

# New Jersey Law Journal

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## \$130K in Attorney Fees: Howell Township Settles After Council Accused of Usurping Planning Board's Role

"This was an attempt by the township council to overstep its role, and we took an affirmative stance to oppose that and we were ultimately vindicated," said Adam Garcia, an attorney for the developer.

By Charles Toutant | March 14, 2022



**(l-r) Jacquelyn Corsentino, Adam Garcia and Steven Gouin of Giordano, Halleran & Ciesla. Courtesy photos**

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A New Jersey municipality that sought to block construction of a residential development has agreed to withdraw its objections and to pay \$130,000 in legal fees to the developer. The settlement, ending a lawsuit in Monmouth County Superior Court, stands as a cautionary tale for elected officials attempting to usurp the powers of the local planning board.

In 2018, the planning board in Howell Township granted approval to a proposal for 100 age-restricted units on a 58-acre parcel. But the so-called developer's agreement, which covers financial terms between the township and the developer, as well as the timing of the project and implementation of the planning board's conditions, falls in the purview of the township council. Members of the Howell town council voted down the developer's agreement, which meant the project could not get building permits and construction could not begin.

Some members of the town council objected to the project because it consists of a four-story building, which they felt was too tall for the community, according to Adam Garcia, a lawyer for Giordano, Halleran & Ciesla in Red Bank who represented the developer, a company called 6461 Route 9 Howell. In addition, the council has expressed a desire to stop development, according to the complaint.

A developer's agreement is "usually a pro forma type of thing. The township used the fact that the developer's agreement was before them as a backdoor means of putting a stop to the project. They said we don't like the project, so we're not going to sign the developer's agreement," according to Garcia, a member of his firm's real estate practice.

David Clark from Gluck Walrath in Trenton and Howell municipal solicitor Joseph Clark represented Howell. David Clark had no immediate comment and Joseph Clark did not return a reporter's call.

The developer filed suit against Howell in November 2021, along with an order to show cause why Howell should not issue a building permit for the project. The sole owner of 6461 Route 9 Howell, Paula O'Neill, was the personal guarantor of a construction loan for \$23 million, and the township's failure to let the project proceed put O'Neill in danger of defaulting on the loan, according to court documents. The developer also noted that it had spent \$2.8 million so far on the project and that the township had accepted \$209,657 in fees and costs from the developer.

"The township council was attempting to usurp the authority of the planning board and has no jurisdiction to reconsider the prior approvals," Garcia said.

The parties negotiated privately and in conferences with Monmouth County Superior Court Judge Lisa Thornton, and the settlement was finalized on March 4. Garcia represented the developer along with Steven Gouin and Jacquelyn Corsentino, both also with Giordano Halleran.

The outcome of the case "confirms that planning boards and zoning boards are the municipal entities that have authority over development in a given town. This was an attempt by the township council to overstep its role, and we took an affirmative stance to oppose that and we were ultimately vindicated," Garcia said.

The parcel of land in question has received planning board approval for a series of proposals, the first in 1989 for 404 units, including 81 for people with low and moderate incomes, with a different developer. Garcia said that in subsequent years, various developers proposed successively smaller projects at the site, which showed that permission was granted multiple times for comparable developments on the property.

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