


HIGH SWARTZ LLP  
By: David J. Brooman, Esquire (I.D. No. 36571)  
Mark R. Fischer, Jr., Esquire (ID No. 94043)  
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mfischer@highswartz.com  
Solicitors for Defendant  
Lowhill Township

TO: PLAINTIFF  
YOU ARE HEREBY NOTIFIED TO  
FILE A WRITTEN RESPONSE TO THE  
ENCLOSED PRELIMINARY  
OBJECTIONS WITHIN TWENTY (20)  
DAYS FROM SERVICE HEREOF OR A  
JUDGMENT MAY BE ENTERED  
AGAINST YOU.

HIGH SWARTZ LLP  
By:   
David J. Brooman, Esquire

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC : No. 2022-C-2786  
Plaintiff :  
 :  
 : CIVIL ACTION - MANDAMUS  
v. :  
 :  
 : Assigned to:  
LOWHILL TOWNSHIP : Honorable Thomas M. Caffrey  
Defendant :

**DEFENDANT’S PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT**

Defendant, Lowhill Township (“Township”), through its Solicitor, High Swartz, LLP, respectfully files its Preliminary Objections to the Complaint of Plaintiff, CRG Services Management, LLC (“CRG”) pursuant to the Pa.R.C.P. 1028(a)(4), and in support thereof avers the following:<sup>1</sup>

<sup>1</sup> The Township initially filed and served its Preliminary Objections on December 27, 2022, but the Court issued an Order on January 6, 2023 denying the Preliminary Objections without prejudice for failure to serve them on CRG. While the Township did serve the Preliminary Objections on CRG on December 27, 2022 by U.S. Mail, the Certificate of Service was inadvertently omitted from the Township’s prior filing. Therefore, pursuant to the Court’s January 6, 2023 Order, the Township is re-filing and re-serving its Preliminary Objections on the date below.

**RELEVANT FACTS AND PROCEDURAL HISTORY**

1. CRG is the equitable owner of a certain tract of land located at 2951 Betz Court, Orefield, Lowhill Township, Pennsylvania (the “Property”). *See* Complaint, a true and correct copy of which is attached hereto as Exhibit “A,” at ¶ 3.<sup>2</sup>
2. CRG submitted a preliminary land development plan application to the Township on March 14, 2022, seeking permission to construct a 299,880 square foot warehouse on the Property (the “LD Application”). Complaint at ¶ 4.
3. After review of the LD Application by the Township Planning Commission and the Township Engineer, CRG provided an extension of time for the Township to act on the LD Application until October 9, 2022. Complaint at ¶¶ 5-10.
4. At its October 6, 2022 meeting, the Township Board of Supervisors voted to deny the LD Application. Complaint at ¶ 12.
5. The Township Board of Supervisors issued a letter to CRG dated October 7, 2022, confirming the denial of the LD Application (the “Decision”). Complaint at ¶ 13.
6. On November 3, 2022, CRG filed a land use appeal of the Decision pursuant to the Municipalities Planning Code, under Lehigh County Court of Common Pleas docket number 2022-C-2536. Complaint at ¶ 14.
7. On December 1, 2022, CRG filed against the Township the instant Complaint in Mandamus, seeking an Order that the LD Application is deemed approved. *See* Complaint *generally*.

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<sup>2</sup> The copy of CRG’s Complaint attached hereto does not include the exhibits thereto because they are extensive and not relevant to the Township’s Preliminary Objections. A copy of the exhibits will be provided upon request.

8. CRG's Complaint admits that the Township timely communicated the Decision to CRG but contends that a deemed approval occurred because the Decision failed to comply with the requirements of the Municipalities Planning Code ("MPC") at 53 P.S. § 10508(2).

9. The Township asserts preliminary objections to CRG's Complaint in Mandamus pursuant to Pa.R.C.P. 1028(a)(4) for the reasons set forth below.

**PRELIMINARY OBJECTION COUNT I**  
**Demurrer – Pa.R.C.P. 1028(a)(4)**

10. The Township incorporates herein by reference all preceding and subsequent paragraphs as if fully set forth at length.

11. Pa.R.C.P. 1028(a)(4) permits a party to file a preliminary objection to a pleading based on legal insufficiency, or demurrer.

12. When considering preliminary objections, the Court accepts as true all well-pleaded material facts alleged in the complaint and all reasonable inferences deducible therefrom and determines whether it is clear and free from doubt that the facts pled are legally insufficient to establish a right to relief. *Edgell v. City of Aliquippa*, 272 A.3d 1011, 1016 n.10 (Pa. Commw. Ct. 2022); *Laskaris v. Hice*, 247 A.3d 87, 89 n.5 (Pa. Commw. Ct. 2021).

13. CRG's Complaint asserts a single claim for a writ of mandamus.

14. "Mandamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy." *Jackson v. Vaughn*, 565 Pa. 601, 604, 777 A.2d 436, 438 (2001).

15. Because mandamus is appropriate only in cases where there is no adequate remedy at law, the lack of any other adequate remedy must be set forth in the complaint and the failure to do so is a material defect that renders the mandamus complaint fatally defective. *See*

*Luke v. Cataldi*, 830 A.2d 655, 658 (Pa. Commw. Ct. 2003) (citing 18 STANDARD PENNSYLVANIA PRACTICE, 2d § 99:74 (1997)).

16. In *Ott v. Nemith*, 2005 Pa. Dist. & Cnty. Dec. LEXIS 597 (Lehigh C.C.P. May 10, 2005), this Honorable Court addressed a situation similar to this case, involving a land use appeal filed simultaneously with a complaint in mandamus; the Court sustained a preliminary objection to the mandamus complaint based on the adequate and more appropriate remedy afforded by the land use appeal under the MPC.

17. In *Ott*, this Honorable Court noted that a writ of mandamus “may not be used as a substitute for a statutory appeal under the MPC where an opportunity for such an appeal is available.” *Id.* at \*5-\*6 (citing *Unger v. Hampton Tp.*, 437 Pa. 399, 263 A.2d 385 (1970) (holding an action in mandamus improper where plaintiff had remedy available by appeal to zoning hearing board and later to court of common pleas); *Taylor v. Moore*, 303 Pa. 469, 154 A. 799 (1931) (holding that the proper remedy to challenge a zoning board decision is by appeal to the court of common pleas, not through an action in mandamus); *Copechal v. Tp. of Bristol*, 668 A.2d 1222 (Pa. Commw. Ct. 1995) (holding an action in mandamus improper where statutory appeal could have been filed to challenge decision of zoning hearing board); *Hanson v. Lower Frederick Tp. Board of Supervisors*, 667 A.2d 1221 (Pa. Commw. Ct. 1995), *appeal denied* 547 Pa. 719, 688 A.2d 174 (holding that a mandamus action is not an appropriate remedy for relief from alleged zoning violations).

18. While noting that the MPC at 53 P.S. § 10910.1 provides, “[n]othing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules (sic) of Civil Procedure No. 1091 (relating to action in mandamus),” the *Ott* Court importantly noted that the key phrase is “where



appropriate,” and Pa.R.C.P. 1095(6) provides that a prerequisite for any action in mandamus is “the want of any other adequate remedy at law.” *Ott, supra* at \*6.

19. In this case, mandamus is not appropriate because CRG does not have a “clear legal right” to a deemed approval and does have another “appropriate and adequate remedy” to challenge the denial of its LD Application.

20. CRG does not have a clear legal right because it admits that the Decision was issued timely, and the alleged deemed approval is dependent upon a determination of whether the Decision adequately set forth the bases for the denial of its LD Application.<sup>3</sup>

21. In addition, CRG’s statutory land use appeal is the more appropriate and adequate remedy to obtain that determination, as expressly provided by the MPC.

22. Finally, CRG’s Complaint fails to set forth the lack of any other adequate remedy, resulting in a material defect that renders the Complaint fatally defective. *See Luke v. Cataldi, supra.*

23. For these reasons, CRG’s Complaint fails as a matter of law and must be dismissed with prejudice.

WHEREFORE, Defendant, Lowhill Township, respectfully requests that this Honorable Court sustain its preliminary objection and dismiss Plaintiff CRG Services Management, LLC’s Complaint with prejudice.

HIGH SWARTZ LLP

By:   
David J. Brooman, Esquire

Dated: 01/09/2023

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<sup>3</sup> While the Pennsylvania Courts have permitted a landowner to file a mandamus action to establish a deemed decision while simultaneously pursuing a land use appeal, it has specifically noted that this is “because a land use appeal challenges the content of a decision while a mandamus action seeking a deemed decision challenges the board’s ‘failure to render a decision within the proper period of time.’” *See, e.g., Gib. Rock, Inc. v. New Hanover Twp. Zoning Hearing Bd.*, 68 A.3d 1012, 1019 (Pa. Commw. Ct. 2013) (citing *WeCare Organics, LLC v. Zoning Hearing Bd.*, 954 A.2d 684, 691 (Pa. Commw. Ct. 2008); *Foltz v. Monroeville*, 290 A.2d 269, 272 (Pa. Commw. Ct. 1972)). Here, the timeliness of the Township’s decision is not disputed and therefore mandamus is not appropriate.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC	:	No. 2022-C-2786
Plaintiff	:	
	:	CIVIL ACTION - MANDAMUS
v.	:	
	:	Assigned to:
LOWHILL TOWNSHIP	:	Honorable Thomas M. Caffrey
Defendant	:	

**CERTIFICATE OF COMPLIANCE**

I, David J. Brooman, Esquire, hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

HIGH SWARTZ LLP

By: 

David J. Brooman, Esquire (I.D. No. 36571)  
Mark R. Fischer, Jr., Esquire (ID No. 94043)  
40 East Airy Street  
Norristown, PA 19404  
(t) (610) 275-0700  
(f) (610) 275-5290  
*Attorneys for Defendant*  
*Lowhill Township*

Dated: January 9, 2023

HIGH SWARTZ LLP

By: David J. Brooman, Esquire (I.D. No. 36571)  
Mark R. Fischer, Jr., Esquire (ID No. 94043)

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Norristown, PA 19404

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mfischer@highswartz.com

Solicitors for Defendant  
Lowhill Township

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IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC

Plaintiff

v.

LOWHILL TOWNSHIP

Defendant

No. 2022-C-2786

CIVIL ACTION - MANDAMUS

Assigned to:

Honorable Thomas M. Caffrey

**CERTIFICATE OF SERVICE**

I, David J. Brooman, Esquire, attorney for Defendant, Lowhill Township, hereby certify that on January 9, 2023, I caused a true and correct copy of Lowhill Township's Preliminary Objections to Plaintiff's Complaint, Brief in Support of Preliminary Objections, and Proposed Order, to be served upon the following individuals via Email and U.S. First Class Mail:<sup>1</sup>

Blake C. Marles, Esquire  
Julie Wagner Burkart, Esquire  
Ambrose W. Heinz, Esquire  
Stevens & Lee  
840 West Hamilton Street, Suite 521  
Allentown, PA 18101  
*Attorneys for Plaintiff, CRG Services Management, LLC*

HIGH SWARTZ LLP

By: \_\_\_\_\_



David J. Brooman, Esquire

Mark R. Fischer, Jr., Esquire

*Attorneys for Defendant, Lowhill Township*

Dated: January 9, 2023

---

<sup>1</sup> The Township initially filed and served its Preliminary Objections on December 27, 2022, but the Court issued an Order on January 6, 2023 denying the Preliminary Objections without prejudice for failure to serve them on CRG. While the Township did serve the Preliminary Objections on CRG on December 27, 2022, the Certificate of Service was omitted from the Township's prior filing. Therefore, pursuant to the Court's January 6, 2023 Order, the Township is re-filing and re-serving its Preliminary Objections on this date.

# **EXHIBIT “A”**

Supreme Court of Pennsylvania

Court of Common Pleas  
 Civil Cover Sheet



County

For Prothonotary Use Only:	TIME STAMP
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

<b>Commencement of Action:</b> <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: CRG SERVICES MANAGEMENT	Lead Defendant's Name: LOWHILL TOWNSHIP
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input type="checkbox"/> outside arbitration limits
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>BLAKE C. MARLES, ESQ.</u>	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<b>TORT (do not include Mass Tort)</b> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	<b>CONTRACT (do not include Judgments)</b> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	<b>CIVIL APPEALS</b> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
<b>MASS TORT</b> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	<b>REAL PROPERTY</b> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	<b>MISCELLANEOUS</b> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations <input type="checkbox"/> Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
<b>PROFESSIONAL LIABILITY</b> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

CRG SERVICES MANAGEMENT, LLC,  
Plaintiff

v.

LOWHILL TOWNSHIP,  
Defendant

IN THE COURT OF COMMON PLEAS  
OF LEHIGH COUNTY, PENNSYLVANIA  
2022-C-2786

NO. \_\_\_\_\_

CIVIL ACTION- MANDAMUS

NOTICE TO DEFEND

TO: LOWHILL TOWNSHIP  
7000 HERBER ROAD  
NEW TRIPOLI, PA 18066

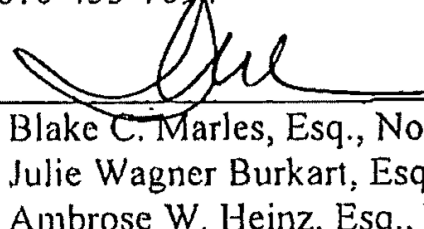
You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LEHIGH COUNTY BAR ASSOCIATION  
LAWYER REFERRAL SERVICE  
1114 W. WALNUT STREET  
ALLENTOWN, PENNSYLVANIA 18102  
TELEPHONE 610-433-7094

By: \_\_\_\_\_

  
Blake C. Marles, Esq., No. 28537  
Julie Wagner Burkart, Esq., No. 88046  
Ambrose W. Heinz, Esq., No. 91021  
840 West Hamilton Street, Suite 521  
Allentown, PA 18101  
610-997-5060  
*Attorneys for Plaintiff,*  
CRG SERVICES MANAGEMENT, LLC

Dated: December 1, 2022

Blake C. Marles, Esq., No. 28537  
Julie Wagner Burkart, Esq., No. 88046  
Ambrose W. Heinz, Esq., No. 91021  
Stevens & Lee, P.C.  
840 West Hamilton Street, Suite 521  
Allentown, PA 18101  
610-997-5060  
*Attorneys for Plaintiff*

CRG SERVICES MANAGEMENT, LLC,  
Plaintiff

v.

LOWHILL TOWNSHIP,  
Defendant

IN THE COURT OF COMMON PLEAS  
OF LEHIGH COUNTY, PENNSYLVANIA  
2022-C-2786

NO. \_\_\_\_\_

CIVIL ACTION- MANDAMUS

LAND USE APPEAL

**COMPLAINT IN MANDAMUS**

CRG Services Management, LLC, by and through its attorneys, Stevens & Lee, hereby files the within Complaint in Mandamus, and in support thereof, avers as follows:

1. Plaintiff, CRG Services Management, LLC, (hereinafter, "CRG") is a Missouri limited liability company with its principal offices at 300 Bar Harbor Drive, Suite 720, Conshohocken, Pennsylvania 19428

2. Defendant is Lowhill Township (the "Township"), a Township of the Second Class, with business address of 7000 Herber Road, New Tripoli, Pennsylvania 18066.

3. CRG is the equitable owner of a certain ±51-acre tract of land located at 2951 Betz Court, Orefield (Lowhill Township), Pennsylvania (the "Property").

4. On March 14, 2022, CRG submitted a land development plan application to the Township to allow for construction of a 50' tall, 299,880 square foot warehouse on the Property



(the "LD Application"). A true and correct copy of the LD Application is attached hereto and marked **Exhibit A**.

5. The Township Planning Commission first reviewed the Plan at its April 25, 2022 meeting, and again on June 27, 2022.

6. The Plan presents no zoning ordinance deficiencies.

7. By letter dated July 15, 2022, CRG through its counsel set forth the reasons why a favorable recommendation should be forthcoming at the June Planning Commission meeting. A copy of that letter is attached hereto and marked **Exhibit B**.

8. On September 12, 2022, the Applicant submitted an updated plan set to the Township addressing drawing issues raised in previous Township engineer generated correspondence. A true and correct copy of the revised LD Application is attached hereto and marked **Exhibit C**.

9. On or about, September 23, 2022, the Township Engineer issued a review letter commenting on the LD Application. A true and correct copy of the Township Engineer's September 23, 2022, letter is attached hereto and marked **Exhibit D**.

10. Action was delayed at the Township's request until the September Planning Commission meeting, and CRG provided an extension of time for the Township to act until October 9, 2022.

11. At the September 26, 2022, Planning Commission meeting, notwithstanding the fact that the September 26<sup>th</sup> meeting was its last meeting before the October 9, 2022, deadline for Township action on the Plan, the following occurred:

(a) CRG and its representatives were not permitted to speak or present information regarding the Plan at this meeting.

(b) Despite the fact that CRG had submitted a complete and timely LD Application to the Township Staff in March, affording more than enough time for Planning Commission review, the Planning Commission recommended denial of the Plan. Although the Township's website indicates that the Planning Commission minutes from the September 26, 2022 were to be approved on November 21, 2022, no minutes of that meeting have been made publicly available.

12. The LD Application was reviewed by the Township Board of Supervisors at its October 6, 2022, at which meeting the Board of Supervisors voted to deny the LD Application.

13. The Board of Supervisors issued a letter to CRG dated October 7, 2022, denying the LD Application (the "Decision"). A true and correct copy of the Decision is attached hereto and marked **Exhibit E**.

14. On or about November 3, 2022, CRG filed a statutory land use appeal from the Decision with the Lehigh County Court of Common Pleas, which land use appeal is docketed at 2022-C-2536.

15. Pursuant to Section 508(2) of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. § 10508, “When an application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon.”

16. Pursuant to MPC § 508(3), 53 P.S. § 10508(3), “Failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of or communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect.”

17. Although a decision was timely communicated to CRG, the Decision did not comply with any of the mandatory requirements of MPC § 508(2), in that it does not specify defects found in with the LD Application, describe any requirements that have not been met, or cite to any provision of the statute or ordinance relied upon. 53 P.S. § 10508(2).

18. The Decision makes reference to purported “Recommendations from our Planning Commission and Engineer,” but these purported recommendations were not attached to the Decision and are were not legally incorporated by reference into the Decision. Lease v. Hamilton Township, 885 A.2d 684 (Pa. Cmwlth. 2005) (upholding a deemed approval of plan where denial letter did not properly incorporate and attach comment letters); see also, Kassouf v. Township of Scott, 584 Pa. 219, 883 A.2d 463, 473 (Pa. 2005) (“If a municipal authority indeed intends for an external document to serve as the substantive explanation of the basis for its

decision, it should make that point explicitly in the decision letter, and not ask the applicant, and the court system to infer the point.”)

19. The requirements of specificity within the “four corners” of the written decision under MPC § 508(2) are mandatory requirements regarding the manner of the decision, and the remedy of deemed approval is to be strictly applied. Lease v. Hamilton, supra; and Bensalem Tp. v. Blank, 539 A.2d 948 (Pa. Cmwlth. 1988).

20. As the Decision does not comply with the mandatory requirements of MPC § 508(2), the LD Application must be deemed approved as filed. Coretsky v. Board of Commissioners of Butler Township, 520 Pa. 513, 555 A.2d 72 (1989).

21. There are no facts in dispute, and CRG’s entitlement to mandamus relief is clear as a matter of law.

WHEREFORE, Plaintiff, CRG SERVICES MANAGEMENT, LLC respectfully requests that this Court: (a) Order that the LD Application is deemed approved as submitted; and (c) Order any other relief which this Honorable Court deems appropriate.

Respectfully Submitted,  
STEVENS & LEE

By: 

Blake C. Marles, Esq., No. 28537  
Julie Wagner Burkart, Esq., No. 88046  
Ambrose W. Heinz, Esq., No. 91021  
840 West Hamilton Street, Suite 521  
Allentown, PA 18101  
610-997-5060  
*Attorneys for Plaintiff,*  
*CRG SERVICES MANAGEMENT, LLC*

Dated: December 1, 2022

**SCHEDULE OF EXHIBITS**

- Exhibit A: LD Application
- Exhibit B: July 15, 2022 correspondence- Stevens & Lee to Lowhill Township Planning Commission
- Exhibit C: Revised LD Application
- Exhibit D: September 23, 2022 Township Engineer's LD plan review letter
- Exhibit E: October 7, 2022 Board of Supervisors' Decision

**VERIFICATION**

I, Christopher P. McKee, verify that I am the Chief Development Officer of CRG SERVICES MANAGEMENT, LLC in the within action; that the attached COMPLAINT is based upon the facts of which I have personal knowledge or information furnished to me by counsel; that the language of the document is that of counsel and not my own; and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



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Date: December 1st, 2022

CRG SERVICES MANAGEMENT, LLC, : IN THE COURT OF COMMON PLEAS  
Plaintiff : OF LEHIGH COUNTY, PENNSYLVANIA  
v. : NO. \_\_\_\_\_  
LOWHILL TOWNSHIP, : CIVIL ACTION- MANDAMUS  
Defendant :

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

STEVENS & LEE

By: 

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Julie Wagner Burkart, Esq., No. 88046  
Ambrose W. Heinz, Esq., No. 91021  
840 West Hamilton Street, Suite 521  
Allentown, PA 18101  
610-997-5060  
*Attorneys for Plaintiff,*  
CRG SERVICES MANAGEMENT, LLC

Dated: December 1, 2022



CRG SERVICES MANAGEMENT, LLC,  
Plaintiff

v.

BOARD OF SUPERVISORS OF  
LOWHILL TOWNSHIP,  
Defendant

IN THE COURT OF COMMON PLEAS  
OF LEHIGH COUNTY, PENNSYLVANIA

NO. \_\_\_\_\_

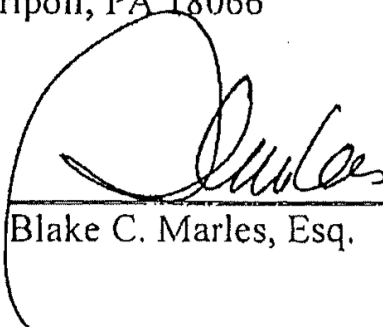
CIVIL ACTION- MANDAMUS

CERTIFICATE OF SERVICE

I, Blake C. Marles, Esquire, certify that on this date, I served a true and correct copy of the foregoing upon the Township, by First Class Mail, as follows:

Board of Supervisors  
Lowhill Township  
7000 Herber Road  
New Tripoli, PA 18066

Date: December 1, 2022

  
\_\_\_\_\_  
Blake C. Marles, Esq.

HIGH SWARTZ LLP  
By: David J. Brooman, Esquire (I.D. No. 36571)  
Mark R. Fischer, Jr., Esquire (ID No. 94043)  
40 East Airy Street  
Norristown, PA 19404  
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(f) (610) 275-5290  
dbrooman@highswartz.com  
mfischer@highswartz.com

Solicitors for Defendant  
Lowhill Township

---

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC : No. 2022-C-2786  
Plaintiff :  
 : CIVIL ACTION - MANDAMUS  
v. :  
 : Assigned to:  
LOWHILL TOWNSHIP : Honorable Thomas M. Caffrey  
Defendant :

**BRIEF IN SUPPORT OF DEFENDANT LOWHILL TOWNSHIP'S  
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

Defendant, Lowhill Township ("Township"), through its Solicitor, High Swartz, LLP, respectfully submits this Brief in support of its Preliminary Objections to the Complaint of Plaintiff, CRG Services Management, LLC ("CRG") pursuant to the Pa.R.C.P. 1028(a)(4).

**I. HISTORY OF THE CASE**

On December 1, 2022, CRG filed against the Township the instant Complaint in Mandamus, seeking an Order that its March 14, 2022, land development application should be deemed approved. A true and correct copy of CRG's Complaint, without exhibits, is attached to the Township's Preliminary Objections as Exhibit "A." The Township asserts preliminary objections to CRG's Complaint in Mandamus pursuant to Pa.R.C.P. 1028(a)(4) for the reasons set forth below.

**II. STATEMENT OF PERTINENT FACTS**

CRG is the equitable owner of a certain tract of land located at 2951 Betz Court, Orefield, Lowhill Township, Pennsylvania (the “Property”). Complaint at ¶ 3. CRG submitted a preliminary land development plan application to the Township on March 14, 2022, seeking permission to construct a 299,880 square foot warehouse on the Property (the “LD Application”). Complaint at ¶ 4. After review of the LD Application by the Township Planning Commission and the Township Engineer, CRG provided an extension of time for the Township to act on the LD Application until October 9, 2022. Complaint at ¶¶ 5-10. At its October 6, 2022 meeting, the Township Board of Supervisors voted to deny the LD Application. Complaint at ¶ 12. The Township Board of Supervisors issued a letter to CRG dated October 7, 2022, confirming the denial of the LD Application (the “Decision”). Complaint at ¶ 13.

On November 3, 2022, CRG filed a land use appeal of the Decision pursuant to the Municipalities Planning Code, under Lehigh County Court of Common Pleas docket number 2022-C-2536. Complaint at ¶ 14.

CRG’s Complaint asserts a single claim for a writ of mandamus. *See* Complaint *generally*. CRG’s Complaint admits that the Township timely communicated the Decision to CRG but contends that a deemed approval occurred because the Decision failed to comply with the requirements of the Municipalities Planning Code (“MPC”) at 53 P.S. § 10508(2).

**III. STATEMENT OF QUESTION INVOLVED**

Should CRG’s Complaint in Mandamus be dismissed pursuant to Pa.R.C.P. 1028(a)(4) because CRG does not have a clear legal right, CRG has a more appropriate and adequate legal remedy in its pending statutory land use appeal, and the Complaint fails to specifically set forth the lack of any other adequate remedy?

Suggested answer: Yes.

**IV. ARGUMENT**

A. Standard on Demurrer under Pa.R.C.P. 1028(a)(4)

Pa.R.C.P. 1028(a)(4) permits a party to file a preliminary objection to a pleading based on legal insufficiency, or demurrer.

When considering preliminary objections, the Court accepts as true all well-pleaded material facts alleged in the complaint and all reasonable inferences deducible therefrom and determines whether it is clear and free from doubt that the facts pled are legally insufficient to establish a right to relief. *Edgell v. City of Aliquippa*, 272 A.3d 1011, 1016 n.10 (Pa. Commw. Ct. 2022); *Laskaris v. Hice*, 247 A.3d 87, 89 n.5 (Pa. Commw. Ct. 2021).

B. CRG's Complaint must be dismissed because it is legally insufficient to establish a claim for mandamus relief.

“Mandamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy.” *Jackson v. Vaughn*, 565 Pa. 601, 604, 777 A.2d 436, 438 (2001). Because mandamus is appropriate only in cases where there is no adequate remedy at law, the lack of any other adequate remedy must be set forth in the complaint and the failure to do so is a material defect that renders the mandamus complaint fatally defective. *See Luke v. Cataldi*, 830 A.2d 655, 658 (Pa. Commw. Ct. 2003) (citing 18 STANDARD PENNSYLVANIA PRACTICE, 2d § 99:74 (1997)).

In *Ott v. Nemith*, 2005 Pa. Dist. & Cnty. Dec. LEXIS 597 (Lehigh C.C.P. May 10, 2005), this Honorable Court addressed a situation similar to this case, involving a land use appeal filed simultaneously with a complaint in mandamus; the Court sustained a preliminary objection to the mandamus complaint based on the adequate and more appropriate remedy afforded by the land

use appeal under the MPC. This Honorable Court noted that a writ of mandamus “may not be used as a substitute for a statutory appeal under the MPC where an opportunity for such an appeal is available.” *Id.* at \*5-\*6 (citing *Unger v. Hampton Tp.*, 437 Pa. 399, 263 A.2d 385 (1970) (holding an action in mandamus improper where plaintiff had remedy available by appeal to zoning hearing board and later to court of common pleas); *Taylor v. Moore*, 303 Pa. 469, 154 A. 799 (1931) (holding that the proper remedy to challenge a zoning board decision is by appeal to the court of common pleas, not through an action in mandamus); *Copechal v. Tp. of Bristol*, 668 A.2d 1222 (Pa. Commw. Ct. 1995) (holding an action in mandamus improper where statutory appeal could have been filed to challenge decision of zoning hearing board); *Hanson v. Lower Frederick Tp. Board of Supervisors*, 667 A.2d 1221 (Pa. Commw. Ct. 1995), appeal denied 547 Pa. 719, 688 A.2d 174 (holding that a mandamus action is not an appropriate remedy for relief from alleged zoning violations).

While noting that the MPC at 53 P.S. § 10910.1 provides, “[n]othing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules (sic) of Civil Procedure No. 1091 (relating to action in mandamus),” the *Ott* Court importantly noted that the key phrase is “where appropriate,” and Pa.R.C.P. 1095(6) provides that a prerequisite for any action in mandamus is “the want of any other adequate remedy at law.” *Ott, supra* at \*6.

In this case, mandamus is not appropriate because CRG does not have a “clear legal right” to a deemed approval and does have another “appropriate and adequate remedy” to challenge the denial of its LD Application. CRG does not have a clear legal right because it admits that the Decision was issued timely, and the alleged deemed approval is dependent upon a

determination of whether the Decision adequately set forth the bases for the denial of its LD Application.<sup>1</sup>

In addition, CRG's statutory land use appeal is the more appropriate and adequate remedy to obtain that determination, as expressly provided by the MPC.

Finally, CRG's Complaint fails to set forth the lack of any other adequate remedy, resulting in a material defect that renders the Complaint fatally defective. *See Luke v. Cataldi, supra.*

**V. CONCLUSION**

For these reasons, Defendant, Lowhill Township, respectfully requests that this Honorable Court sustain its preliminary objections and dismiss Plaintiff CRG Services Management, LLC's Complaint with prejudice.

HIGH SWARTZ LLP

By: 

David J. Brooman, Esquire  
Mark R. Fischer, Jr., Esquire  
Solicitors for Defendant  
Lowhill Township

Date: 01/09/2023

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<sup>1</sup> While the Pennsylvania Courts have permitted a landowner to file a mandamus action to establish a deemed decision while simultaneously pursuing a land use appeal, it has specifically noted that this is "because a land use appeal challenges the content of a decision while a mandamus action seeking a deemed decision challenges the board's 'failure to render a decision within the proper period of time.'" *See, e.g., Gib. Rock, Inc. v. New Hanover Twp. Zoning Hearing Bd.*, 68 A.3d 1012, 1019 (Pa. Commw. Ct. 2013) (citing *WeCare Organics, LLC v. Zoning Hearing Bd.*, 954 A.2d 684, 691 (Pa. Commw. Ct. 2008); *Foltz v. Monroeville*, 290 A.2d 269, 272 (Pa. Commw. Ct. 1972)). Here, the timeliness of the Township's decision is not disputed and therefore mandamus is not appropriate.