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and the Planning Board of the Borough of Roselle Park

**Roselle Park VP, LLC**

**Plaintiff,**

**v**

**Borough of Roselle Park and the  
Planning Board of the Borough of  
Roselle Park**

**Defendants.**

**SUPERIOR COURT OF NEW JERSEY**

**LAW DIVISION: UNION COUNTY**

**DOCKET NO. UNN-L-338-07**

**Civil Action**

**Mount Laurel**

**REPLY CERTIFICATION OF MAYOR  
JOSEPH DeIORIO IN SUPPORT OF THE  
BOROUGH'S MOTION FOR SUMMARY  
JUDGMENT**

**JOSEPH DeIORIO**, of full age, does hereby certify as follows:

1. I am the Mayor of the Borough of Roselle Park, Union County, and have held that position since 1995.
2. As such, I am thoroughly familiar with the facts of this case.
3. I am submitting this certification in reply to various allegations of fact submitted by plaintiff in its opposition to the Borough's Motion for Summary Judgment.

**ACTIONS PRIOR TO OUR EFFORTS TO CREATE A  
REDEVELOPMENT PLAN FOR THE ROMEROVSKI SITE**

4. I have lived in the Borough for my entire life.
5. I have been the Mayor of the Borough for twelve years.
6. Prior to that, I was a Councilman for five years.
7. As a result of the above, I am very familiar with the history of Roselle Park.

8. In his certification, Mr. Braunstein states that he only has knowledge about the Romerovski site since 1996. Braunstein at para. 18.

9. This is not true.

10. In fact, prior to taking over the site as a lessee, Mr. Braunstein worked with, or had some form of relationship with Mr. Romerovski, the former owner of this site, *at least* since 1990. Braunstein also had interacted with Mayor Helen Ryan concerning the Romerovski site during my tenure on the Council from 1990 – 1995.

11. I know this to be true because when I became a Councilman in 1990, the Romerovski site was in my Ward.

12. As the biggest parcel of property in the Borough and a “gateway” of sorts, I was concerned about the rundown nature of the site, and I had many conversations with Mr. Braunstein concerning ideas of what could be done to make the site a more appealing location for the Borough.

13. As I stated in my initial certification, Mr. Braunstein approached me several times to inform me that his business was struggling financially, and that he would like the Borough’s help to revitalize his site.

14. Specifically, Braunstein informed me on many occasions that (1) he was losing money due to issues with his labor rates; (2) that the textile recycling industry was struggling in general, and that he wanted to get out of that business; and (3) he wanted to take advantage of the real estate market, which, at the time, was booming.

15. Naturally, the Borough had an interest in such a “revitalization” project because the site was, and is, a run-down eyesore.

16. The Borough wishes to see the site redeveloped.

17. Although Mr. Braunstein denies it in his certification, he absolutely told me on several occasions that his business was “losing money.”

18. In addition, he absolutely told me that he tried, but was unable to sell his property.

19. He based his requests for assistance from the Borough on his claim that he was losing money and could not find a buyer.

20. In our several initial discussions concerning his proposed “partnership” with the Borough, I suggested several times that the most advantageous avenue for such a project would be through redevelopment, because that would eliminate the need for him to seek and secure a many variances due to the zoning in place at that time.

21. When I suggested redevelopment to Braunstein, he indicated to me that he was familiar with the redevelopment process and that he knew that this process would allow him to avoid the zoning board, and the several variances he would need for such a project.

22. I stated, however, that if the Borough was going to partake in this process, the residents of the Borough would have a voice in the type of project that would ultimately be constructed and that the Borough would naturally seek multiple proposals to fulfill the vision of the Borough’s residents.

23. At that point in the very early part of 2006, Mr. Braunstein was more than happy to agree to that process.

24. That was the *quid pro quo* that Mr. Braunstein agreed to, and that is what got the ball rolling for the Borough’s efforts to redevelop the Romerovski site.

25. At that point, we all had good intentions. As discussed below, Mr. Ladell apparently swept Braunstein off his feet with a lucrative offer, and Braunstein’s impetus to work with the Borough quickly became the impetus to litigate.

## THE REDEVELOPMENT EFFORTS BEGIN

26. On February 9, 2006, I attended a meeting scheduled by Braunstein, with a potential redeveloper.

27. This group indeed proposed a 200+ unit apartment complex.

28. Notably, not one word was spoken about affordable housing.

29. I made some suggestions at the meeting based upon my knowledge of *what the community would want*, including the idea that some senior citizen or age-restricted affordable housing or mixed use development could be part of the project.

30. I agree with Braunstein that I was clear at the meeting that we would be “going through the redevelopment process.” Braunstein at para. 26.

31. I have never wavered from that position, namely because that is exactly what Braunstein agreed to before we even started on this journey.

32. Further, Mr. Braunstein’s memory of that meeting is obviously selective, because I was clear (1) that the Borough wanted to help Braunstein generate as much interest in the property as possible (2) that assisting Braunstein in redeveloping his site would also benefit the interests of the community as a whole, (3) that it was so early on in the process that it may take a while for the Borough to make its decision.

33. I explained that it might take a while because not only because Braunstein’s property was the largest parcel in the Borough, but also because we had not handled a project of this magnitude before.

34. Not yet being familiar with Redevelopment Law at that time, I would not have used the term “RFP” at this meeting. Nonetheless, I made clear that the Borough wanted to field all possible proposals.

35. Soon after the February 9, 2006 meeting with Braunstein and the first interested redeveloper, we hired our planning firm, Heyer/Gruel.

36. After some initial internal meetings with our planners, we immediately scheduled a meeting with Mr. Braunstein and his “personal attorney” for March 29, 2006.

37. In that meeting, Mr. Latini explained to all of us exactly how the redevelopment process works, which included the possibility that we would be using an RFP to attract proposals.

38. I specifically remember asking Mr. Latini the question of how we would attract developers to our redevelopment project, and Mr. Latini said that the typical procedure used by municipalities was an RFP.

39. I also remember commenting that this is the way the Borough would like to proceed because it made sense to get as many proposals as possible.

40. The result of that meeting was simple: Mr. Braunstein agreed to start “beating the bushes” for interested redevelopers, and the Borough’s planners would start the process of taking all the legal steps necessary to create a mutually beneficial Redevelopment Plan. In addition, once the redevelopment plan was adopted, we would issue an RFP.

41. Mr. Braunstein’s statement that he “would not have cooperated with this site” if he knew “that Roselle Park was going to proceed with an RFP process” presumes that the RFP process would not advance his interests. Braunstein at para. 32.

42. However, if our redevelopment plan did generate sufficient interest in the redevelopment, we would need to select a redeveloper that best addressed what the community found in its best interests and that enabled Braunstein to realize an economic benefit.

43. Since Braunstein had reported such hardships prior to the Borough's agreement to work with him, we anticipated that he would be flexible in addressing the Borough's concerns as long as he could realize an economic benefit—even if the redeveloper the Borough preferred did not necessarily offer Braunstein the maximum profit.

44. Mr. Braunstein confirmed our expectations by pledging to do “what was best for the community,” to “work together” and to create a partnership.

45. It was in the Borough's interest to achieve a mutually beneficial solution with Mr. Braunstein. If we could not achieve a mutually beneficial solution, the only way to achieve our redevelopment goals, as explained to me by the Borough's consultants, would be through condemnation.

46. We never discussed condemnation or had any desire to pursue it because we thought we could indeed achieve a solution beneficial to all without having to resort to condemnation. Page 25 of our Redevelopment Plan demonstrates this fact.

47. Mr. Braunstein never said he “would not challenge Roselle Park designating his property as an area in need of redevelopment” as long as he could pick the redeveloper.

48. Mr. Braunstein also asserts that an RFP process “will likely lead to the taking of [his] property by eminent domain” and that he “would have no control over the redevelopment of [his] property.”

49. Again, it certainly was never our intention to take Mr. Braunstein's land by eminent domain following the RFP process.

50. Although my understanding is that the Borough has the power under applicable redevelopment laws to take the property under eminent domain, we wanted to avoid that legal avenue to avoid the complexities and possible pitfalls associated with condemnation.

51. Mr. Braunstein pled for our help. We started the redevelopment process in response to his pleading.

52. Although Mr. Braunstein insists that he is not a “sophisticated land developer,” he was represented by a “personal” attorney. Also, he is certainly a sophisticated business man, and cannot hide behind some imagined veil of ignorance.

53. Further, the Borough spent considerable time and money to develop a Redevelopment Plan for Braunstein’s site.

54. Braunstein’s claim that he would have backed out of this deal if he knew we wanted multiple proposals does not make sense.

55. Given his representations that he was “was not doing well” under the current zoning and use, it would have made no sense for Braunstein to burn the redevelopment bridge, which represented and still represents an opportunity for him to achieve a financial benefit from the use of his property.

56. Second, by backing out, any development proposal he submitted to the Zoning Board without the benefit of the development rights created by the adopted redevelopment plan would have been subject to close scrutiny of the public and would also have required requests for significant zoning variances.

57. Therefore, his threats to “walk” seem contrived and hollow.

58. Also, his assertion that he would have challenged the redevelopment designation “if he only knew” the Borough’s intentions to seek multiple proposals is also disingenuous.

59. First, we adopted the Redevelopment Plan on March 1, 2007. This is over three months *after he admits* that we told him of our intention to seek multiple proposals.

60. It is also well after he had already filed suit against us.

61. If he wanted to challenge the designation, he certainly had the opportunity to do so.

62. He passed on his opportunity.

63. Also, the rezoning benefit Braunstein received once the Borough adopted its Redevelopment Plan created a significant increase in the value of the property. Consequently, instead of zoning to permit a struggling manufacturing facility, Braunstein now enjoys, subject to working with the Borough on redevelopment issues, the ability to construct up to multiple forms of development.

64. Whether he chose the redeveloper or not, the increased value of his property conferred by the redevelopment plan renders it foolish for him to challenge the designation.

65. The Borough adopted the Redevelopment Plan on March 1, 2007, long after he already had gotten “married” to Ladell, a self-proclaimed “sophisticated developer” and “land use attorney.”

66. Consequently, Braunstein made an informed decision when he confined his challenge to the redevelopment plan to the limitation on tenure.

67. Furthermore, obviously, if he successfully challenged the designation of the site as an area in need of redevelopment, he would be right back where he started: holding a run-down, under-productive eyesore.

68. Braunstein’s fanciful assertion that “the Borough was planning on using eminent domain to take my property” has no basis in fact. Braunstein at para. 39.

69. Throughout all our meetings and discussions, not once did the Borough express any desire to condemn the property.

70. Proof of the Borough's intention can be found in the Borough's Redevelopment Plan itself, on page 25, where it states that we do not expect to use our inherent legal authority to use eminent domain due to the "cooperative" relationship between the Borough and the property owner.

**BRAUNSTEIN BRINGS LADELL INTO THE PICTURE AND OUR  
"COOPERATIVE" RELATIONSHIP QUICKLY TURNS TO  
LITIGATION**

71. In the middle months of 2006, we were all working diligently on bringing our redevelopment effort to fruition.

72. As the Borough's various certifications demonstrate, we scheduled and conducted *many* public meetings to discuss the goals and visions of the community, all designed to help our planners design the Redevelopment Plan to match those goals and visions.

73. Contrary to Braunstein's characterization, our residents indeed *vigorously* participated in these meetings, and members of our community spoke about this project often.

74. Moreover, the Planning Board and the Borough Council both discussed in public the process we envisioned.

75. Mr. Braunstein has indicated that he attended at least some of the public meetings.

76. During this time, several entities and persons contacted the Borough directly and expressed an interest in possibly redeveloping the site.

77. This was in response to the "word on the street" and one or more newspaper articles that were published in the local newspapers.

78. Because we felt that Mr. Braunstein should be the person spending the time sorting through these inquiries, we referred them all to Mr. Braunstein because he was the most

familiar with his site and because we had not yet reached the time when we would release our RFP.

79. The idea was for Braunstein to provide answers to the logical and predictable questions from these redevelopers concerning the site and to create “interest” in advance of the Borough’s RFP.

80. Mr. Braunstein also indicated that he retained a real estate agent to help him drum up interest.

81. That makes sense, because it was in all of our interest, and consistent with the Borough’s express desires, to secure as many proposals as possible and to choose the best one.

82. One day in the Summer of 2006, I received a call from Braunstein, who informed me that he had found a person who was interested in talking to the Borough concerning the redevelopment of the site. In this regard, Braunstein was impatient and was pressing the Borough to move the process along.

83. On August 9, 2006, I met with Braunstein and his new suitor, Ron Ladell.

84. In scheduling the meeting, Braunstein told me that he wanted me to meet a potential redeveloper, that the person said he knew me, and that he has strong financial backing.

85. As I had done in the past, I agreed to meet with Braunstein not to make a private deal, but as an accommodation to Mr. Braunstein, who was pressing me hard to meet with one of the developers that had expressed interest.

86. I thought that meeting with the property owner would be a harmless event.

87. Besides, at that point, we were still in the drafting stages of the redevelopment plan, and I saw no harm in meeting with the owner and a potential developer of the site.

88. I had no idea that a partnership was formed or about to be formed between the companies with which these two men are affiliated until plaintiff admitted in one of its motion papers that 450 West Westfield Realty, LLC (Braunstein's company) had partnered with AvalonBay (Ladell's company) to form the entity that sued the Borough.

89. At this meeting in August, Ladell discussed his company's experience in developing rental developments and bragged about the quality of their work.

90. Ladell stated that he wanted to redevelop the property as a rental project.

91. At the meeting, I did not make any promises because at that point, I thought that Ladell was merely another interested developer, and would be one of the many proposals that we would see.

92. I made clear that we attended the meeting to listen and to give Ladell the benefit of our reaction, but that ultimately any proposal would have to be presented publicly because we had made a commitment to our public that their thoughts and opinions mattered.

93. I also specifically told Ladell and Braunstein that the Borough would be publishing an RFP as soon as the Borough adopted its Redevelopment Plan and that Ladell could respond to that RFP once it is released.

94. As an aside, Braunstein's and Ladell's suggestion throughout their certifications that I somehow unilaterally made all the decisions for the Borough is wrong.

95. For instance, I was not personally responsible for "developing a Housing Element and Fair Share Plan" as suggested in paragraph 21 of plaintiff's Counter Statement of Facts.

96. The Borough is a "weak Mayor, Strong Council" form of government, and decisions of the Borough are therefore made not by me, but by the Borough Council.

97. In fact, I cannot even vote unless my vote is necessary to break a tie.

98. In addition, if Mr. Ladell wanted to present his project to the Borough, as I had suggested, he certainly was free to send his concept plan and reports to the attention of the Borough Council and ask them to review his submission and to ask for an audience at one of the upcoming public hearings.

99. He failed to take such action.

100. Nevertheless, I had no idea at the August 9, 2006 meeting, contrary to Braunstein's allegation, that he was interested in "partnering" with Ladell.

101. Mr. Braunstein's suggestion that he "made it clear" throughout the process that he would be selecting the redeveloper is patently false. See Braunstein at para. 23.

102. Braunstein also lied to the Court when he said "it was clear that I was specifically partnering with AvalonBay at the August 2006 meeting."

103. Braunstein merely introduced Ladell as an interested redeveloper, as Braunstein had previously done prior to our meeting with the other developer in February of 2006, and not as the man he was about to form a partnership with.

104. Moreover, neither Braunstein nor Ladell mentioned affordable housing at this meeting.

105. Nor did Braunstein or Ladell mention affordable housing at any other meeting.

106. With regard to the August fundraiser, I did not agree to "work with" Ladell and Braunstein after the November election.

107. Although I indeed mentioned the November election to Braunstein, my statements concerning delay were in the context that, no matter what anyone does, as a practical reality, nothing official was going to be decided in the next three months with the election looming.

108. That practical reality is not unique to Roselle Park.

109. In addition, it was in the Borough's interest not to politicize the Borough's goals of redeveloping the Romerovski site.

110. Mr. Braunstein called again in the Winter of 2006, asking me to participate in another meeting with Ladell.

111. I didn't see the purpose of meeting him again, but Mr. Braunstein pressed me so hard to meet that again I relented.

112. In anticipation of that meeting, I expected Mr. Ladell would provide additional information as to what he had in mind than had been provided in our August 9, 2006 meeting.

113. We were already well along in the redevelopment process, and I had just received a copy of the Borough's draft Redevelopment Plan from Mr. Latini on November 30<sup>th</sup>.

114. On December 12, 2006, I participated in that much-discussed meeting with Ladell and Braunstein. Mr. Latini participated by phone.

115. First, Ladell did not give us as a "proposal." Instead, Ladell sought to pressure the Borough into accepting his company as the redeveloper of the site in apparent recognition that the Borough had to approve the redeveloper.

116. Ladell mentioned his interest in developing a 300 unit rental project.

117. Mr. Ladell never mentioned that he had drawn up a "concept plan."

118. Mr. Ladell did not state that he had any engineering reports.

119. Mr. Ladell did not provide the Borough with *anything* that might give the Borough a specific understanding of what he wanted or reasonably thought he could achieve.

120. If Mr. Ladell did indeed have a concept plan or engineering reports as I learned for the first time upon reading his certification, it would have been in our interest to examine them if, for no other reason, than to make sure our plans for redevelopment were practicable.

121. Despite their false allegations, they never discussed affordable housing in association with this “proposal.”

122. In all honesty, I was somewhat annoyed that Braunstein and Ladell wasted my time with another meeting to tell me the same thing they told me in August, which was how great AvalonBay was, how they did all this work in other municipalities, how they were well-received in these other communities, and so on.

123. The only new “information” that they brought to this meeting was an offer for me to take a bus trip to visit one or more of their projects.

124. In response to Ladell’s pressure for the Borough to select AvalonBay as the redeveloper, I told them that we would be going through the RFP process and that the public would be involved in this decision. This is consistent with what I had said at the August meeting.

125. Mr. Braunstein’s December 13<sup>th</sup> email to me, attached to his certification, demonstrates that I insisted on the public’s participation: “I can assure you **we realize the position you have of the responsibility to your constituents to take their opinions into consideration.**” (emphasis added). This statement also demonstrates that he appreciated the Borough’s legitimate concerns with meaningful public participation. Thus, it was apparent that it was important for the developer to make a favorable impression on the public with any proposal it wished to present.

126. At this meeting, Mr. Ladell clearly and quickly became visibly frustrated by my refusal to retreat from our desire to seek multiple proposals.

127. In fact, as stated in my prior certification, Ladell expressed his frustration by obnoxiously stating that we should forget all about receiving any more proposals because he had

already “tied up” the property and indicating that he was so influential that he would send word out to his competitors and they would listen to him by staying away from Roselle Park.

128. Ladell can sugar coat his statement all he wants. See Ladell certification at para. 28 (describing his statement regarding his tying up the property as “I did not foresee another developer intruding on [my contractual] relationship” with Braunstein).

129. In reality, Ladell looked me in the eye and told me in no uncertain terms that the Borough should “forget about” multiple proposals.

130. Ladell and Braunstein both admit that I told them at that meeting that we wanted multiple proposals, but Ladell calls this request as a “euphemism” for condemnation. Ladell at para. 29.

131. His characterization of our intention is false.

132. I never stated that we intended to condemn even though I am well aware of our power to do so.

133. As a sophisticated developer and attorney, certainly Ladell would have known that the Borough’s use of its condemnation powers created problems that could be avoided (a) by adopting a redevelopment plan; (b) by creating a healthy competition beneficial to the public through the RFP process; and (c) by selecting a developer and proposal that represents what is best for the community while allowing the owner and redeveloper to make a more profitable use of the land.

134. I would also note that Ladell inquired about our status regarding Mount Laurel and I informed him that (1) we had already committed to satisfying our affordable housing obligations, (2) we had instructed our planners to draft such a plan, and (3) in response to our

instructions, our planners had already begun working on the Housing Element and Fair Share Plan.

**AFTER LADELL UNSUCCESSFULLY TRIED TO BULLY ROSELLE PARK INTO SUBMISSION, HE FOUND THE ONLY OTHER WAY TO GET WHAT HE WANTED BY FILING THIS MOUNT LAUREL SUIT.**

135. Despite the unpleasant meeting on December 12<sup>th</sup>, and the phone call that took place on December 13, 2006, I still agreed to participate in a bus trip to see what kind of work Ladell and his company did.

136. As I stated in my prior certification, I agreed to go on this trip as long as Ladell understood that he would need to discontinue his overly aggressive attitude and participate in the redevelopment process like any of his competitors as part of the process.

137. I agreed to participate in the bus trip because, despite Ladell's aggressive tactics, I still thought it would be proper to maintain an open mind.

138. However, it was my impression at the time that Mr. Ladell was mostly interested in this bus trip as a pretext, so he could create a "captive audience" with the Borough Councilmen to show off his other projects.

139. Moreover, I was not planning on traveling on this bus trip alone, but instead would be accompanied by several representatives of the Borough including, for instance, a number of interested residents, planning board members, and members of the Borough Council.

140. I was uncomfortable scheduling a bus trip to an AvalonBay project before the Borough had issued an RFP and received a response, and I felt it would be inappropriate to partake in a bus trip with a potential redeveloper before they met with the public via RFP, because this may have caused public speculation that we were conducting a "back office deal"

behind the public's back. This was exactly the opposite of what we were trying to accomplish through the whole redevelopment process.

141. Therefore, although I stated that I would take this bus trip, I wanted that to happen **after their presentation to the public and then members of the public who saw the presentation and who were interested could go on the bus trip.**

142. Neither Mr. Ladell nor Braunstein ever made arrangements to meet with the Planning Board and present a proposal publicly.

143. We never received a letter explaining what plaintiff proposed. While Ladell now claims that he had a concept plan and that it was ready to share if only we had asked, I had made it clear that Mr. Ladell needed to make a public presentation, and yet Mr. Ladell did not take the simple step of sending us a letter and concept plan and asking the Borough's professionals to review the plan or asking the Planning Board or Council to make time to hear a presentation.

144. Had Ladell come in and publicly presented the proposal he now claims he had all along and had the public been receptive, that might have had two results: (i) it might have resulted in the Borough revise its RFP process; or (ii) it might have made Avalon a developer the Borough was particularly receptive to in the RFP process. Either way, any decision made following this presentation would have been public and transparent. It would not have been the backroom deal Ladell wanted and that I wanted to avoid.

145. Although Ladell and Braunstein tried to contact me multiple times by phone following the December meeting to schedule the bus trip, I did not return these calls because I was clear that they would have to present a proposal to the public prior to me attending their bus trip. If Ladell and Braunstein truly intended to involve the public in this process, they would

take taken the easy steps necessary to secure an audience with the Borough or its Planning Board. They chose not to.

146. Moreover, at that time, the adoption of the Redevelopment Plan was imminent and, consequently, we had not yet started the RFP process.

147. Contrary to Braunstein's statement, we did not make it "clear" that we intended to condemn his property.

148. We never even implied to Ladell or Braunstein that we would need to resort to condemnation.

149. In paragraph 9 of his certification, Braunstein states that the Borough and he secretly agreed that he "would not challenge Roselle Park designating his property as an area in need of redevelopment" as long as he could pick the redeveloper.

150. This too is false.

151. As to plaintiff's claim that it was the "impetus" for the Borough to comply with its affordable housing obligations, this is not true.

152. As I stated in my prior certification, the "impetus" was the advice from our planner, Mr. Latini in November of 2006, three months before plaintiff filed suit, that the Borough needed to adopt a Housing Element and Fair Share Plan.

153. Actually, at the annual League of Municipalities convention on or around November 14, 2006, Mr. Latini, our planner, advised me of the need to comply with Mount Laurel.

154. On November 16, 2006, Mr. Latini presented the Borough with a Proposal for Professional Services to draft the Borough's Housing Element and Fair Share Plan.

155. On November 22, 2006, the Planning Board discussed this need publicly.

156. The minutes of the November 22, 2006 Planning Board meeting state the following:

Fair Share housing plan is needed as soon as possible in Roselle Park.

This must be done by a professional entity as soon as possible to protect us from litigation.

Since Heyer and Gruel is familiar with Roselle Park from doing the Redevelopment Plan, Master Plan, etc. the board feels they are best suited to do this plan

The Planning Board will make a recommendation (via a notice) to the Governing Body to review the Heyer and Gruel "Proposal for Professional Planning Services, Preparation of Housing Element/Fair Share Plan – Roselle Park Borough."

157. The Planning Board unanimously approved to recommend the Heyer and Gruel proposal to the Borough Counsel, and the Borough authorized the drafting of the Plan immediately thereafter, at its next public meeting on December 7, 2007.

I hereby 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.

Date: October 1, 2007

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Joseph DeIorio, Mayor