

**Commonwealth of Massachusetts  
Land Court  
Department of the Trial Court**

LAND COURT  
FILED

Case No. \_\_\_\_\_

2017 JUN 19 AM 11:45

**Civil Cover Sheet**

First Plaintiff Park Central, LLC First Defendant Andrew R. Dennington

Locus Address/Description 0 Park Central Drive City/Town Southborough

Instructions

**Part I - To Be Completed by Plaintiff(s)' Counsel:**

**FOR ALL MISCELLANEOUS CASES (EXCEPT cases filed pursuant to Servicemembers Civil Relief Act):**

1. Using the list below, please number, with the Number 1, the main cause of action on which you base your complaint.
- and
2. Place an "X" next to each other cause of action in your complaint.
- and
3. Is this complaint verified?  Yes  No
- and
4. Are there any related cases filed in the Land Court Department?  Yes  No  
If yes, please provide the Case No.(s) : \_\_\_\_\_

X	ZAC	Appeal from Zoning/Planning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value - G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) - G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C

	MAD	Determine Fiduciary Authority G. L. c. 240, § 27
	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 19
	CNC	Certiorari - G. L. c. 249, § 4
	MAN	Mandamus - G. L. c. 249, § 5
	TRE	Trespass to Real Estate Involving Title - G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other

Received ZBA

Date: 6/19/17

**Part II - Uniform Counsel Certificate** - to be filled out by Plaintiff(s)' Counsel at the time of initial filing. All other counsel shall file within thirty (30) days of initial entry into the case, whether by answer, motion, appearance or other pleading.

**FOR ALL MISCELLANEOUS CASES (EXCEPT Mortgage Foreclosures under the Servicemembers Civil Relief Act)**

I am attorney-of-record for: Park Central, LLC and William Depietri

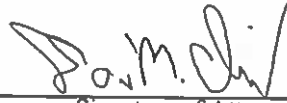
Plaintiff  Defendant in the above-entitled matter.

If Defendant(s) Attorney, please provide Case No. \_\_\_\_\_

- A. In accordance with Rule 5 of the Supreme Judicial Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent . . ."
- B. In accordance with Land Court Standing Order 1-12, I certify that I am aware of the requirement to, "...serve a copy of the "Limited Assistance Representation (LAR) Information Sheet" upon all defendants at the same time as service of the summons, complaint, and civil cover sheet is made", and I will comply with this requirement.

I hereby certify my compliance with these requirements.

BBO# 677043



\_\_\_\_\_  
Signature of Attorney-of-Record

Date: 06/19/2017

\_\_\_\_\_  
David M. Click

Please Print Name

**Exempt Cases:** Tax Foreclosures, Mortgage Foreclosures under the Servicemembers Civil Relief Act and all cases related to original and subsequent registration under G. L. c. 185, §1.

LAND COURT  
FILED

COMMONWEALTH OF MASSACHUSETTS 2017 JUN 19 AM 11:45

WORCESTER, ss.

LAND COURT DEPARTMENT  
DOCKET NO:

PARK CENTRAL, LLC AND WILLIAM A.  
DEPIETRI,

Plaintiffs,

v.

ANDREW R. DENNINGTON, DEBORAH  
DEMURIA, PAUL N. DREPANOS, CRAIG  
NICHOLSON AND DAVID WILLIAMS, AS  
THEY ARE MEMBERS OF THE  
ZONING BOARD OF APPEALS  
OF THE TOWN OF SOUTHBOROUGH,

Defendants,

**COMPLAINT ON APPEAL FROM DECISION OF THE ZONING BOARD  
OF APPEALS OF THE TOWN OF SOUTHBOROUGH**

1. This is an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, from the issuance of two related decisions by the Defendant Zoning Board of Appeals ("ZBA") of the Town of Southborough ( [1] Notice of Decision on Appeal of Planning Board's Denial of Site Plan Review and [2] Notice of Decision on Appeal of Building Inspector's Failure to Issue Decision, hereinafter collectively referred to as the "Planning Board Site Plan Rejection Decisions"), each issued on or about May 17, 2017 and filed with the office of the Town Clerk on May 31, 2017. Plaintiff is the owner of a 100 acre +/- parcel of vacant industrial land which is being developed as an integrated residential community pursuant to two permits previously issued by the ZBA, namely a Use Variance granted on May 27, 2015 allowing for the development of up to 158 townhomes and a Comprehensive Permit issued on August 24, 2016 allowing for the development of a 180 unit affordable housing rental apartment complex pursuant to M. G. L. c. 40B (the "Project"). A copy of the Use Variance is attached hereto as **Exhibit 1**; a copy of the Comprehensive Permit is attached hereto as **Exhibit 2**. Through both

Received ZBA

Date: 6/19/17

*in person delivery*

of the Decisions the ZBA denied Plaintiffs' request for a *ruling* that the Plaintiff's Site Plan which, pursuant to Condition 13 of the Use Variance Plaintiff was required to submit to the Southborough Planning Board ("the Planning Board") for Residual Site Plan Review, *had been constructively approved by operation of Section 174-10. F of the Southborough Zoning Bylaws*. Notwithstanding the ZBA's determination that the Site Plan had not been constructively approved the ZBA otherwise overruled the Planning Board's September 29, 2017 rejection of the Site Plan and remanded the site plan to the Planning Board for further site plan review consideration with direction. Copies of the ZBA's Planning Board Site Plan Rejection Decisions are attached hereto as **Exhibit 3** and **Exhibit 4**. A copy of the *Section 174-10 Site Plan Approval* of the Southborough Zoning Bylaw is attached as **Exhibit 5**.

### Parties

2. Plaintiff, Park Central, LLC is legal title owner of the property located at Park Central Drive which is the subject of the Planning Board Site Plan Rejection Decisions and is a party aggrieved by those Decisions. Plaintiff William A Depietri is the manager of Park Central, LLC and, through Capital Group Properties, LLC, is the developer of the Project and is a party aggrieved by the ZBA Decisions.
4. Defendant, Andrew R. Dennington is the chair member of the Zoning Board of Appeals of the Town of Southborough, and is a resident of Southborough, MA. Dennington is being sued in his capacity as a member of the Zoning Board of Appeals.
5. Defendant, Deborah DeMuria is an alternate member of the Zoning Board of Appeals of the Town of Southborough, and is a resident of Southborough, MA. DeMuria is being sued in her capacity as a member of the Zoning Board of Appeals.
6. Defendant Paul N. Drepanos is a member of the Zoning Board of Appeals of the Town of Southborough, and is a resident of Southborough, MA. Drepanos is being sued in his capacity as a

member of the Zoning Board of Appeals.

7. Defendant Craig Nicholson is a member of the Zoning Board of Appeals of the Town of Southborough, and is a resident of Southborough, MA. Nicholson is being sued in his capacity as a member of the Zoning Board of Appeals.

8. Defendant David Williams is a member of the Zoning Board of Appeals of the Town of Southborough, and is a resident of Southborough, MA. Williams is being sued in his capacity as a member of the Zoning Board of Appeals.

### Facts

9. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-8 as if expressly set forth herein.

10. On or about May 13, 2017 Plaintiff, as required by the express terms of the Use Variance (Exhibit 1 hereof) filed for residual Site Plan Review with the Planning Board pursuant to Section 174-10 of the Zoning Bylaw. Section 174-10 E and F of the Bylaw provides as follows:

“§ 174-10. Site plan approval.

[Amended 4-8-1985 ATM by Art. 39; 4-14-1986 ATM by Art. 48; 4-13-1987 ATM by Art. 43; 4-11-1988 STM by Art. 4; 4-26-1990 ATM by Art. 41] .....

*E. The Planning Board shall hold a public hearing on the application for site plan approval, with a written notice of the time and place of said hearing being given the applicant and the Board of Selectmen. The applicant is responsible for sending this notice to the certified abutters by certified mail return receipt requested, at least 10 days before the scheduled hearing. The Planning Board shall not act on the application until it has received and given due consideration to the recommendations of the Board of Selectmen or until 10 days have elapsed after the public hearing without receipt of the Selectmen's comments.*

*F. The Planning Board shall act on an application for site plan approval and shall notify, in writing, the applicant, the Board of Selectmen and the Building Inspector of its action within 60 days of the receipt of the application. Failure of the Planning Board to so act and to notify the applicant within said 60 days shall constitute approval of the site plan. The actions allowed by the site plan approval are authorized for a one-year period from the date of grant thereof. The applicant shall be granted a single one-year extension by applying to the Planning Board, in writing, prior to the date of expiration. If the actions permitted are not exercised or the approval not extended, they shall lapse, and a new application notice and hearing will be required.” (Emphasis added).*

Significantly during the Comprehensive Permit approval process the ZBA, with the guidance of extensive professional peer review assistance had performed thorough site plan review of Plaintiffs’ Site Plan pursuant to Section 174-10 allowing only for *residual* Planning Board Site Plan Review of four remaining categories as specified in the Use Variance, namely lighting, landscaping, parking and sidewalks. (See Exhibit 1, Use Variance at pp. 16-17).

11. The Planning Board accepted Plaintiffs’ Application for Site Plan Review and duly noticed and commenced public hearings on June 20, 2016 utilizing the same peer review professionals as had been engaged by the ZBA during the Comprehensive Permit process. Continued public hearings were held on July 18, 2016 and August 15, 2016 at which hearing the Planning Board voted, with Plaintiffs’ reluctant acquiescence, to continue the public hearing until September 19, 2016 stating that the required quorum of Board members would not again be available to meet until September 19 due to various personal commitments. At the September 19, 2016 public hearing the hearing was again continued to September 26, 2016 and the Applicant and the Planning Board also executed, at the request of the Planning Board, a written “Request for Continuation / Extension of Public Hearing Form” which also provided that “The time that the Planning Board has to reach a decision on the matters shall be extended until September 30, 2016”. The purpose of the extension to Friday September 30, 2016 was specifically to provide the Planning Board with additional time (beyond the initial 60 days requirement which had been previously extended) to issue a *written* notice and decision following the September 26 hearing as required by the Bylaw. A copy of the Request is attached hereto as **Exhibit 6**. At the conclusion of the September 26, 2016 hearing the Planning Board requested and Plaintiffs agreed to a further

extension of the Public Hearing until September 29, 2016. Plaintiffs would not and did not agree to an extension of time for the Planning Board to issue a written decision beyond September 30, 2016 nor would the Plaintiffs agree to a further extension of the Public Hearing beyond Thursday September 29. The Planning Board closed the public hearing on September 29, 2017 at which time it voted to reject Plaintiffs' application for Site Plan Approval.

12. The Planning Board's rejection of the Plaintiffs' site plan was arbitrary, biased, unlawful and a pretext as the Planning Board purposefully failed to address the merits of Plaintiffs' application but rather specifically delayed the approval process and based its rejection on its prior determination and public proclamation that the Use Variance and the Comprehensive Permit issued by the ZBA for the Project exceeded the ZBA's authority. Moreover, the Planning Board's purported inability to convene a quorum so as to continue to address the merits of Plaintiffs' application between August 15 and September 19, 2016 was a disingenuous fabrication as the Planning Board met on three occasions (September 2, 12 and 13, 2016) without notice to the Plaintiffs to specifically discuss the Project and prepare a judicial appeal of the ZBA's August 24, 2016 grant of the Comprehensive Permit.<sup>1</sup>

13. The Planning Board failed to notify the Plaintiffs, the Board of Selectmen or the Building Inspector in writing of its September 29, 2016 rejection of Plaintiffs' site plan until November 21, 2016.

14. By letter dated November 18, 2016 the Plaintiffs Requested the Building Inspector to formally determine that Plaintiffs' Site Plan had been constructively approved by operation of

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<sup>1</sup> On September 14, 2016 the Planning Board filed a purported appeal of the Comprehensive Permit with the Worcester Superior Court (C.A. No. 16-1363B) which appeal was summarily dismissed by the Court as the Planning Board acted without the authority of the Southborough Board of Selectmen, filed the Complaint without counsel of record and against the advice of Town Counsel and was otherwise entirely without standing to judicially contest the Comprehensive Permit. Plaintiffs' motion for sanctions and costs is presently pending in the Superior Court. A copy of the Docket sheet is attached hereto as **Exhibit 7**.

Section 174-10 F. of the Zoning Bylaw. The Building inspector failed to respond. A copy of Plaintiffs Request is attached hereto as **Exhibit 8**.

15. On October 28, 2016 the Plaintiffs timely appealed the September 29, 2016 Planning Board vote of site plan rejection to the ZBA pursuant to Section 174-10G of the Zoning Bylaw and M. G. L. c. 40A §15.

16. On January 10, 2017 the Plaintiffs timely appealed the failure of the Building Inspector to issue a decision pursuant to M. G. L. c. 40A §7 to the ZBA pursuant to Section 174-24 of the Zoning Bylaw and M. G. L. c. 40A §8.

17. Public hearings on each of the Plaintiffs appeals to the ZBA were, duly noticed, administratively joined and conducted by the ZBA commencing in December 2016 (for the initial appeal) and ultimately closing on May 17, 2017. The ZBA issued a decision on each of Plaintiffs' appeals on May 31, 2017. (Exhibit 3 and Exhibit 4 hereof).

18. At the commencement of the public hearing appeal process before the ZBA Plaintiffs challenged the impartiality of ZBA alternate member Deborah DeMuria and requested that she recuse herself from participation in the hearings which she declined to do and which declination was approved by Chairman Dennington and the ZBA. DeMuria's participation as a voting member of the ZBA tainted the public hearing process and the deliberations of the Board and unduly prejudiced the Plaintiffs as DeMuria and her spouse were each vocal and public opponents of the Project. DeMuria's residence is located on a public way (Flagg Road) which will ultimately serve as a connector road to the Project.

19. The evidence presented and/or made available to the ZBA and existing at the time of the public hearings unequivocally demonstrated that Plaintiffs' Site Plan had been constructively approved by operation of Section 174-10 F of the Bylaw as a result of the Planning Board's failure to provide written notice of its action by September 30, 2016 the date by which it agreed it



would do so. The ZBA's finding that the September 29, 2016 Planning Board vote of rejection constituted the necessary "act" under the Bylaw and that the failure of the Planning Board to provide written notice as required by Section 174-10 F was an immaterial technicality is unsupported by any evidence and is without legal basis or precedent.

20. The evidence presented and/or made available to the ZBA and existing at the time of the public hearings unequivocally demonstrated that at all times relevant hereto the Planning Board acted in bad faith, was biased and prejudiced regarding the Project, the Use Variance and the Comprehensive Permit and was otherwise predisposed to reject Plaintiffs' Site Plan. The ZBA's finding that the Planning Board, rather than the ZBA "should handle any further proceedings on the Appellant's application for site plan review" under circumstances wherein the ZBA is authorized to assume that jurisdiction was contrary to the evidence provided and will result only in Plaintiffs further inability to obtain a fair and impartial review of its Site Plan under the applicable Bylaw and the Use Variance.

21. The evidence presented and/or made available to the ZBA and existing at the time of the public hearings unequivocally demonstrated that at all times relevant thereto alternate Member DeMuria was a predisposed opponent of the Project whose participation in the hearing process materially and adversely impacted the decision of the ZBA.

**Count I: Notice of Decision on Appeal of Planning Board's Denial of Site Plan Review.**

22. Plaintiff repeats and re-alleges paragraphs 1-21 as if expressly and set forth herein.

23. Participation of Member DeMuria in the public hearing and voting process deprived the Plaintiffs of a fair and impartial hearing as DeMuria influenced the other members to deny Plaintiffs' request for constructive approval and Plaintiffs' objection to the remand of future site plan review to the Planning Board.

24. The decision of the Board determining that the Site Plan had not been constructively approved was arbitrary, capricious, exceeded the ZBA's authority was and not predicated on legally tenable grounds.

25. The decision of the Board to remand future Site Plan Approval proceedings to the Planning Board was arbitrary, capricious, exceeded the ZBA's authority was and not predicated on legally tenable grounds.

26. The Plaintiffs are aggrieved by the decision of the ZBA

WHEREFORE, Plaintiff requests that this Honorable Court reverse and vacate the decision of the Town of Southborough Zoning Board of Appeals and enter judgment (1) determining and adjudicating that Plaintiffs' Site Plan was constructively approved, or *alternatively*, (2) affirm the ZBA's decision denying the Planning Board's site plan rejection with direction that further and final site plan review is remanded to the ZBA for all purposes; and (3) grant Plaintiffs such other relief as this Court deems just and equitable, including costs and attorney's fees.

**Count II: Notice of Decision on Appeal of Building Inspector's Failure to issue Decision. .**

27. Plaintiff repeats and re-alleges paragraphs 1-26 as if expressly and set forth herein.

28. Participation of Member DeMuria in the public hearing and voting process deprived the Plaintiffs of a fair and impartial hearing as DeMuria influenced the other members to deny Plaintiffs' request for constructive approval.

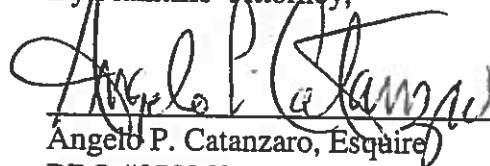
29. The decision of the Board determining that the Site Plan had not been constructively approved was arbitrary, capricious, exceeded the ZBA's authority was and not predicated on legally tenable grounds.

30. Plaintiffs are aggrieved by the decision of the ZBA.

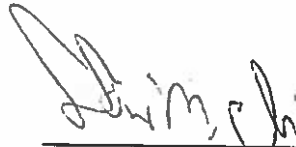
WHEREFORE, Plaintiff requests that this Honorable Court reverse and vacating the decision of the Town of Southborough Zoning Board of Appeals and enter judgment (1) determining and adjudicating that Plaintiffs' Site Plan was constructively approved, and (2) grant Plaintiffs such other relief as this Court deems just and equitable, including costs and attorney's fees.

Date: June 19, 2107

Respectfully Submitted,  
By Plaintiffs' Attorney,



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