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RECEIVED & FILED
SUPERIOR COURT
2007 OCT 26 PM 1:16
CIVIL DIVISION

CASTLE ROCK ESTATES, LLC

Plaintiff,

vs.

TOWNSHIP OF RIVERDALE PLANNING
BOARD

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

DOCKET NO.: L-3111-07

CIVIL ACTION

**COMPLAINT IN LIEU OF
PREROGATIVE WRIT**

Plaintiff, Castle Rock Estates, LLC (hereinafter, "Castle Rock" or "Plaintiff") by way of Complaint in Lieu of Prerogative Writ against Defendant, Township of Riverdale Planning Board (hereinafter, "Defendant Board"), says as follows:

NATURE OF THE CASE

This case concerns the Defendant Board's improper denial of the Plaintiff's application for subdivision, site plan and variance approval for property located in the Borough of Riverdale. Defendant Board denied Plaintiff's application to subdivide its property into three residential single family lots, which were permitted in the zone and required minimal variance relief, to service new homes on each lot, without credible evidence to support such denial.

STATEMENT OF THE MATTER

1. Plaintiff is a limited liability company authorized to do business in the State of New Jersey, with its principal place of business located at 11 Erie Avenue, Wanaque, New Jersey.

2. Defendant Board is a duly organized land use board of the Borough, authorized, empowered and required to perform functions and powers delegated to said board pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL").

3. On October 3, 2006, Castle Rock filed an application for a three-lot subdivision, site plan and variance approval to the Defendant Board (the "Application"). Castle Rock's Application is for property located on the Skyview Terrace cul-de-sac, in the Borough of Riverdale, also known as Block 11, Lot 9 on the Borough of Riverdale tax map (the "Property").

4. Plaintiff is the contract purchaser of the Property.

5. The Property is located in the R-40 Zone. Principal permitted uses in this Zone include single-family detached dwellings.

6. The area of the entire tract is 11.32 acres. The Application proposes subdividing Lot 9 into three lots of 1.59 acres, 3.99 acres and 5.74 acres in order to service one residential home on each lot. The three proposed lots are approximately two, four and one half and six times, respectively, the required size for the R-40 zone.

7. The Application proposed a specific home on proposed Lot 2. Approval of plans for the other two proposed homes will be sought at a later date.

8. The Application for residential development of the Property is wholly in conformance with the Borough of Riverdale's Zoning Ordinance (the "Zoning Ordinance"),

except for one variance required from the Steep Slope Ordinance. The proposed use of the lots for residential homes is permitted in the zone.

9. The Zoning Ordinance provision relating to steep slope provides in part that no area with prohibitive slopes shall be disturbed, developed, or redeveloped. Prohibitive slopes include those slopes greater than 25%.

10. The Application comfortably meets all of the steep slope and other Zoning Ordinance requirements except for a minimal deviation from the prohibitive slope provision. Indeed, the Application proposes disturbance of only 2.4 % of the land impacted by the 25% slopes. This disturbance is associated with the undulating terrain associated with the Property. No construction was being proposed in any continuous slope area. In other terms, of the entire lot of nearly 500,000 square feet, only approximately 8,700 square feet of new disturbance is non-conforming, that disturbance is within isolated pockets and fringe areas, and all other disturbance falls well within the contours of the Zoning Ordinance requirements.

11. On January 25, 2007, March 22, 2007, May 24, 2007 and July 26, 2007, Defendant Board conducted public hearings with respect to Plaintiff's Application.

12. During the course of the hearings, Plaintiff presented ample testimony demonstrating that the Application conforms to the applicable land use regulations and that there is basically no impairment of the Zone Plan or Zoning Ordinance. As previously noted, the only non-conformity with respect to the Application related to the de minimus variation from the steep slope provision.

13. Throughout the course of the hearings, Castle Rock introduced expert engineering, geotechnical engineering and planning testimony, as well as other evidence

demonstrating the benefits of the proposed development, its permissibility in the zone and the need for variance relief.

14. Objectors to the Application, including representation for the adjacent property, the Rock Creek Crossing Condominium Association, were present at the meeting. An expert in the area of geotechnical engineering testified on behalf of the Rock Creek Crossing Association. At no time did the Objector's expert provide any specific engineering, testing, analysis or calculations to substantiate his concerns.

15. The Defendant Board also provided an engineering expert to testify throughout the course of the hearings and specifically in the area of geotechnical issues concerning the development.

16. Castle Rock provided additional testing and analysis in response to both Objector's and the Defendant Board's engineers request. All of that testimony supported the development. In fact, Defendant Board's expert testified that the proposed development, would in certain aspects, improve existing conditions.

17. At the conclusion of the public hearing on July 26, 2007, Defendant Board voted to deny Plaintiff's Application.

18. The Defendant Board memorialized a resolution denying Plaintiff's Application on September 6, 2007. Notice of this Resolution was published in the Suburban Trends newspaper on September 12, 2007. A copy of the Resolution was received by facsimile from the Defendant Board on October 16, 2007.

19 Pursuant to N.J.R. 4:69-6, if the determination or resolution of a planning board results in a denial, a prerogative writ may be filed within 45 days from the date the notice is

published in the local newspaper or from the date the notice is mailed to the applicant, whichever is later.

20. This Complaint, filed this date, is thus timely.

21. The evidence presented at the hearings demonstrated that the Plaintiff was entitled to the preliminary major subdivision approval, site plan approval and variance relief requested.

COUNT ONE

(Board Decision was Arbitrary, Capricious and Unreasonable)

1. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 21 contained in the Statement of the Matter as if same were set forth at length herein.

2. The totality of the actions of the Defendant Board in denying the Application failed to account for the weight of the evidence and the proofs and constituted a pattern of ill-conceived, arbitrary, capricious and unreasonable exercises of official authority by Defendant Board.

3. The decision of the Defendant Board was contrary to the evidence presented, had no basis in fact, and was based upon information that should not have been considered by the Defendant Board.

4. Plaintiff's interests have been adversely affected by the Defendant Board's arbitrary application of its zoning and land use powers which have been exercised in violation of the MLUL, 40:55D-1, et seq., other statutory provisions and governing case law.

5. Defendant Board's actions relative to the Application are contrary to fundamental principles of sound planning and violate the sprit and intent of the MLUL, 40:55D-1, et seq., and governing law.

6. The actions of the Defendant Board were arbitrary, capricious, and unreasonable, contrary to the evidence presented, and without any support in fact or law

7. The denial by the Defendant Board is without basis in law or fact.

WHEREFORE, Plaintiff, Castle Rock Estates, LLC, demands judgment against the Defendant, Planning Board of the Borough of Riverdale

a. Declaring that the Planning Board's denial of the Application was arbitrary, capricious, unreasonable, and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Riverdale, and the lawful rights of Plaintiff;

b. Reversing the denial of the Application;

c. Granting approval of the Application for subdivision and site plan approval and variance relief;

d. Awarding such other and further relief as the court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

COUNT TWO

(Variance relief for steep slope provision)

1. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 21 of the Statement of the Matter and Count One of the Complaint as if same were set forth at length herein.

2. Deviations from the provisions of a Zoning Ordinance may be made by variance.

3. A variance from bulk requirements may be granted by a Land Use Board to an applicant pursuant to the MLUL, N.J.S.A. 40:55D-70(c)(1), if the applicant establishes it cannot comply with the ordinance where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.

4. A variance from bulk requirements may also be granted if the purposes of the MLUL, N.J.S.A. 40:55D-70(c)(2), would be advanced by a deviation from the Land Use Ordinance and the benefits of the deviation would substantially outweigh any detriment.

5. Defendant Applicant presented sufficient and credible evidence necessary to meet its burden of proof for the grant of the subject variance relief related to steep slopes on the Property.

6. The variance from the steep slope ordinance proposed by Castle Rock is de minimus in light of the size of the Property and the scope of relief requested. Indeed, Plaintiff's plan proposes to disturb only 2.4 % of the land impacted by 25% slopes. In other words, out of the nearly 500,000 square foot lot, only about 8,700 square feet of new disturbance would be non-conforming.

7. All other disturbance falls well within the parameters of the Zoning Ordinance.

8. Relief from the strict provisions of the Zoning Ordinance in this regard, including but not limited to the variance relief requested, is justified not only by the size of the lot and its

unique topography, but also in that the proposed plan seeks to save a large number of trees and other natural outcroppings. Further, the proposed home on Lot 2 is to be located on the portion of the Property which limits disturbance and preserves the top of the Property (and surrounding views) from development.

9. The grant of variance relief to Plaintiff was substantiated by valid, credible lay and expert testimony and was supported by adequate proofs of the positive and negative criteria necessary to grant a (c)(1) or (c)(2) variance.

10. The record is replete with findings of fact and conclusions of law sufficient for the Defendant Board to grant variance relief.

11. The Defendant Board's action in the denial of steep slope variance relief was arbitrary, capricious, unreasonable and otherwise without basis in law or fact, contrary to the Defendant Board's statutory obligations and the lawful rights of Plaintiff.

12. The Defendant Board's actions relative to the Application are contrary to the fundamental principles of sound planning and violate the spirit and intent of the MLUL, 40:55D-1, et seq.

WHEREFORE, Plaintiff, Castle Rock Estates, LLC, demands judgment against the Planning Board of the Borough of Riverdale

- a. Declaring that the Planning Board's denial of the Application was arbitrary, capricious, unreasonable, and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Riverdale, and the lawful rights of Plaintiff;
- b. Reversing the denial of the Application;
- c. Granting approval of the Application for subdivision and site plan approval and variance relief;

d. Awarding such other and further relief as the court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

COUNT THREE
(Unsupported Resolution)

1. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 21 of the Statement of the Case and the First and Second Counts of the Complaint as if the same were set forth herein at length.

2. A Planning Board's decision must reflect the actual deliberations and specific findings of fact made by Planning Board members in order to sustain the Planning Board's conclusion that the statutory burden of proof for relief has not been satisfied.

3. The resolution memorializing the Planning Board's decision to deny the Application is defective and insufficient.

4. The reasons stated for the denial of the Application

- (a) are unsupported by the facts presented and the record below;
- (b) are erroneous;
- (c) concern determinations which are outside the jurisdiction of the Defendant Board to consider relative to the Application; and
- (d) confirm the arbitrary and capricious conduct exhibited by the Defendant Board in its review of the Application.

5. The Defendant Board failed to make proper findings of fact and conclusions of law in accordance with the MLUL, N.J.S.A. 40:55D-1, et seq., and existing case law.

6. The Defendant Board's action in adoption of the Resolution was arbitrary, capricious and unreasonable and otherwise without basis in law or fact contrary to the Defendant Board's statutory obligations and the lawful rights of Plaintiff.

7. The Defendant Board's actions relative to Plaintiff's Application are contrary to the fundamental principles of sound planning and violate the spirit and intent of the MLUL, N.J.S.A. 40:55D-1, et seq.

WHEREFORE, Plaintiff, Castle Rock Estates, LLC, demands judgment against the Planning Board of the Borough of Riverdale

a. Declaring that the Planning Board's denial of the Application was arbitrary, capricious, unreasonable, and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Riverdale, and the lawful rights of Plaintiff;

b. Reversing the denial of the Application;

c. Granting approval of the Application for subdivision and site plan approval and variance relief;

d. Awarding such other and further relief as the court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

COUNT FOUR

(Abuse of Discretion; Wrongful Denial of Application based upon off site condition)

1. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 21 of the Statement of the Case and Counts One, Two, and Three of the Complaint as if the same were set forth at length herein.

2. The power vested in a planning board when reviewing a site plan application is limited where the proposed use is a permitted use.

3. The object of site plan review is to determine whether the site will be used in accordance with the regulations of the zoning ordinance and provisions of the site plan ordinance.

4. When a site plan is being considered by a planning board, the planning board must grant preliminary approval if the proposed plan complies with the municipal zoning ordinance, or grant waivers or exceptions from provisions of the ordinance when appropriate.

5. Although a planning board has discretion to review site plans to assure compliance with the objectives and requirements of the site plan ordinance, the MLUL does not grant the planning board authority or power to prohibit a permitted use.

6. A planning board does not have the authority to deny a site plan because of an existing off-site condition unrelated to the property that is the subject of the site plan application.

7. If a planning board determines that there may be an off-site impact in its review of a site plan for a permitted use, the planning board should address those concerns by imposing conditions and restrictions in connection with the site plan approval rather than through an outright denial of the proposed use.

8. At the four (4) hearings held on the application by the Defendant Board, Plaintiff presented factual and expert testimony which established that it had sustained its burden of proof to obtain subdivision and site plan approval and variance relief for a permitted use in the zone.

9. The Defendant Board discussed and spent considerable time reviewing the geotechnical impact on Rock Creek Crossing, the property adjacent to the Property, but which was originally located over 100 feet from any development on the Property. Such extensive

review of the potential impacts on Rock Creek Crossing is beyond the scope of the Defendant Board's jurisdiction. The Defendant Board's significant consideration of such matters was arbitrary, capricious and unreasonable.

10. Moreover, in light of Defendant Board's concerns for the adjoining property, Castle Rock agreed to move the location of the closest proposed home on the Property further away from the Rock Creek property line, to over 160 feet., which was nearly 200 feet to the nearest unit.

11. The expert testifying on behalf of the Rock Creek Crossing Condominium Association himself indicated in his testimony that structural concerns were not a likely effect on the Rock Creek Crossing slopes. Further, this expert also admitted that the distance of the Castle Rock development from the edge of the Rock Creek Crossing slopes is a factor which reduced the concerns of any impact on Rock Creek Crossing.

12. The Defendant Board's engineer also testified with regard to the impact on Rock Creek Crossing, stating that because of the distance between the Castle Rock Property and Rock Creek Crossing, the effect of the proposed development would be insignificant to the rock face of Rock Creek Crossing.

13. Despite the fact that no impact on Rock Creek Crossing was ever proven and in spite of Rock Creek Crossing Association's expert testimony and Defendant Board's own expert testimony, the impact on Rock Creek Crossing was used by the Defendant Board as a basis for denial of the Application. Indeed, the Resolution adopted by the Defendant Board states that the application filed by Plaintiff was denied, *inter alia*, because:

The area of the property has been subjected to years of problems with the rock faces falling apart causing a dangerous condition on the adjoining [Rock Creek Crossing] property (brackets added).

Further, the Resolution states the following with regard to the adjoining property:

The Geotechnical experts opinions presented by both the Applicant and the Objectors are at odds with one another and the Board is not persuaded that the development of three houses on the subject property will not increase rock failure in the rock face of the adjoining property.

14. In its decision to deny the Application, Defendant Board failed to acknowledge that its own engineering expert testified as to the lack of geotechnical impact on Rock Creek Crossing.

15. In light of the location of Rock Creek Crossing, over 160 feet away from the nearest home on the Property, and the fact that plaintiff's geotechnical testing and testimony demonstrated that no impact would result on Rock Creek Crossing, the Defendant Board's denial of the application based on geotechnical impact was improper and unreasonable. Further, in its intense focus on the potential off-site impacts, the Board failed to consider and weigh the onsite conditions and benefits resulting from the development of the Property

16. Plaintiff's interests have been adversely affected by the Defendant Board's arbitrary and irrational application of its planning, zoning and land use powers which have been exercised by indirection and in violation of statute.

17. The Defendant Board's action in denying the application was arbitrary, capricious, unreasonable and otherwise without basis in law or fact, contrary to the Defendant Board's statutory obligations and the lawful rights of Plaintiff.

18. The Defendant Board's actions relative to Plaintiff's development application are contrary to the fundamental principles of sound planning and violate the spirit and intent of the MLUL, N.J.S.A. 40:55D-1, et seq.

WHEREFORE, Plaintiff, Castle Rock Estates, LLC, demands judgment against the Defendant, Planning Board of the Borough of Riverdale:

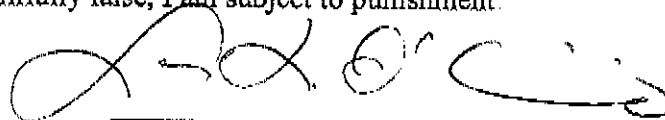
- a. Declaring that the Planning Board's denial of the Application was arbitrary, capricious, unreasonable, and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Riverdale, and the lawful rights of Plaintiff;
- b. Reversing the denial of the Application;
- c. Granting approval of the Application for subdivision and site plan approval and variance relief;
- d. Awarding such other and further relief as the court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

CERTIFICATION

The undersigned hereby certifies that the matter in controversy herein is not the subject of any other action pending in this Court. The undersigned certifies that there are no other parties which need be joined.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: October 25, 2007



Louis L D'Arminio

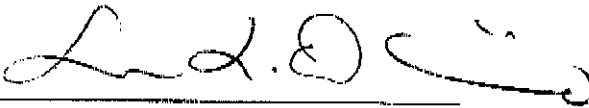
CERTIFICATION PURSUANT TO RULE 4:69-5

The undersigned hereby certifies that all necessary transcripts of local agency proceedings in the cause have been ordered or already received.

I hereby certify that the foregoing statement made by me is true. I am aware that if the foregoing statement made by me is willfully false, I am subject to punishment.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Plaintiff, Castle Rock Estates, LLC

Dated: October 25, 2007


By: 
Louis L. D'Arminio

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1, Louis L. D'Arminio, Esq. is hereby designated as trial counsel.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Plaintiff, Castle Rock Estates, LLC

Dated: October 25, 2007

By: 
Louis L. D'Arminio

CIVIL CASE INFORMATION STATEMENT (CIS)



Use for initial Law Division – Civil Part pleadings (not motions) under Rule 4:5-1
Pleadings will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE:	CK	CG	CA
CHG/CK NO.			
AMOUNT			
OVERPAYMENT:			
BATCH NUMBER:			

ATTORNEY/PRO SE NAME Louis L. D'Arminio	TELEPHONE NUMBER (201) 391-3737	COUNTY OF VENUE Morris County
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FIRM NAME (IF APPLICABLE) Price, Meese, Shulman & D'Arminio, P.C.	DOCKET NUMBER (when available)
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OFFICE ADDRESS Mack-Cali Corporate Center 50 Tice Boulevard Woodcliff Lake, NJ 07677	DOCUMENT TYPE Complaint in Lieu of Prerogative Writ
JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

NAME OF PARTY (e.g. John Doe, Plaintiff) Castle Rock Estates, LLC	CAPTION Castle Rock Estates, LLC v Township Of Riverdale Planning Board
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CASE TYPE (see reverse side for listing) 701	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
IF YOU HAVE CHECKED 'YES', SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. IF YES, LIST DOCKET NUMBERS	

RELATED CASE PENDING <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown
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THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP (explain) <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS
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B DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

DO YOU OR YOUR CLIENT HAVE ANY NEEDS UNDER THE AMERICANS WITH DISABILITIES ACT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
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WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE:
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ATTORNEY SIGNATURE
Louis L. D'Arminio

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CIVIL DIVISION

SIDE 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES: (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I – 150 days’ discovery

- 151 Name Change
- 175 Forfeiture
- 302 Tenancy
- 399 Real Property
- 502 Book Account
- 505 Other Insurance Claim (including Declaratory Judgment Actions)
- 506 PIP Coverage
- 510 UM or UIM Claim
- 511 Action on Negotiable Instrument
- 512 Lemon Law
- 599 Contract/ Commercial Transaction
- 801 Summary Action
- 802 Open Public Records Act (Summary Action)

TRACK II – 300 days’ discovery

- 305 Construction
- 509 Employment (other than CEPA or LAD)
- 602 Assault and Battery
- 603 Auto Negligence – Personal Injury
- 605 Personal Injury
- 610 Auto Negligence – Property Damage
- 699 Tort – Other

TRACK III – 450 days’ discovery

- 005 Civil Rights
- 301 Condemnation
- 604 Medical Malpractice
- 606 Product Liability
- 607 Professional Malpractice
- 608 Toxic Tort
- 609 Defamation
- 616 Whistleblower/Conscientious Employee Protection Act (CEPA) Cases
- 617 Inverse Condemnation
- 618 Law Against Discrimination (LAD) Cases

TRACK IV – Active Case Management by Individual Judge/450 days’ discovery

- 156 Environmental/Environmental Coverage Litigation
- 303 Mt. Laurel
- 508 Complex Commercial
- 613 Repetitive Stress Syndrome
- 701 Actions in Lieu Prerogative Writ

Mass Tort (Track IV)

- 240 Redux/Phen-Fen (formerly "Diet Drug")
- 248 Ciba Geigy
- 264 PPA
- 601 Asbestos
- 619 Vioxx

999 OTHER (Briefly describe in nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics".

Please check off each applicable category:

- Verbal Threshold
- Putative Class Action
- Title 59