty area utilized semi-informally as parking for the church services. The rest of the plan area includes an undersized, vacant lot, and a standalone mixed-use building. These two additional lots are small and contiguous to the main parcel, and for that reason they have been included in the plan. The existing site of Abundant Life Church is very large and sufficient for purposes of a major redevelopment and so the absorption of the additional parcels will not be required for proposing a project on this site, but it would be logical to include them if a developer for the larger site had interest in acquiring these parcels at their sole expense.
> The Plan envisions the combined development of the City's downtown as a major impetus to establishment of a sound and expanded economic base for the City of New Brunswick in terms of additional jobs, homes, and an increased tax base.
>
> The plan complies with the goals of the City's Master Plan and Zoning Code but as is typical in redevelopment areas takes an aggressive approach through incentives (in this case less restrictive height standards) to effectuate the desired outcome of redevelopment.

(Pa000238.)

Notably, the Redevelopment Plan is a non-condemnation Plan, providing that "[n]o property within the Plan area shall be subject to condemnation" and the

[5] Plaintiffs never challenged the Resolution adopting the Plan.

"acquisition of property by the Redevelopment Agency for redevelopment purposes to effectuate this redevelopment plan in this area is not permitted…." (Pa000246.) Accordingly, any redevelopment requires the cooperation of the property owner.

In terms of the designation of a redeveloper, Plaintiffs selectively quote from the Redevelopment Plan, suggesting it sets forth rigid initial requirements demonstrating the proposed redeveloper's financial capability to develop the Property. (Pb6-8.)[6] In fact, the Redevelopment Plan sets forth a continuing process, with the proposed redeveloper submitting "estimates" to the NBHA in order to be designated, followed by more detailed information as the process continues and is monitored and approved by the NBHA and, thereafter, the Planning Board. For avoidance of doubt, the Redevelopment Plan provides:

> **Redeveloper Designation:**
>
> In order to be considered for designation as a redeveloper, a prospective redeveloper will submit the following information and materials to the Redevelopment Agency:
>
> - Preliminary plans sufficient in scope to demonstrate compliance with the design standards and guidelines of the Redevelopment Plan.
>
> - Documentation evidencing the financial responsibility and capability of the proposed redeveloper to carry out the proposed redevelopment project, including comparable projects completed, financing plan, disclosure of

[6] "Pb" refers to Plaintiff-Appellants' Amended Brief.

ownership interests in the proposed redeveloper including general and limited partners, financial profile of the proposed redeveloper and its parent, if applicable.

- **Estimated** total development cost for the proposed redevelopment project.

- **Estimated** timeline for the start and completion of development.

Other Redeveloper Requirements:

The estimates referred to above shall be finalized by the designated Redeveloper(s) at the time of execution of the Redeveloper Agreement. Prior to the commencement of construction of any improvements on Redevelopment Area land, final plans and specifications must be submitted to the Redevelopment Agency by the Redeveloper for approval to insure material conformance with the approved submission.

The Redeveloper(s) will be obligated to carry out certain specified improvements in accordance with the Redevelopment Plan.

The Redeveloper(s) and its successors or assigns shall devote land to the use(s) specified in this Redevelopment Plan for such area for the period of the duration of the Redevelopment Plan and shall not devote such land to any other use(s).

The Redeveloper(s) shall begin and complete the development of said land for the use(s) required in this Redevelopment Plan within a reasonable time as determined by the Redevelopment Agency.

The Redevelopment Agency shall consent to the disposition of all or any part of the Redeveloper's interest in the Redevelopment Area, such consent to be effective

> upon the completion by the Redeveloper(s) of all the improvements, rebuilding and redevelopment work required. The Redeveloper(s) will not be permitted to dispose of property until the improvements are completed without the prior written consent of the Redevelopment Agency, which consent will not be granted except under conditions that will prevent speculation and protect the interests of the City of New Brunswick.

(Pa000253) (emphasis added).

Although Plaintiffs spill much ink criticizing the City's passage of the Redevelopment Plan, they did *not* challenge its adoption. Instead, Plaintiffs' Complaints only challenge the appointment of NB Plaza as the designated redeveloper of the Property.

On December 21, 2023, NB Plaza submitted an application to the NBHA seeking to be designated as redeveloper of the Property. (Pa000272.) NB Plaza's application included the required application form (Pa000274-276); letters from its multiple sources of investment and financing that confirm NB Plaza's ability to fund the development ((Pa000277) (Seraphim Equities); (Pa000278) (Jade Capital); (Pa000279) (M&CF Investments LLC)); the required disclosure of its ownership (Pa000280); a site plan prepared by NB Plaza's engineer showing how NB Plaza plans to develop the Property (Pa000281); and preliminary architectural plans with a rendering of what the Property will look like once complete. (Pa000282-304.) The application listed NB Plaza's building partner, Ray Construction, and detailed several previous development projects of comparable scope, including projects in

New Jersey, New York, and Tennessee, as well as the similar-sized projects already completed by one of NB Plaza's principals, Ifany. (Pa000275.)

On February 23, 2024, NB Plaza submitted a letter to the NBHA supplementing its application. (Pa000309.) Included in this submission was a letter of support from an additional source of funding, CW Funding, as well as an opinion letter from Galaxy Capital regarding a construction loan that could be issued to NB Plaza for $275 million. (Pa000310-313); (*see also* Pa000472-473 at 35:3-36:4). NB Plaza also provided information on the number and type of affordable housing units that would be included in the development and a letter of support and commitment from its builder partner, Ray Builders, Inc. (Pa000313.)

On February 28, 2024, the NBHA held a hearing on NB Plaza's application. (Pa000437-492.) NB Plaza presented the testimony of Chris Roche, a civil engineer with Langan, NB Plaza's engineering consultant, who explained how the project would work logistically. (Pa000447-452 at 10:2 – 15:12.) NB Plaza also presented the testimony of John Zimmer from Fogarty Finger Architecture, the architect for the Project. (Pa000455-470 at 18:17 – 33:2.) Mr. Zimmer ran through a power point presentation discussing the design aspects of the Project and how it would fit in with and benefit the City. (*Id.*)

Plaintiffs have pointed to questions from the Commissioners about the financing plan and actual loan commitments for NB Plaza. (Pb17.) In responding

to this question, counsel for NB Plaza explained:

> MR. KELSO: Yeah. What we typically do in these kinds of agreements, you know, this is a preliminary stage right now because I mean the reality is you're not going to have all of your financing in place before you [inaudible] designated because you got to go through a process. At some point [inaudible] provide a full financial plan which is called for in the redevelopment agreement. And that may be within nine months or a year where we have a full financial plan in place. By that time we have a better understanding of the overall cost of the project, able to project out what their revenue projections are. And that allows them to get their construction and permit and financing in place and likely additional equity participation. But it's important for you to see that we're sitting on $90 million right now in equity which makes this, you know, a viable project at this stage and then to be pulled out with a full financial plan down the road.

(Pa000474.)

After questions from the NBHA Commissioners, several members of the public commented, including one who questioned the specificity of the plans offered by NB Plaza and asked whether the public would have input at additional times in the process. Responding, counsel for NB Plaza explained:

> MR. KELSO: Let me just respond briefly, Charlie. Yes, it is typical not only in New Brunswick but in all major redevelopment areas to have a combination of a plan that's being proposed to work with the city planning authority in order to determine what is the best approach to the redevelopment that someone is coming forward with and proposing. It's a combination of recognizing what the developer wishes to do as opposed to what the city feels from its own expertise in developing the city as a whole it's willing to do. And the city's responsibility is to look

> beyond the site and to see the nature of how it fits into what the city's vision is for a particular area. And that's what results in a new redevelopment plan and upgraded redevelopment plan. And yes, that's a process that's very typical. I also would point out when Charlie talks about additional times for input, as he knows, you know, this is only the first step in the process. What this Board is doing is approving the developer and its concept because of the information that we provide to you, but the city process is only beginning. Obviously, this has to go before the city's Planning Board. And a lot of the items that typically -- even the things we talked about tonight are vetted by the Planning Board. And I want to recognize that it's just the City Council that adopted this, but it goes to the Planning Board. The Planning Board reviews the plan and sends it back to the Council for action. I would comment on the fact that, yes, this was previously not adopted. I think there was confusion over the affordable units and the inclusion of affordable units which was clarified and the City Council unanimously approved it. So, again, there's a vetting process that still goes on before the Planning Board. And Charlie, you know, I'm sure you'll be there. So, but, this is really first step.

(Pa000480-481 at 43:7 – 44:17.)

Notably, Plaintiffs have not claimed that any of their alleged members attended the hearing or spoke out against the Project. After the hearing, the NBHA passed the Resolution, designating NB Plaza as Redeveloper of the Property. Among other things, the NBHA concluded that NB Plaza had submitted:

- Preliminary plans sufficient in scope to demonstrate compliance with the design standards and guidelines of the Redevelopment Plan;

- Documentation evidencing the financial responsibility and capability of the proposed Redeveloper to carry out

> the proposed redevelopment project including comparable projects completed; financing plan and ownership interest;
>
> - Estimated total development cost for the proposed redevelopment project; and
>
> - Estimated timetable for the start and completion of development.

(Pa000495.)

II. The Resolution Approving the Sale of Block 120, Lot 5.01 to NB Plaza

On October 16, 2024, the City introduced Resolution # R-102434, authorizing the City to sell the Undersized Lot. (Pa000522-530.) In NB Plaza's original assessment of the property, it believed this portion of Lot 5.01 had been subject to an easement for potential road widening and was identified as such on the land survey done by NB Plaza's land surveyor in anticipation of its development. (Pa000532.) The Undersized Lot is a rectangular area with a length of 204.59 feet and width between 17.73 and 20.77 feet. (*Id.*)

NB Plaza discovered in doing a more detailed title search that, in November 1982, this Undersized Lot had been conveyed by the NBHA to the City, perhaps for street widening associated with a previous development that had been abandoned. (Pa000534-537.) The City agreed to convey the Undersized Lot to NB Plaza to be developed as part of the project and the resolution passed on October 16, 2024 authorizes the City to begin the process to do so. (Pa000522-530.)

STANDARDS OF REVIEW

The issue of standing is a matter of law as to which this court exercises de novo review. People For Open Government v. Roberts, 397 N.J. Super. 502, 508 (App. Div. 2018) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). However, an appellate court must accord deference to a trial court's factual findings when such findings are "supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). An appellate court generally defers to the factual findings of the trial court because the trial court has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand" and it also "has a feel of the case that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. W.F., 434 N.J. Super. 288, 290 (App. Div. 2014).

Similarly, an appellate court's review of the denial of a motion to amend a pleading "is limited," as the determination "is generally left to the sound discretion of the trial court" in light of the facts that existed at the time the motion was made. Franklin Med. Assocs. v. Newark Pub. Schools, 362 N.J. Super. 494, 506 (App. Div. 2003) (citations omitted). Therefore, the trial court's "exercise of discretion will not be disturbed on appeal, unless it constitutes a 'clear abuse of discretion.'" Ibid. (quoting Salitan v. Magnus, 28 N.J. 20, 26 (1958)).

Finally, where there is a challenge to a determination of a municipal agency,

the court's "role is to defer to the local land-use agency's broad discretion and to reverse only if [the Court] find[s] its decision to be arbitrary, capricious, or unreasonable." Bressman v. Gash, 131 N.J. 517, 529 (1993). An agency's decision to designate a redeveloper, like other municipal actions, "is a discretionary act, vested with a presumption of validity, that will be upheld where any set of facts may reasonably be conceived to justify the action." Vineland Construction Co. v. Twp. of Pennsauken, 395 N.J. Super. 230, 255 (App. Div. 2007).

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY FOUND THAT PLAINTIFFS FAILED TO ESTABLISH THAT THEY ARE UNINCORPORATED ASSOCIATIONS UNDER N.J.S.A. 2A:64-1 WITH STANDING TO BRING SUIT.

The issue of standing is "of substantial importance" because it "involves a threshold determination which governs the ability of a party to initiate and maintain an action before the court. Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (citing In re Adoption of Baby T., 160 N.J. 332, 340 (1999)). The "essential purpose" of the standing doctrine in New Jersey is to:

> assure that the invocation and exercise of judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication.

N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82

N.J. 57, 69 (1980). The standing requirement "cannot be waived, nor may standing be conferred by consent." Petro v. Platkin, 472 N.J. Super. 536, 558 (App. Div. 2022).

After considering the allegations of the Complaints and the additional motion and hearing evidence presented below, the Trial Court reasonably determined from the facts that Plaintiffs had failed to meet their burden to establish standing in this case. This court should uphold that determination and affirm the dismissal of the Complaints.

A. Plaintiffs Failed To Prove That They Meet The Requirements For a Valid Unincorporated Association Under N.J.S.A. 2A:64-1 Et Seq.

The first and most basic step in determining whether any plaintiff has standing is to determine the plaintiff's legal identity. As this court has noted, "[t]he requirement that a litigant provide his, her, or its identity serves important systemic functions. Among other things, the identity of a litigant may bear on such important matters as jurisdiction, issue preclusion, claim preclusion, attorney conflict of interest, enforcement or a compliance with court orders, and sanctions." A.A. v. Gramiccioni, 442 N.J. Super. 276, 283-284 (App. Div. 2015).

Consistent with this principle, pursuant to Rule 1:4-1, the first pleading of any party in a civil action "shall include" not only the "names of all the parties" but also the "party's residence address, or, if not a natural person, the address of its principal

place of business." This rule "is not merely one of administrative convenience. It also serves society's interest in having access to the facts of the lawsuit…." A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 500 (App. Div. 1995).

A plaintiff seeking to sue as an unincorporated association also must meet the requirements of N.J.S.A. 2A:64-1 et seq. N.J.S.A. 2A:64-1, titled "Organizations which may sue or be sued; effect of action; abatement" provides:

> Any unincorporated organization or association, **consisting of 7 or more persons and having a recognized name**, may sue or be sued in any court of this state by such name in any civil action affecting its common property, rights and liabilities, with the same force and effect as regards such common property, rights and liabilities as if the action were prosecuted by or against all the members thereof. Such an action shall not abate by reason of the death, resignation, removal or legal incapacity of any officer of the organization or association or by reason of any change in its membership.

(Emphasis added); see generally Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 110 (1971). N.J.S.A. 2A:64-2, in turn, provides:

> All process, pleadings and other papers in such action may be served on the president or other officer for the time being or the agent, manager or person in charge of the business of the organization or association.

See also Buteas v. Raritan Lodge #61 F. & A.M., 248 N.J. Super. 351, 53 (App. Div. 1991) (discussing impact of statute on members' potential personal liability for acts of the association).

Contrary to Plaintiffs' arguments, these statutes create specific requirements

for the establishment of an unincorporated association. Specifically, the unincorporated association must have (1) seven members; (2) a recognized name; and (3) a recognized president, officer, manager or other agent available to accept service of pleadings or other process. After all, an unincorporated association can sue "or be sued" so it must have someone to accept service of process and a place where process can be served:

> The existence of a proper legal entity is not, as originally argued by plaintiff, a mere matter of form rather than substance. In any suit, particularly one in which equitable relief is requested, the plaintiff must subject itself to orders enforceable against itself, as well as availing itself of favorable orders. Without the presence of a plaintiff capable of both suing and being sued, relief cannot be afforded. **A complaint by a non-legal entity should not be entertained**.

Options v. Lawson, 287 N.J. Super. 209, 221 (App. Div. 1996) (emphasis added).

As a preliminary matter, Plaintiffs did not allege in their Complaints, and have never identified, an address or principal place of business for either Association. This is a plain violation of Rule 1:4-1. The only specific facts alleged as to the identity of the Associations are their names, but Plaintiffs failed to allege or later identify any facts to show that those entities existed prior to the filing of the Complaints or had names that could be deemed "recognized" -- as required by the plain language of N.J.S.A. 2A:64-1 -- by anyone other than the anonymous party or parties behind the filing of the Complaints.

Instead, to prove the legal identity of the Citizens Association, Plaintiffs presented ten unsworn and undated statements of unknown origin, with no evidential value, and a single anonymous certification by someone designated "J.R." At the hearing of December 17, 2024, Plaintiffs' counsel was questioned as to the identities of the individuals that comprise the two organizations, the identity of those who signed the unsworn statements, and other facts concerning the organization. 1T at p. 37-39. Although Plaintiffs repeatedly stated they were "prepared" to bring someone forward to testify or present evidence that the alleged members existed, they failed to provide any competent evidence supporting the Citizens Association's allegations. 1T at p. 39.

As a result, the Trial Court considered the "evidence" presented – or, more accurately, the lack thereof -- and found that Plaintiffs failed to present evidence of any meetings or election of any officers (Pa000001, ¶ 2); the ten signed and unsworn statements accuse the Church of "embezzlement" without any details (Pa000001, ¶ 3); and none of the unsworn statements were dated or certified and there is no indication as to who created the pre-typed forms and obtained the signatures. (Pa000001, ¶¶ 5-6.). Based on these factual findings, the Court held that the Citizens Association failed to demonstrate it was an unincorporated association under N.J.S.A. 2A:64-1 and lacked standing to bring the action. (Pa000002.)

As the Trial Court explained:

> Well, if this Association has no organ - has no officers, someone would have to sign. It has to have somebody who steps forward into daylight to say that they have gathered these signatures. Somebody has to say that we have organized this and we have some common purpose. There's no evidence of that…. I can't say that the signed statements can count as competent evidence really of anything without knowing who circulated these forms for people to sign.

1T 40:17-25 and 41:1. The Court further properly determined that the Citizens Association did not have standing because:

> You've got somebody wants to, you know, file an action in lieu or file whatever they want to file, that's fine. But they can't file a complaint anonymously. And, by the same token, they can't gin up some sham association and pretend it's really all these people who have just signed something outside the bravo supermarket next door to the church without being told what this is really what they're really signing.

1T 42:8-16.

Plaintiffs' argument as to whether there is a requirement to conduct meetings under the unincorporated association statute (Pb32) is irrelevant: regardless of whether the statute *requires* meetings, it was proper for the Trial Court to consider the lack of credible proof that meetings occurred, along with the other factors it identified, in concluding that the Association is not the valid legal entity it claims to be. Moreover, the statute clearly requires that someone serve as an agent for the association and that there be at least seven identifiable members, but Plaintiffs provided no competent evidence of this. As the Trial Court stated in its December

19, 2024 Order, the "undated, uncertified signed statements obtained by an unknown individual cannot be regarded as competent admissible evidence of membership in the Association of Concerned Citizens of New Brunswick." (Pa000001-2.)

In a similar vein, Plaintiffs failed to present competent credible evidence that the Bidders Association was a valid unincorporated association entitled to sue. The Trial Court requested evidence that Byrne was involved in the Bidders Association at the time its Complaint was filed in April 2024, which was entirely appropriate since standing is determined at the time the complaint is filed. See Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 224-25 (App. Div. 2011) (finding that a plaintiff must have standing at the time of filing a complaint); Davis v. FEC, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) (Standing is "focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.").

In response, Plaintiffs' counsel submitted a letter of engagement signed, not by Byrne, but by Vincent Clancy. (3T at p. 60). Moreover, although Byrne testified that the Bidders Association paid their attorneys, there was no cancelled check or corroborating evidence of payment. (1T 27:22-28:24). The Trial Court found there was no documentation that connected Byrne to the case at the time the suit was initiated and "[drew] a negative inference... that such documentation does not exist." 4T 29:25-30:1. Like the Citizens Association Complaint, the Trial Court found that

the Bidders Association Complaint "was an attempt by these parties to prosecute their claim anonymously, which is not permitted under the A.B.C. v. XYZ Corp. case." 4T 30:6-13.

The Trial Court's decision is fully consistent with precedent of this Court. In A.B.C. v. XYZ Corp., cited supra, the plaintiff, who claimed he suffered from a sexual disorder known as exhibitionism, sought to prosecute an employment discrimination claim against his former corporate employer using pseudonyms so that he could litigate his claim anonymously, without disclosing his or his former employer's name. The trial court dismissed the complaint, and this court affirmed. In doing so, the court stated:

> Court proceedings are public proceedings and the names of the parties *and their addresses* are essential not only to identify the various parties, but also in connection with aspects of the judicial process such as discovery, motion practice, jury selection, and execution to enforce money judgments. As a corollary, *proper identification of a party assures against misidentification of some other party as being involved*. There is a constitutional and customary presumption of openness in all judicial proceedings, except in juvenile court proceedings.

Id. at 499 (emphasis added) (internal citations omitted). See also A.A. v. Gramiccioni, 442 N.J. Super. at 279-280 (affirming dismissal of an anonymous prerogative writ action challenging denial of an OPRA request because there is no statute or court rule authorizing a person to proceed anonymously in an OPRA action in the Superior Court.)

A party seeking to proceed anonymously "must show compelling circumstances why identification would be improper." A.A. v. Gramiccioni, 442 N.J. Super. at 284 (citing A.B.C., 282 N.J. Super. at 505)). A general desire for privacy, fear of embarrassment, or even alleged fear of reprisals from government agencies – an asserted rationale for the anonymity of members in this case -- are plainly insufficient to meet that test. See, e.g., A.B.C., 282 N.J. Super. at 505 ("Although in certain rare circumstances a litigant's interest in privacy may overcome the constitutional presumption in favor of open court proceedings, mere embarrassment or a desire to avoid the potential criticism attendant to litigation will not suffice."); A.A. v. Gramiccioni, 442 N.J. Super. at 284 **(**Although some litigants "may wish to remain anonymous out of concern about possible retaliatory action or harm that may ensue from public notoriety, those potential concerns do not justify litigants deciding for themselves whether they wish to withhold their identities when seeking relief in the Superior Court.")

Simply, the law "does not allow unnamed or anonymous individuals to proceed in court with a cause of action in the guise of a sham unincorporated organization or association." (Pa000002.) Plaintiff had multiple opportunities – in their Complaints, in their motion to vacate, the motion for reconsideration, and a plenary hearing — to produce competent evidence that the purported Associations actually exist and are qualified to bring suit under the governing statute and court

rules, but they failed to do so. On this basis alone, the Complaints were properly dismissed.

B. Even If Plaintiffs Are Valid Unincorporated Associations, They Failed To Establish Standing In This Case.

Even if the court finds that Plaintiffs satisfied their burden to show that they are valid unincorporated associations, they failed to demonstrate associational standing in this case.

A litigant has standing only if it demonstrates "a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and…a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable decision." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409-10 (App. Div. 1997). Although standing is interpreted broadly in New Jersey, our courts "will not render advisory opinions or function in the abstract nor will [they] entertain proceedings by plaintiffs who are mere intermeddlers or are merely interlopers or strangers to the dispute. Rather, there must be a substantial likelihood the party will suffer some harm by an unfavorable decision." Stubaus v. Whitman, 339 N.J. Super. 38, 48 (App. Div. 2001) (quotation and citation omitted); Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 432 (App. Div. 1995). Thus, litigants "do not have standing to assert the rights of third parties." Stubaus, 339 N.J. Super. at 48.

Further, an association may seek judicial relief on its own behalf (if it would suffer harm directly) or on behalf of its members. To establish standing on behalf of its members (associational standing), the association "must demonstrate that its members would have standing to sue; the interests it seeks to maintain are germane to the purposes of the organization; and neither the claim asserted nor the relief requested requires individual participation by the association's members." N. Haledon Fire Co. No. 1 v. Borough of N. Haledon, 425 N.J. Super. 615, 627-28 (App. Div. 2012). In other words, when an association is the "sole party plaintiff," it has standing if:

> it has a real stake in the outcome of the litigation, there is a real adverseness in the proceeding, and the complaint is confined strictly to matters of common interest and does not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual member and the defendant.

N.J. Citizen Action, 296 N.J. Super. at 416 (quotation and citation omitted).

Plaintiffs allege that their members have a "real stake" in the outcome of this case (Pa000017; Pa000037), but they cannot simply rely on a bald conclusory allegation in their Complaints: they were required to make a factual showing that their members are adversely harmed by the challenged actions and that the interest of the members are common. N.J. Shore Builders Association v. Township of South Brunswick, 325 N.J. Super. 412 (App. Div. 1999), involved a similar fact pattern. There, three associations representing "residential home builders, contractors and

suppliers doing business in New Jersey" alleged that they were negatively affected by a municipal ordinance about water detention basins. Id. at 414. The Trial Court held that the three associations had standing but the record "contain[ed] no findings on th[at] issue" Id. at 415. Reversing, this Court held:

> [O]ur review ***of the inadequate record here makes it clear that a remand is also required for specific findings and conclusions on the standing issue. It is not at all clear that the associations have demonstrated adverse effects to themselves or their members since the ordinance's enactment, particularly as to past developments containing detention basins. Nor is it clear that there is 'substantial harm' or impediment to developers pursuing new developments in the Township.*** In fact, the associations' attorney informed the motion judge that several of the law firm's current clients have developed properties in the Township and are currently subject to the challenged ordinance. Although this alone, without more, may not be dispositive, it does not appear that the subject ordinance has impeded development in the Township.

Id. at 419-20 (emphasis added). As this authority makes clear, Plaintiffs' Complaints are not enough to establish standing and a trial court cannot assume that plaintiffs like Citizens Association and Bidders Association have standing without a factual record with "specific findings and conclusions on the standing issue." Id.

Plaintiffs devote a significant portion of their brief pointing out the alleged errors made by the Defendants, but it was Plaintiffs' burden to establish a record showing that the Resolution they challenge caused them "substantial harm." N.J. Shore Builders Association, 325 N.J. Super. at 415. As with their arguments

regarding the statutory requirements for an unincorporated association, rather than providing admissible evidence that the Associations and their purported members are actually harmed by the Resolution, Plaintiffs relied solely on conclusory assertions that are not supported by facts or evidence. When Plaintiffs tried to put forth witnesses and evidence to substantiate the role of the Plaintiff Associations, the Trial Court found the evidence to not be credible. Promises that Plaintiffs are "prepared" to present evidence or bring forward an individual are not sufficient.

At most, Plaintiffs claimed, in their motion for reconsideration, that the individual members of the Citizens Association were dismayed at the designation of that redeveloper. (Pa000661 ¶ 11.) But a sentiment conveyed by an anonymous person to Plaintiffs' counsel is inadmissible hearsay and not properly considered as part of a counsel certification. Mazur v. Crane's Mill Nursing Home, 441 N.J. Super. 168, 179-80 (App. Div. 2015). Furthermore, Plaintiffs cannot rely on this "fact" because it was available at the time of the original motion to vacate and therefore was not properly included as part of the motion for reconsideration. Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 463 (App. Div. 2002). Regardless, being unhappy with the outcome of a public hearing and the subsequent passage of a Resolution following public comment is not sufficient to establish any of these individuals had a "personal stake" or were individually harmed.

With respect to the Bidders Association, the Trial Court found that critical

elements of Byrne's testimony lacked credibility or support, especially the asserted justification for anonymity and the absence of documentation proving the entity's existence. The Trial Court explicitly rejected Byrne's claim that he didn't want to be named as a plaintiff due to fear of retaliation by the City of New Brunswick. 4T 25:11-16 The Court noted that Byrne does no business in the City or even the county, and it was implausible that New Brunswick officials could harm his unrelated projects in Bayonne or West New York. 4T 25:17-25. The Trial Court's skepticism was evident: "[t]hat simply does not ring true." 4T 26:23.

Also weighing against a finding of associational standing in this case is the clear indication that the lawsuits have been driven by an individual rather than a common grievance, and that private interests predominate over any claimed public interest. The Complaints, which are virtually identical, contain numerous unfounded spurious personal attacks against Shimon Jacobowitz, principal of one of NB Plaza's member entities, as do the certifications proffered by Plaintiffs in support of their various motions. (Pa000014; Pa Pa000034.) Additionally, after instituting suit, Plaintiffs issued numerous subpoenas to individuals and entities named in NB Plaza's application, which were ultimately quashed and which the Trial Court determined were "punitive in nature". 2T 55:9-12. As the Court reasonably concluded from the record before it, "it's obvious . . . that one of the motivations of this litigation is to settle a score with Mr. Jacobowitz (phonetic)."

1T 43:10-24. Indeed, Byrne conceded in testimony that he is a member of Folxco, LLC, an entity in contentious litigations with NB Plaza. (3T 29:1-8.) Given these personal grievances underlying the Complaints, Plaintiffs failed to and cannot show, as they must to establish associational standing, that the Complaints do "not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual member and the defendant." N.J. Citizen Action, 296 N.J. Super. at 416 (quotation and citation omitted).

Plaintiffs rely heavily on Crescent Park Tenants Association, supra, to support standing, but that case is easily distinguishable because the Court had a detailed factual record about the plaintiff association in that case: the plaintiff was

> a nonprofit organization which was incorporated in 1969 pursuant to the terms of N.J.S.A. 15:1-1 et seq. It was created for the protection and mutual benefit of the tenants residing in the Crescent Apartment House located at 320 South Harrison Street, East Orange. Its membership consists of a substantial majority of the tenants and it has undertaken to represent them with respect to their common grievances against their landlord the defendant . . . .

58 N.J. at 99. In contrast, Plaintiffs have provided no such evidence about their identity, their interest, and the harm that the Resolution they challenge purportedly caused. Standing in this State is liberal, but courts still do not "render advisory opinions or function in the abstract nor will [they] entertain proceedings by plaintiffs who are mere intermeddlers or are merely interlopers or strangers to the dispute." Stubaus, 339 N.J. Super. at 48.

Just like the associations in New Jersey Shore Builders Association, supra, Plaintiffs here have made no factual showing that any of their members have suffered or will suffer substantial harm as a result of the challenged municipal actions in these cases. Plaintiffs have failed to meet their burden to establish standing to maintain these actions and, as such, their Complaints were properly dismissed.[7]

C. The Trial Court's Denial of the Motion to Amend Was Not an Abuse of Discretion because an Amendment Would Have Been Futile Due to Byrne's Lack of Standing.

As noted above, a trial court's exercise of discretion to deny a motion for leave to amend a complaint should not be disturbed on appeal unless it constitutes a "clear abuse of discretion." Franklin Med. Assocs., 362 N.J. Super. at 506 (App. Div. 2003) (citations omitted). Furthermore, under the "futility" exception to the liberal rules of amendment, the discretion to deny a motion to amend "is not mistakenly exercised when it is clear that the amendment is so meritless that a motion to dismiss under R[ule] 4:6-2 would have to be granted…." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.2.1 on R. 4:9-1 (2024). Thus, when considering "the factual

[7] Plaintiffs have not briefed the standards applicable to the trial court's denial of their motion for reconsideration. Therefore, that issue should be deemed abandoned on appeal. State v. Shangzhen Huang, 461 N.J. Super. 119, 125 (App Div. 2018); 539 Absecon Blvd., L.L.C. v. Shan Enters. Ltd. P'ship, 406 N.J. Super. 242, 272 n. 10, (App. Div. 2009) (noting claims that have not been briefed are abandoned on appeal).

situation existing at the time each motion is made," a court is "free to refuse leave to amend when the newly asserted claim is not sustainable as a matter of law." Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 501-02 (2006).

The Trial Court's denial of Plaintiffs' Motion to Amend the Bidders Association Complaint to add Byrne as a named Plaintiff was properly denied because the amendment would be futile. Because the Redevelopment Plan is a non-condemnation plan, NBHA has no power to condemn the Property and convey it to a redeveloper, which means that a prospective redeveloper with no interest in the Property is precluded from redeveloping the Property unless, like NB Plaza, it obtains some control over the site in order to apply for the redeveloper designation. Plaintiffs failed to demonstrate that Byrne or any of the Bidders Association's purported members could actually gain control of the Property and develop the project.

Additionally, the Trial Court correctly concluded that the proposed amended complaint failed to tie Byrne to the subject matter of the original Complaint, but, pursuant to Rule 4:69-6, any proposed additional plaintiff must necessarily have been part of the process within the 45-day limitation period for bringing an action in lieu of prerogative writs. Under all these facts and circumstances, the Trial Court did not abuse its discretion when it reasonably determined it would be futile to permit the amendment.

II. EVEN IF THIS COURT FINDS THAT PLAINTIFFS HAVE STANDING, THE ORDERS OF DISMISSAL SHOULD BE AFFIRMED BECAUSE THE DESIGNATION OF NB PLAZA AS THE REDEVELOPER WAS NOT ARBITRARY OR CAPRICIOUS.

It is well settled under New Jersey jurisprudence that an appellate court has broad authority to affirm a judgment on grounds different from those relied upon by the trial court. In other words, even if the reasoning or grounds relied upon by the trial court were incorrect or different, the appellate court may still affirm the judgment if the ultimate decision is correct. See Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) ("[T]he fact that [the order] was predicated upon an incorrect basis will not stand in the way of its affirmance.").[8] This principle is rooted in the understanding that appeals are taken from the judgment itself, not the reasoning or opinions of the trial court. State v. Scott, 229 N.J. 469, 479 (2017) ("[A]ppeals are taken from orders and judgments and not from opinions…or reasons given for the ultimate conclusion.") (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)).

In the proceedings below, Plaintiffs raised two principal arguments (which are mirrored in the presentation of the facts in their brief to this Court) in support of their attempt to have the Court second guess the NBHA's discretionary decision to

[8] Plaintiffs acknowledge this in their brief, stating "[t]his Court may also exercise discretion in ruling on the substantive issue raised below" (Pb29), yet Plaintiffs failed to address the merits of their underlying case in their brief to this court.

designate NB Plaza as redeveloper of the Property. *First*, Plaintiffs argued that the Redevelopment Plan required the NBHA to engage in some sort of competitive bidding process (or at least consider competitive bids) before selecting a redeveloper. *Second*, Plaintiffs argued, on the facts, that the NBHA should have rejected NB Plaza's application to be designated as redeveloper because NB Plaza's financial profile and financing plan were not complete and because, based on non-record evidence, the NBHA should have rejected the application.

Neither argument has merit. The NBHA's decision was based on settled law, supported by substantial record evidence, and was neither arbitrary nor capricious. Because Plaintiffs' underlying claims lack merit, the Trial Court's dismissal of the Complaints should be affirmed on that alternative basis.

A. Neither the Redevelopment Plan Nor the LRHL Required the NBHA to Solicit Competitive Bids to Designate a Redeveloper

In passing the Plan, the City delegated to its "designated redevelopment agency," the NBHA, the authority to designate a redeveloper. (Pa000252.) The Plan also provides: "The Redevelopment Agency shall consider both solicited and unsolicited proposals for designation of a redeveloper. All designated redevelopers are required to enter into a Redevelopment Agreement with and satisfactory to the Redevelopment Agency." (Pa000252.)

According to Plaintiffs, the phrase "shall consider both solicited and

unsolicited proposals for designation of a redeveloper" means that the NBHA was required to solicit competitive bids. (Pb19.) However, that interpretation cannot be squared with the Redevelopment Plan's plain text, in light of its context and the background of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49 ("LRHL").

To begin with, Plaintiffs offered no reason why the term "solicited . . . proposals" must be read as referring to a formal RFQ or other similar procurement process. Even used in a legal sense, the plain meaning of "solicit" merely refers to the act of "requesting or seeking to obtain something" or "[a]n effort to gain business." Black's Law Dictionary, Solicitation (8th Ed. 2004). So, it is not at all clear that the language in the Redevelopment Plan was intended to direct formal solicitation. Instead, the language merely suggests that the NBHA must consider not just the prospective redevelopers it sought (or solicited) but anyone who submitted an application. That interpretation makes eminent sense here where the "unsolicited" proposal came from the owner of the Property itself.

In addition, requiring the redevelopment agency to conduct formal solicitation would run contrary to the division of authority created by LRHL. N.J.S.A. 40A:12A-7, which Plaintiffs cite (Pb19), sets forth the means by which the City may adopt a redevelopment plan by ordinance. That provision of the LRHL lists specific areas that "shall" be included in the redevelopment plan, including the

plan's relationship with the local objectives and what the municipality wants to achieve, proposed land uses, and an identification of properties to be acquired, among others. N.J.S.A. 40A:12A-7(a). It then continues to list things that "may" be included in the redevelopment plan and a procedure for how it is to be adopted. N.J.S.A. 40A:12A-7(b).

Not included in N.J.S.A. 40A:12A-7 is the ability of the municipality to place restrictions on how the redevelopment agency can select a redeveloper. Based on basic rules of statutory construction, when the Legislature includes an exhaustive list, "it is assumed to intend to exclude what is not enumerated unless it indicates by its language that the list or section is not meant to be exhaustive or exclusive." Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 215 (2013). If the Legislature had wanted municipalities to be able to cabin the discretion of the redevelopment agency in how it could select a redeveloper, it would have included that power in the list of areas the municipality "shall" or "may" include in the redevelopment plan. This court should not imply this authority where the Legislature did not grant it.

This conclusion is bolstered by the very next section of the LRHL, N.J.S.A. 40A:12A-8, which expressly vests the redevelopment agency with broad discretion in selecting a redeveloper to carry out a redevelopment plan. See Bryant v. City of Atl. City, 309 N.J. Super. 596, 602 (App. Div. 1998). N.J.S.A. 40A:12A-8,

empowers the redevelopment entity to undertake any number of actions to redevelop the property, including entering into contracts with redevelopers for the planning, construction or undertaking of any project within an area in need of rehabilitation, or selling or leasing property to redevelopers without public bidding and at prices and upon such terms as it deems reasonable. N.J.S.A. 40A:12A-8(f), (g). Based on this broad statutory discretion, this Court has held that there is "***no requirement that a municipality issue a request for qualifications for potential redevelopers***." Vineland Constr. Co., Inc., supra, 395 N.J. Super. at 255 (citing Bryant, 309 N.J. Super. at 624) (emphasis added).

With this statutory background, the language in the Plan can only be read to refer to the broad discretion that the NBHA has to select a redeveloper in accordance with its statutory authority, namely its ability to consider both solicited and unsolicited proposals to be the redeveloper. Plaintiffs' interpretation, by contrast, would render the Plan inconsistent with the division of authority expressly established in the LRHL and, therefore, would be unenforceable. See, e.g., Scheff v. Maple Shade, 149 N.J. Super. 448, 456 (App. Div. 1977) ("In any conflict between an ordinance and a statute, the latter must prevail.").

In short, the NBHA was not required to conduct formal solicitation. As noted above, in the context of this Property, the NBHA was faced with a situation where the owner of the Property, the Church, had entered into a partnership with others and

formed a development entity, NB Plaza, to control how ***its own property*** was developed. Once it was satisfied that NB Plaza's development plan was consistent with the Plan generally (as discussed in the next section), the NBHA was well within its discretion to select this "unsolicited" redeveloper without further search. Plaintiffs' arguments to the contrary provide no basis to overturn the Resolution.

B. The NBHA's Decision to Designate NB Plaza Was Supported by Substantial Record Evidence and Was Not Arbitrary or Capricious.

At bottom, Plaintiffs' prerogative writ actions seek to have the court substitute its judgment for that of the NBHA. The scope of a court's review, however, is limited. See Bressman v. Gash, supra, 131 N.J. at 519. The NBHA's decision "enjoy[s] a presumption of validity, and a court may not substitute its judgment for that of the [agency] unless there has been a clear abuse of discretion." Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) (citing Cell South of N.J., Inc. v. Zoning Bd. of Adj., W. Windsor Twp., 172 N.J. 75, 81 (2002)). Thus, municipal action "will not be overturned unless it is found to be arbitrary and capricious or unreasonable, with the burden of proof placed on the plaintiff challenging the action." Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015). "Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved." Kramer v. Bd. of Adjustment of Sea Girt, 45 N.J. 268, 296

(1965).

i. The Court Must Disregard the Evidence Outside the NBHA's Record Submitted and Relied Upon by Plaintiffs.

To buttress their claims of arbitrary and capricious action by the municipal defendants, Plaintiffs improperly seek to introduce a host of records beyond those considered by the NBHA in determining whether to appoint NB Plaza as redeveloper. Specifically, Plaintiffs have included in their appendix the following documents that were not considered by or part of the record before the NBHA:

- Tax assessor records from Memphis Tennessee relating to two properties. (Pa000336-347; Pa000350-362.)
- Corporate formation records for IFANY, LLC. (Pa000336-374.)
- A miscellaneous document relating to the New Horizon development in Tennessee. (Pa000319.)
- Various Court records relating to collections actions purportedly relating to one of the disclosed owners of NB Plaza, Shimon Jacobowitz. (Pa000375- Pa000427.)
- Document purporting to be photographs of developments in Tennessee. (Pa000432-436.)

Plaintiffs' attempted reliance on these documents is clearly improper. In reviewing the action of a municipal administrative agency like the NBHA, this

Court's decision "must be based solely on the agency record." Willoughby v. Planning Bd. of Twp. of Deptford, 306 N.J. Super. 266, 273 (App. Div. 1997). (citing Kramer, 45 N.J. at 268). This allows the court "to determine whether the [municipal agency's] factual findings are based on 'substantial evidence' and whether its discretionary decisions are 'arbitrary, capricious and unreasonable.'" Willoughby, 306 N.J. Super. at 273-74.

Plaintiffs claimed the right to rely on these records because they are "publicly available," but that assertion misconstrues the court's role in an action in lieu of prerogative writs. The public availability of records may permit a trial court to take judicial notice records in the context of a regular civil action in which the court is performing a fact-finding role. See, e.g., Grand View Gardens, Inc. v. Hasbrouck Heights, 14 N.J. Super. 167, 170 (App. Div. 1951) (discussing the role of judicial notice in the court's finding of adjudicative facts). But in an action in lieu of prerogative writs, the trial court is not being asked to find facts, it is charged with reviewing the determination of the municipal agency, here the NBHA, to determine if it was supported by substantial evidence in the record. Willoughby, 306 N.J. Super. at 273-74. Thus, any documents not part of the record below and arguments stemming from them were properly disregarded by the Trial Court and should be disregarded by this Court in deciding this appeal.

ii. Plaintiffs' Challenge to the NBHA's Discretionary Decision Must be Rejected.

Reviewing the actual record before the NBHA, in order to succeed in its challenge, Plaintiffs bore the "heavy burden" of overcoming the presumption of validity of the NBHA's action by showing that it was arbitrary, capricious or unreasonable. Bryant, 309 N.J. Super. at 610. "It is not for the courts to second guess the municipal action, which bears with it a presumption of regularity." Forbes v. Bd. of Trs. of Tp. of S. Orange Vill., 312 N.J. Super. 519, 532 (App. Div. 1998). Instead, challengers like Plaintiffs can overcome this presumption "'only by proofs ***that preclude the possibility that there could have been any set of facts known to the legislative body . . . [that] would rationally support a conclusion that the enactment is in the public interest.***'" Id. (quoting Hutton Park Gardens v. Town Council of W. Orange, 68 N.J. 543, 564-65 (1975)) (emphasis added).

In support of their challenge, Plaintiffs argue that the information provided by NB Plaza was insufficient to demonstrate "the financial responsibility and capability of the proposed redeveloper to carry out the proposed redevelopment project, including comparable projects completed, financial plan, disclosure of ownership interest in the proposed redeveloper including general and limited partners, financial profile of the proposed redeveloper and its parent, if applicable." (Pa000253). But the NBHA had ample evidence from which to conclude, within its broad discretion, that NB Plaza had demonstrated its financial responsibility for the project. NB Plaza

submitted numerous letters from various investors and financial institutions committing to invest or loan money for the Project. (Pa000521-532.) Nowhere did the Redevelopment Plan require (or even suggest) that the applicant's "financial plan" had to be presented in any specific form and the NBHA, which questioned NB Plaza's representatives and witnesses, acted reasonably and within its discretion in finding that NB Plaza's financial representations and information were credible.

Fundamentally, Plaintiffs' objections reflect a complete misunderstanding or disregard for the reality of how redevelopment works. The reality is that developers like NB Plaza are unlikely to obtain ironclad commitments from investors or lenders until they are actually designated as the redeveloper for the project, something expressly explained to the NBHA by NB Plaza's counsel. (Pa000474 at 37:4-22.) This reality was contemplated by the Redevelopment Plan. Plaintiffs ignore the key fact that the application information is expressly referred to as an "estimate." After discussing the language cited by Plaintiffs regarding the information to be submitted as part of the application to be designated as redeveloper, the Redevelopment Plan explains:

> ***The estimates referred to above shall be finalized by the designated Redeveloper(s) at the time of execution of the Redevelopment Agreement.*** Prior to the commencement of construction of any improvements on Redevelopment Area land, final plans and specifications must be submitted to the Redevelopment Agency by the Redeveloper for approval to insure material conformance with the approved submission.

(Pa000253) (emphasis added). Thus, the Redevelopment Plan expressly contemplated that the estimates submitted by prospective redevelopers would be less detailed at the beginning and additional information would be provided as the process continued. The NBHA's designation of NB Plaza as redeveloper is not its final chance to monitor and ensure that NB Plaza is financially capable of finishing the project or that the project itself complies with the Redevelopment Plan's specifications. Once designated, if NB Plaza did not provide finalized commitments by lenders and investors, the NBHA was under no obligation to enter into a redevelopment agreement with NB Plaza and, in the redevelopment agreement itself, the NBHA would maintain the ability to approve the actual architectural plans. (Pa000253). In light of the full nature of its involvement, the NBHA relied on the substantial evidence showing the financial commitments NB Plaza had to the project, its proposed plans and estimates on development, and its builders' explanations of prior projects similar in scope.

Plaintiffs also claim, without legal or factual support, that the reference to a "financial profile" in the Redevelopment Plan was intended to refer to a "financial statement." (Pb22.) But the NBHA did not interpret "financial profile" to mean something so formal and this court is not permitted to second guess the NBHA's discretionary interpretation of that term. See First Montclair Partner, L.P. v. Herod Redevelopment I, L.L.C., 381 N.J. Super. 298, 303 (App. Div. 2005) (holding that

court must defer to local agency's reasonable interpretation of a term in a redevelopment plan).

The same can be said about Plaintiffs' argument that a "financing plan" had to be something more than what the NBHA considered. Plaintiffs presented much argument on what other documents the NBHA could have looked at—or perhaps what arguments they wish the NBHA would have considered—but Plaintiffs' disagreement with how the NBHA went about its business in choosing NB Plaza as redeveloper does not provide legal grounds for this court to invalidate that decision. The indisputable fact remains that the record that was before the NBHA contains documentary evidence showing that NB Plaza had commitments from investors and financing for the project and ensured the NBHA that they would provide more detailed information down the road. The Redevelopment Plan described the information to be submitted by proposed redevelopers as "estimates" and, based on the NBHA's experience, it understood that more detailed financial information would be provided in the context of negotiating a Redevelopment Agreement—as expressly contemplated by the Redevelopment Plan. Based on that understanding, the NBHA accepted the documentation in the record on its face, as it was permitted to do. Plaintiffs' second guessing is not a valid legal basis to overturn that decision.

CONCLUSION

For the foregoing reasons, Respondent NB Plaza respectfully requests that this Court affirm the Trial Court's Orders dismissing the Plaintiffs' Complaints and denying the Bidders Association's motion to amend their Complaint to add James Byrne as a plaintiff.

Respectfully submitted,

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Attorneys for Defendant-Respondent,
NB Plaza Owner Urban Renewal LLC

By: */s/Jennifer Borek*
JENNIFER BOREK

Dated: July 18, 2025

ASSOCIATION OF CONCERNED CITIZENS OF NEW BRUNSWICK,

Appellant,

v.

CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC,

Respondents.

ASSOCIATION OF DISENFRANCHISED BIDDERS OF REDEVELOPMENT WORK IN THE CITY OF NEW BRUNSWICK,

Appellant,

v.

CITY OF NEW BRUNSWICK, NEW BRUNSWICK HOUSING AUTHORITY, NEW BRUNSWICK PLANNING BOARD, and NB PLAZA OWNER URBAN RENEWAL LLC,

Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-001613-24

On Appeal From:

Orders of the Superior Court, Law Division, Middlesex County, dated December 19, 2024, January 31, 2025, March 7, 2025, and March 12, 2025

Trial Court Docket Nos.: MID-L-2242-24
MID-L-2243-24

Sat below:

Hon. J. Randall Corman, J.S.C.

APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT

The trial court took what it otherwise found to be meritorious challenges to a New Brunswick city resolution and dismissed them not based on any consideration of applicable legal standards or substantive justice, but instead based on a rigid formalism based on either the incorrect standard or a standard it invented on the spot.

Defendant-Respondents, the public entities overseeing the redevelopment plan at issue and the private redeveloper supporting it, take up the trial court's misguided logic and ask this Court to affirm that logic, even under the *de novo* standard of review applicable to the trial court's erroneous consideration of the Plaintiff-Appellants' standing to sue. While many of Respondents' arguments are addressed in Appellants' initial brief, three overarching items will be addressed here.

First, Respondents encourage this Court to find something which the trial court did not: that Appellants' position is futile. The futility argument is apparently based on two false premises: 1) requiring the public entity defendants to solicit bids or requiring NB Plaza to submit documentation complying with the redevelopment plan at issue would still have resulted in the challenged ordinance being passed; and 2) James Byrne himself would have lacked standing to sue even had the trial court added him as an individual plaintiff. These arguments must be rejected. If this Court accepts Respondents' logic, the public entity defendants' conduct in accepting a redeveloper who clearly and obviously did not comply with the requirements set

forth in the defendants' own Lower George II Redevelopment Plan (the "Plan") would be beyond any possible judicial review, and nobody would have legal standing to request such a review. This conclusion is not found anywhere in applicable law and is antithetical to a system guided by the rule of law.

Second, Respondents invite this Court to review the merits of Appellants' claims, though the trial court never ruled on those merits. While the facts below dictate that the challenged resolution should be overturned, Appellants only ask this Court to remand so the trial court can make that determination. That said, we address those merits herein to clarify why this is not a futile challenge to the subject resolution. We also address the merits to confirm that the challenge to the resolution at issue is not limited to Respondents' failure to solicit bids as required by the Plan, but includes the failure to procure the financial plan and background information from the redeveloper as required by the Plan and, therefore, applicable law.

The Procedural History and Statement of Facts from Appellants' opening brief are incorporated herein by reference, and will not be repeated.

LEGAL ARGUMENT

I. Appellants' Substantive Challenge to the Subject Resolution is not Futile, nor was James Byrne's Motion to Amend the Complaint

A common thread through Respondents' briefs are that Appellants' challenge to the subject resolution was completely futile both because only NB Plaza was eligible for appointment as redeveloper and soliciting bids as required by the Plan

would not have changed that result. And Respondents argue that James Byrne's motion to amend the Complaint to add himself as an individual plaintiff was futile because he could not possibly have prevailed on a bid to be appointed redeveloper.

These arguments miss the mark as they ignore the Plan on which the subject resolution was based, which required ***any*** prospective redeveloper to provide certain information to prevail as bidder among solicited and unsolicited bids.

A. The Substantive Challenge to the Resolution Is Not Futile

Respondents claim that Appellants' challenge to the resolution is futile. The City of New Brunswick calls soliciting bids a "useless and futile act." Since only NB Plaza had the owner's approval to redevelop its property, the argument goes, it was the only possible candidate to be appointed. This Court cannot accept that under applicable law such appointment is a *fait accompli* not subject to legal requirements.

The Plan states that the Housing Authority "***shall consider both solicited and unsolicited proposals*** for designation of a redeveloper." *Pa000252*. But the Housing Authority did not solicit bids from other redevelopers. The Housing Authority thereby failed to comply with the Plan – and by extension the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* ("LRHL"). The LRHL provides:

> No redevelopment project shall be undertaken or carried out ***except in accordance with a redevelopment plan adopted by ordinance of the municipal governing body***, upon its finding that the specifically delineated project area is located in an area in need of redevelopment or in

> an area in need of rehabilitation, or in both … as appropriate.

N.J.S.A. 40A:12A-7 (emphasis supplied).

While the LRHL provides guidelines for designating areas in need of redevelopment, it "does not set forth any criteria governing the selection of a private redeveloper." Vineland Construction Company, Inc. v. Township of Pennsauken, 395 N.J. Super. 230, 255 (App. Div. 2007). As a result, municipal redevelopment designations are entitled to deference, ***but only if they are supported by substantial evidence in the record***. See Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 372 (2007) (emphasis supplied). Courts generally uphold such designations unless they are "arbitrary, capricious or unreasonable." See Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610 (App. Div. 1998). In describing this standard, Courts hold that a decision based on "***unsupported findings is the essence of arbitrary and capricious action***." In re Boardwalk Regency Corporation For A Casino License, 180 N.J. Super. 324, 334 (App. Div. 1981) (emphasis supplied).

The requirement that a court "defer to the expertise of the agency is only as compelling as is the expertise of the agency" and should only occur in technical matters within an agency's "special competence." Id. at 333. Unlike designation of a redevelopment area – which the City and its municipal agencies may be uniquely qualified to assess – the Housing Authority and its commissioners are not "uniquely qualified" to select a redeveloper without a competitive bidding process and the

specific financial information required by the Plan. Accordingly, the Housing Authority's redeveloper designation is not entitled to any special deference here.

Respondents' position regarding soliciting bids is also belied by well-settled principles of statutory construction. The rules governing statutory construction apply to a municipal ordinance. See Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). Our Courts "ascribe to the statutory words their ordinary meaning and significance and read them in context with related provisions so as to give sense to the legislation as a whole." In re Matter of Proposed Construction of Compressor Station, 258 N.J. at 324-25. Courts should try to give effect to every word of a statute to avoid rendering any part of it superfluous. Jersey Central Power & Light Co. v. Melcar Utility Company, 212 N.J. 576, 587 (2013). To that end, courts "must presume that every word in a statute has meaning and is not mere surplusage." Id.

Following these principles, the Plan required the Housing Authority to solicit bids to redevelop land ***solely occupied*** by the Abundant Life Family Worship Church (the "Church"). And the Plan supplements the Lower George Redevelopment Plan I by proscribing additional requirements to develop that land. The Plan states the Housing Authority "shall consider both solicited and unsolicited proposals" for redeveloper designation. *Pa000252*. The Housing Authority could only consider solicited proposals if it engaged in a solicitation process for the project. Otherwise, the terms "both" and "solicited" would be rendered meaningless. New Jersey law

does not permit this result. See Jersey Central Power & Light, 212 N.J. at 587 (holding that every word in a statute has meaning).

There should be no scenario in which a municipality or its agencies can give its imprimatur to a private entity as redeveloper without that determination being subject to scrutiny. Respondents apparently realized as much when they drafted and approved the Plan, which expressly requires the proposed redeveloper provide certain detailed information and to prevail among both solicited and unsolicited bids.

B. James Byrne's Motion to Amend the Complaint Was Not Futile

The Plan crafted multiple provisions to "protect the Church." The City was obligated to (1) obtain solicited and unsolicited bids from developers to ensure the Church gets a fair deal; and (2) scrutinize any proposed redeveloper, including an evaluation of the redeveloper's financial wherewithal, a concrete financial plan, and the necessary experience in developing similar projects. Respondents failed to follow the notice requirement of the plan and the purported developer's application contained documents that cannot be considered information showing its financial wherewithal. If anything, the purported redeveloper's appointment was a sham.

Mr. Byrne or another members of the Bidders Association should have been given an opportunity to submit a bid. If Respondents wish to alter the Plan to exclude a solicitation process, they must, pursuant to LRHL, go back to the drawing board and approve a new or revised Plan obviating the need for solicitation. In any event,

the trial court never reached whether Respondents breached the obligations under Plan. This Court should reverse and remand for such determination. New Jersey Shore Builders Ass'n v. Twp. of S. Brunswick, 325 N.J. Super. 412 (App. Div. 1999) (trial court invalidation of ordinance remanded for further fact finding).[1]

The case of Grimes v. City of East Orange, 285 N.J. Super. 154, 167 (App. Div. 1995) upon which the Housing Authority relies, confirms that Mr. Byrne's motion to amend was timely and was not futile. *HA Rb. at 25*. In Grimes, the trial court denied the plaintiff's motion to amend seeking to assert a new cause of action that was never plead, after a jury returned its verdict. Here, the proceedings were active during the subject motion to amend because the trial court directed the submission of additional evidence at a plenary hearing. Appellant Bidders Association did not seek to assert a new cause of action, but rather sought to add Mr. Byrne as an individual plaintiff in response to the trial court's December 17, 2024 ruling. Mr. Byrne's claims were to be identical to the already-pending claims of the Bidders Association. Appellant Bidders Association's motion was not futile.

II. Respondents' Adoption of The Resolution Was Arbitrary and Capricious

[1] NB Plaza misplaces its reliance on the NJ Shore Builders case in arguing Appellants' lack a sufficient stake in the outcome of the litigation to confer standing. It is difficult to understand how this case could be cited for such a proposition. As in NJ Shore Builders, we urge this Court to remand to the trial court for determination of the substantive issues with factual findings.

Both the Housing Authority and NB Plaza briefs discuss the substance of the resolution at issue, rather than focusing on the trial court's rejection of Appellants' standing. *HA Rb. at 29-35*; *NB Plaza Rb. at 36-44*. So Appellants' silence on such arguments is not construed as consent, we address them here since there can be no question that Respondent's failed to follow the requirements of their own Plan which in and of itself constitutes arbitrary and capricious conduct.

The LRHL provides that no redevelopment project "shall be undertaken or carried out ***except in accordance with a redevelopment plan adopted by ordinance***" of the municipality. N.J.S.A. 40A:12A-7 (emphasis supplied). This statutory language is plain and unambiguous and must be ascribed its ordinary meaning. See In re Matter of Proposed Construction of Compressor Station, 258 N.J. 312, 324-25 (2024) (ascribing "statutory words their ordinary meaning and significance").

The City Council adopted an ordinance approving the Plan on November 15, 2024. The Plan requires a prospective redeveloper to submit documents evidencing: (1) the "financial responsibility and capability" of the proposed redeveloper to carry out the project; (2) a "financial profile" of the proposed redeveloper and its parent; and (3) a "financing plan" for the redevelopment. NB Plaza failed to meet these requirements, as it produced nothing to demonstrate the financial wherewithal of the company or its members. Nor did it produce a complete financing plan for the project. And these facts are entirely undisputed based on the record below.

Despite the prospective redeveloper's failure to furnish information required by the Plan, the Housing Authority ignored those rules and designated NB Plaza as redeveloper. While our Courts have never decided a case where a redevelopment agency failed to comply with the redevelopment plan, public entities in analogous settings have been challenged and reversed for failing to follow their own rules.

In the context of subdivision and site plan approvals, our Courts hold that public entities must follow their own standards, or they will be reversed. See, e.g., Pizzo Mantin Grp. v. Twp. of Randolph, 137 N.J. 216, 229 (1994) ("Because a municipality must exercise its zoning and subdivision powers by enacting ordinances … Municipalities may effectuate those statutory purposes only by incorporating them ***as standards in duly enacted zoning and subdivision ordinances***.") (emphasis supplied); Sartoga v. Borough of W. Paterson, 346 N.J. Super. 569, 582 (App. Div. 2002) ("[A] planning board's authority in reviewing an application for site plan or subdivision approval is limited to determining whether a development plan ***conforms with the zoning ordinance and the applicable provisions of the site plan*** or subdivision ordinance.") (emphasis supplied).

In the context of licensure requirements, our Courts hold that a municipality must follow its own rules. See Petrangeli v. Barrett, 33 N.J. Super. 378, 386 (App. Div. 1954) (holding "***municipality may not disregard its own ordinance***" and "must reverse such violative action."); Pub. Serv. Ry. Co. v. Hackensack Imp. Comm'n, 6

N.J. Misc. 15, 17 (N.J. Sup. Ct. 1927) (setting aside grant of bus license where municipality did not comply with own governing ordinance); Bergen Bus Line v. Hackensack Imp. Comm'n, 4 N.J. Misc. 167, 168-69 (N.J. Sup. Ct. 1926) ("The commission having enacted a general ordinance designating the matters required to be set forth by one applying for licenses to operate auto busses, ***it was obliged to conform, in dealing with application for licenses, to the provisions of the ordinance which it had enacted***. This it did not do") (emphasis supplied).

So too here. Under the LRHL, the City Council empowered the Housing Authority to implement "a redevelopment plan adopted by ordinance" containing specific requirements for prospective redevelopers. But as discussed below, the Housing Authority failed to comply with these rules. As a result, the trial court must vacate the Housing Authority's decision to designate NB Plaza as redeveloper.

A. NB Plaza Failed To Submit A Financial Profile Of The Company Or Its Members.

The Housing Authority cannot point to ***a single document*** that relates to the financial wherewithal of NB Plaza and its members. This is not a situation where the Court is being asked to evaluate the sufficiency of what the prospective redeveloper submitted because there was ***nothing produced***. NB Plaza could not possibly satisfy the "financial profile" requirement based on the record below.

Importantly, the Housing Authority's failure to obtain and review these documents is not a harmless administrative error. As noted above, the term "financial

profile" is used interchangeably with "financial statement" in the business community. Those documents provide a summary of assets and liabilities, revenue and expenses, and a company or individual's overall financial condition. Herman v. Sunshine Chem. Specialties, Inc., 133 N.J. 329, 344-45 (1993) (permitting use of certified financial statements to show the financial condition of the defendant).

The City Council included financial disclosure requirements in the Plan for good reason. The proposed redevelopment has been characterized ***as the largest real estate project in New Brunswick history***. The municipality has an obligation to understand the financial wherewithal of a redeveloper embarking on a $300 million construction project with a not-for-profit religious organization. At a minimum, the financial statements of the redeveloper (NB Plaza), its parent companies (Ifany and SDG), and two controlling members (Jacobowitz and Searight), would demonstrate whether this group has the ability to take on a large-scale municipal redevelopment project – or whether additional information is needed to make an informed decision.

But that basic review did not happen here. Instead, the Housing Authority ignored the rules established by the City Council and awarded a $300 million real estate project to a redeveloper without obtaining the financial disclosures required by the Plan. In so doing, the Housing Authority violated the Plan adopted by the City Council – and in turn the LRHL's statutory mandate. As a result, the Housing Authority's decision must be reversed under the legal authority cited above.

B. NB Plaza Admittedly Failed To Submit A Financing Plan

The City Council had good reason to require that a prospective redeveloper submit a financing plan with its application. The proposed redevelopment is slated to be the largest in New Brunswick history – totaling in excess of $300 million. Under these circumstances, any reasonable municipal agency would want to understand (1) how a prospective redeveloper planned to finance such a large-scale project, and (2) who will be responsible for ensuring that these monies are available when the work begins. But somehow, none of this information was provided here.

The record shows NB Plaza produced no financing plan for this project. While the application lists an estimated cost of $300 million, it does not explain how the ***entire project*** will be funded. NB Plaza instead submitted three "letters of support" from purported financiers in which two of them (Jade and M&CF) suggest they will invest a total of $90 million and the third (Seraphim) expresses interest without making any financial commitment. NB Plaza supplemented its submission to include one additional "letter of support" from a family member (Howard Wieder) with a letter (from Galaxy Capital) summarizing the financing needed for the project. Neither company committed any additional financing for the project.

This lack of a financing plan was specifically discussed by the Housing Authority at the public meeting on February 28, 2024. During this discussion, the Housing Authority questioned why only $90 million out of the $300 million

development costs had been accounted for by NB Plaza in its submission. ("What I see here is only $90 million. So I don't know. Maybe I missed something."). In response, NB Plaza admitted that it did not have the remaining financing in place and would provide "***a full financial plan down the road***." *Pa000474-000475* (emphasis supplied). Despite this glaring omission, the Housing Authority still voted to approve NB Plaza as redeveloper at this meeting. *Pa000494-000497*.

Interestingly, the Housing Authority argues this Court should consider that the financial plan information was ultimately supplemented by the later adoption of the developers agreement. This contradicts Respondents' own repeated assertion that consideration of the issues must be limited to the documents available to the City Respondents at the time they adopted the resolution. Respondents cannot have it both ways---as the entities with the control over the language of the Plan, they could not simply choose to ignore certain of its words pending future supplementation.

In sum, the record contains ***no explanation*** for how NB Plaza plans to finance $210 million out of the $300 million needed to complete the redevelopment – ***70% of the total project cost***. Notwithstanding this lack of information, the Housing Authority somehow found that the materials it received were "in conformity with Section 8 of the Redevelopment Plan" and designated NB Plaza as redeveloper for the project. These findings are unsupported by the record which is "the essence of

arbitrary and capricious action." In re Boardwalk Regency Corporation, 180 N.J. Super. at 333. The Housing Authority's decision must be vacated.

C. Respondents Admittedly Failed to Solicit Bids

The Plan expressly states that the Housing Authority "shall consider both solicited and unsolicited proposals for designation of a redeveloper." *See Ex. H at 19*. But the Housing Authority did not solicit bids. *See Ex. I.* Nor did it consider proposals from other prospective redevelopers. *See Ex. I.* As a result, the Housing Authority failed to comply with the Plan – and by extension the LRHL.

Courts should try to give effect to every word of a statute to avoid rendering any part of it superfluous. Jersey Central Power & Light Co. v. Melcar Utility Company, 212 N.J. 576, 587 (2013). To that end, courts "must presume that every word in a statute has meaning and is not mere surplusage." Id.

Following these rules of construction, the Plan clearly required the Housing Authority to solicit competitive bids. The Plan states the Housing Authority "shall consider both solicited and unsolicited proposals" for redeveloper designation. *See Ex. H at 19*. Practically speaking, the Housing Authority could only consider solicited proposals if it solicitation bids for the redevelopment project. Otherwise, the terms "both" and "solicited" would be rendered meaningless and superfluous. New Jersey law does not permit this result. See Jersey Central Power & Light, 212 N.J. at 587 (holding courts must presume that every word in statute has meaning).

The Housing Authority's failure to solicit bids is yet another example of how it failed to comply with the City Council's rules. This constitutes arbitrary and capricious action requiring reversal. And the Bidders Association and James Byrne have a stake in the outcome of this litigation sufficient to confer standing upon them.

III. Citizens Association Properly Filed An Action In Lieu of Prerogative Writs

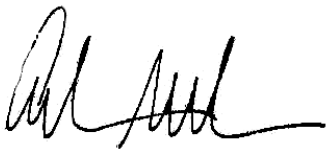
The Housing Authority states Citizens Association' improperly filed an action in lieu of prerogative writs, stating it concerns the Church, not the government entity Respondents. That argument ignores well settled associational standing precedent.

Indeed, the Citizens Association's complaint clearly establishes a stake in the litigation and an adverseness to Respondents. *Pa000037*. As members of the greater New Brunswick community, its members will be adversely affected by Respondents failure to properly investigate the Project, the purported redeveloper, and the purported financiers of the project. *Id.* The Citizens Association meets the low threshold to satisfy associational standing, as laid out in Appellants' initial submission, through both its Complaint and member certifications opposing the Project's development. New Jersey Citizens Action v. Riviera Motel Corp., 296 N.J. Super. at 416; N.J.S.A. 40:55D-4; *Pa000644-Pa000653*.

CONCLUSION

This Court should reverse the trial court's Orders and remand for a decision on the merits.

BRACH EICHLER LLC



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Dated: July 30, 2025