COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. _____

PAMELA MAGNARELLI, JOHN MAGNARELLI, JUDITH BERNIER, PAUL BERNIER, SUSAN CINA and ROBERT CINA	)
V.	)
MICHAEL MAIN, DAVID PECK, EDWARD CONROY, MICHAEL LEARY, KEVIN O'REILLY, PETER CONNER and PHILIP RICARDI, as they are members of the Zoning Board of Appeals of the Town of Plymouth, Massachusetts, and CLAREMONT PLYMOUTH LLC	)

COMPLAINT

Introduction

This is an appeal pursuant to G.L. c. 40A, § 17 from the March 9, 2023 Amended Decision of the Zoning Board of Appeals ("Board") of the Town of Plymouth ("Town"), Case No. 4063 ("Amended Decision") purporting to grant a Special Permit under G.L. c. 40A, § 9 and the Plymouth Zoning Bylaw ("Bylaw") to Claremont Plymouth, LLC ("Claremont") for phase 1 of a minimum 348 unit residential complex on 16.39 acres (the "Site"). Plaintiffs Pamela Magnarelli, John Magnarelli, Judith Bernier, Paul Bernier, Susan Cina and Robert Cina ("Plaintiffs") are persons aggrieved by the Amended Decision and will suffer particularized harm to interests within the zone of protection of the Bylaw.

The Board purported to issue the Amended Decision following an appeal under G.L. c. 40A, § 17 on January 3, 2023 by Plaintiffs and others of the Board's decision dated December 14, 2022 the very same special permit application ("First Decision"). That case is pending in Plymouth Superior Court, *Pamela Magnarelli et al. v. Michael Main as Chair of the Plymouth Zoning Board of Appeals et al.*, Civil Action 2883CV002.

The Amended Decision is conditioned upon an unlawful "Development Agreement" negotiated by the Plymouth Selectboard with Defendant Claremont and voted on by the Selectboard in an unlawful executive session on November 15, 2023 and ratified in open session on January 5, 2023. In the Development Agreement the Selectboard directs the Board to issue permits for Claremont in exchange for an alleged payment by Claremont of $2.5 million to fix a Town water pump. The Selectboard's unlawful interference in the independent adjudicatory functions of the Board and the Board's complicit incorporation of the unlawful Development Agreement into the Amended Decision exceeds the Board's authority. The Board has acted with bias and a lack of objectivity that taints the Amended Decision and is obvious from its effort to stretch the Bylaw beyond lawful limits to accommodate the Project.

Following Plaintiffs' appeal of the First Decision, the Board, at Claremont's request "reopened" the public hearing on March 6, 2023 on the very same special permit application for the sole purpose of adding previously unprovided but required Findings of Fact that the Project qualifies for height and parking space waivers and special permits under the Bylaw. The Board's March 6, 2023 purported reasons, concocted to address fatal flaws in the First Decision, do not remedy the arbitrary and capricious and unsupportable First Decision. Plaintiffs bring this complaint to annul the Amended Decision because it exceeds the Board's authority.

Notice of the filing of this Complaint has been filed with the Town Clerk on this date.

Jurisdiction

1. This Court has jurisdiction under G.L. c. 40A, § 17.

Parties

2. Plaintiff Pamela Magnarelli resides at 9 Mariners Way, Plymouth MA.
3. Plaintiff John Magnarelli resides at 9 Mariners Way, Plymouth MA.
4. Plaintiff Judith Bernier resides at 15 Mariners Way, Plymouth MA.
5. Plaintiff Paul Bernier resides at 15 Mariners Way, Plymouth MA.
6. Plaintiff Susan Cina resides at 7 Mariners Way, Plymouth MA.
7. Plaintiff Robert Cina resides at 7 Mariners Way, Plymouth MA.
8. Each Plaintiff is an abutter to the Site and an aggrieved person within the meaning of G.L. c. 40A, § 17 and has a right to appeal the Decision.
9. As a result of the Board's abuse of its discretion, misapplication of the Bylaw, and arbitrary and capricious Amended Decision, each Plaintiff will suffer particularized harm to an interest within the zone of protection of the Bylaw, including but not limited to harm to their property values from the unlawful siting, density and height of the Project resulting in a structure and appurtenances that are out of scale with surrounding uses, negative visual and aesthetic impacts, threats from flooding and erosion, loss of access to open space, the use and enjoyment of their homes due to the proximity and lack of buffer and setback between their homes and the Project, impacts to their drinking water, noise, light pollution and glare, increased traffic and loss of scenic views of the adjacent conservation land.
10. Each Plaintiff will be harmed by the nuisance conditions created by and linked to the Bylaw violations alleged in this Complaint, including the violation of zoning district

prohibitions, density, height, floor to area ratio, stormwater, flood prevention, drinking water and sewage.

11. Defendant Michael Main is Chair Zoning Board of Appeals of the Town of Plymouth and resides at 28 Janet Street, Plymouth MA.
12. Defendant David Peck is Vice Chair of the Zoning Board of Appeals of the Town of Plymouth and resides at 16 Overlook Road, Plymouth MA.
13. Defendant Edward Conroy is a member of the Zoning Board of Appeals of the Town of Plymouth and resides at 21 Rollingwood Lane, Plymouth MA.
14. Defendant Michael Leary is a member of the Zoning Board of Appeals of the Town of Plymouth and resides at 42 Billington Sea Road, Plymouth MA.
15. Defendant Kevin O'Reilly is a member of the Zoning Board of Appeals of the Town of Plymouth and resides at 31 Hayden Hollow, Plymouth MA.
16. Defendant Peter Conner is a member of the Zoning Board of Appeals of the Town of Plymouth and resides at 154 Micajah Pond Road, Plymouth MA.
17. Philip Ricardi is a member of the Zoning Board of Appeals of the Town of Plymouth and resides at 8 Daylily Drive, Plymouth MA.
18. Defendant Claremont Plymouth LLC is a Massachusetts limited liability corporation with its principal place of business at 2 Lakeshore Center, Bridgewater MA 02324.

Facts

The Board's proceedings and public hearings

19. On December 7, 2022, Board purported to issue a special permit to Claremont under G.L. c. 40A, § 9 and the Bylaw for phase 1 of a development consisting of 198 apartment units of a residential complex proposed to have a minimum total of 348 units when completed.
20. The Board opened the public hearing on Claremont's permit application on August 17, 2022, continued it to September 7, 2022, November 16, 2022 and concluded it on December 7, 2022.
21. The Board closed public comment at the hearing on November 16, 2022 and continued the public hearing to December 7, 2022 for its deliberations.
22. At the public hearing on December 7, 2022, the Board deliberated on the permit including conducting deliberations on new information that it had received after it closed public comment on November 16, 2022.
23. At the public hearing on November 16, 2022, the Board refused to allow public comment on new information submitted to the Board between September 16, 2022 and November 16, 2022.
24. After it closed public comment at hearing on November 16, 2022, the Board received substantive new information, including information from Claremont, Town Departments, and the Town Select Board about the pending permit application.
25. The list of "Submitted Documentation" in the First Decision and the Amended Decision fails to identify substantive written public comments from experts, professionals and members of the public identifying concerns, describing how the

Project violates the Bylaw and requesting specific mitigation indicating the Board ignored written public comment and failed to consider material, substantive, and relevant information in its deliberations.

26. Plaintiffs and others appealed the First Decision under G.L. c. 40A, § 17 to Superior Court on January 3, 2023.
27. On March 6, 2023, the Board reopened the public hearing on Case No. 4063 on its own initiative, with the consent of Defendant Claremont.
28. The Board's March 6, 2023 Agenda states: "Case #4063 – Claremont…Vote Clarification".
29. The Abutter Notification for the March 6, 2023 public hearing states the hearing is "for the **purpose of amending** the Board's decision on the petition of Claremont Plymouth LLC requesting a Special Permit…." (emphasis supplied)
30. The Board voted 4-1 on March 6, 2023 to issue the Amended Decision.
31. At the March 6, 2023, the Board stated that by adding the four new findings of fact to the First Decision it was merely making "clerical changes".
32. The Board's self-serving purpose in reopening the hearing on March 6, 2022 was an after-the-fact attempt to correct the fatal flaw in the First Decision consisting of lack of required findings of fact that the Project meets the three criteria for a height waiver under the Bylaw and a waiver to exceed the number of parking spaces.
33. The Board's after-the-fact attempt to correct its fatally flawed First Decision by shoehorning the Project into the Bylaw's criteria fails because the Project does not and cannot qualify for a height variance and parking lot exceedance under the Bylaw

34. At the March 6, 2023 public hearing, the Board merely recited and adopted verbatim the new findings of fact drafted by Defendant Claremont and Town staff.
35. At the March 6, 2023 public hearing the Board refused to accept and include in the record new written and verbal public comment unless it pertained to the four new pre-drafted, predetermined findings.
36. The Amended Decision purports to make substantive findings of fact that relate to the Project in its entirety and the Board's refusal to consider public comment on new information and the findings was erroneous and arbitrary.
37. The Board's public hearing violated G.L. c. 40A, § 9 because, inter alia, the Board closed the public hearing without allowing the public the opportunity to comment on substantive information received by the Board and incorporated into the Amended Decision.
38. The Board failed to include in the record as "Submitted Documentation" for the reopened public hearing written documentation submitted to it.
39. The Amended Decision was filed with the Town Clerk on March 9, 2023.
40. Plaintiffs bring this action within 20 days as required by G.L. c. 40A, § 17.

The Site

41. The Amended Decision pertains to a portion of the 16.43-acre parcel shown on Plymouth Assessor's Map 104 as Lots 26-40 and 26-41 known as "Lot 5A."
42. Phase 2 of the Project, a minimum of 150 units, will at some time be proposed for the conceptual Lot 5B although the Board has already given its approval for such development *de facto* through the Select Board Development Agreement.

43. On the portion of the Site designated as Lot 5C, Claremont intends to remove and reconfigure an existing fully functioning storm water retention area currently used to collect and filter runoff and precipitation from 60 acres of the adjacent Plymouth Gateway mall development. The sole reason for reconfiguring the stormwater area is to reduce its surface area, to allow Claremont to add more development on the adjacent Lot 5B.
44. The 16.43-acre parcel has not been subdivided for Lots 5A, 5B and 5C under the Town of Plymouth *Rules and Regulations Governing the Subdivision of Land* for siting and construction of the Project.
45. Claremont's engineering plans and the Amended Decision give varying conflicting acreage for the conceptual Lot 5A.
46. A portion of conceptual Lot 5A is located in the Town of Kingston.
47. The Site overlies the Plymouth Carver Sole Source Aquifer ("Aquifer"), designated under the federal Safe Drinking Water Act in 1990 as the sole source of drinking water obtained from groundwater wells for seven towns including Plymouth, for a total of about 200,000 people.
48. The Site is in the Bylaw's Aquifer Protection Overlay District (AA) Bylaw § 206
49. The Site is located entirely in the Area 2 (Zone II) wellhead protection area for the Town's North Plymouth Well.
50. All vegetation and sand and gravel has been removed from the Site by an industrial sand and gravel mining operation, exposing the groundwater to contamination, and interfering with naturally occurring filtration capacity for drinking water wells.

51. As a result of the industrial sand and gravel mining operation, the topography has been altered impacting natural stormwater and groundwater flows.
52. The Board issued mining permits for the Site and the surrounding area (Cases No. 2946, 3002 and 3048) but never required site restoration and revegetation leaving the drinking water exposed to contamination.
53. The Amended Decision fails to address the impaired environmental condition of the Site created by past industrial mining operations that removed drinking water and stormwater protections.

Bylaw Use Table Category C

54. The Plymouth portion of the Site is zoned Mixed Commerce (MC) under the Bylaw § 205-16.
55. The Bylaw prohibits residential uses in the MC district.
56. The MC zoning district is "[t]o provide for a mix of Retail and Industrial Uses in an area geographically suited to Commercial activity, by encouraging a mix of Light Industrial Uses and larger-scale Retail Uses." Bylaw § 205-16.
57. To evade the Bylaw prohibition on residential uses in the MC district, Claremont sought to portray the Project as an "Institutional Use" under Use Table C7, Elderly Housing.
58. Claremont sought a special permit under the Bylaw Use Table C7 for "Elderly Housing" but Claremont's plans identify the Project as an "Independent Living Facility" a separate and distinct use in Bylaw Use Table C6.
59. The Project is neither an "Independent Living Facility" as claimed by Claremont, nor "Elderly Housing" as claimed by the Board.

60. An “Independent Living Facility” is defined as:

A facility that provides residential accommodation for Elderly Persons not requiring medical or other forms of significant professional care or support, which Facility may include common dining and other areas, space for social, psychological, and/or educational programs, where home health care or other community-based services may be made available for use on an individual basis and meals, linen and housekeeping services may be offered.

Bylaw, § 201-3.

61. “Elderly Housing” is defined as:

A residential facility licensed by the Commonwealth of Massachusetts and available for lease or ownership by Elderly Persons or persons with disability that is financed or subsidized in whole or in part by State or federal housing programs established primarily to furnish housing, rather than housing and personal services **or housing that need not be so licensed, financed and/or subsidized, consisting of Dwelling Units for Elderly Households in Single-family, Two-Family, Townhouse, or Multi-family Dwellings**.

Bylaw, § 201-3.

62. The Project has none of the features of an “Institutional” use as an “Independent Living Facility” or “Elderly Housing” such as communal dining, space for social, psychological, and/or educational programs, home health care or other community-based services available for use on an individual basis, and meals or linen and housekeeping services.

63. The Project has nothing in common with the other “Institutional” uses listed in Category C of the Use Table: (1) Cemetery, (2) Child Care Facility, (3) Hospitals, Long Term Care Facility and similar institution, (4) Public Parks and Community Recreation Center, (5) Congregate Housing, (6) Assisted Living/Independent Facility, (8) School, (9) School, College, University, Commercial-For Profit, (10) Public Safety Buildings, (11) Town building and use.

64. Instead, the Project is a traditional apartment complex to be leased at market rates.

65. The Decision contains no condition, restriction, or enforceable provision limiting the Project for use only as an Independent Living Facility or Elderly Housing: Claremont does not have to limit the occupants to "Elderly Persons" (age 55 or over under the Bylaw) and is free to rent to anyone of any age or even turn the apartments into condominiums and to sell them.
66. The Bylaw Use Table must be interpreted in a manner consistent with the definition and purpose of the MC zoning district, Bylaw § 205-16.
67. The Bylaw Use Table, Category C, "Institutional" applies only to facilities of an **institutional** character which the Project is not.
68. Claremont and the Amended Decision misapply Use Table, Category C, Institutional uses claiming Category C overrides the MC district prohibition against residential uses under Bylaw § 205-16.
69. By misapplying the Bylaw, Claremont can maximize the number of residential units on the Site, maximize profits, and create an apartment complex seven times with a density seven times that of comparable projects in the Town.
70. The Amended Decision treats the Project as a traditional residential apartment complex and not as an Institutional use (Elderly Housing or Independent Living Facility).
71. Under the Bylaw, adequate parking for Elderly Housing is only one half a parking space per dwelling unit. Bylaw § 203-7(J), *Parking Spaces Required*, Table 3.
72. The Bylaw requires only 99 parking spaces for an Elderly Housing complex of 198-units. The Board's Amended Decision applied the parking requirement for a

traditional residential dwelling complex and required 309 parking spaces for the Project, not 99.

Variance Requirement, G.L. c. 40A, § 10 and Bylaw Section 202-5

73. The Bylaw limits the Project to a height of 35 feet.

74. The Project requires a Variance under G.L. c. 40A, § 10 and the Bylaw § 205-5.

75. Height is a dimensional requirement under G.L. c. 40A, § 10 and the Bylaw § 205-5.

76. G.L. c. 40A, § 10 provides that a permit granting authority shall have the power after a public hearing to grant a variance from the terms of the Bylaw where the permit granting authority,

specifically finds that owing to the soil conditions, shape, or topography of such land or structures and especially such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

77. Under the Bylaw § 202-5, a Variance from dimensional requirements may be granted provided the applicant demonstrates the following conditions:

Owing to circumstances relating to soil conditions, shape or topography of the land or Structure for which the Variance is sought, but not affecting generally the Zoning District in which such land or Structure is located; A literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, as the term "hardship" has been interpreted by the appellate Courts of the Commonwealth; and Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.

78. The Amended Decision did not grant a Variance from the dimensional requirement for height and the Board made no findings under G.L. c. 40A, § 10 or the Bylaw § 205-5.

79. The Board made no finding under the Bylaw § 205-5(A) (1) and Claremont cannot demonstrate the condition because the Project is unconstrained by any physical characteristics of the Site.

80. The Board made no finding under § 205-5(A) (B) and Claremont cannot demonstrate the condition because there is no hardship, financial or otherwise and Claremont owns both conceptual Lots 5A and 5B and a total of 16.37 acres and could use these acres to build the desired number of units (198).

81. The Board made no finding under § 205-5(A)(C) and Claremont cannot demonstrate the condition because granting the dimensional variance creates a dense development on Lot 5A and the adjacent Lot 5B is proposed for an additional at least 150 units.

82. The Project, combined with the newly-built Hanover Colony Place 320 unit apartment complex across the street, represent two very dense housing projects in proximity, contrary to the Purpose of the Bylaw, which includes to prevent overcrowding of the land, undue concentration of the population, to facilitate the adequate provision of services including water supply and to conserve the value of land and buildings, including the conservation of natural resources and prevention of blight and pollution of the environment.

Bylaw Dimensional Table

83. The Amended Decision purported to grant a special permit waiving the 35-foot height limits of the Bylaw by making the findings required by Dimensional Table, Footnote 7.

84. The Bylaw, *Dimensional Table* Footnote 7, *All Districts, Exceptions to 35-ft. maximum Height* required the Board to find the following three facts in order to grant a height waiver:

a. No feasible alternative to the proposed Height exists and total Height is minimum necessary for an allowed Use;

b. A demonstrated public benefit may be realized only by additional Height; and

c. The Structure will not detract from the visual character or quality of the adjacent Buildings, the neighborhood, or the Town as a whole.

85. Findings of Fact ¶s 4-6 of the Amended Decision purporting to make the findings required to grant a waiver of the height limit under Dimensional Table, Footnote 7 are arbitrary, capricious, and not based on credible evidence.

86. The Board's finding regarding Footnote 7, criteria (a) that granting the waiver is necessary because there is no feasible alternative is arbitrary and capricious and not based on any evidence because Claremont in fact has a feasible alternative because as owner Lots 5A, 5B and 5C, a total of 16.43 acres and can spread the units across Lots 5A and 5B.

87. The Board's finding regarding Footnote 7, criteria (b) that granting the waiver provides a demonstrated public benefit is arbitrary and capricious and not supported by the evidence because the finding that "proposed project will fund the construction of a new booster pump for the Town of Plymouth…" is unrelated to the dimensional waiver of a 35-foot height limit.

88. The Board's finding regarding Footnote 7, criteria (b), that granting the height waiver provides a demonstrated public benefit is arbitrary and capricious and not supported

by the evidence because the finding that the net financial benefit of the "Development Agreement" to the Town and taxpayers once waived building, connection and reduced Affordable Housing Trust fees are offset against the $2.5 million funding by Claremont for the water pump is estimated at $400,000, not $2.5 million as stated by the Board in the Amended Decision.

89. The Board's findings in ¶s 4-7 that the criteria of Footnote 7 are met all turn on the "Development Agreement" and the Board has no facts and made no findings of the dollar amount of the fees that the Board is agreeing to waive.

90. The Board's finding regarding Footnote 7, criteria (c), that allowing the structure to exceed 35 feet will not detract from the visual character or quality of the adjacent Buildings, the neighborhood or the Town as a whole is arbitrary and capricious and not supported by evidence because:

(a) On its southern boundary, the Site is entirely bounded by the residential development Sawyer's Reach consisting of primarily two-story town homes and condominium units spread over 28 acres and on its west side by Westwood Village a traditional residential development of two-story ranch style homes.

(b) On its entire northern boundary, the Site abuts a globally and regionally significant network of at least 400 acres of interconnected conservation land.

(c) The Project due to its configuration on the Site, excessive height and density will detract from the visual character and quality of the adjacent Buildings, the neighborhood, and the Town as a whole.

(d) The West Plymouth Steering Committee and North Plymouth Steering Committee oppose the Project.

(e) Conservation lands abutting the Site serve the public interest and the Project will impair the public's interest to access the adjacent conservation lands

Amended Decision Condition 8(i): Development Agreement

91. In October, 2022 the Town's consulting engineer issued a report finding the Town's water supply system was inadequate to provide potable water to phase 1 of the Project. Subsequent to the Town engineer's report that the Town's water supply was inadequate, the Plymouth Selectboard negotiated a deal with Claremont whereby Claremont would provide up to $2.5 million for a new water booster pump in exchange for the Town's waiver of municipal fees and approval of all projects proposed by Claremont for conceptual Lots 5 A, B and C ("the Development Agreement").
92. The Amended Decision Condition 8(i) incorporates the Development Agreement negotiated by the Selectboard with Claremont into the First and Amended Decisions.
93. The Select board violated the Open Meeting Law, G.L. c. 30A, §§ by meeting in an unlawful executive session on November 15, 2022 to discuss and vote on the Development Agreement.
94. The Board violated the Open Meeting Law, G.L. c. 30A, §§ by meeting in an unlawful executive session on November 15, 2022 with the Select board to discuss the Development Agreement.
95. Open Meeting Complaints are pending with the Office of Open Government of the Attorney General's Office and seek to nullify the Development Agreement because of the serious nature and magnitude of the Open Meeting Law violations by the Board and the Select board.
96. The Amended Decision Condition 8(i) incorporating the Development Agreement exceeds the Board's authority.

97. Condition 8(i) is inaccurate and misleading because it portrays the financial public benefit of the Development Agreement to be $2.5 million when it is in reality far less.

Bylaw floor-to-area ratio (FAR)

98. Under the Bylaw, *Dimensional Table*, *Floor to Area Ratio* ("FAR") the MC zoning district FAR is a maximum of 0.75.

99. Claremont plans show the total conceptual Lot 5A size as 9.02 acres, which includes 2.27 acres of land in Kingston.

100. Claremont cannot include 2.27 acres in Kingston in the Lot 5A lot size for purposes of calculating the FAR under the Bylaw because it is in another town and the Amended Decision requires it to be offered to a third party for conservation. Amended Decision, Condition 3.

101. Even if Claremont could include the 2.27 acres in Kingston in the Lot 5A lot size for purposes of calculating the FAR, the Project exceeds the FAR of 0.75.

102. Claremont's plans show the total gross floor area for the Project to be 348,700 square feet.

103. The FAR for a 9.02-acre lot with a gross floor area of 348,700 square feet equates to a ratio of 0.89, exceeding the 0.75 limit under the Bylaw *Dimensional Table.*

104. Under the Bylaw § 202-5, *Variance from Dimensional Standards*, Claremont was required to apply for and obtain a variance from the Bylaw's 0.75 FAR, which they did not.

105. The Board failed to apply the Bylaw § 202-5 *Variance from Dimensional Standard,* and did not make the mandatory findings of § 202-5(A) (1) to (3) to allow Claremont to exceed the 0.75 FAR.

106. The Amended Decision does not authorize Claremont by special permit under Bylaw § 202-6, to exceed the minimum FAR of 0.75.

Failure to grant waivers for Natural Features, Landscaping

107. The Amended Decision fails to grant a waiver from the Bylaw § 203-2 (B) Natural Features Conservation requiring the preservation of trees, vegetation, soils, and topography.

108. The Amended Decision fails to grant a waiver under Bylaw § 203-7 for visual relief.

Violation of Aquifer Protection District Bylaw

109. The Site is located entirely in the Area 2 (Zone II) wellhead protection area, which is a wellhead protection area determined by hydro-geologic monitoring to protect the recharge area around public water supply groundwater sources and contributes surface runoff to the Area 1 (Zone I) of drinking water wells.

110. The Zone II for Plymouth's North Plymouth Well overlaps with the Zone II for the Town of Kingston's Trackle Pond well.

111. The North Plymouth well is one of three that serves the West Plymouth Service Zone. It is the largest source of supply in the West Plymouth Service Zone with a pumping capacity of 1.53 million gallons per day.

112. The Project cannot be granted a special permit under the Aquifer Protection Bylaw Use Table because the Site has been used for mining, will store more than 500 gallons of fuel or oil via 317 vehicles and/or will store liquid hazardous or toxic materials and liquid petroleum products in quantities greater than normal household use.

113. The Project is located in the Zone II for protection of North Plymouth Well that is already contaminated.

114. The Amended Decision, Condition 8(j) is inconsistent with the purposes of the Aquifer Protection Overlay district requirements for water supply protection, fails to provide for a reasonable or protective Groundwater Monitoring Plan to protect the North Plymouth Well or Trackle Pond Well.

115. The Amended Decision ignores the impacts of the prior alterations on groundwater hydrology, evapotranspiration rates, groundwater recharge rates, possible changes in groundwater flow direction and water quality.

116. The failure to restore the Site to protect groundwater and Claremont's proposal to cover it with a dense impervious development consisting of at least 198 units and parking for 317 cars in phase 1 alone and to further alter the topography through excavation and filling on the Site for the future phases will cause further cumulative harm to the Aquifer.

117. The Decision does not require groundwater monitoring or baseline testing for PFAS chemicals or any other contaminants.

118. The Decision fails to protect the Plaintiffs, the Town, and its residents for the cost of remediating groundwater contamination.

Inadequate stormwater protection

119. The Amended Decision does not ensure compliance with the *Guide for the Design of Drainage Facilities in the Town of Plymouth, Massachusetts* (June 2021), the *Massachusetts Stormwater Management Standards*, 201 CMR 10.000, the Town Wetlands Bylaw, or the *Massachusetts Stormwater Handbook*.

120. The 16.43-acre Site includes several acres of stormwater system including a detention pond, stormwater basins and pipes that service a 60-acre stormwater catchment area within the Plymouth Gateway, including the abutting car dealership.

121. Claremont will remove, alter, and replace the existing storm water system and surrounding land to reconfigure the Site for the at least 348 residential units on conceptual Lots 5 A and B.

122. Claremont's new storm water plans for the Project are based on outdated 1977 precipitation data and design criteria that fail to account for current climate conditions and are considered scientifically obsolete.

123. The Decision's failure to require adequate stormwater management exposes Plaintiffs and abutters to an unreasonable risk of flooding, erosion, and damage to their homes.

124. The Plymouth Gateway developers were required to protect a vernal pool on the Site, but the vernal pool has been impaired and will be further impaired by Claremont's development of the site.

125. The Project may negatively impact the ability of the municipal sewer system to service the Plymouth Gateway area.

126. On October 24, 2022, the Town's consulting engineer, Environmental Partners, issued a report stating that the Town lacks the capacity to supply water via the municipal water system to the Project.

127. The Amended Decision fails to adequately address the issues raised in the Environmental Partners report of October 24, 2022, the third report to the Board

warning that the Town lacks capacity to supply dense residential development projects with municipal water.

Unlawful delegation to third parties of the Board's mandatory duties to implement the Bylaw

128. The Amended Decision purports to contain "conditions" which unlawfully delegate to Town employees, including the building inspector, water department employees, and others the obligation to apply, interpret and implement the Bylaw, and/or approve aspects of the Decision.

129. The Amended Decision unlawfully defers the modification of the existing drainage infiltration basin that serves the 60-acre Plymouth Gateway catchment area to the Planning Board (Finding of Fact # 20), a matter of substance.

130. Condition 8 contains twenty-five "conditions" that Claremont is "addressing and working through", and as a result the Decision is based on incomplete information.

131. The Amended Decision unlawfully delegates to Town employees the responsibility to interpret, apply and implement the Bylaw and requirements for a special permit while they "work through" the Bylaw requirements with Claremont.

132. The Amended Decision incorporates and is conditioned on the Selectboard's unlawful Development Agreement.

133. The inappropriate involvement of the Select board in the deliberations of the Board, its imposition of the Development Agreement on the Board and its meddling in the affairs of the Board pressuring it to approve all phases of the Site development renders the Amended Decision arbitrary and capricious and not in accordance with law, on its face.

134. The Amended Decision, Conditions 8(i) and (w)(i) to (iii) provide an escape hatch in the event Claremont decides not to contribute up to $2.5 million under the Development Agreement, allowing Claremont to connect to the Town water system anyway.

135. The Amended Decision conflicts with the Board's own 2003 special permit for the "Plymouth Gateway" which did not provide for residential uses and conflicts with the master plan.

136. Condition 3 regarding land in Kingston is unenforceable and meaningless and cannot form the basis for a special permit because it conditions nothing.

137. The Amended Decision, Condition 8 (j) fails to comply with the AA district requirements in the Bylaw § 206-1§ H(4)(b) because it delegates to town employees the groundwater monitoring plan, and fails to require compliance with 4(b), including a schedule for testing of groundwater for known chemicals that are contaminating the North Plymouth well, including PFAS.

Lack of Notice, Improper Conduct of Public Hearings

138. Parties in interest within the meaning of G.L. c. 40A, § 11 including abutters and Plaintiffs were not notified of the Board's public hearing on Claremont's special permit application, by mail, postage prepaid, as required by G.L. c. 40A, § 11 and were not notified of the First or Amended Decisions as required by G.L. c. 40A, § 9.

Cause of Action

Appeal under G.L. c. 40A, § 17 to annul the Amended Decision

139. Plaintiff repeats and realleges each and every preceding paragraph as though fully restated herein.

140. The Amended Decision is erroneous because the Project cannot be permitted in the MC district.

141. The claim that the up to 198 apartment complex is “Elderly Housing” or an “Independent Living Facility” misinterprets and misapplies the Bylaw and the prohibition against traditional residential uses in the MC zoning district under the Bylaw § 205-16.

142. The density of the 198-unit apartment complex on a 6.03-acre conceptual Lot 5A creates a noxious, impermissible use, and is contrary to the purpose and intent of the Bylaw.

143. The Board lacked the authority to issue the Amended Decision purporting to grant a special permit under the Bylaw and G.L. c. 40A, § 9.

144. The proposed project does not qualify for a variance or special permit from the Dimensional height requirement or parking space exceedance.

145. Even if the Project qualified as an Institutional use allowed by special permit in the MC district, the Board failed to grant a dimensional variance under Bylaw § 202-5 to exceed the 0.75 FAR ratio.

146. The Amended Decision, Condition 3 purports to require Claremont to conserve the 2.27 acres of land in Kingston but Condition 3 is not enforceable, contingent on the agreement of a third party that is not bound by the Amended Decision, and may never happen, rendering Condition 3 meaningless.

147. The Amended Decision relies on an unlawful and misleading Development Agreement negotiated between the Selectboard and Claremont binding the Board to issue permits for unknown future projects.

148. The Board exceeded its authority in agreeing in the Amended Decision to be bound by the Development Agreement that requires it to issue permits for projects for which it does not even have applications.

149. The Amended Decision requires the Board to issue at least one permit for Claremont's phase 2 development on the Site with the effect that the Board has predetermined its approval egregiously exceeding the authority granted it by the Zoning Act and the Bylaw.

150. The Board lacks the authority to promise Claremont a future permit in exchange for the payment of $2.5 million.

151. The Development Agreement misrepresents the monetary benefit to the Town which is far less than represented in the Amended Decision.

152. The Development Agreement and the Amended Decision are conditioned on the Board's predetermined approval for subsequent developments of the Site for which the Board has no permit applications.

153. The Amended Decision incorporating the Development Agreement provides only a four-year solution to the water shortage identified in the Town engineers report resulting in a public detriment, not benefit, as required by the Dimensional Table waiver granted by the Amended Decision.

154. Seventy-five percent of the Conditions in the Amended Decision are unenforceable or unlawful because they improperly delegate matters of substance regarding a special permit to third parties and are based on unresolved issues Claremont is "addressing and working through."

155. The Amended Decision is not harmony with the general purposes and intent of the Bylaw, allows a use that is noxious, does not serve the public good, and exceeds the Board's authority to grant special permits under G.L. c. 40A, § 9.

156. The failure to properly notify parties in interest and failure to provide mailed notice to persons in interest violated G.L. c. 40A, § 11.

157. The Project is improperly segmented to evade comprehensive permitting and review undermining the purpose and intent of the Bylaw, its specific provisions, the Town's master plan and G.L. c. 40A, § 9.

158. The Amended Decision exceeds the authority of the Board, is contrary to the facts and is arbitrary and capricious and not in accordance with the law and should be annulled.

Claim for Relief

WHEREFORE, Plaintiffs request this Honorable Court to:

1. Enter Judgment declaring the Amended Decision exceeds the Board's authority;
2. Annul the Amended Decision;
3. Grant whatever additional relief this Court deems just; and
4. Award Plaintiffs its legal fees and costs.

Plaintiffs,

By their attorney,

Margaret E. Sheehan
P.O. Box 1699
Plymouth MA 02362
BBO # 456915
ecolawdefenders@protonmail.com
508-259-9154

NOTICE TO TOWN CLERK, PLYMOUTH MA

I, Margaret E. Sheehan, co-counsel for the Plaintiffs PAMELA MAGNARELLI, JOHN MAGNARELLI, JUDITH BERNIER, PAUL BERNIER, SUSAN CINA, and ROBERT CINA,

hereby provide notice that there is an appeal of the Amended Decision of the Plymouth Zoning Board of Appeals, Case No. 4063, Claremont Plymouth LLC, pursuant to G.L. c. 40A, § 17.

The appeal was docketed in the Plymouth Superior Court on this date as Case No. _____. A copy of the complaint is attached.

_____
By: Margaret E. Sheehan
P.O. Box 1699
Plymouth MA 02360
BBO # 456915
ecolawdefenders@protonmail.com
508-259-9154

Dated: March 28, 2023

Exhibit 1

Amended Decision