MARILEE J. CALHOUN
Town Clerk

KELLY M. MURRAN
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Town of Thompson

TOWN HALL
4052 Route 42
Monticello, NY 12701-3221

Telephone (845) 794-2500 Ext.302
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February 14, 2018

Lebaum Company, Inc.
PO Box 450
Monsey, New York 10952

Re: **Amended Summons & First Amended Verified Complaint**
Date of Action: 11/20/2012
Gan Eden Estates vs. Town of Thompson and Town of Thompson Planning Board

To Whom It May Concern:

Enclosed please find a copy of an **Amended Summons & First Amended Verified Complaint** on the above-mentioned matter that was dated and received into this office on 02/09/2018 from the Law Offices of Walters, McPherson, McNeill, P.C., Attorneys for the Plaintiff. Our office is putting you on notice of said matter. A copy has also been forwarded to the Town Attorney and Town Board.

Thank you in advance for your prompt attention to this matter and if you should have any questions regarding the above, feel free to contact our Town Attorney Michael B. Mednick, Esq. at (845) 794-5200.

Sincerely,

Marilee J. Calhoun

Marilee J. Calhoun
Town Clerk

Encl. (1)
MJC:kmm

PC: Michael B. Mednick, Town Attorney
18 Prince Street – PO Box 612
Monticello, New York 12701

Paula E. Kay, Deputy Town Attorney
548 Broadway
Monticello, New York 12701

Hon. William J. Rieber, Jr., Supervisor and Town Board
Gary J. Lasher, Town Comptroller
James L. Carnell, Jr., Director of Building, Planning & Zoning
Patrice Chester, Deputy Administrator

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

GAN EDEN ESTATES Plaintiff, v. TOWN OF THOMPSON and TOWN OF THOMPSON PLANNING BOARD, Defendants.	Index No.: 2017-2291 Date Purchased: 12/21/17 **AMENDED SUMMONS** Plaintiff designates Sullivan County as the place for trial. The basis of this designation is CPLR 503.

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the verified First Amended Complaint in this action, that is supplement to the complaint that was filed on December 21, 2017, with index number 2017-2291, and to serve a copy of your Answer, or, if the Complaint is not served with this Amended Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Amended Summons, exclusive of the day of service, or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to appear or answer, judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: February 9, 2018

Daniel E. Horgan (NY Bar: 2222099)
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By: Daniel E. Horgan
Daniel E. Horgan

By: Eric D. McCullough
Eric D. McCullough

Defendants' Addresses:

Town of Thompson Planning Board
4052 Route 42
Monticello, New York 12701

Town of Thompson
4052 Route 42
Monticello, New York 12701

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

GAN EDEN ESTATES Plaintiff, v. TOWN OF THOMPSON, and TOWN OF THOMPSON PLANNING BOARD, Defendants.	:	**FIRST AMENDED VERIFIED COMPLAINT** **Index No.: 2017-2291**

Plaintiff Gan Eden Estates, by their attorneys, bring this action against defendant Town of Thompson and its Planning Board, and allege as follows:

1. Gan Eden Estates, a New Jersey general partnership ("Gan Eden"), brings this action pursuant to CPLR §3001 for a declaration that certain provisions of the current zoning of the Town of Thompson, ("Town"), Sullivan County, New York, are void, illegal and otherwise unenforceable, together with such other relief as is requested herein or otherwise determined and appropriate to provide Gan Eden with the full scope of relief to which it is entitled.

2. Gan Eden is the owner of undeveloped property in the Town ("Property"), consisting of approximately 199 contiguous acres that are located in the "Suburban Residential District", and further identified as Tax Lot Section 2, Tax Block 1, Lot 6.3. The Property also has 13.4 acres in the adjacent Town of Fallsburg.

3. The Town is a municipality of the State of New York, and is located within Sullivan County. The creation of zoning regulations for the lands within its borders is among its powers and obligations under New York Town Law §261.

4. The Town of Thompson Planning Board ("Planning Board") is a planning board created by the Town, and has assumed the role of lead agency for review of a development proposed by Gan Eden in the Town under the State Environmental Quality Review Act

("SEQRA").

Zoning for Multifamily Development and the Gan Eden Property

5. The current zoning enacted by the Town ("Zoning") permits residential uses in the Suburban Residential District that are denominated as one-family dwellings, two-family dwellings, row houses, multiple dwellings and planned unit developments, as well as hotels and motels. Central water and sewer facilities are required for some uses, and optional for others, but where optional, such facilities allow for development at greater densities when water and sewer are provided.

6. The Zoning provides maximum densities in the Suburban Residential District at which each of such uses is permitted to be developed on the Property. Building height limitations, and many other limitations in the Zoning, limit the overall density of residential development on the Property.

7. State law and regulations strictly regulate the availability of potable water for residential development. Those State standards require that any on- site potable water supply system demonstrate the sustained minimum amount of water that the on-site water system is capable of supplying. That calculated amount then establishes yet another limit on the number of residential bedrooms that can be served by the water system.

8. SEQRA mandates a review of major project approvals, and the conduct of such a SEQRA review further ensures that limitations on development linked to the allowable use of potable water are fully enforced, as well as other protections for the health, safety and welfare of all members of the public.

9. The Zoning creates a further limitation on the density of multi-family and other uses within the Suburban Residential District, other than single-family homes, by limiting the density of uses per acre to calculation based on a "net acreage". The net acreage for density calculations is determined by subtracting the areas of steep slopes, environmentally sensitive areas, such as wetlands, critical species habitat, road rights-of-way, and other easements to arrive at a "net

acreage" from the total site acreage. That net area then becomes the base number for density calculations.

10. As a consequence of the structure of these density provisions of the Zoning, and State laws and regulations, the calculation of the actual residential density for uses on a particular property in the Suburban Residential District requires a multi-disciplined, professional determination of numerous engineering and environmental criteria and factors, including the area of net acreage and the amount of potable water available to establish the number of bedrooms to be permitted to be served by an on-site water system.

Gan Eden Planning for Multifamily Residences

11. Gan Eden has followed such an approach and determined that the net acreage of its Property available for development under the Zoning is 133.95 acres out of a total site of 198.96 acres in the Town (and not including 13.38 acres of property in the adjacent Town of Fallsburg), as set forth in the following table from its pending site plan application to the Town:

Property Area (Ac.)			Wetlands (Ac.)	Steep Slope Area (Ac.)	Exist. ROW (Ac.)	Exist. Pond (Ac.)	Net Acreage
Thompson	Fallsburg	Total	*Total*	>20%	Total	Total	Ac.
a	**b**	**c**	***d***	**e**	**f**	**g**	**h=(a-d-e-f-g)**
198.96	13.38	212.34	*18.92*	42.09	0.86	3.14	133.95

12. Gan Eden has also engaged professionals and experts to determine that on-site wells can provide sufficient and sustainable supplies of potable water to permit the construction of a residential project consisting of 1341 bedrooms. See: **Exhibit A**, Affidavit of Verification of William A. Canavan, incorporated herein.

13. Gan Eden has owned the Property in the Suburban Residential District for many years. It was formerly developed as a resort hotel, but is now vacant land at the intersection of Sullivan County Routes 104 and 107. It has been common knowledge for many years that Gan

Eden proposed development of the Property.

14. A conceptual plan for development of Gan Eden was prepared, submitted and discussed with the town of Thompson Supervisor and Planning Board in 2010. That Planning concept illustrated a total of 885 mixed residential types that included Townhomes, apartments and senior apartments.

Opposition to the Gan Eden Project

15. Before the Gan Eden project ("Project") had undergone, or even begun SEQRA review for such issues as potable water supply, traffic, population impacts, housing needs, wetlands, wastewater treatment and the overall nature of the proposed development, a local group has maintained a campaign against the Project and, upon information and belief, continues to pressure the Town to thwart the Project.

16. That group is the Columbia Hill Neighborhood Alliance ("CHNA"), and its stated purpose is to oppose the Gan Eden Project, the purpose of such opposition being stated in the following terms:

> We seek a properly conceived and scaled project for Columbia Hill. It is only when we ensure a viable infrastructure that we will maintain the lifestyle we have chosen. To accomplish this we will engage necessary decision makers and help guide sustainable development. Source: *WHO WE ARE, http://www.columbiahill.org, last accessed November 28, 2017.*

17. In advancing what it describes as the "lifestyle we have chosen", CHNA has stated:

> We plan on continuing our efforts in 2017 to educate the public about the status of the Gan Eden project and to lobby the Town of Thompson to ensure that the project is handled according to Town code and State law. ...We're also going to be involved in the election of local politicians more favorable to sensible, right sized growth." *SOURCE: http://www.columbiahill.org/letters.html,* ***Moving Forward****, excerpted, last accessed November 28, 2017.*

18. As a private group of individuals, CHNA may hold whatever opinion it chooses, and may express its opinion to public officials. The Town, and all public officials, are otherwise obligated to provide zoning and administer the law free from any prejudices, bias or other improper considerations that may be presented to them by CHNA.

Gan Eden's Multifamily Residential Rental Project

19. Gan Eden is owned and controlled primarily by principals of Atlantic Realty Development Corporation of Woodbridge New Jersey, which has developed, owns and operates over 80 high quality residential projects throughout New Jersey, and a number of luxury residential projects in New York City.

20. Gan Eden intends to develop the Property and retain ownership of the units, which it plans to rent to qualified individuals in accordance with all laws, rules and regulations, such as the Federal Fair Housing Act.

21. Gan Eden has the means and experience, as well as the access to capital, to produce, own and operate a successful residential rental development on the Property. It fully intends to do so.

22. Gan Eden has been aware that CHNA and others opposed development of the Property, and that those objectors had concerns on the suitability and feasibility of development of the 885 units proposed in the 2010 concept plan.

23. In March 2016 Gan Eden submitted an amended site plan for the Property ("Site Plan") to the Planning Board that proposed the development of 535 residential units in the form of 147 attached townhouses and 388 apartments in multifamily dwellings together with central, on-site water and sewer systems, internal roads, a clubhouse for residents and other facilities appropriate for a rental residential community on the Property.

24. The Site Plan provides for an overall density of development of 4.0 residential

dwelling units per net acre, which includes both townhouses and apartments. Site development utilizes only 8.59% total building coverage whereas 20% building coverage is permitted. The location of the proposed uses and the structures proposed in Gan Eden's Site Plan, and the general character of development, have been designed with full consideration for the provisions of the Zoning, with the sole exception of the present density of multifamily dwelling units as interpreted by the Town. The layout and design minimize site disturbance and provide the maximum preservation of existing natural conditions and open space. The characteristics of the plan are more fully described in the Affidavit of Verification of Joseph J. Fleming attached and incorporated as **Exhibit B**

25. The Planning Board received the Site Plan and has designated itself as the lead agency to conduct analyses for the development of the Property under SEQRA.

26. Gan Eden has engaged engineers, surveyors, hydrogeologists, attorneys, and others in furtherance of development of the Property, including for the SEQRA process. The Planning Board has also required Gan Eden to pay substantial sums for services provided to it by additional consultants engaged by the Planning Board. Those costs are escalated and duplicated as Gan Eden is also, voluntarily, paying the adjacent town of Fallsburg for attorneys, engineers, planners, and hydrogeologists.

27. The Town of Fallsburg is involved only because some of the wells providing potable water are located on the 13.4-acre portion of the Property that lies within that town.

28. In anticipation of proceeding with the approval process, and the SEQRA process, Gan Eden has drilled wells and conducted hydrogeological studies to determine the availability of adequate quantities of potable water to support the development of its Site Plan. It has submitted studies to the Planning Board for review by its consultants engaged for such purpose at Gan Eden's expense. These studies demonstrate, among other things, that development of the Gan Eden Site Plan will not be limited by a shortage of potable water. The adequacy of

potable water supply is established by the affidavit of William B. Canavan, an expert hydrogeologist, attached as **Exhibit A.**

29. Hydrogeological studies, plans and other materials have been provided to the Planning Board and the Town and made a public record. All such information is also available to the adjacent Town of Fallsburg where the wells on the Property are located.

30. All information available to Gan Eden, including the information provided to the Planning Board, Town, Fallsburg, and the public, demonstrates that there is no basis to believe that the development of the Property at a density of 535 dwelling units, as proposed, would create any threat to the public health, safety, or welfare, including any threat to the natural environment from pollution or other actual physical harm.

31. The Zoning permits development of the Property with forms of dwellings other than multifamily apartments at the same or greater densities than the density proposed under the Gan Eden Site Plan. Such development would be almost certain to require more building coverage and a greater area of site disturbance than the Gan Eden Site Plan.

The Need For Multifamily Rental Housing In The Town

32. At and before January 2013 the Town was reviewing and approving development of a 1,583-acre site and amending §250-27.2 of its previously created zoning for Planned Resort Development. It was simultaneously conducting an in-depth SEQRA review of the plan for the EPT Concord Resort project.

33. Among the formal SEQRA findings of the Town Board of Thompson on that

review were the following[1]:

a. The annual operation of the resort project will produce approximately 2,642 permanent, FTE (full time employment) jobs in the resort itself.

b. The economic influence of the resort will produce an additional 1,299 FTE indirect and induced permanent jobs within Sullivan County.

c. The total estimated number of new, permanent jobs within Sullivan County will be 3,871 jobs.

d. The total projected effect on the local economy within Sullivan County is $598.53 million, including indirect and induced demand.

e. The Town would receive approximately $42.5 million in real property tax alone.

34. With respect to the potential impact on the local economy of a projected 3,871 new full-time jobs created by the economic impacts of just the EPT Concord Resort, the Town reached the following conclusion in its SEQRA Findings, at page 75, under the heading of "LOCAL ECONOMY": ***Employees. A portion of the 2,642*** [full time] ***jobs would be filled by employees who would be new to the County, as they would move to the area as a result of the Proposed Project.***

35. The Town's findings continued and included this conclusion: ***Residential Development. Housing demand in Sullivan County could rise as a result of the Phase 1 development, as some of the new jobs would be filled by those who would move to the County as a result of the Proposed Project. However, most of the employment generated by Phase 1 would be drawn from the local labor force. It is likely that any new housing demand generated by the development of Phase 1 would first be absorbed by the existing housing stock.***

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[1] Lead Agency Findings Statement, SEQRA: EPT Concord Resort, Received January 28, 2013, Town Clerk, Town of Thompson, NY

36. As set forth in the foregoing paragraphs 34 through 35, the Town was fully aware, and officially acknowledged that it should anticipate a significantly increased level of employment in Thompson due to the creation of over 3,800, new full-time jobs within the Town itself.

37. There was no rational basis for finding by the Town that the existing housing stock within the municipality could absorb any significant portion of the local housing demand generated by these new jobs projected to be created.

38. At this time and, on information and belief, at no time since 2010, did the Town conduct a survey, study, or planning analysis that determined if the existing housing supply in the Town would be adequate to meet prospective demand for housing to be generated by new resort development or any indirect increase in employment or other indirect economic activity generated in the Town.

39. From 2010 through the present the Town has no factual basis to accurately project the existing or prospective rental housing needs within the Town.

40. Even without the additional housing demand generated by 3,800 new full-time jobs in the town of Thompson, the existing supply of rental housing, principally rental apartments, is inadequate to meet the needs of the community and its residents.

41. Based upon data collected by the US Census Bureau through its American Community Survey (2011-2015) 60% of the rental households in Thompson pay a gross monthly rental that exceeds 30% of their household income. These households are considered "housing cost-burdened" by the US Department of Housing and Urban Development (HUD). This is higher than Sullivan County (53%), New York State (54%) and the United States (52%).

42. Upon information and belief, the Village of Monticello, within Thompson, has re-

zoned several neighborhoods to reduce multi-family dwellings and re-convert them to single and two family residences. This is intended to and will likely reduce the number of multi-family units available to the residents of Thompson. A reduction in the number of available units inevitably increases the demand for the remaining units, and further burdens that portion of the community that is cost-burdened.

43. Gan Eden's proposed development of its Property with the inclusion of 388 rental apartments and 147 rental townhouses at a density of four dwelling units per net acre, is consistent with the permitted density for townhome dwellings, and would serve the public health, safety, and welfare of the Town in each of the following ways:

a. Meet an existing need for safe, efficient, and well-planned rental housing by adding substantially to the supply of rental housing within the community, in close proximity to the major source of new employment, the casino-resort development.

b. By increasing the supply of rental housing, Gan Eden's rental units would help to stabilize apartment rents in the Town and surrounding communities.

c. Allow for the development of the Gan Eden site essentially as zoned by the Town, but without unreasonable restrictions on the development of rental apartments.

Discrimination Against Multifamily Rental Apartments in the Zoning

44. At the time in 2010 when Gan Eden proposed the concept of developing 885 dwelling units on the Property, the Zoning permitted a density for multifamily dwellings computed on a formula based on number of bedrooms that produced between 6 to 10 dwelling units per net acre in the Suburban Residential District. That prior zoning determined density as a function of the number of habitable bedrooms. See: Affidavit of Verification and annexed report of Keenan Hughes, attached and incorporated as **Exhibit C**.

45. On information and belief, CHNA began its campaign of opposition to the Gan Eden project in 2012. A principal objection that CHNA raised was the number of dwellings that might be built as part of both the Gan Eden development and another development named Kelli Woods. Kelli Woods has not been developed nor has it applied for any approvals.

46. Without any study of the community's housing needs, and without any other valid reason, in 2013 the Town changed the Zoning to its present form and lowered the density for multifamily units to 1.9 dwelling units per net acre of property in the Suburban Residential District.

47. This change was accomplished by the adoption of **Local Law 13-2012**, which reduced the allowable density for multifamily rental units in the Suburban Residential District and on the Gan Eden Property to 1.9 dwelling units per net acre. **Local Law 13-2012** replaced the prior density provisions that were based upon habitable bedrooms with a density of 1.9 units per net acre, without defining any bedroom limits for such units.

48. Based upon information and belief, the intent of the Zoning is now to limit the number of "dwelling units" not bedrooms.

49. The Zoning sets two sets of standards for what is essentially the same type of dwelling within the Suburban Residential District under §250-28 of the Zoning:

a. "Row" housing is a group of one-family dwelling units attached to each other.

b. "Multiple Dwellings" contain three or more rental apartments.

50. The individual dwelling units in both row houses and multiple dwellings are envisioned by the Zoning to be contained within buildings that are limited in their overall dimensions under §§250-28, C (2) and (1), respectively.

51. Multiple dwellings are clearly identified as containing rental units. This sets

them apart from all other forms of housing permitted in the Suburban Residential District.

Row Houses

52. Row houses are permitted to contain units of smaller size than multiple dwellings. Row house dwelling units have a minimum habitable floor area of only 500 square feet.

53. Each dwelling in a multiple dwelling is required to be at least twice as large as the minimum for row house dwellings, with a minimum habitable floor area of 1,000 square feet.

54. The Zoning, as amended by **Local Law 13-2012**, allows row house dwelling units at a density of 4.0 units per net acre, but restricts multiple dwelling units, that is rental units, to a density of only 1.9 units per net acre.

55. What distinguishes, and excludes, the multiple dwellings on the Gan Eden Site Plan from row houses under §250-28, C (2) of the zoning is an ownership requirement that: ***"Row or attached housing consisting] of a series of attached one-family dwelling units, each located on its own individual lot owned in fee simple, not owned in fee simple, or in condominium ownership...".***

56. If the purpose of the provision in the foregoing paragraph is to require that the occupant of the dwelling unit in a row house building be its owner, or that the dwelling unit be separately and individually owned, then it is outside the power of the Town to impose under its Zoning, and is otherwise arbitrary, discriminatory and illegal.

57. If the purpose of the same provision is to require separate subdivided lots for each of the several dwelling units in a row house building so that the building must be made a condominium, or to make development of such a building otherwise impossible under the

Zoning because subdivision or other zoning standards cannot be met by a subdividing a single building into multiple lots, then it is arbitrary, discriminatory, capricious and outside the power of the Town to impose under its zoning.

Other Forms of Housing in the Suburban Residential District

58. By segregating and excluding "townhouses, duplexes, fourplexes and row houses" from the category of multiple dwellings in §250-28, C (1), those forms of housing fall within the category of row or attached housing regulated under §250-28, C (2).

59. The Zoning defines townhouse as "TOWNHOUSE - A building consisting of a series of noncommunicating one-family sections, each owned in fee simple, having a common wall between each two adjacent sections."

60. The Zoning defines a duplex as "DUPLEX - a building designed for or occupied exclusively by two families living independently from each other."

61. The Zoning does not define the other terms used, "fourplex" or "row house".

62. The Zoning does provide a definition for "DWELLING, MULTIPLE - a series of attached one-family dwelling units, each unit located on its own individual lot."

63. The Zoning uses the terms identified in the foregoing paragraphs 58 through 62 to establish ownership requirements for dwelling units in buildings containing three or more individual dwelling units. Zoning provisions that dictate ownership requirements are illegal, arbitrary, capricious and not a proper exercise of the zoning power.

Density Requirements of the Zoning

64. The Zoning sets density for dwelling units per net acre in the Suburban

Residential Zone for dwelling units owned by their residents at more than twice the density set for similar if not identical rental units.

65. There is no valid, proper or legal reason, other than discrimination against rental units, for any of the distinctions between "multifamily dwellings" and other forms of attached housing established in the Zoning, including §250-28 and the Schedule of District Regulations for the Suburban Residential District.

66. This discrimination in the Suburban Residential Zone is directed against Gan Eden and its development, particularly its present Site Plan.

67. Such discrimination is illegal, but also contrary to the need for rental housing in the Town.

68. The Town's own official projection, made in January 2013 of over 3,800 new full-time jobs being created within the Town by the development of the Adelaar Resort and the Montreign (now known as the Resorts World) casino, and the additional finding that housing demand from these jobs would consume all existing housing stock and generate additional demand for housing within the Town, make the adoption of **Local Law 13-2012** to reduce the supply of rental housing, a cynical, arbitrary, capricious, unreasonable action, and one that was contrary to the Town's obligations to zone only for purposes of protecting the public health, safety, welfare, and morals of the community.

69. The density adopted by the Town in 2013 by **Local Law 13-2012** for multifamily dwellings in the Suburban Residential District is arbitrary, capricious, unreasonable and serves no legitimate governmental purpose in that it:

a. Sets an arbitrary and unreasonably low standard for the developmental of rental apartments in the community

b. Changed an existing, reasonable standard without any basis

c. Unreasonably discriminates against the construction and development of multifamily rental housing by reducing its density and increasing the cost to develop such units

d. Frustrates the health, safety, morals, or general welfare of the community by restricting and, in many cases, precluding the development of a use that is otherwise proper and permitted

e. Restricts and discriminates against multifamily rental housing that is necessary in the community and required by many of its residents.

70. Rather than conducting any study of the community's exiting and prospective housing needs, the Town implemented a major downzoning of its residential lands by dramatically reducing the allowable density for multifamily housing.

An Arbitrary Test for Compatibility

71. In §250-28 A of the Zoning, of the various uses permitted, only multiple dwellings, hotels and motels are subjected to a test of "compatibility", which requires the Planning Board to determine "… that the location of the proposed uses and the structures proposed and the general character of development are compatible with the surroundings and such other requirements of this Part 1 as may apply."

72. Other residential uses permitted on the Property by the Zoning are not subjected to a test of compatibility by the Planning Board, including row houses and attached dwellings that are also controlled by the standards §250-28 of the Zoning.

73. The test of compatibility as specified in §250-28 A of the Zoning is not authorized under the Town Law §261 et seq.

74. The test of compatibility as specified in §250-28 A of the Zoning is arbitrary, capricious, unreasonable and serves no legitimate governmental purpose in that it:

a. Does not set a discernible standard for review of a site plan or other plan for the development of property in the Suburban Residential District.

b. Impermissibly delegates zoning authority to the Planning Board.

c. Permits subjective findings with respect to "surrounding conditions" outside the property, and even outside of the zoning district to indiscriminately control multiple dwellings within the district where property is sought to be developed.

d. Applies to only one type of private residential use within the district, but not others, without rational basis for such selective distinction.

e. Allows and encourages discrimination against multifamily dwellings for purposes that are improper, immoral, unconstitutional and otherwise discriminatory.

A Pattern of Discrimination

75. The Town has not established provisions that allow for the construction of residential rental projects; and, whether by design, intention, or simple indifference to the needs of the Town and its obligations to zone properly for the welfare of the community, the Zoning presents a pattern of discrimination against rental housing that further establish the arbitrary, capricious, unlawful and illegal nature of the multifamily zoning in the Suburban Residential District.

76. The reduction of density for multifamily dwellings for the Property to 1.9 units per net acre by **Local Law 13-2012** created a density limitation that was far less than any other

zone where multifamily dwellings were ostensible permitted.

77. The Zoning purports to allow multifamily residential development in various residential zones at a density of 4.0 dwelling units per net acre, but effectively excludes rental apartment units from development in those zones by provisions requiring that the unit be owned and not rented.

78. One example of this discrimination based upon ownership and economic status is §250-27 of the Zoning entitled "Planned Unit Development" which permits residential use which "...may be any type...as provided elsewhere in this Part 1." The reference to "Part 1" is a reference to the entire Zoning code.

79. The Schedule of District Regulations for the Suburban Residential Zone, which is Appendix A to the Zoning (Schedule"), provides for a residential density of 4.0 Units per Acre in a Planned Unit Development, but a further referenced sub-section, §250-27 refers back to "...the appropriate number of dwelling units per acre for the district in which such site is located", which would either impose the same 1.9 units per acre for "multiple dwellings" under §250-28, C (1) or allow for greater density only at the arbitrary discretion of Town boards, officials and advisors.

80. "Multifamily dwellings" are also permitted by §250-27.2, B (2) (a) (5) in the Planned Resort Development Zone ("PRD") in accordance with a Comprehensive Development Plan ("CPD") to be approved by the Town Board under §250-27.2, B (3). The density of residential development permitted by the CPD is 4.0 units per acre of net site area. §250-27.2, B (3)(b)(1). Density for rental multifamily dwellings in the PRD is treated no differently than the density for any other type of multifamily housing.

81. Virtually unlimited discretion of the Town Board over the PRD, and the fact that this is the very resort zone slated to produce thousand of jobs through extensive non-

residential development, create no rights to develop, nor likelihood of development of residential rental housing in the PRD.

82. Upon information and belief, there are no proposals to provide any significant amount of residential rental housing at the resort, nor are such proposals likely. As a result the PRD will not meet the rental housing needs of the Town as those needs have been acknowledged by the Town in its 2013 findings under SEQRA.

83. The arbitrary and unreasonable restriction of multifamily rental housing is most manifest in §250-28.2 of the Zoning, which provides for a floating zone linked only to Highway Commercial ("HC") districts. §250-28.2 provides for a "Workforce Housing Development District" ("Workforce District" of "WFD").

84. This district is not permitted in other residential zones, and carries a number of occupancy restrictions and limitations to ensure an economically segregated community and other limitations that are discriminatory on their face, guided in all respects by the stated purpose of this zone:

> The Town Board has determined that there is a need for housing developments located and designed to meet the needs of everyday working families and citizens of the Town of Thompson, to be known as "workforce housing developments" and believes that workforce housing should be encouraged by the Town of Thompson. Such housing developments will tend to contribute to the dignity and independence of people at a greater range of income levels. Workforce housing developments, if not properly located, constructed and maintained, may be detrimental to the general welfare, health and dignity of the residents. It is also deemed essential that the Town of Thompson safeguard against the deterioration of a workforce housing development. *§250-28.2 Workforce Housing Development District. subsection A.(1) added by Local Law 7-2012.*

85. The WFD does not provide zoning as-of-right in any area, or on any particular property. The Town Board has reserved unto itself the "sole discretion" whether to even

accept, much less approve, an application for workforce housing development. §250-28.2 K (1)

86. Among other discriminatory provisions of the WFD zone is the economic discrimination inherent in §250-28.2 G which limits occupancy to households whose combined total income "...is at or below the threshold set by the New York State HCR, or other successor agency as designated by the State of New York". §250-28.2 G (1).

87. HCR refers to the New York State Homes and Community Renewal agency, which publishes both statewide, area and county income tables of income limits for low-income families earning various percentages of the low-income limit for each of those areas or counties, as well as for the state as a whole.

88. The current HCR tables for 2017 establish varying income limits for all areas within New York, including Sullivan County. The particular income limit depends on the number of persons in a household, and which percentage of the local poverty level is applicable. There are eight levels of percentage of poverty level, ranging from 30 percent of the low-income limit to 166 percent.

89. The Zoning for WFD fails to establish which of the many income limits, or combinations thereof, would be applicable to establish a WFD zone, making the income limitations even further arbitrary and discriminatory.

90. No provision of the Zoning provides a reasonable opportunity to develop residential multifamily housing in the Town without arbitrary and illegal distinctions drawn to suppress rental housing development.

91. When the zoning allows more than twice the density of units per acre for independently owned residential units such as condominium and other units that are more

expensive to acquire and occupy than rental apartment units, rental units are placed at an unfair and illegal disadvantage.

92. Whether the purpose of such zoning is intentional discrimination through convoluted zoning provisions, definitions, requirements, procedures and other means, or simply governmental neglect of its obligations to create zoning districts without discrimination against rental housing, the effect is the same - improper and illegal zoning.

Improper Burdens On Housing
-Mandatory Obligations and Parkland Fees -

93. In December 2016, and again in December 2017, the Town added substantial, additional obligations upon new housing development applications for the mandatory contribution of land and payment of fees for park and recreation purposes.

94. A planning board is authorized by Town Law §274-a(6)(a), and §277(4)(a), to require the reservation of land for parks on site plans or in subdivisions, respectively, or to impose fees, after following the procedures in those statutes.

95. The Town Law limits the ability of a planning board or other board to require the reservation of land for parks on an applicant's site plan or subdivision until after the board reviewing it has concluded that a "proper case" exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. A planning board or other board's consideration of a "proper case" shall include, "an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth **to which the particular [site plan or subdivision plat] will contribute."** §274-a(6)(b) and §277(4)(b).

96. The Town Law alternatively authorizes a planning board to require payment of a sum of money, after first finding a "proper case" exists, and then only if "a suitable park or parks of adequate size to meet the requirement cannot be properly located on such [site plan or subdivision plat]", in an amount established by the town board. Town Law §274-a(6)(c) and §277(4)(c).

97. In December 2016, the Town added a new article to its Zoning, codified as **Article XIX** of Chapter 250 of the Town Code, for the purpose of adding substantial, mandatory conditions on the approval of a subdivision or a site plan, which conditions exceed the scope of authority created by the Town Law, and which are confiscatory under the United States and New York Constitutions.

98. The Town created the provisions of **Article XIX** in three steps over a period of one year:

a. The Town enacted **Local Law 8-2016** in December 2016 initially creating **Article XIX**.

b. Six months later, in June 2017, it adopted a Parks and Recreation Study.

c. Six months after that, in December 2017, it enacted **Local Law 8-2017** amending provisions of **Article XIX**.[2]

-Creating Article XIX-

[2] The local law adopted by the Town in December 2017 was advertised, considered and adopted as Local Law #8-2017, but is listed as Local Law 7-2017 on the official, on-line code service of the Town. See: *https://www.ecode360.com/laws/TH0750*, accessed 1/30/18. In this amended complaint it is referred to as Local Law 8-2017.

Local Law 8-2016 - Mandatory Fees

99. In December 2016, the Town adopted **Local Law 8-2016** entitled: "A local law amending Chapter 52 entitled 'Planning Board and Zoning Board of Appeals'" and Chapter 250 entitled '"Zoning and Plan Unit Development'" of the Town of Thompson Code" ("Local Law 8-2016"). A true copy of **Local Law 8-2016** is attached as **Exhibit D.**

100. A purpose of **Local Law 8-2016** was to permit the Planning Board to require the reservation of land in subdivisions or site plans for park or recreational purposes.

101. An additional purpose of **Local Law 8-2016** was to require a park or recreational fee for all subdivisions or site plans, without regard to whether the Planning Board determined that adequate recreational space could be provided on the subdivision or site plan.

102. Paragraph 1 of **Local Law 8-2016** amended §52-3(E) of the Town Code pertaining to the Planning Board. Prior to **Local Law 8-2016**, §52-3(E) required an applicant to the Planning Board to remit a fee for recreational purposes in an amount determined by the Town Board, in the event the Planning Board concluded that an adequate park could not be located within any subdivision or would otherwise be impracticable.

103. **Local Law 8-2016** amended §52-3(E) to require the Planning Board to condition approval of a subdivision or site plan upon payment of a fee, pursuant to Town Law §277(4) and § 274-a(6), respectively. The amount of the fee would be in an amount to be calculated in the newly enacted **Article XIX**. Among the amendments to §52-3(E) approved by **Local Law 8-2016** was the direct reference to §274-a and 277 of Town Law.

104. Paragraph 2 of **Local Law 8-2016** amended Chapter 250 of the Town Code by adding the new **Article XIX**. **Article XIX** includes new §250-151 to 250-154. §250-151 and 250-152 apply to subdivision applications; § 250-153 and 250-154 apply to site plans.

105. **Local Law 8-2016**, § 250-151 defines procedures for considering park, playground, and recreational sites in subdivision applications, purportedly pursuant to Town Law § 277(4); however, **Local Law 8-2016**, §250-151(A) does not limit the Planning Board's authority to consider recreational needs to only residential subdivisions, unlike Town Law § 277(4)(a), which limits the Board's authority to only applications for subdivision plats with residential units.

106. **Local Law 8-2016**, §250-151(B) and (C) follows, in substance, the provisions of Town Law §277(4)(b) and (c) by requiring the Planning Board to make a finding of a "proper case" considering the factors identified in the Town Law. **Local Law 8-2016**, §250-151(D)-(F) includes provisions not found in Town Law §277(4).

107. **Local Law 8-2016**, §250-152 sets out standards for determining the number of acres that the Planning Board may require in a subdivision, based upon assumptions concerning the number of people who would dwell within different types of units (e.g., four people in a single-family detached home; one person in an "efficiency" apartment). However, rather than provide for a case-by-case analysis for each application, **Local Law 8-2016**, §250-152 applies these assumptions across the board to every application for subdivision. **Local Law 8-2016**, §250-152(A) then states an arbitrary and unsupported standard that the Planning Board may require one acre to be provided for by the developer for every 100 people in a development.

108. **Local Law 8-2016**, §250-152(B) mandates that if the Planning Board requires incorporation of recreational facilities on the subdivision plat, the applicant shall pay $1,250 per unit or lot, whichever number is greater, and that if the Planning Board does not require incorporation of recreational facilities on the subdivision plat, the applicant shall pay $2,500 per unit or lot, whichever number is greater.

109. **Local Law 8-2016**, §250-152(B) directly contradicts Town Law §277(4)(c), and **Local Law 8-2016**, § 250-151(C), which both require payment of a fee only in the event the

Planning Board does not require the applicant to incorporate of parks or recreational facilities on the subdivision plat.

110. **Local Law 8-2016**, §250-152(B) is also arbitrary and unsupported because the Town Board made no findings prior to its adoption to support a fee of either $1,250 or $2,500 per unit or lot.

111. **Local Law 8-2016**, §250-153 and -154 address site plans. Section 250-153 directly references Town Law §274-a(6).

112. **Local Law 8-2016**, §250-153(A) and (B) follow, in substance, the provisions of Town Law §274-a(6)(a) and (b).

113. **Local Law 8-2016**, §250-153(C) departs from Town Law §274-a(6)(c) by omitting the following language, which appears in both Town Laws §274-a(6)(c) and §277(4)(c), as well as **Local Law 8-2016**, §250-151(C):

> In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park and recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes pursuant to the provisions of this section shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

114. **Local Law 8-2016**, §250-153(C) thus fails to establish standards to be considered by the Planning Board when resolving the suitability of onsite accommodations of recreational facilities for site plan applications. Town Law §274-a(6)(c) does include standards, which the Town has not adopted. (As noted, the Town did adopt the Town Law standards as applicable to subdivision applications under Town Law §277(4)(c).).

115. As a result of the omission of the foregoing language, **Local Law 8-2016**, §250-153(C) enacted different provisions for Planning Board consideration of site plans and

subdivisions, and is inconsistent with Town Law §274-a(6)(c), on which the Town purports to base its authority to enact the subsection.

116. **Local Law 8-2016**, §250-153(D) establishes a mandatory fee for all site plan approvals as follows:

> The Planning Board **shall require as a condition of approval of any site plan containing residential units a payment to the Town of a Parkland fee**, which fee shall be available for use by the Town exclusively for park, playground or other recreational purpose, including the acquisition of property. [Emphasis added]

117. The foregoing mandate clearly requires the Planning Board to impose a fee on "any site plan containing residential units," and provides no exceptions for housing developments of over four dwelling units. Town Law §274-a(6) includes no identical or comparable language, and the Local Law conflicts with Town Law §274-a(6)(c), which permits imposition of a conditional fee only when the Planning Board does not mandate inclusion of a park or recreational facility on the site plan.

118. **Local Law 8-2016**, §250-151 does not include the provision found in **Local Law 8-2016**, §250-153(D), and thus may impose a different standard for imposition of fees for site plans and subdivisions, despite the fact that no such distinction exists in Town Laws §§274-a(6) and 277(4).

119. **Local Law 8-2016**, §250-154(A) imposes the identical, arbitrary, and unsupported standard concerning the number of people residing in different classes of homes, and the number of acres necessary per 100 people, as are contained in **Local Law 8-2016**, §250-152(A).

120. **Local Law 8-2016**, §250-154(B) requires that if the Planning Board has mandated inclusion of recreational facilities on the site plan, the applicant shall pay a fee of $1,250 per unit

or lot, whichever is greater, or $2,500 per unit or lot, whichever number is greater, if the Planning Board has not mandated inclusion of recreational facilities on the site plan.

121. **Local Law 8-2016**, §250-154(B) is thus directly contrary to Town Law §274-a(6)(c) and **Local Law 8-2016**, §250-153(C), which require payment of a fee only in the event the Planning Board does not require incorporation of parks or recreational facilities on the site plan. **Local Law 8-2016**, §250-154(B) is also arbitrary and unsupported because the Town Board made no findings to support a fee of either $1,250 or $2,500 per unit or lot.

122. No valid or rational reason exists to mandate, as a condition of approval, the payment of parkland fees on one kind of housing development (site plans), while making the parkland fees optional for others (subdivisions), particularly for virtually physically identical housing units.

123. As set forth aforesaid, other provisions of the Zoning Code have placed burdens on residential rental housing approvals that make them more difficult and costly to obtain.

124. A parkland fee, mandatory on site plans, but discretionary on subdivisions, constitutes an improper burden on residential rental housing that is developed through site plan, but not subdivision approvals.

125. Town Laws §274-a(6)(c) and §277(4)(c) do not specify how a local board hearing a site plan or subdivision application is to make the fact-sensitive determination of what recreation facilities would be suitable in a particular case for a particular housing development.

126. Nor do those sections of Town Law specify how a Town Board should determine the sum of money required to be paid in lieu of such facilities being provided on-site.

127. Both these fact-sensitive considerations were made in **Local Law 8-2016** without any regard to the particulars of any subdivision or site plan application or approval.

128. The provisions of Town Law §274-a(6)(c) that have been omitted from **Local Law 8-2016** are elements of constitutional due process requiring an essential nexus between the site plan and the need to provide parkland or recreation facilities beyond those included on the site plan.

129. The right of a municipality to impose conditions upon approval of land use approvals, including **Local Law 8-2016**, as amended by **Local Law 8-2017**, is subject to decisions of the Supreme Court of the United States describing when such conditions are permissible, and when conditions are confiscatory, e.g., Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).

130. In December 2016 when **Local Law 8-2016** was adopted, there was no shortage of public recreation facilities available in the Town.

131. Any perceived shortage of recreation facilities was not attributable to any increased population anticipated by the development of the Gan Eden Site Plan pending before the Planning Board.

132. Gan Eden's site plan proposes substantial on-site facilities to meet the needs of its residents, including three playgrounds, a large outdoor swimming pool, a tennis court, a clubhouse, and large areas of open space freely available to its residents and guests for passive and active outdoor recreation.

133. Substantial publicly available facilities also exist in the Town and adequately serve the present needs of its residents.

134. In December 2016 the Town had no basis to conclude that any shortage of public recreation facilities existed for residents of the Town.

135. In December 2016 the Town had no financial, or other analysis of parks or recreation facilities, existing or proposed, upon which to base the fees of $2,500 and $1,250 adopted by it in **Local Law 8-2016**.

136. The fees adopted in **Local Law 8-2016** were adopted without any basis in fact and arbitrarily as exactions to be imposed upon site plan approvals.

137. The fees imposed in **Local Law 8-2016** are excessive in the circumstances.

138. There is no rationale or factual basis in the record for the application of a uniform standard for the number of persons in particular forms of residential units. Each subdivision or site plan application must be evaluated on a case-by-case basis before reaching a conclusion on a "proper case" requiring specific park or recreational facilities.

139. There is no rationale or factual basis in the record for establishing a one-acre requirement for every 100 persons in a development.

140. No basis exists from the actual review of any site plan or subdivision that such reservation of land is needed within the limitations of Town Laws §274-a(6)(b), and §277(4)(b).

141. For all of the reasons aforesaid, the provisions of Local 8-2016 concerning site plan conditions of approval are arbitrary, capricious, unreasonable, violate Town Law and unconstitutional.

142. The provisions of these sections of **Article XIX** are in conflict with the above-cited provisions of Town Laws and exceed the authority of the Town to enact such requirements as provisions of local law.

143. The provisions of **Local Law 8-2016** enacted as **Article XIX** of the Zoning Code, as aforesaid, are arbitrary, capricious, unreasonable and unlawful for the following reasons, among others:

a. They are contrary to Town Laws §274-a(6), and §277(4), which requires on-site

reservation of land and fees for off-site recreation facilities to be set on a fact-specific basis consistent with actual and anticipated need, a "proper case."

b. They are also contrary to Town Laws §274-a(6) and §277(4), which allows for such fees only when adequate facilities are not provided on a site plan or subdivision.

c. They are confiscatory in that they exact payments to the Town without justification or basis in fact.

d. They violate fundamental obligations of due process by failing to provide any mechanism for a site plan applicant to have the amount or reasonableness of the fee determined in that proceeding, because it has been determined in advance, in whole or in part, by the Town.

e. They violate constitutional due process by imposing a fee without establishing a nexus between the actual or reasonably anticipated recreational needs of the Town, and the anticipated population of the new residential development.

f. They violate constitutional due process and equal protection protections because a one-size-fits-all fee based on the mere number of units, and an arbitrary determination of the amount of parkland required is not reasonably proportional to the need for recreation facilities for the anticipated population of the new residential development.

g. They constitute a taking of property without due process of law.

Parks and Recreation Study

144. Six months after the adoption of **Local Law 8-2016**, a study of existing parks and recreation facilities entitled: *Town of Thompson, Sullivan County, New York, Parks and Recreation Study, June 2017* was adopted by the Town Board at its meeting of June 20, 2017. A

copy is attached to and incorporated into this Amended Complaint as **Exhibit E** (hereafter "Study").

145. The Study did not exist at the time of the adoption of **Local Law 8-2016**.

146. **Local Law 8-2016** did not rely upon the Study as the basis for the enactment of any of its provisions.

147. The Study does not contain any financial analysis whatsoever, or any other information that could serve as a basis for setting a parkland fee as was enacted in **Local Law 8-2016**, such as a minimum fee of $1,250 for each new dwelling unit or lot.

148. The Study, in its "Introduction" at page 1, states, *inter alia*:

> This study contains an inventory of the existing parks and recreation facilities used by Town residents and compares them to the current population in order to create a baseline of recreational needs per capita. The Town Planning Board will utilize this base line when determining the need for additional recreational facilities to meet potential demand created by future development projects.

149. The foregoing statement is misleading in that the "current population" used in the Study includes arbitrary estimates of population by including "part-time residents" to inflate a perceived demand for recreation facilities by artificially increasing the "per-capita" number of people to be served.

150. There is nothing in the Study that serves as the basis to conclude any of the following:

a. The recreation needs of part-time residents in the Town are the same as those of full time residents.

b. The present usage of existing recreation facilities listed in the Study.

c. Any need for additional facilities based on lack of availability of any facilities to any residents.

d. Any "per-capita" need or requirement for additional recreation facilities.

e. The type of facilities used and/or demanded by Town residents.

151. The Study's reliance on National Park and Recreation Association ("NRPA") guidelines is improper.

152. The Study has failed to follow the NRPA recommendations "that each municipality develop customized Level of Service standards that reflect the specific conditions and unique nature of their community." [Study, §5.1, page 8].

153. The Town has made no attempt, much less actually undertaken the task of objectively evaluating the recreational needs of its residents.

154. The Study grossly over-estimates the amount of parkland required per resident at 10 acres per 1,000 residents, allegedly based upon NRPA recommendations." [Study, §5.1, page 9].

155. The actual NRPA recommendations for parkland acreage, as cited in the Study itself in Table 5.1 at page 8 are much less, with the highest level being 5 to 8 acres per 1,000 residents for a "community park."" Even "regional parks" which are designed to serve "several communities" and encompass "200+ acres" are recommended by NRPA to be between 5 to 10 acres per 1,000 residents.

156. The Study arbitrarily and capriciously selected the highest possible standard it could find in the NRPA recommendations.

157. Relying upon NRPA generalized standards provides no support for the requirement that one acre of land be reserved for every 100 new residents.

158. Based upon a Freedom of Information Law ("FOIL") request made by counsel for Gan Eden:

a. The Town never authorized its long-time engineering firm, Delaware Engineering, to conduct the Study.

b. There are no records that the Town paid for the Study using public funds.

c. Delaware Engineering rendered only three invoices for the Study, totaling $1,365. and those were directed to and paid from the Escrow account established to pay for expenses of the Gan Eden Site Plan before the Planning Board.

d. The Town's public records are devoid of evidence that the Study was made in the normal course of the Town's business.

159. Upon information and belief, the Study was prepared after-the-fact of the adoption of **Local Law 8-2016**, in an attempt to justify the requirement of providing one acre of parkland for every 100 new residents.

160. Also, upon information and belief, the Study was prepared to increase the burdens imposed upon the development of the Gan Eden property by the imposition of unwarranted and improper obligations.

161. The Town Board was aware, or should have been aware, that the Study was envisioned, produced and adopted in a highly irregular manner and circumstances for improper purposes directed at Gan Eden's development and the development of multi-family rental housing.

Local Law 8-2017
- Increased Mandatory Fees, Or no Fee in Some Cases -

162. In December 2017 the Town adopted **Local Law 8-2017**, entitled, "A local law amending Chapter 52 entitled 'Planning Board and Zoning Board of Appeals' and Chapter 250 entitled 'Zoning and Planned Unit Development' of the Town of Thompson Code". ("**Local Law 8-2017**"). A copy of **Local Law 8-2017** is attached and incorporated herein as **Exhibit F.**

163. Paragraph 1 of **Local Law 8-2017** further amends §52-3E of the Town Code by, *inter alia*, directly referencing the Study:

> Pursuant to the findings in the Town of Thompson Parks and Recreation Study, which was adopted by the Town Board on June 20, 2017, there is a concrete need for additional parks and recreational facilities to support future recreational demands; new residential developments that will contribute to the population growth, whether year-round or seasonal, will create a demand for parks and recreational facilities in addition to those that exist presently.

164. The Town thus concluded that additional recreational facilities would be needed for any residential project, whereas the Town Law requires an individual assessment of the "anticipated future needs for park and recreational facilities in the town based on projected population growth **to which the particular plan will contribute**." Town Law § 274-a(6)(b) and 277(4)(b).

165. **Local Law 8-2017** amended §250-151(c) of **Article XIX** by deleting language defining the standards to be applied by the Planning Board in assessing the recreational needs implicated by proposed subdivisions, which standards had been identical to Town Law §277(4)(c).

166. **Local Law 8-2017** also amended §250-152(B) of **Article XIX** by requiring payment of a $2,500 fee if the Planning Board required parks and recreational space to be provided on the subdivision, and that the fee could be reduced up to $1,250 upon consideration of several factors. **Local Law 8-2017** amends §250-152(B) to eliminate any fee in cases where the Planning Board does not require inclusion of park or recreational facilities on a subdivision as a condition of approval.

167. Thus, the Town Board has mandated the Planning Board assess a fee in all cases where parks and recreational space are required in a subdivision, but excuses any fee where no on-site park or recreational space is imposed by the Planning Board.

168. Identically, **Local Law 8-2017** amends §250-154(B) to impose the requirement of a $2,500 fee if the Planning Board requires inclusion of park or recreational space in a site plan,

which amount can be reduced to $1,250 upon consideration by the Planning Board of a variety of factors, but no fee is imposed if the Planning Board does not require inclusion of park or recreational space on the site plan.

169. There is nothing in the record to support the decision to double the per unit or per lot fee from $1,250 to $2,500, or to eliminate fees where no park or recreational facilities are required on subdivisions or site plans as a condition of approval.

170. Sections 250-152(B) and 250-154(B) of **Article XIX**, as amended by **Local Law 8-2017**, are arbitrary, capricious, unreasonable and unlawful for the following reasons, among others, as follows:

a. It is contrary to Town Laws §§ 274-a(6) and 277(4), which require such fees to be set on a site-specific basis by the Town Board.

b. It is also contrary to Town Laws §§ 274-a(6) and 277(4), which allows for such fees only when adequate facilities are not provided on a site plan or subdivision.

c. It is confiscatory in that it exacts payments to the Town without justification or basis in fact.

d. It violates fundamental obligations of due process by failing to provide any mechanism for an applicant before a land use board to contest the amount or reasonableness of the imposition of a recreation fee in that proceeding.

e. It violates constitutional due process by imposing a fee without establishing a nexus between the actual or reasonably anticipated recreational needs of the Town, and the anticipated population of the new residential development.

f. It violates constitutional due process and equal protection requirements because a one-size-fits-all fee is not reasonably proportional to the cost of providing recreation facilities to the anticipated population of the new residential development.

g. It constitutes a taking of property without due process of law.

171. The provisions of **Local Law 8-2017** are arbitrary, capricious, unreasonable and unlawful as set forth in paragraphs 162-170, above.

172. The course of conduct of enacting **Article XIX** by **Local Law 8-2016**, then performing the Study, and then amending **Article XIX** by **Local Law 8-2017**, represents an irrational course of conduct by the Town that is entirely arbitrary, capricious, unreasonable, unlawful, unconstitutional and directed at the development of multi-family rental apartments, including specifically the development of Gan Eden's Property.

First Claim for Relief

- Declaratory Judgment -

173. Plaintiff repeats and incorporates all of the foregoing paragraphs in support of its claim.

174. Gan Eden's proposed development of its Property with the inclusion of 388 rental apartments in multifamily buildings at a density of four dwelling units per net acre, consistent with the permitted density for townhouse dwellings, would serve the public health, safety, and welfare of the Town in each of the following ways:

a. Meet an existing need for safe, efficient, and well-planned rental housing by adding substantially to the supply of rental housing within the community, in close proximity to the major source of new employment, the Adelaar casino-resort development.

b. Increase the supply of rental housing and meet an acknowledged housing need.

c. Stabilize apartment rents in the Town and surrounding communities.

d. Allow for the development of the Gan Eden site essentially as zoned by the Town,

but without unreasonable restrictions on the development of rental apartments.

175. Gan Eden acquired the Property for the specific purpose of pursuing a residential rental/sale development and has determined that the best use of the Property is in accordance with its present Site Plan. It has expended substantial sums in pursuing development of the Property.

176. In March 2016 Gan Eden submitted an amended site plan for the Property ("Site Plan") to the Planning Board that proposed the development of 535 residential units in the form of 147 townhouses or row houses and 388 apartments or multifamily dwellings together with central, on-site water and sewer systems, internal roads, a clubhouse for residents and other park or recreational facilities appropriate for a rental residential community on the Property.

177. It was known to the Town, and is otherwise common knowledge, that the 535 proposed units would be rental units.

178. Representatives of the Planning Board participating in the SEQRA process of Gan Eden's revised site plan stated that Gan Eden should reduce the density of its development, submit a new Site Plan, and begin the SEQRA process anew from the beginning.

179. The reason given to Gan Eden for reducing the density of development from 4.0 to 1.9 residential dwelling units per net acre is **Local Law 13-2012** that reduced the density for multiple dwellings, that is apartments, to 1.9 units per net acre.

180. **Local Law 13-2012** is arbitrary and capricious in that it:

a. Sets an unreasonably low density for multifamily dwellings, particularly with respect to other forms of housing permitted in the Suburban Residential Zone;

b. Was adopted without any study, need or factual basis of any kind, including a

proper review under SEQRA;

c. Was improperly influenced by objections of CHNA and others that had no basis in fact and were merely designed to thwart development of the Property.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** that **Local Law 13-2012** is void and unenforceable in that it:

- Is arbitrary and capricious setting an unreasonable standard of density in the circumstances;
- Violates Town Law 261 as improper zoning;
- Furthers a pattern of discrimination against rental housing as compared to other similar and/or identical housing types;
- Is confiscatory in nature; and
- Violates the United States and New York Constitutions.

Second Claim for Relief

- Declaratory Judgment -

181. Plaintiff repeats and incorporates all of the foregoing paragraphs in support of its claims.

182. The Zoning treats rental housing in a discriminatory way based upon ownership and economic status, as the standard and policy of the Town.

183. The Zoning contains numerous provisions that give unfettered discretion to Town bodies and Town officials to discriminate against rental housing by declaring it to not be

"compatible", as with the provisions of §250-28 A.

184. Gan Eden's Site Plan and its submissions pursuant to SEQRA have been filed since March 2016. During that time Gan Eden has sought to have its application proceed.

185. The Planning Board has not proceeded with any material aspect of the Gan Eden Site Plan or its review under SEQRA.

186. Such delays have been based upon the density restrictions of **Local Law 13-2012.**

187. Upon a declaration of the invalidity of **Local Law 13-2012**, the Gan Eden site plan review process should proceed in the normal course of business, but without delay or other objection from the Town or the Planning Board as to permitted uses or density of the 535 residential rental units proposed.

188. The conformance of the Gan Eden Site Plan with good engineering practice and the substantive provisions of the Zoning has been confirmed by the affidavits attached to and verifying this First Amended Complaint.

189. The "compatibility" provisions of the Zoning are therefore not applicable to the proposal to develop multifamily dwellings on the Property in accordance with the Gan Eden Site Plan.

190. The "compatibility" provisions of the Zoning are an impermissible provision and delegation of authority to the Town Planning Board and other officials from the Town Board.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** that the "compatibility" provisions are void and of no effect and that the remaining Zoning permits the uses

and densities proposed in the Gan Eden Site Plan.

Third Claim For Relief
-Declaratory Judgment-

191. Plaintiff repeats and incorporates all of the foregoing paragraphs in support of its claims.

192. Gan Eden's Site Plan proposes the inclusion of recreation facilities for the residents of its development that are adequate to their on-site needs and no additional facilities are required.

193. Adequate facilities for the off-site recreation needs of new residents in Gan Eden's development presently exist, and are available to Gan Eden's new residents.

194. **Local Law 8-2016** is arbitrary, capricious, unreasonable and unlawful in that it:

a. Does not comport with the requirements of Town Laws §274-a(6) and §277(4) in that it:

1) Impermissibly delegates obligations of the Town Board to the Planning Board.

2) Sets arbitrary, confiscatory and extortionate requirements for the payment of money and the dedication of property.

3) Denies an applicant for site plan or subdivision approval a meaningful hearing and opportunity for factual findings on the need for recreational facilities and the suitability of facilities provided.

b. Was adopted without any study, need or factual basis of any kind, including a

proper review of the recreation existing in the Town available for use by Town residents.

c. Has the impermissible effect of seeking to thwart the development of new residential housing when such housing is sorely needed in Thompson.

d. Seeks to improperly transfer a public obligation to provide for a portion of the existing, and all of the future, recreational needs of the residents of the Town to private property owners who wish to develop housing.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** that **Local Law 8-2016** is void and unenforceable in that it:

- Is arbitrary and capricious setting unreasonable requirements for review of Gan Eden's Site Plan in the circumstances;
- Violates Town Law 261§274-a(6) and §277(4); and
- Furthers a pattern of discrimination against new housing in the Town.

Fourth Claim For Relief
-Declaratory Judgment-

195. Plaintiff repeats and incorporates all of the foregoing paragraphs in support of its claims.

196. **Local Law 8-2017** is arbitrary, capricious, unreasonable and unlawful in that it:

a. Does not comport with the requirements of Town Law §274-a(6) and §277(4) in that it sets and increases arbitrary, confiscatory and extortionate requirements for

the payment of money and the dedication of property.

b. Was adopted without any proper study, need or factual basis of any kind, including a proper review of the recreation existing in the Town available for use by Town residents.

c. Purports to have been adopted based upon a Study that was made, designed, intended and used to further the improper purposes inherent in the adoption of **Article XIX** of the Zoning of the Town.

d. Has the impermissible effect of seeking to thwart the development of new residential housing when such housing is sorely needed in the Town.

e. Seeks to improperly transfer a public obligation to provide for a portion of the existing, and all of the future, recreational needs of the residents of the Town to private property owners who wish to develop housing.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** that **Local Law 8-2017** is void and unenforceable in that it:

- Is arbitrary and capricious setting unreasonable requirements for review of Gan Eden's Site Plan in the circumstances;

- Violates Town Laws §274-a(6) and §277(4);

- Was adopted in an unlawful manner upon a Study that was made, designed, intended and used for improper purposes;

- Furthers a pattern of discrimination against new housing in the Town;

Fifth Claim For Relief

-Declaratory Judgment -

-Denial of U.S. Constitutional Due Process -

197. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

198. Gan Eden has a constitutionally protected right to the use and enjoyment of its real property, and its funds under the United States Constitution.

199. The Fifth and Fourteenth Amendment of the U.S. Constitution prohibit the Town from depriving Gan Eden of the use and enjoyment of its property or funds without providing Gan Eden a legal process to determine the basis upon which the Town can impose requirements or require payment of money as conditions for the development of its Property.

200. **Article XIX** of Chapter 250 imposes mandatory obligations upon Gan Eden as an applicant for site plan approval that have been predetermined by the Town and imposed as mandates by the Town upon the Planning Board.

201. These mandated requirements cannot be applicable in every case, and particularly not before a "proper case" has been established that the particular site plan or subdivision presents a need for park and recreation facilities, and a determination is made as to the nature and extent of such facilities, or the amount of money to be paid to produce such facilities off-site when they cannot be practically located on-site.

202. The establishment of a "proper case" is a fundamental due process requirement.

203. Subjecting Gan Eden, and other applicants for development approvals, to such mandates, and the burdens of challenging such mandates, denies due process to applicants for development in the Town.

204. Such burdens deny Gan Eden the use and enjoyment of its property and require expenditure of funds while the Planning Board imposes an unconstitutional imposition upon them.

205. **Article XIX** of Chapter 250 constitutes a denial of constitutional due process.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the United States that **Article XIX** of Chapter 250 of the Code of the Town is void and in violation of the Constitution of the United States.

Sixth Claim For Relief

-Declaratory Judgment -

-Denial Of Due Process Under Article 1, §6 Of

The Constitution Of The State Of New York-

206. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

207. Gan Eden is also protected by the due process provision of the New York State Constitution, Article 1, §6.

208. The Town, through **Article XIX**, Chapter 250, fails to provide due process to Gan Eden in violation of the New York State Constitution, Article 1, §6.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the State of New York that **Article XIX** of Chapter 250 of the Code of the Town is void and in violation of the New York State Constitution, Article 1, §6.

Seventh Claim For Relief

-Declaratory Judgment -

-Taking Of Property Without Just Compensation

In Violation Of The United States Constitution-

209. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

210. **Article XIX** mandates that Gan Eden and other property owners seeking approval for the development of their property must surrender to the Town portions of their property, and/or funds, to be used by the Town for the public purpose of creating or maintaining recreation facilities.

211. The Fifth and Fourteenth Amendment of the U.S. Constitution prohibits the Town from confiscating the land or funds of Gan Eden without providing Gan Eden with just compensation.

212. **Article XIX** of Chapter 250 imposes mandatory obligations upon Gan Eden as an applicant for site plan approval, and upon others similarly situated, that have been predetermined by the Town and imposed as mandates by the Town upon the Planning Board.

213. These mandatory exactions of property and/or money from Gan Eden and those similarly situated are not measured in any way against the need for public recreation facilities, or the need for on-site contribution of land, and are not related to the need for additional recreation facilities produced by the anticipated new residents of proposed development.

214. These mandated requirements cannot be applicable in every case, and particularly not before a "proper case" has been established that the particular site plan or subdivision presents a need for park and recreation facilities, and a determination is made as to the nature and extent of such facilities, or the amount of money to be paid to produce such facilities off-site when they cannot be practically located on-site.

215. The amounts of land and or money required to be surrendered to the Town under **Article XIX** of Chapter 250 are arbitrary, excessive and unreasonable and do not constitute just compensation for the exactions imposed by the Town.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the United States that **Article XIX** of Chapter 250 of

the Code of the Town is void and in violation of the Constitution of the United States.

Eighth Claim For Relief

-Declaratory Judgment -

-Taking Of Property Without Just Compensation

In Violation Of Article 1, §7 Of The New York Constitution-

216. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

217. Gan Eden is also protected by the just compensation provision of the New York State Constitution, Article 1, §7.

218. The amounts of land and or money required to be surrendered to the Town under **Article XIX** of Chapter 250 are arbitrary, excessive and unreasonable and do not constitute just compensation for the exactions imposed by the Town.

219. The Town, through **Article XIX**, Chapter 250, fails to provide just compensation to Gan Eden in violation of the New York State Constitution, Article 1, §7.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the State of New York that **Article XIX** of Chapter 250 of the Code of the Town is void and in violation of the New York State Constitution, Article 1, §7.

Ninth Claim For Relief

-Declaratory Judgment -

-Denial Of U.S. Constitutional Equal Protection -

220. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

221. Gan Eden has a constitutionally protected right to be treated equally with others under the United States Constitution.

222. Under the provisions of **Article XIX** of Chapter 250 a recreation fee must be imposed when park and recreation facilities are provided and/or required by the Planning Board, but no fee is imposed if the Planning Board does not require inclusion of park or recreation space on a site plan or subdivision.

223. The provisions of **Article XIX** of Chapter 250 are arbitrary and require recreation exactions without regard to the need for such facilities in some cases, but in others those same provisions disregard any consideration of need and any requirement to contribute land and/or money for such facilities.

224. The provisions of **Article XIX** of Chapter 250 treat development applications, such as Gan Eden's, as requiring mandated contributions of property and/or money because they propose on-site recreation facilities. **Article XIX** places an unequal burden and obligation on such applications, by mandating the exclusion of other applications from any such obligations.

225. These provisions of **Article XIX** deny Gan Eden, and others similarly situated, with the equal protection of the laws.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the United States that **Article XIX** of Chapter 250 of the Code of the Town is void and in violation of the Constitution of the United States.

Tenth Claim For Relief

-Declaratory Judgment -

-Denial of Equal Protection -

In Violation Of Article 1, §11 Of The New York Constitution-

226. Plaintiff incorporates all of the foregoing paragraphs in support of its claim.

227. Gan Eden has a constitutionally protected right to be treated equally with others under the Constitution of the State of New York.

228. The Town, through **Article XIX**, Chapter 250, fails to provide the equal protection of the law to Gan Eden in violation of the New York State Constitution, Article 1, §11.

WHEREFORE, Plaintiff seeks a declaration pursuant to **New York CPLR 3001** and its fundamental rights under the Constitution of the State of New York that **Article XIX** of Chapter 250 of the Code of the Town is void and in violation of the Constitution of the State of New York.

Eleventh Claim for Relief

- Supplemental Relief Pursuant to CPLR Article 78 -

229. Plaintiff repeats and incorporates all of the foregoing paragraphs in support of its claim.

230. Upon a Declaration granted in response to the First through Tenth Claims for Relief, or earlier upon application for interim relief, Plaintiff seeks an order directing the Town, its Planning Board and its other officials to proceed with all deliberate speed to perform and conclude their review of the Gan Eden Site Plan pursuant to SEQRA.

231. The provision of rental housing within the Town has, and will increasingly continue to have, an important impact upon the Town and its residents.

232. The provision of an adequate supply of rental housing is likely to have an impact upon employment and other social impacts that are required to be considered under SEQRA.

233. Upon information and belief, such a SEQRA or other similar review has never been performed by the Town or any other agency with respect to the Adelaar resort development or any component thereof as respects housing requirements for a dramatically increased and increasing level of employment in the Town.

234. SEQRA and the interests and welfare of the Town and its residents, and others, require that such a review be performed without delay.

235. The Gan Eden Site Plan review under SEQRA should not be burdened with such a review, but the public interest would be advanced by having the review of the Gan Eden project proceed without further delay engendered by the Town's Zoning or discrimination against multifamily rental housing.

WHEREFORE, Plaintiff seeks an Order and Judgment pursuant to **New York CPLR 7801, et seq**. requiring the commencement of the SEQRA process for the Gan Eden development without delay and with all deliberate speed

Dated: February 9, 2017

Daniel E. Horgan (NY Bar: 2222099)
dehorgan@lawwmm.com
Eric D. McCullough (NY Bar: 4023172)
edm@lawwmm.com
WATERS, McPHERSON, McNEILL,
Attorneys for Plaintiff, Gan Eden Estates
233 Broadway, Suite 2220
New York, NY 10279
-and-
300 Lighting Way, 7th Floor
Secaucus, NJ 07094
(201) 330-7453

Daniel E. Horgan

Eric D. McCullough

AFFIDAVIT OF VERIFICATION

by

Larry Frenkel

(CPLR R 3021)

Larry Frenkel, being all full age, upon his oath deposes and says:

1. I am a member in Columbia Hill Investors, LLC, a New York limited liability company, which is a general partner of Gan Eden Estates, and I am fully empowered and authorized to act on behalf of Gan Eden Estates partnership. I am the individual charged with the management of the development of the Gan Eden Property in the Town of Thompson, New York and the prosecution of this action against the Town of Thompson and its Planning Board.

2. The statements in the foregoing First Amended Verified Complaint of Gan Eden Estates against the Town of Thompson and its Planning Board are true to my knowledge, except where such statements are made upon information and belief, in which case I believe them to be true.

3. I have reviewed and relied upon the Affidavits of Verification of William A. Canavan, Joseph Fleming, and Keenan Hughes, which are attached to and incorporated in the First Amended Verified Complaint as Exhibits. The facts stated in those Affidavits are known by me to be true. I am knowledgeable of the professional opinions stated in those Affidavits and I believe them to be true.

DATED: February 9, 2018

GAN EDEN ESTATES

Columbia Hill Investors, LLC, general partner

BY: _____

Larry Frenkel

Sworn and Subscribed before me
this 9th day of February 2018

NOTARY

CARLOS F FRANK JR
Notary Public - State of New York
NO. 01FR6231562
Qualified in Rockland County
My Commission Expires 11/29/2018

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

AFFIDAVIT OF VERIFICATION

by

WILLIAM A. CANAVAN

(CPLR R 3021)

EXHIBIT A

to First Amended Verified Complaint of Gan Eden Estates

William A. Canavan, being all full age, upon his oath deposes and says:

1. I make the statements in this Affidavit for the purpose of verifying the attached First Amended Complaint of Gan Eden Estates against the Town of Thompson and its Planning Board concerning matters of potable water supply.

2. I had reviewed and executed a verification to the Verified Complaint filed December 21, 2017.

3. I have reviewed the First Amended Verified Complaint for purposes of verifying its allegations and hereby verify that the allegations made in the First Amended Verified Complaint concerning the availability of potable water supply, the regulation of potable water supply, the testing of wells, and of sufficient water supply for the Gan Eden Site Plan are true; they also accurately reflect my professional opinion where the First Amended Verified Complaint states matters of expert opinion. The statements made by me herein in verification of the First Amended Verified Complaint are personally known to me and are true. Where such matters are of information and belief, I belief them to be true.

4. I am the president of HydroEnvironmental Solutions, Inc., a company that for eighteen years has provided consulting services in the field of environmental consulting, with an emphasis upon navigating the complexities of environmental laws and a particular focus upon water resources and protection of the environment. Additional information on my company is available at www.hesny.com .

5. My educational background includes Bachelor of Science from Franklin & Marshall College and Master of Science from Southern Illinois University at Carbondale degrees in geology,

and I am a licenses professional geologist in New York with license number 246. I have worked in the field of hydrogeology for 29 years.

6. My professional work as a hydrogeologist involves, among other things, investigations to determine the availability and suitability of potable water supplies to serve the needs of both private and public water supply systems; and, to do so with adequate measures to protect the environment from harm, and the degradation of existing water supplies. An integral part of the process also includes thorough knowledge and extensive experience in preparing plans, analyses and reports necessary for securing permits from all levels of government agencies regulating potable water supplies and systems.

7. I have qualified as an expert and provided sworn testimony before administrative agencies and courts in the States of New York and New Jersey in the area of hydrogeology on numerous occasions during my professional career.

8. Since 2009, I have been engaged by Gan Eden to evaluate the availability of potable water supplies for its project in the Town of Thompson, New York. I have reviewed all available information on the four wells drilled on the Gan Eden site, including well test reports and other evaluations to determine a safe and continuous yield of potable water that would be available from these wells. I have also evaluated such information to reach a conclusion as to the amount of potable water that could be produced for use by the Gan Eden development under existing regulations of the State of New York and the Delaware River Basin Commission ("DRBC"). The DRBC is a multistate agency regulating water supply within the geographic area in which the town of Thompson is located, and is the agency from which necessary water supply permits would have to be obtained for the Gan Eden development.

9. My conclusion from the foregoing evaluations is that sufficient potable water is available on site to supply the Gan Eden development for residential use up to the level of 1341 bedrooms. The applicable regulatory standards determine water demand for projects like Gan Eden on the basis of the number of residential bedrooms. The standards are essentially very conservative to ensure that water supply systems will have sufficient water under all anticipated conditions, and that the operation of these systems will not have an adverse affect on water supplies upon which other users depend.

10. I have reviewed the entire Complaint to which this affidavit is attached, and its supporting exhibits, including the affidavit of Joseph P Fleming, PE, to ensure that the statements made in reliance upon my professional advice and opinions, are true, complete, and accurate. Based upon that review, I can attest to the fact that sufficient potable water is available to the Gan Eden project to support the development of residential units proposed by Gan Eden as stated in the Complaint.

DATED: February 7, 2018

William A. Canavan

William A. Canavan

Sworn and subscribed before me, a Notary Public of New York on

February 7, 2018

1016427.1

State of new york
county of westchester

william A. Canavan appeared and signed before me on 2/7/18.

ERIK M VIETZ
Notary Public - State of New York
NO. 01VI6252358
Qualified in Westchester County
My Commission Expires Dec 5, 2019

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

AFFIDAVIT OF VERIFICATION

by

JOSEPH J. FLEMING

(CPLR R 3021)

EXHIBIT B

to First Amended Verified Complaint of Gan Eden Estates

Joseph J. Fleming, being all full age, upon his oath deposes and says:

1. I make the statements in this Affidavit for the purpose of verifying the attached First Amended Verified Complaint of Gan Eden Estates against the Town of Thompson and its Planning Board concerning matters of civil engineering, utilities, and site layout and design.

2. I had reviewed and executed averification to the Verified Complaint filed December 21, 2017.

3. I have reviewed the First Amended Verified Complaint for purposes of verifying its allegations and hereby verify that the allegations made in the Complaint concerning the Gan Eden Site Plan, including the number of dwelling units and the inclusion of recreation facilities on the site plan are true; they also accurately reflect my professional opinion where the Complaint states matters of expert opinion. The statements made by me herein in verification of the First Amended Verified Complaint are personally known to me and are true. Where such matters are of information and belief, I belief them to be true.

4. I am the Executive Vice President of PS&S, an integrated design and engineering company. I am the principal in charge of all Land Services at PS&S, which includes Environmental Permitting & Remediation, Utility Services, Surveying, Landscape Architecture and Civil Engineering. PS&S provides a broad range of consulting services for the development community, including the design, permitting, and construction of residential housing in all of its associated utility, drainage, roadway and other aspects. Additional information on my company is available at www.psands.com.

5. My educational background includes a Bachelor of Engineering degree from the New Jersey Institute of Technology and I am a licensed Professional Engineer in New York,

Massachusetts, Pennsylvania and New Jersey. I have worked in the field of professional engineering for 41 years.

6. My responsibilities at PS&S with regard to the Gan Eden Estates residential development project in the Town of Thompson, NY, include supervision and coordination of services provided by PS&S, including the survey, design and engineering services required for the preparation of the Gan Eden Site Plan prepared by a New York licensed Professional Engineer, Lisa A. DiGerolamo, P.E. who works within the Land Services group. As such I am personally familiar with the details of the Gan Eden Property as described in the attached Complaint and the Site Plan prepared by Ms. DiGerolamo. I have personal knowledge of those plans and proposals.

7. I have qualified as an expert and provided sworn testimony before administrative agencies and courts in the area of professional engineering on numerous occasions during my professional career, including the civil engineering of large scale residential and other developments.

8. Since 2007, PS&S Land Services has been engaged by Gan Eden to evaluate the development of its property in the Town of Thompson, New York. I am personally familiar with the design and engineering for the Gan Eden Property, including its present Site Plan as described in the attached Complaint.

9. My conclusion from the foregoing is that the Gan Eden Site Plan represents a project that is based in all respects upon sound design and engineering, as well as proper considerations for applicable engineering and environmental regulations, including storm water detention, utilities, and sewerage disposal for a project of 1341 bedrooms. The Site Plan proposes the development of those 1341 bedrooms in 535 residential dwelling units with a layout that

minimizes site disturbance, maximizes the preservation of natural areas and open space, and that will not have negative impacts upon the area in which it is located.

10. I have reviewed the entire First Amended Verified Complaint to which this affidavit is attached, and its supporting exhibits, including the affidavit of William A. Canavan, to ensure that the statements made in reliance upon the design of Gan Eden and its site plan, and the professional opinions and advice provided to Gan Eden by me and my company, are true, complete, and accurate. Based upon that review, I can attest to the fact that they are true and accurate as stated in the First Amended Verified Complaint.

DATED: February 7, 2018

Joseph J. Fleming

Sworn and Subscribed before me, a Notary Public of New Jersey:

NOTARY
LISA ANN SHPUNDER
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2226025
MY COMMISSION EXPIRES MAY 28, 2019

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

AFFIDAVIT OF VERIFICATION

by

Keenan Hughes

(CPLR R 3021)

EXHIBIT C

to First Amended Verified Complaint of Gan Eden Estates

Keenan Hughes, being all full age, upon his oath deposes and says:

1. I make the statements in this Affidavit for the purpose of verifying the attached First Amended Verified Complaint of Gan Eden Estates against the Town of Thompson and its Planning Board concerning matters of professional planning, which include planning for housing needs, recreation, density and related factors of need and supply. The statements made by me herein in verification of the Gan Eden Complaint are personally known to me and are true. I have reviewed the First Amended Verified Complaint for purposes of verifying its allegations and hereby verify that the allegations made in the First Amended Verified Complaint concerning housing issues, recreation density, discrimination and the local zoning applicable to the Gan Eden Site Plan are true; they also accurately reflect my professional opinion where the First Amended Verified Complaint states matters of expert opinion. Where such matters are of information and belief, I belief them to be true.

2. I had reviewed and executed a verification to the Verified Complaint filed December 21, 2017.

3. I am attaching and incorporating into this Affidavit a report prepared by me for Gan Eden. It includes my professional qualifications, analysis and opinions. Additional information on my background, qualifications and professional qualifications is available at www.ppgplanners.com.

DATED: February 6, 2018

Keenan Hughes

Sworn and Subscribed before me, a Notary Public of New Jersey:

MICHAEL JOVISHOFF
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 20, 2020

PLANNING ANALYSIS – GAN EDEN ESTATES
PREPARED BY KEENAN HUGHES, AICP, PP

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1. I am a principal of Phillips Preiss Grygiel LLC (PPG), a planning and real estate consulting firm based in Hoboken, NJ. I am a licensed Professional Planner in the State of New Jersey and a member of the American Institute of Certified Planners. I have a Master's Degree from the Graduate School for Planning and the Environment from Pratt Institute in Brooklyn, NY. I have been a visiting professor at Pratt Institute and maintain regular continuing education in the field of planning.

2. PPG has prepared comprehensive plans and other studies for numerous communities in New York, such as the Villages of Hastings-on-Hudson, Ossining, Dobbs Ferry and South Nyack.

3. I have advised governmental and private sector clients throughout the Tri-State Area, including the Port Authority of New York and New Jersey, the Roosevelt Island Operating Corporation and the New Jersey Sports and Exposition Authority, on land use, planning and zoning matters. I have been accepted as an expert in the field of planning by land use boards in over 70 municipalities.

4. In June 2017 I was retained by Gan Eden Estates, LLC ("Gan Eden") to evaluate from a planning viewpoint the Town of Thompson's Zoning and Planned Unit Development Ordinance as applied to Gan Eden's proposed residential development consisting of 535 dwelling units.

5. In conducting my investigation, I reviewed the following documents:

    a. The site plan prepared by PS&S dated August 2011 (revised through September 30, 2016);
    b. The current Town of Thompson Zoning and Planned Unit Development Ordinance [available online via www.ecode360.com];
    c. An archived version of the Town of Thompson Zoning and Planned Unit Development Ordinance, dated September 10, 2011 [available online via www.ecode360.com]
    d. The Town of Thompson/Village of Monticello Comprehensive Plan, prepared by the Thompson-Monticello Joint Comprehensive Plan Committee, 1999;
    e. Local Law No. 13 of 2012;
    f. Excerpts of Town Board Meeting Minutes from 2012 regarding proposed local law to change density calculations;
    g. Amended Site Plan Application filed by Gan Eden Estates dated July 22, 2016;
    h. Town of Thompson Technical Review Comments for Gan Eden, prepared by MH&E D.P.C., dated July 20, 2016;
    i. Town of Thompson Planning Board Record of Appearance dated March 13, 2017;
    j. Hydrogeologic Review prepared by Miller Hydrogeologic Incorporated dated April 17, 2017; and

k. Groundwater Supply Assessment for Gan Eden Estates prepared by HydroEnvironmental Solutions, Inc. dated February 2017.
l. Illustrated Book of Development Definitions (Fourth Edition), Moskowitz et al.
m. Housing Affordability in New York State, prepared by the Office of Budget and Policy Analysis, New York State Comptroller, March 2014.
n. Gaming Facility License Award, Montreign Operating Company, LLC. New York State Gaming Commission, December 21, 2015.

SUMMARY OF KEY FACTS

6. Gan Eden's proposed development consists of 535 dwelling units, including 147 townhouses and 388 multifamily dwelling units.

7. The gross acreage of the subject property is approximately 199 acres. The net acreage after deducting areas of wetlands, steep slopes, existing rights-of-ways and easements and bodies of water is approximately 134 acres.

8. The subject property is located within the Town of Thompson's SR (Suburban-Residential) zone. The SR zone permits single- and two-family dwellings, day care, cluster developments for single-family dwellings, multiple dwellings (hereafter "multifamily dwellings"), row and attached dwellings (hereafter "townhouses"), planned unit developments, hotels and motels, places of worship and clubhouses for social and recreational activities.

9. The SR zone sets forth maximum densities for various residential uses.
    a. Single- and two-family dwellings are allowed at a density of up to 1.9 dwelling units per acre on properties with access to central sewer or water facilities and 0.9 dwelling units per acre on properties without access to central sewer or water facilities. The calculation of density for single- and two-family dwellings is based on the gross acreage of the property.
    b. In 2012, pursuant to Local Law No. 13, the Town of Thompson reduced the permitted density for "multiple dwellings" (hereafter "multifamily dwellings") from approximately 6 to 10 dwelling units per acre to 1.9 dwelling units per acre. However, the calculation of density for multifamily dwellings is based on the net acreage of the property (i.e., gross acreage minus areas of steep slopes, wetlands, easements and bodies of water). Multifamily dwellings must be located on properties with access to central sewer or water facilities.
    c. Townhouses are allowed at a density of up to 4 dwelling units per acre. Similar to multifamily dwellings, the density calculation is based on net acreage.
    d. Planned unit developments are allowed at a density of up to 4 dwelling units per acre. Planned unit developments may consist of any permitted residential use. The density calculation for planned unit developments is based on net acreage.

10. The Zoning and Planned Unit Development Ordinance also sets forth various bulk and other requirements for each of the permitted residential uses.

11. The Groundwater Supply Assessment prepared by HydroEnvironmental Solutions, Inc. determined that the on-site wells are "more than capable of meeting the water demands for the proposed project (1,341 bedrooms)."

SUMMARY OF EXPERT OPINION

12. Based on a review of the aforementioned documentation and the above facts, it is my opinion that the Town of Thompson's Zoning and Planned Unit Development Ordinance is arbitrary, capricious and unreasonable for the reasons set forth below.

13. The Town of Thompson's excessively low density standard for multiple dwellings in the SR Zone is arbitrary and unreasonable.

14. Based on the density standards for the SR zone, the subject property could be developed with up to 378 single-family dwellings or 536 townhouses. Alternatively, the property could be developed with 255 multifamily dwelling units.

15. Based on a review of Town Board meeting minutes and the text of Local Law No. 13-2012, the Town of Thompson did not offer any rationale for such a drastic reduction in permitted density, which imposes a more restrictive density standard on multifamily dwellings than single-family homes and townhouses.

16. There is no discussion in the Town of Thompson's Comprehensive Plan regarding the issue of density as it relates to multifamily dwellings.

17. In planning and zoning, the densities allowed for various residential uses typically range from single-family dwellings (low) to multifamily dwellings (high). The below table from the Complete Illustrated Book of Development Definitions illustrates this general hierarchy of permitted densities.[1]

Gross Density Ranges for Housing Types (units per acre)

Type of Unit	Suburban Area	Town	Urban Center
Single-family detached	1-4	4-8	8-15
Two-family	6-8	8-12	20-40
Townhouses	6-10	10-20	20-30
Flats, two- and three-story	10-18	15-30	25-40
Mid-rise	20-40	30-50	40-60
High-rise	-	50-60	70+

[1] Illustrated Book of Development Definitions (Fourth Edition), Moskowitz et al, p. 146.

18. Multifamily dwellings are typically permitted at greater densities than single-family dwellings and townhouses, because they are less impactful from a planning viewpoint. This concept is consistent with how Thompson controlled density prior to the 2012 Amendment.

19. For example, multifamily dwellings are less consumptive of land than single-family dwellings or townhouses. Single-family dwellings have a greater impact on farmland, open space and scenic landscapes than multifamily dwellings because they require greater land area. To illustrate, based on the standards for various residential uses set forth in Thompson's Zoning and Planned Unit Development Ordinance:

    a. In the SR zone, a conforming multifamily building with a lot coverage of 9,600 square feet can contain approximately 12 dwelling units (i.e., approximately 800 square feet of lot coverage per dwelling unit).

    b. In contrast, the development of 2 single-family homes requires approximately 1 acre of land with lot coverage permitted up to 8,000 square feet (i.e., approximately 4,000 square feet of lot coverage per dwelling unit).

    c. Four conforming townhouse units consume approximately 6,250 square feet of land area (i.e., approximately 1,562 square feet per dwelling unit).

20. Multifamily dwelling households have lower car ownership rates than single-family homes and thus generate less traffic than other housing types.

    a. In the US, the car ownership rate for multifamily dwelling units is 1 vehicle per unit. The car ownership rate for single-family homes is 2.1 vehicles per unit (according to a National Multifamily Housing Council analysis of American Community Survey 2005 data).

    b. According to the Institute of Transportation Engineers Trip Generation Handbook, 9th Edition, apartment dwelling units generate 0.62 trips per unit during the peak hour. Single-family homes generate 1 trip per unit during the peak hour.

21. Environmental concerns are not a valid justification for the density restriction on multifamily dwellings, because the Town code separately requires all environmentally-sensitive areas to be deducted from the lot area which may be factored into the calculation of permitted density. Further, multifamily development is restricted to properties served by a central sewer system. Meanwhile, single-family dwellings, which are more land-intensive, can be developed at a much greater density, because they are not subject to the net acreage requirement.

22. Inexplicably, single-family dwellings are not required to factor environmental and other constraints in the maximum density calculation. Consequently, the net acreage density calculation required for multifamily dwellings is discriminatory.

23. In a rural setting such as Thompson, one of the primary development impact considerations is water supply. However, the State Department of Health evaluates water use and water withdrawal proposals in connection with residential development based on number of bedrooms, irrespective of residential type. Thus, water use capacity is not a basis for irrationally limiting the density of multifamily dwellings.

24. For all of the above reasons, Thompson's excessively low density standard for multiple dwellings as compared to single-family dwellings and townhouses is arbitrary and unreasonable and bears no relation to the health, safety or general welfare of the community.

25. In addition, the Town's Zoning Ordinance contains numerous inconsistencies and flaws which result in an arbitrary and unreasonable set of regulations.

    a. §250-28.A provides that "multiple dwelling, hotels and motels and related accessory structures shall not be approved by the Planning Board without first determining that the location of the proposed uses and the structures proposed and the general character of development are compatible with their surroundings and such other requirements of this Part 1 as may apply." Thus, the Planning Board has arbitrary discretion to approve or reject multifamily development based on unspecified and entirely subjective criteria.

    b. §250-28.B requires that "the entire site occupied by multiple dwellings and related accessory structures shall be maintained in single or group ownership throughout the life of the development." Zoning laws cannot impose restrictions on the ownership of a property unless it is a relevant factor in its land use classification. If a change in the form of ownership results in a change in the property's land use classification, this would constitute a change in use that would be subject to the Town's zoning requirements.

    c. §250-28.C.1(e) requires "two allotted parking spaces for every dwelling unit constructed." This is contradicted by §250-22.C which requires "1 ½ per dwelling unit providing two bedrooms or fewer, and 2 per dwelling unit providing more than 2 bedrooms." This is a blatant and unresolvable inconsistency in the zoning ordinance.

    d. Per Schedule A. Schedule of District Regulations – SR Suburban Residential District, planned unit developments are permitted subject to §250-27 on tracts of at least 30 acres at a maximum density of 4 units per acre. However, the allowable number of dwelling units is subject to the Planning Board's arbitrary consideration of such factors as "protection of surface water quality" and "protection or enhancement of scenic quality." The Board's ability to dictate allowable density on a case-by-case basis absent objective criteria constitutes an arbitrary and unreasonable regulation.

26. The density standard for multiple dwellings constitutes exclusionary zoning.

27. Exclusionary zoning is characterized by "development regulations that result in the exclusion of low- and moderate-income and minority families from a community." Exclusionary zoning "provisions include allowing only large-lot, single-family detached dwellings; bulk regulations in excess of those needed for health and safety; limiting or barring of multifamily development; and excessive improvement requirements that generate unnecessary costs."[2]

28. As noted above, the density limitation on multiple dwellings unfairly restricts multifamily uses to a lesser density than single-family detached dwellings and townhouses. The restrictive density standard for multiple dwellings lacks any reasonable or legitimate public purpose.

29. Multifamily dwellings tend to be more affordable than low-density single-family housing. Thus, multifamily dwellings provide a vital housing option for those who cannot afford to purchase a home.

30. There is a need for more housing options in Sullivan County to address existing deficiencies in housing quality and affordability. For example, 26.8% of renter households and 17% of owner households in Sullivan County expend more than 50% of their household income on housing costs, which is a level considered "severely housing cost burdened" by the U.S. Census Bureau.[3]

31. The need for housing will be intensified by the construction of the Montreign Resort Casino in Thompson, which will create 1,425 full-time jobs and 96 part-time jobs.[4] Additional housing options for these workers within Thompson will allow the Town to capture more of the economic and community benefits generated by the new casino resort. In addition, providing housing options within a short commuting distance to the casino is consistent with sustainable development principles.

32. Gan Eden's proposed development would provide 535 new multifamily and townhouse units within an approximately 10 minute drive of the Montreign Casino Resort.

33. In imposing a more restrictive maximum density requirement on multifamily dwellings as compared to single-family dwellings or townhouses, the Town of Thompson has eliminated any economic rationale in support of the construction of multifamily dwellings. A property owner has zero economic incentive to construct multifamily dwellings when it can construct a higher number of single-family detached dwellings or townhouses.

34. Limiting multifamily dwellings to a lower density than single-family homes and townhouses virtually ensures that no apartments will be constructed in the community.

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[2] The Complete Illustrated Book of Development Definitions, Fourth Edition, p. 190.
[3] Housing Affordability in New York State, prepared by the Office of Budget and Policy Analysis, New York State Comptroller, March 2014.
[4] Gaming Facility License Award, Montreign Operating Company, LLC. New York State Gaming Commission, December 21, 2015.

35. Under the current density standards, there is no reasonable opportunity in Thompson for the development of multifamily dwellings due to the Town's density standards. This results in a blatantly exclusionary form of zoning, because it effectively excludes multifamily dwellings from the community.

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

Town of Thompson
Local Law 8 - 2016

EXHIBIT D

to

First Amended Verified Complaint of Gan Eden Estates

(Use this form to file a local law with the Secretary of State) REV699

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Thompson

Local Law No. 08 of the year 2016

A local law amending Chapter 52 entitled "Planning Board and Zoning Board of Appeals" and Chapter 250 entitled "Zoning and Planned Unit Development" of the Town of Thompson Code

Be it enacted by the Town Board of the

Town of Thompson

1. §52-3 E. is hereby amended to read as follows:

E. If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located in any plat showing lots, blocks or sites pursuant to Town Law §277(4) or any site plan pursuant to Town Law §274-a(6), or is otherwise not practical, the Planning Board shall require, as a condition of approval of any such plat, payment to the Town of a parkland fee, which fee shall be available for use by the Town for park, playground and/or recreation purposes, including acquisition of property. The fee for same shall be consistent with parkland fees as set in Article XIX of Chapter 250 of the Town Code.

2. Chapter 250 is hereby amended to include:

ARTICLE XIX
Park, Playground, Recreational Sites and Parkland Fees

§250-151. Approval procedure for subdivision plats pursuant to Town Law §277(4).

A. Before the approval by the Planning Board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already in the office of the Clerk of the county wherein such plat is situated if such plat is entirely or partially undeveloped, such plat shall also show, in proper cases and when required by the Planning Board, a park or parks suitably located for playground or other recreational purposes. Where a proposed park, playground or other permanent recreation area is shown on the Site Development Plan to be located in whole or part in a proposed subdivision, the Planning Board shall require that such area or areas be shown on said plat.

B. Land for such park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular subdivision plat will contribute.

C. In the event that the Planning Board makes a finding pursuant to paragraph "B" of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a park or parks suitably located for playgrounds or other recreational purposes of adequate size cannot be properly located on the subdivision plat, the Planning Board may require, as a condition to approval of any such plat, a payment to the Town of a parkland fee, which fee shall be available for use by the Town for park, playground and/or recreation purposes, the amount of which is established in §250-152(B). In making such determination of suitability, the board shall assess the size and suitability of lands shown on the subdivision plat which could be possible locations for park and recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes pursuant to the provisions of this section shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.

D. When said permanent recreational areas are to be required to be shown, the subdivider shall submit to the Planning Board a suitable tracing, at a scale of not less than 30 feet to an inch, indicating:

(1) The boundaries of said recreation area.
(2) Existing physical features, such as brooks, ponds, trees, rock outcrops, structures, etc.
(3) Existing and, if applicable, proposed changes in grades of said area and the land immediately adjacent.

E. In no event shall the Planning Board require that more than 10% of the gross area of a proposed subdivision be so shown. The minimum area of contiguous open space acceptable in fulfillment of this requirement shall be generally three acres. However, in the case of subdivisions of less than 10 acres, smaller recreation areas may be approved by the Planning Board whenever it deems that the difference between the area shown and three acres may be made up in connection with the subdivision of adjacent land.

F. In applicable cases, the Planning Board shall require execution and filing of a written agreement between the applicant and the Town Board regarding costs of grading, development, equipment and maintenance of said recreation areas, as well as the conveyance of whatever rights and title deemed necessary to ensure that said premises will remain open for use by the residents of the Town of Thompson.

§250-152. Determination of required lands or monies.

A. For every 100 people in a development, one acre of land may, at the discretion of the Planning Board, be provided for by the developer. For the purposes of computation:

(1) Single-family detached = four people per unit.
(2) Efficiency apartment = one person per unit.
(3) One-bedroom townhouse, condominium or apartment = two people per unit.
(4) Two-bedroom townhouse, condominium or apartment = three people per unit.

(5) Three-bedroom townhouse, condominium or apartment = four people per unit.

B. For all developments and subdivisions, other than up to a four-lot minor subdivision, if the Planning Board has required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $1,250 per the higher of the number of units or lots. If the Planning Board has not required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $2,500 per unit or lot.

C. In either case, the total amount of parkland fees to be paid by the developer shall be delivered to the Town prior to the issuance of any final approval of the subdivision.

D. In instances where the Planning Board requires the construction of on-site recreation facilities, and if the development is approved in sections in accordance with general Town Law §276 subdivision 6, said recreation facilities shall be constructed proportionally with the sections.

E. In the case where the Planning Board deems it in the best interest of the Town to require the developer to provide land to the Town to create a Town-wide park instead of money, the Town will enter into a contract agreement with the developer. This contract will be executed before final approval is granted by the Planning Board.

F. Whereas the domicile of an applicant for a development or subdivision, greater than a two-lot subdivision, is located on said land proposed for development or subdivision, the fee required by this section upon the applicant's post-subdivision domicile parcel is waived.

§250-153. Approval procedure for site plans pursuant to Town Law §274-A(6).

A. Before the approval by the Planning Board of a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purpose.

B. Land for such park, playground or other recreational purpose may not be required until the Planning Board makes a finding that a proper case exists for requiring a park or parks be suitably located for playgrounds or other recreational purpose within the Town. Such finding shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

C. In the event the Planning Board makes such a finding pursuant to paragraph B of this section that the proposed site plan should require a park or parks suitably located for playgrounds or other recreational purpose, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof as shall be consistent with parkland fees as set forth in this Article.

D. The Planning Board shall require as a condition of approval of any site plan containing residential units a payment to the Town of a parkland fee, which fee shall be available for use by the Town exclusively for park, playground or other recreational

purpose, including the acquisition of property.

E. Notwithstanding the foregoing provision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to Town Law §276 and this Article, the authorized board shall credit the applicant for any land set aside or parkland fees paid under such subdivision plat approval. In the event of re-subdivision of such plat, nothing shall preclude the additional reservation of parkland fees or money donated in lieu thereof.

§250-154. Determination of required lands or monies.

A. For every 100 people in a development, one acre of land must, at the discretion of the Planning Board, be provided for by the developer. For the purposes of computation:

(1) Single-family detached = four people per unit.
(2) Efficiency apartment = one person per unit.
(3) One-bedroom townhouse, condominium or apartment = two people per unit.
(4) Two-bedroom townhouse, condominium or apartment = three people per unit.
(5) Three-bedroom townhouse, condominium or apartment = four people per unit.

B. For all developments and subdivisions, other than up to a four-lot minor subdivision, if the Planning Board has required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $1,250 per the higher of the number of units or lots. If the Planning Board has not required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $2,500 per unit or lot.

C. In either case, the total amount of parkland fees to be paid by the developer shall be delivered to the Town prior to the issuance of any building permits.

3. Except as herein specifically amended, the remainder of Chapter 52 and Chapter 250 of such Code shall remain in full force and effect.

4. If any clause, sentence, paragraph, subdivision, section or part thereof this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree or order shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment, decree or order shall have been rendered and the remainder of this local law shall not be affected thereby and shall remain in full force and effect.

5. Except as herein otherwise provided penalties for the violation of this local law, any person committing an offense against any provision of the chapter of the Code of the Town of Thompson shall, upon conviction thereof, be punishable as provided in Chapter 1, General Provisions, Article II, of such Code.

6. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only)

I hereby certify that the local law annexed hereto, designated as local law No. 08 of 2016 of the Town of Thompson was duly passed by the Town Board on December 20, 2016 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by Elective Chief Executive Officer*)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2016 of the County/City/Town/Town/Village of _____ was duly passed by the _____ on _____2016 and was (approved) (not approved) (repassed after disapproval) by the _____ on _____ and was deemed duly adopted on _____2016, in accordance with the applicable provisions of law.

3. (Final adoption by referendum)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2016 of the County/City/Town/Town/Village of _____ was duly passed by the _____ on _____2016 and was (approved) (not approved) (repassed after disapproval) by the _____ on _____. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 2016, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2016 of the County/City/Town/Town/Village of _____ was duly passed by the _____ on _____2016 and was (approved) (not approved) (repassed after disapproval) by the _____ on _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____2016 in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2016 of the City of _____ having been submitted to referendum pursuant to the provisions of sections 36/37 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at a special/general election held on _____ 2016 became operative.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, chairman of the county legislative body, the mayor of a city or village or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter)

I hereby certify that the local law annexed hereto, designated as local law No. 08 of 2016 of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____ 2016, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide the appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Marilou J. Calhoun

~~Clerk of the county legislative body, city~~, town, ~~village~~ clerk ~~or officer designated by local legislative body~~

Date: December 21, 2016

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality)

STATE OF NEW YORK
COUNTY OF SULLIVAN

I, the undersigned, do hereby certify that the foregoing local law contains the correct text and that all proper proceeding have been had or taken for the enactment of the local law annexed hereto.

Date: December 21, 2016

Attorney for Town of Thompson

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

Town of Thompson, Sullivan County, New York Parks and Recreation Study June 2017

EXHIBIT E

to

First Amended Verified Complaint of Gan Eden Estates

Town of Thompson

Sullivan County, New York

Parks and Recreation Study

June 2017




Town of Thompson
New York

Delaware Engineering, D.P.C.
28 Madison Avenue Extension
Albany, New York 12203

Table of Contents

1.0 Introduction

The Town of Thompson has a long history as a scenic resort area and recreational destination in Sullivan County, New York. The Town has a growing year-round population and experiences a population surge during the summer months due to numerous camps, bungalow colonies and second home communities. The Town is undertaking a parks and recreation study in order to assess their existing recreational facilities and ensure that the community will have adequate resources to serve the future recreational needs of year-round and seasonal residents.

This study contains an inventory of the existing parks and recreational facilities used by Town residents and compares them to the current population in order to create a baseline of recreational needs per capita. The Town Planning Board will utilize this baseline when determining the need for additional recreational facilities to meet potential demand created by future development projects.

Background data for this study was obtained from U.S. Census records, National Recreation and Park Association (NRPA) classifications and guidelines, and the NYS Statewide Comprehensive Outdoor Recreation Plan (2014-2019). In addition, information on the community's existing recreational facilities and usage was obtained from the Town of Thompson and Village of Monticello recreation departments, representatives of the Sullivan County YMCA and leaders of area youth athletic organizations.

This study originally focused only on parks and recreational facilities located within the Town of Thompson and outside the Village of Monticello boundary. However as research continued it was apparent that facilities within the Village should be included in the inventory. Town and Village parks are utilized by residents of both municipalities and one Village-owned park is actually located within the Town. Area sports leagues are open to youth in both municipalities, and MCSD recreation facilities serve children throughout the district, which includes sections of the Towns of Thompson, Forestburgh, Bethel, Fallsburg and Mamakating.

2.0 Existing Public Parks and Recreational Facilities

2.1 Town of Thompson Park

The Town of Thompson owns and operates a 173 acre community park located on Town Park Road near the northern town border. Park facilities include a new community building and playground, two pavilions, rest rooms, barbeque pits, an apple orchard and picnic areas, hiking/cross-county ski trails, a pedestrian bridge over the East Mongaup River, soccer/softball practice areas, and a 20' x 50' swimming pool. The swimming pool is only open during the summer day camp program which is operated by the Sullivan County YMCA. Approximately 200 children register for the seven week day camp session each summer. In 2010 the Monticello MAFCO-Football league created a youth football field in the south end of the park with lights and bleachers. The Town is currently adding new signage and hiking/cross-country ski trails and repairing storm and wind damage on the east side of Town Park Road.

2.2 Village of Monticello Parks and Recreation Facilities

2.2.1 Dillon Park and Pool

The Village of Monticello owns and operates Dillon Park, a 13.6 acre community park located in the Town of Thompson on the south side of Dillon Road. The park includes a 5 acre pond and fishing dock, a pavilion, gazebo, barbecue pits, picnic area, basketball court, playground with tire swing and slide, skate park, and a 30' x 60' swimming pool. The pool is open during July and August from noon to 7 p.m. with free admission.

2.2.2 De Hoyos Memorial Park and Pond

The Village of Monticello owns and operates De Hoyos Park and Pond, a community park located on Hay Street at the west end of the Village. The park is comprised of two parcels. The main recreation parcel is 11.5 acres and includes a pavilion, barbeque pit, toddler playground and older child playground, 6 tennis courts (in poor condition), a 2 acre pond stocked with fish, frogs and turtles, walking trails around the pond, a scenic overlook and ice skating. The park also includes a 13.6 acre wooded parcel at the west end of Hay Street which is undeveloped.

2.2.3 Ted Stroebele Recreation Center

The Ted Stroebele Center serves the Village as a community center rather than a recreation facility. It houses the Parks and Recreation Department offices, Village Court, Meals on Wheels program, Senior Citizen activities, and community meeting rooms.

2.3 Monticello Central School District (MCSD) Recreational Facilities

MCSD athletic fields and indoor recreation facilities are not open for general public use but may be rented by community groups when not scheduled for classes, practice or games by district sports teams. School affiliated groups, volunteer non-profit community groups, government agencies and local scouting organization are exempt from rental fees. Other organizations and youth groups have special contractual agreements with the district or have a reduced fee

schedule. The Village Recreation Department currently uses the MCSD gyms for free K-5 indoor recreation programs.

2.3.1 Monticello High School and Robert J. Kaiser Middle School Campus

The High School and Middle School campus includes a football field, baseball field, two softball fields, four soccer fields and track and field facilities. The ball and soccer fields are rented out to community groups during the entire outdoor season. The Monticello Little League uses the High School fields 1 and 2 for their six divisions: T-Ball, Rookie, Minors Softball, Minors Baseball, Majors Softball, and Majors Baseball. The Mamakating-Monticello AYSO uses the High School soccer field.

2.3.2 Somerville Athletic Field

MCSD recreation facilities at Somerville Field include a soccer/football field with bleachers and lights, softball field, track and field facilities, and two tennis courts.

2.3.3 Kenneth L. Rutherford Elementary School

Recreation facilities include two softball fields, basketball courts, a soccer field and two playground areas.

2.3.4 George L. Cook Elementary School

Recreation facilities include a baseball field, soccer field, miscellaneous courts and two playground areas.

2.4 New York State Forest Land

2.4.1 Wolf Brook Multiple Use Area

The Wolf Brook Multiple Use Area is a regional park comprised of 585 acres of NYS Forest Lands that are located entirely within the Town of Thompson just southwest of Wolf Lake. The area is accessible by north and south parking areas on Wolf Brook Road. The park features 1.9 miles of trails and unpaved roads open for hiking, horseback riding, cross-country skiing and biking. Trout fishing is available on the Wolf Pond Brook and Mullet Brook which are tributaries of the Neversink River. There are no designated campsites but primitive camping is allowed. Hunting and trapping are permitted during appropriate seasons.

2.4.2 Neversink River Unique Area

The Neversink River Unique Area is a regional park that includes 6,580 acres of NYS State Forest Land. Approximately 570 acres lie within the Town of Thompson, with the remaining 6,000 acres in the Town of Forestburg. The park is a hiking and fishing destination and includes a spectacular gorge and two major waterfalls. There are 11 acres of trails in the Neversink Area open for hiking, cross-country skiing and biking, including 1.6 miles within the Town of Thompson. Parking is available at the Katrina Falls trailhead. Canoeing, hunting, fishing, and trapping are permitted. The Nature Conservancy designated the Neversink River as one the 76 "Last Great Places" and the river is considered the birthplace of American dry fly fishing.

3.0 Existing Private Recreational Facilities

3.1 Rock Hill Park

In 2014 the Rock Hill Business and Community Association and the Rock Hill Fire Department constructed a new park on land adjacent to the Fire House on Glen Wild Road. Rock Park includes "Frog Field," a softball field with lights and bleachers, a soccer field and a community playground with swing sets, seesaws and a firetruck. The total park area is approximately 4 acres. Frog Field is the home of the Sullivan County Slo-Pitch League and the soccer field is used by the Mamakating/Monticello AYSO.

3.2 Fireman's Camp

The Monticello Fire Department owns the 4.4 acre Fireman's Camp and 128 acre Sackett Lake parcel in the Town of Thompson. The camp is open to Monticello Fire Department families and is also open to the public during special sponsored events. The camp includes a beach area for boating and fishing, a playground, camp sites, gazebo, and a pole barn with kitchen.

3.3 YMCA of Sullivan County

The YMCA of Sullivan County recently opened a new Environmental Exploration Center on a 155 site on Wild Turnpike in Rock Hill. It includes a 3,000 square foot facility offering family based fitness classes, outdoor education, youth programs, and a summer environmental camp. The site includes a nature play area, low ropes course, archery, volleyball field, waterfront for boating and fishing, hiking trails, and snowshoeing.

3.4 Holiday Mountain Ski and Fun Park

Formerly owned and operated by the Town of Thompson, the 160 acre Holiday Mountain is now a commercial family sports center. Skiing, snowboarding and tubing are offered during the winter months and summer activities including go-carts, mini golf and rock climbing.

3.5 Private Homeowners Associations

Most Homeowners Associations in the Town of Thompson offer recreational facilities for members. Typical amenities include a clubhouse, swimming pool, tennis courts and walking trails. Several of the largest communities are located near the eastern Town boundary:

- **Lake Louise Marie –**

  Lake Louise Marie is one of two residential lake communities located near Lake Louise Marie, an approximately 300 acre non-motorboat lake in the southeastern section of the Town. The community was originally developed in the 1960s with small lots located between the northern shore of the lake and Route 17. It currently has approximately 256 homes with a few remaining building lots. A feature of the community is the "Lake Louise Marie County Club" which is operated by the homeowners' association and includes an outdoor pool, swimming beach, playground, tennis courts, handball and basketball courts, dock area and lake access for non-lake front homeowners.

- **Emerald Green –**

  Emerald Green is a 1,400 acre residential lake community developed in the 1970s which currently has over 629 homes and 300 remaining building lots. It surrounds three lakes (Lake Louise Marie, Treasure Lake and Davis Lake) totaling 330 acres of water and provides 55 acres of common grounds and recreational facilities. Recreational resources for residents include pocket parks, a clubhouse with gym, an outdoor pool, swimming beach, boating, fishing, tennis courts, indoor and outdoor basketball, and handball courts.

- **Wolf Lake –**

  Wolf Lake is a residential community with 1,550 acres in the Town surrounding the Wolf Lake reservoir, a 380 acre non-motorboat lake. It was originally founded as a "forever wild" summer fishing and boating retreat with approximately 200 lots. Many of the cabins and bungalows have been winterized for year round occupancy. There is a clubhouse and community beach and the surrounding land can be used for hiking, hunting, snowmobiling, cross-country skiing and ATVing.

- **Wanaksink Lake Club –**

  The Wanaksink Lake Club, founded in 1935, owns a private 300 acre non-motorboat lake. It is surrounded by 300 lots with lakeside cottages and some larger homes, many of which have been winterized and upgraded for year round use. Amenities include a clubhouse, community beach and tennis court.

3.5 Private Camps, Cottages and Bungalows

According to Sullivan County 2016 Real Property Service (RPS) records there are 167 parcels in the Town classified as Property Class Code 417 (Camps, Cottages and Bungalows) covering 2,577 acres. In addition 9 parcels are classified as 580s (Camps, Camping Facilities and Resorts) covering a total of 913 acres. Most of these facilities provide recreational areas for use of their residents.

3.6 Private Forest Lands

According to 2016 RPS records there are 22 parcels in the Town of Thompson classified as Property Class Code 920 (Private Hunting and Fishing Clubs) covering a total of 2,050 acres.

4.0 Population and Housing Trends

4.1 United States Census

U.S. Census records for the Town of Thompson and Village of Monticello show that the Town experienced extremely rapid growth in the 1960s and 70s. Growth slowed during the following two decades and increased again between 2000 and 2010. The 2015 American Community Survey estimates that the County, Town and Village have experienced a slight decrease in population since 2010. **Table 4.1** shows the population trends in the County, Town and Village between 1960 and 2015.

Table 4.1 Population Trends 1960 – 2015

	1960 Census	1970 Census	1980 Census	1990 Census	2000 Census	2010 Census	2015 ACS Est.
Sullivan County	**45,272**	**52,580**	**65,155**	**69,277**	**73,966**	**77,547**	***76,330***
Population Change		7,308	12,575	4,122	4,689	3,581	*-1,217*
% Change		16.14%	23.92%	6.33%	6.77%	4.84%	*-1.57%*
Town of Thompson (incl Village)	**8,792**	**11,418**	**13,479**	**13,711**	**14,189**	**15,308**	***15,098***
Population Change		2,626	2,061	232	478	1,119	*-210*
% Change		29.87%	18.05%	1.72%	3.49%	7.89%	*-1.37%*
Village of Monticello	**5,222**	**5,991**	**6,306**	**6,597**	**6,512**	**6,726**	***6,685***
Population Change		769	315	291	-85	214	*-41*
% Change		14.73%	5.26%	4.61%	-1.29%	3.29%	*-0.61%*
Town of Thompson (excl Village)	**3,570**	**5,427**	**7,173**	**7,114**	**7,677**	**8,582**	***8,413***
Population Change		1,857	1,746	-59	563	905	*-169*
% Change		52.02%	32.17%	-0.82%	7.91%	11.79%	*-1.97%*

The U.S. Census population records do not reflect the seasonal population surge that the Town experiences each summer from the influx of people in vacation homes, bungalow colonies, resorts, camps and campgrounds. In order to get an estimate of the summer population the 2010 Census figures for the number of seasonal housing units (2,144) and average persons/ household (2.45) were multiplied and added to the year-round population.

Table 4.2 2010 Census Seasonal Housing Units and Population

	Seasonal, Recreational or Occasional Use HU	Seasonal Population *(2.45 Persons/HU)*	2010 Census Population	Total Estimated Population
Town of Thompson (incl Village)	2,144	**5,253**	15,308	**20,561**
Village of Monticello	109	267	6,726	6,993
Town of Thompson (excl Village)	2,035	**4,986**	8,582	**13,568**

Table 4.2 indicates that the Town's total 2010 summer population may have increased by about 5,253 persons (or approximately 34% of its year round population) to 20,561. If considering only the Town outside the Village, the summer population may have increased by about 4,986 persons (or approximately 58% of its year round population) to 13,568. Note that this is a very conservative estimate of the increase in the Town's summer population.

4.2 Second Home Owners Study

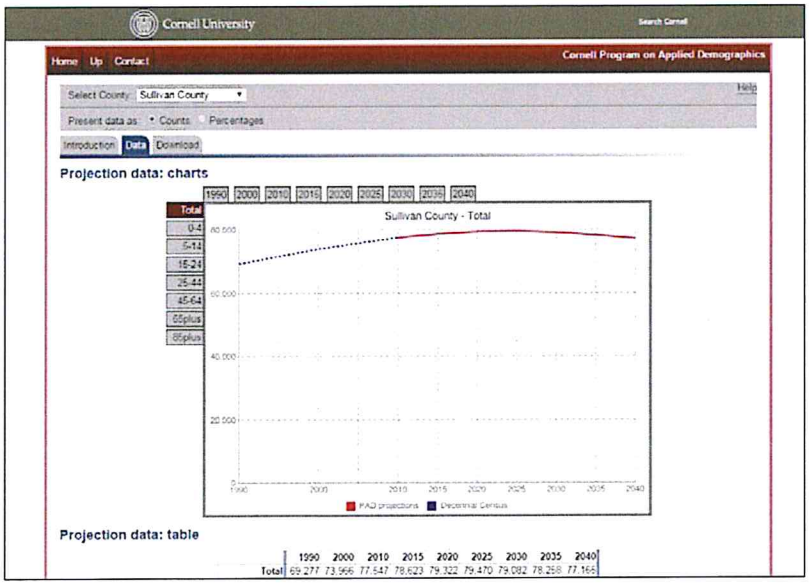
Sullivan County conducted a Second Home Owner Study in 2008. According to tax roll data, second home owners in the County increased from 6,089 persons in 2001 to 10,085 persons in 2007, a 65% increase. The highest percentages of second homes were located in the Towns of Bethel (16.0%) and Thompson (14.7% or 1,482 homes.) A survey mailed to these second home owners had a 13.7% response rate. The typical respondent was between the ages of 55-74, married with no children at home, employed full-time, with a Bachelor's degree or higher.

The 2016 Sullivan County RPS parcel data was checked to estimate the current number of second homes in the Town. There are 4,622 residential parcels (200s property class) of which 2,150 parcels have mailing addresses outside of the Monticello, Harris, Kiamesha Lake, Rock Hill, Glen Wild and Wurtsboro zipcodes. This correlates well with the 2010 Census figure of 2,144 seasonal, recreational or occasional use housing units.

4.2 Cornell Program on Applied Demographics

The Cornell Program on Applied Demographics (PAD) prepares population projections for New York State counties in 5 year intervals to 2040. PAD estimates that the population in Sullivan County will continue to rise from 77,547 persons in 2010 to a peak of 79,470 persons in 2055 before gradually declining. Note that these trends do not concur with current ACS estimates.

Figure 4.1 PAD Sullivan County Projections



5.0 Park Planning Guidelines

5.1 NRPA Guidelines

The National Recreation and Park Association (NRPA) is a national, non-profit service organization dedicated to advancing parks, recreation and environmental efforts that enhance the quality of life for all. In 1996, the NRPA published the *Park, Open Space and Greenway Guidelines* which presented a model of typical park classifications as well as recommended service levels based on population. However, the NRPA determined that one set of standards does not fit all communities nationwide especially in urban areas. They recommended that each municipality develop customized Level of Service standards that reflect the specific conditions and unique nature of their community. The following NRPA Standards should therefore be viewed as general guidelines which can be customized by individual communities.

Table 5.1 NRPA Traditional Parkland Classifications

Type	Service Area Radius	Desirable Size	Acres/ 1000 residents	Site Characteristics and Facilities
Mini/Pocket Parks	< ¼ mile	< 1 acre	0.25 – 0.5 acres	Playground and/or passive recreation for specific groups such as tots or senior citizens. Easily walkable, typically no parking.
Neighborhood Parks	¼ - ½ mile	5 – 10 acres	1 – 2 acres	Serve surrounding neighborhoods with open space and facilities such as basketball courts, children's play equipment and picnic tables.
Community Parks	1 – 2 miles	25+ acres	5 – 8 acres	May include areas for both intense and passive recreation such as athletic complexes, swimming pools, hiking trails and areas for viewing, sitting, and picnicking.
Regional Parks	Several Communities	200+ acres	5 – 10 acres	Contiguous with or encompassing natural resources.
Special Use Areas	No applicable standards	Variable	Variable	Area for specialized or single purpose recreation such as campgrounds, golf courses, etc.

Over the past few decades the general NRPA recommendation of a minimum of 10 acres of neighborhood/community parkland per 1,000 residents has become a common standard used by many communities. This metric currently remains relevant. The 2017 NRPA Agency Performance review indicates that the typical park and recreation agency has 9.6 acres of parkland per 1,000 residents. Note that school district facilities and regional parks are not typically included in this calculation.

As noted in Section 4.1, the total estimated seasonal population in the Town of Thompson is approximately 20,561 persons. Based on the NPRA recommendation of 10 acres per 1,000 residents, the Town needs approximately 200 acres of public parkland to serve this population. A shown in **Table 5.2**, the Town of Thompson currently has just under 200 acres of public parkland, very close to the NRPA acreage guidelines.

Table 5.2 Town of Thompson / Village of Monticello Public Parks

Name	Type	Acres	Facilities
Thompson Town Park	Community	173	Community building, two pavilions, playground, swimming pool, picnic areas, hiking/cross country ski trails, football field, soccer/softball areas.
Dillon Park	Community	13.6	Pavilion, basketball court, skate park, playground, picnic areas, swimming pool, pond and fishing dock.
De Hoyos Park	Community	11.5	Pavilion, two playgrounds, tennis courts, pond, walking trail, ice skating
TOTAL		**198.1**	

NRPA traditional recommendations for the number of specific types of recreation facilities per population are shown in **Table 5.2**.

Table 5.2 Town of Thompson / Village of Monticello / MCSD Athletic Facilities

Facility Type	NRPA Standard per Population	Recommended for 20,000 Pop.	Existing Quantity
Baseball Field	1 per 5,000	4	2
Softball Field	1 per 5,000 *(if also used for youth baseball)*	4	6
Basketball Court	1 per 5,000	5	3
Football Field	1 per 20,000	1	3
Playgrounds	1 per 2,000	10	9
Soccer fields	1 per 10,000	2	9
Swimming Pools	1 per 20,000	1	2
Tennis Courts	1 per 2,000	10	8
Track	1 per 20,000	1	2

6.0 Findings

The Study incorporates the identification of existing public parks and recreational facilities including those owned by the Town of Thompson, Village of Monticello, Monticello Central School District, and State of New York. In addition, a number of large private recreational resources are identified. The Study provides a description of population trends and park planning guidelines.

The Study documents a relationship between the current publicly available parks and recreational facilities and the current estimated peak summer population. The estimated summer population in the Town is 20,561 persons and there are currently just under 200 acres of public park land. This closely matches the traditional NRPA metric of 10 acres per 1,000 residents. Thus current facilities are adequate to serve the current estimated summer population.

Furthermore, the Study identifies the need for additional parks and recreation facilities to support recreational demands in the areas of baseball, basketball, playgrounds and tennis courts using NRPA Standards. On this basis, new residential development that will contribute population growth, whether year-round or seasonal, will create a demand for parks and recreational facilities in addition to those that exist presently.

Thus, new residential development should be reviewed by the Town Planning Board on an individualized basis to determine if suitable park and/or recreational facilities of adequate size to meet the demands of the new population associated with the development can be located on the site of the new residential development. If such facilities cannot be located on-site, pursuant to Town Law §277, the Town Planning Board may require a sum of money in lieu of park land on site, in an amount established by the Town Board. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes shall be deposited in a trust fund to be used by the Town exclusively for park, playground and other recreational purposes, including the acquisition of property.

Review and updating of the acreage and type of parks and recreational facilities as well as population trends is recommended on a five to ten year basis, depending on the availability of new datasets to support informed comparisons of population to parks and recreational facilities.

SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Index No. 2017-2291

Town of Thompson
Local Law 8 - 2017

EXHIBIT F

to

First Amended Verified Complaint of Gan Eden Estates

(Use this form to file a local law with the Secretary of State) REV699

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Thompson

Local Law No. 8 of the year 2017

A local law amending Chapter 52 entitled "Planning Board and Zoning Board of Appeals" and Chapter 250 entitled "Zoning and Planned Unit Development" of the Town of Thompson Code

Be it enacted by the Town Board of the

Town of Thompson

1. §52-3 E. is hereby amended to read as follows:

E. Pursuant to the findings in the Town of Thompson Parks and Recreation Study, which was adopted by the Town Board on June 20, 2017, there is a concrete need for additional parks and recreation facilities to support future recreational demands: new residential developments that will contribute to the population growth, whether year-round or seasonal, will create a demand for parks and recreational facilities in addition to those that exist presently. New residential development should be reviewed by the Planning Board on an individualized basis to determine if suitable park and/or recreational facilities of adequate size to meet the demands of the new population associated with the development can be located on the site of the new development, If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located in any plat showing lots, blocks or sites pursuant to Town Law §277(4) or any site plan pursuant to Town Law §274-a(6), or is otherwise not practical, the Planning Board shall require, as a condition of approval of any such plat, payment to the Town of a sum of money in lieu of park land on site. Any monies required by the Planning Board in lieu of land for parks, playground, or other recreational purposes shall be deposited in a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including acquisition of property. The fee for same shall be consistent with parkland fees as set in Article XIX of Chapter 250 of the Town Code.

2. §250-151 B. is amended to read as follows:

B. Land for such park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular subdivision plat will contribute.

3. §250-151 C. is amended to read as follows:

C. If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located in any plat showing lots, blocks or sites pursuant to Town Law §277(4) or is otherwise not practical, the Planning Board shall require, as a condition of

approval of any such plat, payment to the Town of a sum of money in lieu of park land on site. Any monies required by the Planning Board in lieu of land for parks, playground, or other recreational purposes shall be deposited in a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including acquisition of property. The fee for same shall be consistent with parkland fees as set in Article XIX of Chapter 250 of the Town Code.

3. §250-152 B. is amended to read as follows:

B. For all developments and subdivisions, other than up to a four-lot minor subdivision, if the Planning Board has required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $2,500.00 per unit or lot, whichever is higher. The Planning Board may reduce this fee to a minimum of $1,250.00 per unit or lot, whichever is higher, by reviewing, on a case by case basis the following criteria or any other relevant data to determine the proposed development's overall impact on the Town's recreational facilities:

Population/demographics of proposed development;
Types of recreational facilities proposed for the site, including whether passive or active, and the nature of the facilities proposed;
Number of housing units proposed;
Size/acres of proposed site;
Seasonality of the development's population, as well as seasonality of the on-site facilities;
Location of proposed development relative to other proposed or existing public recreational facilities.

4. §250-153 C. is amended to read as follows:

C. If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located in any plat showing lots, blocks or sites pursuant to Town Law §274(A)(6) or is otherwise not practical, the Planning Board shall require, as a condition of approval of any such plat, payment to the Town of a sum of money in lieu of park land on site. Any monies required by the Planning Board in lieu of land for parks, playground, or other recreational purposes shall be deposited in a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including acquisition of property. The fee for same shall be consistent with parkland fees as set in Article XIX of Chapter 250 of the Town Code.

5. §250-154 B. is amended to read as follows:

B. For all developments and subdivisions, other than up to a four-lot minor subdivision, if the Planning Board has required the incorporation of recreation facilities by the developer on his site, the parkland fee shall be $2,500.00 per unit or lot, whichever is higher. The Planning Board may reduce the fee to a minimum of $1,250.00 per unit or lot, whichever is higher, by reviewing, on a case by case basis the following criteria or any other relevant data to determine the proposed development's overall impact on the Town's recreational facilities:

Population/demographics of proposed development;

Types of recreational facilities proposed for the site, including whether passive or active, and the nature of the facilities proposed;
Number of housing units proposed;
Size/acres of proposed site;
Seasonality of the development's population, as well as seasonality of the on-site facilities;
Location of proposed development relative to other proposed or existing public recreational facilities.

6. Except as herein specifically amended, the remainder of Chapter 52 and Chapter 250 of such Code shall remain in full force and effect.

7. If any clause, sentence, paragraph, subdivision, section or part thereof this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree or order shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment, decree or order shall have been rendered and the remainder of this local law shall not be affected thereby and shall remain in full force and effect.

8. Except as herein otherwise provided penalties for the violation of this local law, any person committing an offense against any provision of the chapter of the Code of the Town of Thompson shall, upon conviction thereof, be punishable as provided in Chapter 1, General Provisions, Article II, of such Code.

9. This local law shall take effect immediately upon filing with the Secretary of State.