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Attorneys for City of Millville

TRACKRACKET, INC., a domestic nonprofit  
association, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK and  
the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**CITY OF MILLVILLE'S NOTICE OF  
MOTION TO QUASH DEPOSITION  
NOTICES/SUBPOENA AD  
TESTIFICANDUMS OF CITY  
OFFICIALS AND REPRESENTATIVES  
OR, IN THE ALTERNATIVE, FOR A  
PROTECTIVE ORDER PURSUANT TO  
R. 4:10-3(d)**

**RETURNABLE: OCTOBER 29, 2010**

TO: Oliver D. Griffin, Esq.  
Richard D. Gallucci, Jr., Esq.  
Spector Gadon & Rosen, P.C.  
1635 Market Street  
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Counsel for Plaintiffs

Jeffrey A. DiLazzero, Esq.  
Kavanagh, Kavanagh & DiLazzero, LLC  
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Counsel for Defendant  
New Jersey Motorsports Park

**PLEASE TAKE NOTICE** that the undersigned will apply to the above named Court, at the Gloucester County Courthouse, 1 N. Broad Street, Woodbury, NJ 08096, on Friday, October 29, 2010, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order in favor of City of Millville quashing the deposition notices/subpoena ad testificandum's served upon the city officials and representatives of the City of Millville, or, in the alternative, for a Protective Order pursuant to R. 4:10-3(d) regarding these depositions.

Reliance will be placed upon the enclosed Brief and Certification of Katherine M.

Morris, Esq.

Pursuant to R. 1:6-2(d) the undersigned:

- Waives oral argument and consents to disposition on the papers.
- Does not request oral argument at this time.
- Requests oral argument if timely opposition is filed at the discretion of the Court.

A proposed form of Order is annexed.

COOPER LEVENSON APRIL  
NIEDELMAN & WAGENHEIM, P.A.

Dated: October 1, 2010

By: 

Katherine M. Morris, Esquire  
Counsel for City of Millville

CLAC; 483300.1

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SUPERIOR COURT OF NEW JERSEY  
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DOCKET NO. CUM-L-1230-09

Civil Action

**BRIEF IN SUPPORT OF THE CITY OF  
MILLVILLE'S MOTION TO QUASH  
DEPOSITION NOTICES/SUBPOENA  
AD TESTIFICANDUMS OF CITY  
OFFICIALS AND REPRESENTATIVES  
OR, IN THE ALTERNATIVE, FOR A  
PROTECTIVE ORDER PURSUANT TO  
R. 4:10-3(d)**

**RETURNABLE: OCTOBER 29, 2010**

### INTRODUCTION

This matter comes before the court on the City of Millville's (hereinafter "Millville" or "the municipality") motion to quash the deposition notices/subpoena ad testificandums issued by Plaintiff's TrackRacket Inc., Michelle Post, David Carrow, Elizabeth Milne and Byron Robbins (hereinafter "Plaintiffs") for City Officials and Representatives or, in the alternative, for a Protective Order pursuant to *N.J.Ct. R. 4:10-3(d)*

### PROCEDURAL HISTORY

Suit was filed in the instant matter on December 23, 2009. See Court files. A default was mistakenly entered against Millville and was vacated by Consent Order dated April 7, 2010.

See Court files. Thereafter, Millville filed an Answer and Affirmative Defenses on April 23, 2010. See Court files.

On August 26, 2010, the Honorable Anne McDonnell, J.S.C. dismissed the plaintiff's Complaint against the City of Millville with prejudice. See Exhibit "A" to Certification of Katherine M. Morris, Esq., served with these papers (hereinafter "Morris Cert.")

On September 20, 2010, via facsimile, Plaintiffs' counsel served upon counsel for Millville deposition notices/subpoena ad testificandums for:

Ed Grennan (former Chief of Police);

David W. Vanaman (Director of Public Safety);

Dale Finch (Director of Public Works);

James F. Quinn (Director of Public Affairs);

Joseph J. Derella (Vice Mayor, Director of Revenue and Finance);

J. Tim Shannon (Mayor, Director of Parks and Public Property);

Dr. Kim Ayers (Planning Director); and

Wayne Caregnato (Zoning Officer). See Morris Cert, Exhibit "B".

Millville now files this Motion to Quash the deposition notices/subpoena ad testificandums of the City Officials and representatives, or, in the alternative, for a protective order pursuant to *N.J.Ct. R. 4:10-3(d)*.

### **LEGAL ARGUMENT**

A fair reading of the Complaint specific to the allegations against Millville sounds in Plaintiffs' general displeasure in the passage of Ordinance 23-2004 which created land use and development regulations authorizing and establishing the Airport Motorsports Entertainment District in 2004 and Resolution No. 2-05 which granted co defendant New Jersey Motorsports

Park approval of a General Development Plan, also in 2004. See Court files. The effect of these two actions by the Planning Board and the City Council of Millville was the building of the New Jersey Motorsports Park, (hereinafter “the Park”) and the establishment of racing at the Park in July 2008. See Court files.

All the deposition notices/subpoena ad testificandums served state that these depositions are for the purpose of questioning the deponents “regarding [or relating to] the matter involved in this action,” which is the passage of these Ordinances and approvals in 2004. See Exhibit “B” to the Certification of Katherine M. Morris, Esq., filed with these moving papers (hereinafter “Morris Cert.”) This is the basis of the Complaint, the “noise” issue, which is ancillary and a by product of the passage of the Ordinance and approval, the background of which and the amending of which is the Plaintiffs’ main concern. Plaintiffs’ allege, generally, that there is “noise pollution” emanating from the Park, but, as of this writing, have not produced a Sound Level Assessment or Critical Analysis and Sound Study which opines the noise from the Track is over the limit set forth in the approvals.

With the overbroad statement on the notices that the areas to be inquired into is “regarding [or relating to] the matter involved in this action,” it can only be assumed, based upon the assertions in the Complaint, that the questions of the Council and representatives will concern the passage of both the ordinance and the resolution, or quite possibly, the City representatives personal “thoughts” or “opinions” concerning the ordinance, resolution, and the noise allegations. As to the first area of supposed questioning, those questions relate to legislative action and, therefore, are neither relevant nor can they lead to discoverable evidence. The depositions sought are of the individuals in their official capacity, and their mental processes of impressions are off limits. See *N.J. Turnpike Authority v. Sisselman*, 106 N.J. Super. 358

(App. Div. 1969, *certif. denied* 54 N.J. 565 (1969), *see also* N.J. Sports and Exposition Auth. v. McCrane, 119 N.J. Super. 457 (Law Div. 1971) *aff'd* 61 N.J. 1 (1972). Generally, New Jersey Courts have held that government officials are immune from inquiry into mental processes by which they made decisions. All meetings of the City Council and Planning Board are held in compliance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*. During those meetings, all discussion, comments, rationale and reasoning of the members of City Commission, the Planning Board, and its professionals are stated on the record, openly and under the glare of public scrutiny. Public comments, discourse and objections are heard from members of the public, and the members of TrackRacket Inc and the individual plaintiffs were granted the right, pursuant to N.J.S.A. 10:4-7, to be at all meetings, and “to witness in full detail all phases of the deliberation, policy formulation and decision making of [the] public body” of the City of Millville. As is required, an official record is made, and beyond that official record, which documents the meetings fully, questions as to the “thought processes”, “mental impressions” or “reasons” that the City representatives and professionals recommended certain action be taken is not relevant. By participating fully in the public discourse of these meetings, the members of the City Council, Planning Board and their professionals put on the record a full accounting of their thought processes, held the appropriate discussion and demonstrated the validity of their reasoning in public, which is what is required under the Open Public Meetings Act.

The individual’s personal thoughts are irrelevant.

*Rule 4:10-2* provided for the scope of discovery and states:

“Parties may obtain discovery regarding any matter, **not privileged, which is relevant to the subject matter involved in the pending action** whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information

sought will be admissible at the trial if the information sought appears **reasonably calculated to lead to the discovery of admissible evidence**; not is it grounds for objection that the examining party has knowledge of the matter as to which discovery is sought.” (Emphasis added.)

Whether or not the discovery sought under *R. 4:10-2* is “relevant to the subject matter involved” is determined under the same standard as *N.J.R.E. 401*. *N.J.R.E. 401* defines relevancy as a “tendency in reason to prove or disprove any facts or consequence to the determination of the actions.” The thoughts or deliberations of the individual deponents relevant to the adoption of the Ordinance and approval at issue is not relevant to the subject matter, which is the Plaintiffs subjective dissatisfaction with the approvals, is off limits and has no consequence to the determination of the action. In fact, to allow that type of question would “chill” the process under which municipal officers and their representative act for the general good of their municipalities. The official record of the meetings under the Open Public Records Act provides all the information that is relevant to the decisions, that is relevant to the determination of the actions and any attempt to question these representatives beyond what is statutorily allowed should be suppressed.

The relevant standard of *R. 4:10-2* also includes information which is “reasonably calculated to lead to admissible evidence” respecting a cause of action or defense. *Pfenninger v. Hunterdon Central*, 167 *N.J.* 230, 237 (2001). It is respectfully submitted that the depositions of these representatives are not “relevant to the subject matter involved in the pending actions” and are not “reasonable calculated to lead to the discovery of admissible evidence” as permitted by *R. 4:10-2*. The admissible evidence is the official record of the meetings and approvals at issue, not any deliberative thoughts or process engaged in by any of the noticed deponents before stating their positions, and reasons for same, on the official record. It is simply not relevant to the case at bar.

Alternatively, if the Court's determination is not to quash these depositions in their entirety, a protective order is requested. *R. 4:10-3* allows a party to obtain a protective order and states:

“Upon motion by a party or by the person from whom discovery is sought and for good cause shown, the court may make an order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including but not limited to . . . that the discovery not be had..”

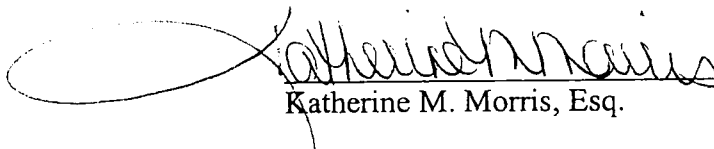
In crafting such an Order, the Court's purpose is to afford 'adequate protection against unwarranted intrusion and invasion of the rights "of the person against whom discovery is sought." *Berrie v. Berrie*, 188 *N.J.Super.* 274,282 (Ch. Div. 1983) (quoting *Bead Chain Mfg. Co. v. Smith*, 1 *N.J.* 118, 121 (1948)). Further, a protective order is appropriate where the deposition is nothing more than harassment and this Court can limit the scope of discovery and the areas to be inquired into. *N.J.Ct. R. 4:10-3(d)*. At the least, Plaintiffs' counsel should be required to state to this Court what line of questioning it intends to pursue during these depositions. Anything concerning thought process, mental impressions or the deliberative process that each representative conducted personally before stating their public opinion or reasons for supporting the Ordinance in not relevant and should be subject to a Protective Order before depositions are held. The individual person thoughts or opinions, not being relevant, should also be protected. This removes the need for speculation as all parties are aware of the breadth and scope of the deposition process and what subjects may, and may not, be explored.

Plaintiffs' are not disadvantaged in any way if these deposition are quashed. All the relevant information sought concerning this Ordinance and Planning Board approval is in the public recording of the proceedings, which the Plaintiffs' had to opportunity to attend and also have the opportunity to receive a copy of the official record. Alternatively, if a Protective Order

is fashioned by this Court, it will focus the deposition questions and also prevent harassment of the municipal representatives.

Thus, it is respectfully submitted that the deposition notices/subpoena ad testificandums of Ed Grennan (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance); J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer) should be quashed as any information obtained from said depositions is not relevant and both invades and chills the municipal function of decision making. In the alternative, it is respectfully submitted that a Protective Order be granted as to the scope of questioning allowed in said depositions.

Respectfully submitted,



Katherine M. Morris, Esq.

Dated: October 1, 2010

CLAC; 483373.1

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Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK and  
the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**CERTIFICATION OF KATHERINE M.  
MORRIS, ESQUIRE IN SUPPORT OF  
THE CITY OF MILLVILLE'S MOTION  
TO QUASH DEPOSITION  
NOTICES/SUBPOENA AD  
TESTIFICANDUMS OF CITY  
OFFICIALS AND REPRESENTATIVES  
OR, IN THE ALTERNATIVE, FOR A  
PROTECTIVE ORDER PURSUANT TO  
R. 4:10-3(d)**

**RETURNABLE: OCTOBER 29, 2010**

I, KATHERINE M. MORRIS, ESQUIRE, hereby certify as follows:

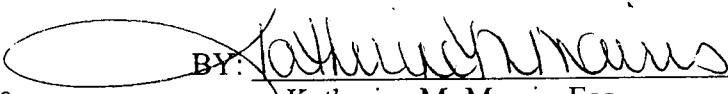
1. I am an attorney admitted to practice law in the State of New Jersey and a member of the firm of Cooper Levenson April Niedelman & Wagenheim, attorneys for the City of Millville.
2. The City of Millville was dismissed from the instant action by Order of the Honorable Anne McDonnell, J.S.C. dated August 26, 2010. Attached hereto and marked as Exhibit "A" is a true and correct copy of said Order and Memorandum of Decision.
3. Attached hereto and marked as Exhibit "B" is a true and correct copy of the September 20, 2010 facsimile cover sheet to Katherine M. Morris, Esq. from Oliver D. Griffin,

Esq., with attachments of the deposition notices/subpoena ad testificandums of Ed Grennan (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance); J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer).

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

COOPER LEVENSON APRIL  
NIEDELMAN & WAGENHEIM, P.A.

Date: October 1, 2010

BY:  \_\_\_\_\_  
Katherine M. Morris, Esq.

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Attorneys for Defendant City of Millville

**FILED**

**AUG 26 2010**

**ANNEMcDONNELL, J.S.C.**

TRACKRACKET, INC., a domestic nonprofit association, MICHELLE POST, DAVID CARROW, ELIZABETH MILNE and BYRON ROBBINS

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK and the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**ORDER DISMISSING PLAINTIFFS'  
COMPLAINT WITH PREJUDICE AS  
AGAINST DEFENDANT CITY OF  
MILLVILLE**

This matter having come before the Court upon the application of Katherine M. Morris, Esq., of Cooper Levenson April Niedelman & Wagenheim, attorneys for Defendant City of Millville, and upon notice to Oliver D. Griffin, Esq. and Richard D. Gallucci, Jr., Esq., of Spector Gadon & Rosen, P.C., attorneys for Plaintiffs' and Jeffrey A. DiLazzero, Esq., of Kavanagh, Kavanagh & DiLazzero, LLC, counsel for Defendant New Jersey Motorsports Park, for an Order to dismiss Plaintiffs' Complaint for failure to state a claim upon which relief can be granted pursuant to New Jersey Court Rule 4:6-2(e); and the Court having reviewed the moving papers, any opposition filed thereto, and having heard the arguments as put forth by counsel, if any, and for good cause shown:

IT IS on this 26 day of <sup>August</sup>~~July~~, 2010 **ORDERED and ADJUDGED** as follows:

The Plaintiffs' Complaint against Defendant the City of Millville is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all parties

within 10 days.

*Alison*

J.S.C.

- Notice of Motion
- Movant's Certifications
- Movant's Brief
- Answering Certifications
- Answering Brief
- Cross Motion
- Movant's Reply
- Other Argued July 23, 2010

*Reasons set forth in Bench  
Memo of even date*

CLAC; 450019.1

SUPERIOR COURT OF NEW JERSEY

ANNE McDONNELL  
JUDGE

PO Box 797  
WOODBURY, NJ 08096



NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

BENCH MEMORANDUM

Trackracket, Inc., et al. v. New Jersey Motorsports Park and the City of Millville,  
CUM-L-1230-09

Argued: July 23, 2010  
Decided: August 26, 2010

Relief Requested

Defendant City of Millville ("Millville") moves to dismiss Count IV with prejudice for failure to state a claim under R. 4:6-2(e) and failure to meet the time requirements of R. 4:69-1.

Motion Record

On December 23, 2009, plaintiffs filed a complaint against and New Jersey Motorsports Park ("NJMP") and Millville concerning the noise generated by NJMP. Pursuant to Count IV of the complaint, plaintiffs demand judgment against Millville as follows:

Mandatory relief pursuant to R. 4:69 (action in lieu of prerogative writs) requiring the City of Millville to enforce its existing public nuisance ordinance.

The complaint describes defendant NJMP as a \$100 million racing facility located in Millville New Jersey. The Track has two road courses and a high performance karting facility. Paragraph 13.

The complaint states that NJMP and its representatives gave public presentations and demonstrations as to the benefits of the Track, and specifically, how the initiative would be a [boon] for the local economy, while at the same time that the decibel levels generated from noise from the Track would not [affect] those residents exposed to the noise in any kind of meaningful way (i.e., that those residents' quality of life and their property values would not plummet.) Paragraph 24.

The complaint states that, specifically, between 2005 – 2007, the following (among other things) occurred to "pave" the way for the Track: (a) at a special planning board meeting, City approval is given to build the Track; (b). the Governor of New Jersey signs legislation allowing for the creation of the special tax district in Millville; (c) the City Commission introduces (and which is later approved) a 15 year tax abatement in lieu of taxes for the Track; and (d) the Federal Aviation Administration clears the sale of 139 acres of the City airport for use in construction for Phase 1 of the Track. Paragraph 26.

The complaint provides that Ordinance No. 23-2004 passed on August 8, 2004, states as follows:

A plan will be submitted that will diminish to the extent reasonably possible such sound or noise as shall be audible from activities or events beyond the property boundaries. Decibel standard shall be set as follows:

- A. Continuous airborne sound emitting from *the Airport Motorsports Entertainment District shall not exceed 80 dBA at the boundaries of the existing residential zoning districts R5, R10, R15, R20*. Continuous airborne sound shall be the Leq measurement for a minimum of 20 minutes with the sound level meter set for "A" weighing in the slow response mode.
- B. Races are motorsports related events taking place on the oval racetrack shall be exempt from noise standards set forth herein.

(Emphasis added). This new noise standard served only to undercut the existing noise ordinances of the City in favor of the Track. Paragraph 32.

The complaint states that the decibel levels are unacceptable and nearly unlivable. The Track exists as a public and private nuisance to the plaintiffs, and others, and its noise pollution must be curtailed. In addition, future phases cannot be allowed to be built without stringent noise pollution guidelines that are a reasonable/livable decibel limit (and not the absurd current limit, dictated by the ordinance. Paragraph 41.

Paragraphs 58 and 59 of the complaint identify the public nuisance ordinance which plaintiffs seek to compel Millville to enforce as follows:

For a nuisance to be a public nuisance it does not have to affect the whole municipality. It is public if the nuisance adversely affects the people or properties of a local neighborhood, or a portion of the public who comes and contact with it."  
[Article V. Section 11-43 of the municipal code].

Public nuisance includes public nuisances as defined in the common law of New Jersey.  
[Art.V. Section 11-44 of the municipal code].

Plaintiffs complain that the noise emanating from the operation of defendant NJMP constitutes a public nuisance contrary to Millville's public nuisance code and should be enjoined or abated. Despite numerous complaints and requests to enforce the applicable public nuisance ordinances, Millville has refused. Paragraphs 60 and 61.

#### **Standard of Review for R. 4:6-2(e) Motion**

Rule 4:6-2(e) permits a defendant to file a motion to dismiss a complaint which "fail[s] to state a claim upon which relief can be granted." When determining whether or not to

dismiss the complaint, the court must accept as true the factual allegations in the complaint and determine whether the allegations “suggest” a legal cause of action. Craig v. Suburban Cable Vision, Inc. 140 N.J. 623, 625-26 (1995). The court must consider only the pleadings and accept as true the facts as alleged by the plaintiff. See Rieder v. State Dept. of Transportation, 221 N.J. Super. 547 (App. Div. 1987). If, after accepting as true the facts alleged, the plaintiff’s complaint still states no basis for relief, and discovery would not provide one, dismissal of the complaint is appropriate. Camden County Energy Recovery Assoc., L.P. v. New Jersey Dep’t of Environmental Protection, 320 N.J. Super. 59, 64 (App. Div. 1999); Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div.), *certif. den.* 185 N.J. 297 (2005).

Motions to dismiss for failure to state a claim pursuant to R. 4:6-2(e) must be approached with “great caution” and “should be granted in only the rarest of circumstances.” Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989). The complaint must be searched:

...in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint’s allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

[Id. at 746 (internal quotations and citations omitted); *see also* Banco Popular N. Am. v. Gandi, 184 N.J. 161, 165-66 (2005).]

The complaint clearly sets forth at Count IV an action in lieu of prerogative writs seeking to compel Millville to enforce its public nuisance ordinance against defendant NJMP. The issue presented is whether the complaint makes clear that relief cannot be granted on that claim.

[I]n appropriate situations mandamus will lie to compel municipal officials to enforce ordinances, zoning and others, provided the plaintiff’s right and the defendant’s duty are clear and other adequate relief is unavailable. We consider the rule to be fully applicable in our State...

[Garrou v. Teaneck Tryon Co., 11 N.J. 294, 303 (1953).]

The writ of mandamus is subject to important and well-defined qualifications. A plaintiff’s right and the defendant’s duty must legally be clear. Id. at 302. Here, plaintiffs’ right to have the nuisance ordinance enforced against NJMP is not clear. Although Millville’s ordinance defines public nuisance broadly, Millville cannot be

compelled to enforce a general public nuisance ordinance against NJMP when it has specifically and legislatively exempted NJMP from the noise ordinance. Under the common approach to statutory construction, specific language takes precedence over more general language. Burnett v. County of Bergen, 198 N.J. 408, 424 (2009).

Mandamus is an extraordinary remedial process to compel the performance of a specific act or duty; and its issuance ordinarily involves the exercise of a sound discretion. Beronio v. Pension Com. of Hoboken, 130 N.J.L. 620, 623 (E. & A. 1943). Here, the Complaint sets forth both the public nuisance ordinance sought to be enforced and the ordinance establishing the noise exemption. Accordingly, based on the complaint, the Court denies the extraordinary relief of mandamus because Millville ought not to be compelled to enforce its noise ordinances against NJMP in light of the legislative exemption.

The court does not address the timeliness argument as plaintiffs are not challenging the validity of the ordinances passed by Millville. The court does not address the MLUL argument as it is made as to NJMP only. The court does not address the Tort Claims Act argument as plaintiffs' only claim against Millville is a count in lieu of prerogative writs and not a tort claim.

#### **Conclusion**

For the foregoing reasons, the Defendant Millville's motion to dismiss Count IV pursuant to R. 4:6-2(e) is granted. Count IV of the Complaint is dismissed with prejudice.

**SPECTOR GADON & ROSEN, P.C.**

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*Oliver D. Griffin*

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September 20, 2010

FACSIMILE COVER SHEET

DATE: September 20, 2010

TO: KATHERINE M. MORRIS, ESQUIRE - 609-572-7561  
JEFFREY A. DiLAZZERO, ESQUIRE - 856-765-9918  
MICHAEL L. TESTA, ESQUIRE 0 856-691-5655

FROM: OLIVER D. GRIFFIN, ESQUIRE

NO. OF PAGES (INCLUDING COVER) 18

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SEP 20 2010 7:12 PM

**SPECTOR GADON & ROSEN, P.C.**

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FAX: [215] 241-8844  
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FAX: [727] 896-4604

*Oliver D. Griffin*

DIRECT DIAL NUMBER  
[215] 241-8870

DIRECT FAX  
[215] 531-9177

September 20, 2010

**VIA FACSIMILE ONLY**

Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

Re: **TrackRacket, et al v. New Jersey Motorsports Park and City of Millville**  
**NJ Superior Court, Cumberland County Law Division**  
**Docket No.: L-1230-09**

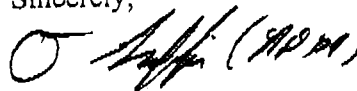
Dear Ms. Morris:

Enclosed please find Subpoenas and Notices of Deposition for the following previously noticed City of Millville employees for which you have agreed to accept service: Ed Grennon, David W. Vanaman, Dale Finch, James F. Quinn, Joseph J. Derella, J. Tim Shannon, Dr. Kim Ayers, and Wayne Caregnato.

These depositions are scheduled to commence at 10:00 a.m. on Monday, October 18, 2010 at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ. My office will provide the reporter.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



OLIVER D. GRIFFIN

ODG/tb  
Enclosures

cc: Jeffrey A. DiLazzerro, Esquire, w/enc., via Facsimile  
Michael L. Testa, Jr., Esquire, w/enc., via Facsimile

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on Monday, October 18, 2010 at 10:00 a.m. at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360, regarding the matter involved in this action, at which time and place the following person will be produced:

ED GRENNON

SPECTOR GADON & ROSEN, P.C.

BY:

OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on Monday, October 18, 2010 at 2:00 p.m. at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360, regarding the matter involved in this action, at which time and place the following person will be produced:

DAVID W. VANAMAN

SPECTOR GADON & ROSEN, P.C.

BY:

OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**  
By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire  
1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

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DALE FINCH

SPECTOR GADON & ROSEN, P.C.

BY:

OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

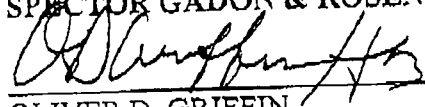
TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on Tuesday, October 19, 2010 at 12:00 p.m. at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360, regarding the matter involved in this action, at which time and place the following person will be produced:

WAYNE CAREGNATO

SPECTOR GADON & ROSEN, P.C.

BY:

  
OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

**NOTICE OF DEPOSITION**

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on **Tuesday, October 19, 2010 at 2:00 p.m.** at the offices of **Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360**, regarding the matter involved in this action, at which time and place the following person will be produced:

**JAMES F. QUINN**

**SPECTOR GADON & ROSEN, P.C.**

BY:

**OLIVER D. GRIFFIN**  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

**NOTICE OF DEPOSITION**

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

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**JOSEPH J. DERELLA**

**SPECTOR GADON & ROSEN, P.C.**

BY:

**OLIVER D. GRIFFIN**  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

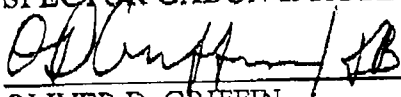
TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on Wednesday, October 20, 2010 at 12:00 p.m. at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360, regarding the matter involved in this action, at which time and place the following person will be produced:

DR. KIM AYERS

SPECTOR GADON & ROSEN, P.C.

BY:

  
OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

NOTICE OF DEPOSITION

TO: Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Attorneys for Defendant, City of Millville

**PLEASE TAKE NOTICE** that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on **Wednesday, October 20, 2010 at 2:00 p.m.** at the offices of **Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360**, regarding the matter involved in this action, at which time and place the following person will be produced:

J. TIM SHANNON

SPECTOR GADON & ROSEN, P.C.

BY:   
OLIVER D. GRIFFIN  
Attorney for Plaintiffs

Dated: September 20, 2010

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

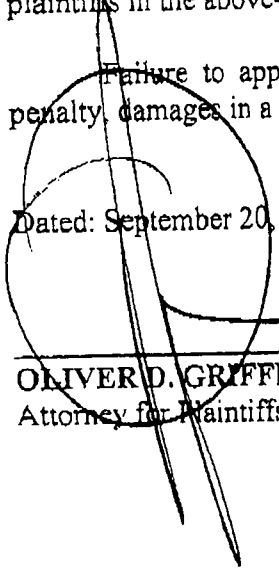
THE STATE OF NEW JERSEY TO:

Ed Grennon  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

YOU ARE HEREBY COMMANDED to attend and give testimony before the above  
named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Monday, October 18, 2010 at 10:00 a.m. on the part of the  
plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

  
OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

/s/Jennifer Perez  
JENNIFER PEREZ, CLERK

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

**SUBPOENA AD TESTIFICANDUM**

THE STATE OF NEW JERSEY TO:

David W. Vanaman  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

YOU ARE HEREBY COMMANDED to attend and give testimony before the above named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis Avenue, Vineland, NJ 08360, on Monday, October 18, 2010 at 2:00 p.m. on the part of the plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

**OLIVER D. GRIFFIN, ESQUIRE**  
Attorney for Plaintiffs

*/s/Jennifer Perez*  
**JENNIFER PEREZ, CLERK**

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

THE STATE OF NEW JERSEY TO:

Dale Finch  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

YOU ARE HEREBY COMMANDED to attend and give testimony before the above  
named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Tuesday, October 19, 2010 at 10:00 a.m. on the part of the  
plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

  
\_\_\_\_\_  
OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

1/s/Jennifer Perez  
\_\_\_\_\_  
JENNIFER PEREZ, CLERK

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY  
DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

THE STATE OF NEW JERSEY TO:

Wayne Caregnato  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

YOU ARE HEREBY COMMANDED to attend and give testimony before the above  
named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Tuesday, October 19, 2010 at 12:00 p.m. on the part of the  
plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

  
OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

/s/Jennifer Perez  
JENNIFER PEREZ, CLERK

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

THE STATE OF NEW JERSEY TO:

James F. Quinn  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

YOU ARE HEREBY COMMANDED to attend and give testimony before the above  
named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Tuesday, October 19, 2010 at 2:00 p.m. on the part of the  
plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

  
OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

/s/Jennifer Perez  
JENNIFER PEREZ, CLERK

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY  
DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

THE STATE OF NEW JERSEY TO:

Joseph J. Derella  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

**YOU ARE HEREBY COMMANDED** to attend and give testimony before the above  
named Court at the offices of **Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Wednesday, October 20, 2010 at 10:00 a.m.** on the part of  
the plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

**OLIVER D. GRIFFIN, ESQUIRE**  
Attorney for Plaintiffs

*/s/ Jennifer Perez*  
**JENNIFER PEREZ, CLERK**

SPECTOR GADON & ROSEN, P.C.  
By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire  
1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
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SUPERIOR COURT OF NEW JERSEY  
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SUBPOENA AD TESTIFICANDUM

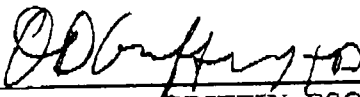
THE STATE OF NEW JERSEY TO:

Dr. Kim Ayers  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

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named Court at the offices of Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Wednesday, October 20, 2010 at 12:00 p.m. on the part of  
the plaintiffs in the above-entitled action, relating to the matter involved in this action.

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penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

  
OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

/s/Jennifer Perez  
JENNIFER PEREZ, CLERK

**SPECTOR GADON & ROSEN, P.C.**

By: Oliver D. Griffin, Esquire  
Richard D. Gallucci, Jr., Esquire  
Peter N. Kessler, Esquire

1000 Lenola Road  
P.O. Box 1001  
Moorestown, New Jersey 08057  
(856) 778-8100

Attorneys for Plaintiffs

TRACKRACKET, INC., a domestic nonprofit  
organization, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS,

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK  
and CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO.: L-1230-09

SUBPOENA AD TESTIFICANDUM

THE STATE OF NEW JERSEY TO:

J. Tim Shannon  
c/o Katherine M. Morris, Esquire  
Cooper Levinson  
1125 Atlantic Avenue  
Atlantic City, NJ 08401

**YOU ARE HEREBY COMMANDED** to attend and give testimony before the above  
named Court at the offices of **Michael L. Testa, Jr., Esquire, Basile & Testa, P.A., 424 Landis  
Avenue, Vineland, NJ 08360, on Wednesday, October 20, 2010 at 2:00 p.m.** on the part of  
the plaintiffs in the above-entitled action, relating to the matter involved in this action.

Failure to appear according to the command of this Subpoena will subject you to a  
penalty, damages in a civil suit and punishment for contempt of Court.

Dated: September 20, 2010

OLIVER D. GRIFFIN, ESQUIRE  
Attorney for Plaintiffs

/s/Jennifer Perez  
JENNIFER PEREZ, CLERK

Katherine M. Morris, Esquire  
COOPER LEVENSON APRIL NIEDELMAN & WAGENHEIM  
A Professional Association  
1125 Atlantic Avenue – Third Floor  
Atlantic City, NJ 08401  
(609) 344-3161  
Attorneys for City of Millville

TRACKRACKET, INC., a domestic nonprofit  
association, MICHELLE POST, DAVID  
CARROW, ELIZABETH MILNE and  
BYRON ROBBINS

Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK and  
the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**PROOF OF MAILING OF CITY OF  
MILLVILLE'S MOTION TO QUASH  
DEPOSITION NOTICES/SUBPOENA AD  
TESTIFICANDUMS OF CITY  
OFFICIALS AND REPRESENTATIVES  
OR, IN THE ALTERNATIVE, FOR A  
PROTECTIVE ORDER PURSUANT TO  
R. 4:10-3(D)**

**RETURNABLE: OCTOBER 29, 2010**

A copy of the within the City of Millville Motion to Quash Deposition Notices/Subpoena Ad Testificandums of City Officials and Representatives or, in the Alternative, for a Protective Order Pursuant to R. 4:10-3(d) has been filed with the Clerk of the Superior Court of New Jersey, Law Division, Cumberland County Court House, 60 W. Broad Street, Bridgeton, NJ 08302 via regular mail, postage prepaid.

DATED: October 1, 2010

COOPER LEVENSON APRIL  
NIEDELMAN & WAGENHEIM, P.A.

By: 

Katherine M. Morris, Esquire  
Attorneys for the City of Millville

1. I, the undersigned, am employed by the law firm of Cooper Levenson April Niedelman & Wagenheim, P.A., attorneys for Defendant the City of Millville.

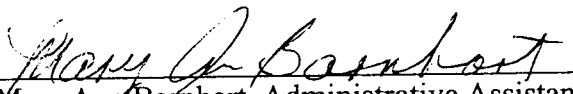
2. On October 1, 2010, I sent the City of Millville's Motion to Quash Deposition Notices/Subpoena Ad Testificandums of City Officials and Representatives or, in the Alternative, for a Protective Order Pursuant to R. 4:10-3(d), Brief in support of motion, Certification of Katherine M. Morris, Esq., proposed forms of Orders and Proof of Mailing via regular mail, postage prepaid, to:

Oliver D. Griffin, Esq.  
Richard D. Gallucci, Jr., Esq.  
Spector Gadon & Rosen, P.C.  
1635 Market Street  
7<sup>th</sup> Floor  
Philadelphia, PA 19103  
Counsel for Plaintiffs

Jeffrey A. DiLazzero, Esq.  
Kavanagh, Kavanagh & DiLazzero, LLC  
219 N. High Street  
P.O. Box 718  
Millville, NJ 08332  
Counsel for Defendant  
New Jersey Motorsports Park

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

Dated: October 1, 2010

  
Mary Ann Barnhart, Administrative Assistant

CLAC; 483319.1

Katherine M. Morris, Esquire  
COOPER LEVENSON APRIL NIEDELMAN & WAGENHEIM  
A Professional Association  
1125 Atlantic Avenue – Third Floor  
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TRACKRACKET, INC., a domestic nonprofit  
association, MICHELLE POST, DAVID  
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Plaintiffs,

v.

NEW JERSEY MOTORSPORTS PARK and  
the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**PROTECTIVE ORDER REGARDING  
DEPOSITIONS OF THE CITY OF  
MILLVILLE OFFICIALS AND  
REPRESENTATIVES**

This matter having come before the Court upon the application of Katherine M. Morris, Esq., of Cooper Levenson April Niedelman & Wagenheim, attorneys for the City of Millville, and upon notice to Oliver D. Griffin, Esq. and Richard D. Gallucci, Jr., Esq., of Spector Gadon & Rosen, P.C., attorneys for Plaintiffs' and Jeffrey A. DiLazzero, Esq., of Kavanagh, Kavanagh & DiLazzero, LLC, counsel for Defendant New Jersey Motorsports Park, for an Order requesting a Protective Order pursuant to N.J.Ct. R. 4:10-3(d) relating to the depositions of Ed Grennan, (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance); J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer), and the Court having reviewed the moving papers, any opposition filed thereto, and having heard the arguments as put forth by counsel, if any, and for good cause shown:

IT IS on this \_\_\_\_\_ day of October, 2010 **ORDERED and ADJUDGED** as

follows:

During the depositions of Ed Grennan (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance);

J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer), the only areas of questioning that may be explored by counsel for Plaintiffs' is as follows: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IT IS FURTHER ORDERED** that a copy of this Order shall be served upon all parties within \_\_\_\_\_ days.

\_\_\_\_\_  
J.S.C.

- Notice of Motion
- Movant's Certifications
- Movant's Brief
- Answering Certifications
- Answering Brief
- Cross Motion
- Movant's Reply
- Other \_\_\_\_\_

CLAC; 483344.1

Katherine M. Morris, Esquire  
COOPER LEVENSON APRIL NIEDELMAN & WAGENHEIM  
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Plaintiffs,

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NEW JERSEY MOTORSPORTS PARK and  
the CITY OF MILLVILLE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CUMBERLAND COUNTY

DOCKET NO. CUM-L-1230-09

Civil Action

**ORDER QUASHING THE DEPOSITION  
NOTICES/SUBPOENA AD  
TESTIFICANDUMS OF THE CITY OF  
MILLVILLE OFFICIALS AND  
REPRESENTATIVES**

This matter having come before the Court upon the application of Katherine M. Morris, Esq., of Cooper Levenson April Niedelman & Wagenheim, attorneys for the City of Millville, and upon notice to Oliver D. Griffin, Esq. and Richard D. Gallucci, Jr., Esq., of Spector Gadon & Rosen, P.C., attorneys for Plaintiffs' and Jeffrey A. DiLazzero, Esq., of Kavanagh, Kavanagh & DiLazzero, LLC, counsel for Defendant New Jersey Motorsports Park, for an Order Quashing the deposition notices/subpoena ad testificandums of Ed Grennan (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance); J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer), and the Court having reviewed the moving papers, any opposition filed thereto, and having heard the arguments as put forth by counsel, if any, and for good cause shown:

**IT IS** on this \_\_\_\_\_ day of October, 2010 **ORDERED and ADJUDGED** as

follows:

The deposition notices/subpoena ad testificandums of Ed Grennan (former Chief of Police); David W. Vanaman (Director of Public Safety); Dale Finch (Director of Public Works); James F. Quinn (Director of Public Affairs); Joseph J. Derella (Vice Mayor, Director of Revenue and Finance); J. Tim Shannon (Mayor, Director of Parks and Public Property); Dr. Kim Ayers (Planning Director) and Wayne Caregnato (Zoning Officer), are hereby **Quashed**.

**IT IS FURTHER ORDERED** that a copy of this Order shall be served upon all parties within \_\_\_\_\_ days.

\_\_\_\_\_  
J.S.C.

- Notice of Motion
- Movant's Certifications
- Movant's Brief
- Answering Certifications
- Answering Brief
- Cross Motion
- Movant's Reply
- Other \_\_\_\_\_