

IN THE APPELLATE DIVISION OF THE STATE OF NEW JERSEY

No. A-002144-22

TOWNSHIP OF HOWELL,

Plaintiff-Respondent

v.

SPROUTS PMA, KIMBERLY HOULI, LEANNE COFFEY, BIRDS FARM,
LLC,

Defendants-Appellants,

On appeal from the Superior Court of Monmouth County, Civil Division, Appeal
from Order of Judge Lourdes Lucas

APPELLANT'S BRIEF IN SUPPORT OF REVERSING ORDER BARRING
SPROUTS PMA FROM MEETING AT BIRDS FARM WITHOUT
GOVERNMENT PERMISSION

Submitted June 22, 2023

Dana Wefer- 036062007
Law Offices of Dana Wefer, Esq.
P.O. Box 374
290 Hackensack Street
Wood-Ridge, NJ 07075
Telephone: 973-610-0491
DWefer@WeferLawOffices.com
Attorney for Defendant/Appellant

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PRELIMINARY STATEMENT

Sprouts Nature Project is an association of homeschooling families who joined together for the purpose of creating a community centered around nature and farming and to bring their children together to socialize, learn about farming and animal husbandry, and be part of a farming-oriented community. Sprouts Nature Project owns farm animals, grows food, and offers enrichment activities for member children to develop these skills. The farm is owned by Stanley and Tasia Domin (“the Domin’s”) who are also members of Sprouts and whose three young children participate in Sprouts activities. All of the activities are led by parent members. There is no profit. This is a private membership association and members are engaged in constitutionally protected expressive activities under the First and Fourteenth Amendments.

The standard of review when application of a zoning regulation is alleged to threaten or violate a constitutional right “is determined by the nature of the right assertedly threatened or violated rather than by the power being exercised of the specific limitation imposed.” *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981). Here, the Superior Court erred in avoiding the constitutional analysis, which is required, and instead analyzing whether Sprouts’ activities were a permitted use under the zoning law.

Sprouts asserts three constitutional rights: the right to association under the First and Fourteenth Amendment and the Fourteenth Amendment right to direct the care and upbringing of their children. Under each of these rights, strict scrutiny is triggered. Howell's actions cannot pass strict scrutiny because Howell's asserted interests are not furthered by its action of barring Sprouts members from meeting at the farm without government authorization. There is no nexus between the asserted interest and the government action taken in furtherance of that interest. Under Supreme Court precedent, to survive strict scrutiny, Howell would have to show that the associational and expressive activities it is seeking to bar are incompatible with the zoning law. Howell cannot do that because Sprouts is a nature and farming centered group that is doing nothing more than gathering on the land, engaging in play and farming related activities, and communicating information to the children about farming and nature through speech and activities. For these reasons, the order barring Sprouts Nature Project members from meeting on the farm owned by fellow members, the Domins, should be reversed.

STANDARD OF REVIEW

The standard of review on all constitutional issues and statutory construction is *de novo*. *Manahawkin Convalescent v. O'Neill*, 217 N.J. 99, 115 (2014) (stating that a "trial court's interpretation of the law and the legal consequences that flow

from established facts are not entitled to any special deference”) (internal citations omitted).

PROCEDURAL HISTORY

The matter was initiated by the Township of Howell on October 19, 2022 *via* Complaint. DA7. An Order to Show Cause why temporary restraints should not issue was filed contemporaneously. DA19. Sprouts filed opposition and on December 22, 2022, Judge Lucas held oral argument on the Township’s motion.¹ At the conclusion of that argument, Judge Lucas requested the parties to submit additional briefing, which both parties did. On January 26, 2023 Judge Lucas delivered an oral opinion ruling in favor of the Township of Howell on Count I of its Complaint, which alleged that Sprouts was violated the zoning regulations, and dismissing Count II, which alleged that Sprouts was operating a school, day camp, or childcare center unlawfully. 2T. On February 6, 2023, Judge Lucas signed an Order dismissing the second count of the Township of Howell’s Complaint and ordering Sprouts Nature Project to “immediately cease all operations on the property.” DA5.

STATEMENT OF FACTS

The individual Defendants, Kimberly Houli (“Ms. Houli”) and Leanne Coffey (“Ms. Coffey”) are founding members of Defendant Sprouts Nature Project PMA

¹ 1T is the oral argument from December 22, 2022. 2T is Judge Lucas’s oral decision delivered on January 26, 2023.

(“Sprouts”). DA73 at ¶1; DA82 at ¶1. Sprouts is a private membership association whereby families can associate with each other to provide, among other things, shared learning and social experiences for their homeschooled children. DA74 at ¶¶9-10; DA83 at ¶¶8-9. Birds Farm, LLC, (“Birds Family Farm”) and the actual land on which Sprouts was meeting are owned by non-parties Stanley and Tasia Domin (“the Domin”). DA79 at ¶1. Birds Family Farm is a small family cooperative farm dedicated to providing healthy local food for the people of Howell Township and surrounding areas. *Id.* The Domin family are also members of Sprouts PMA; their three children participate in Sprouts activities on the farm. *Id.* at ¶¶2-4. Ms. Houli and Ms. Coffey also each have two children who participate in Sprouts. DA82 at ¶¶1-2; DA73 at ¶¶1-2. The families associate with each other through Sprouts to create opportunities for their children to learn about farming, animal care, and related nature skills. DA74 at ¶¶9-10; DA83. at ¶¶8-9; DA79 at ¶¶3-4. Sprouts members share common beliefs, including that farm work, time in nature, and clean healthy food is essential to a child’s development. DA74 at ¶¶10-11; DA83 at ¶8; DA79 at ¶¶3-4. There is no profit. DA73 at ¶7; DA82 at ¶7. Sprouts is not a business, a school, or a camp. DA73 at ¶11; DA82. at ¶10; DA80 at ¶¶10-11. Sprouts is a private association of families, a community, who gathered together on the open land to farm to appreciate nature and pass those farm-related skills and values on to their children.

Sprouts activities and meetings on the farm

Sprouts kept goats, pigs, chickens and other animals at Birds Family Farm so children of Sprouts members could learn animal care and develop a love for agriculture and nature. DA73-74 at ¶¶7, 9-10. All Sprouts activities were led by parents who are members of Sprouts. DA73 at ¶5. Enrichment activities include farming programs for kids and families as well as special group events and meetings.

The vast majority of Sprouts activities are directly related to agriculture and nature and the evidence produced by Howell shows this. The lease states that purpose of the lease was to:

facilitate a private learning environment for all ages, operating as a Private Membership Association (PMA)* which includes, but is not limited to, gardening, caretaking of our farm animals, cooking, wilderness skills, hiking, exchange of good among members, and formal academic studies; SPROUTS PMA will also be using The Site to occasionally host member-only gatherings.

DA34. The enrichment activities Howell chose to highlight in its moving papers confirm the farming focus. For example, the Sprouts program, which met one day a week, was described as a “farm and forest” model of “unstructured, child-led play and exploration in the forest” along with “teacher [always a Sprouts parent] presented seasonal and thematic nature-based units.” DA69. Likewise, the “ROOTS Farm Program,” which also met just one day a week, was for Sprouts children to gather and learn about “sustainable and biodynamic farming” and Project QUEST is

a program through which member children can explore “meaningful design challenges that solve real world and real farm problems.” DA69. The regularly scheduled meetings that are grouped by age (Seedlings, Book Worms, Busy Bees, and Mini Sprouts) are all held outside on the farm with an “emphasis on natural learning opportunities” that arise on a farm. DA69. With the exception of the “Seedlings” group, the children met just one time a week. DA70. Members pay a fee to participate, which contributes to the cost of creating the programs for member kids, including the cost of keeping the animals. Leanne Coffey submitted an additional certification on January 10, 2023 that gives representative examples of what types of farm and nature related activities the children engage in at these parent-led meetings.² Sprouts has hosted a handful of non-farm related activities like a Ukulele program that met for just two hours a day over four days or the “color wars,” which was a fun activity for Sprouts kids, but those activities are also compatible

² This certification was submitted by letter to the court on January 10, 2023 and provided to Howell as well for the purpose of supplementing the record. Howell objected to this certification being considered because the parties believed that no further information would need to be submitted after the December 22, 2022 argument. Howell also objected because the certification is (inadvertently, by fault of counsel) unsworn. It is not clear if Judge Lucas considered the certification or not, particularly because she did not reach the constitutional issues, however, it is provided in the appendix for completeness of the record. DA77.

with the use of land, resulting in no alterations to the land. *See* DA68, DA63. Indeed, these occasional activities strengthen Sprouts claimed associational rights because it shows that the members are coming together as a group of people that have chosen to associate with each other as part of Sprouts Nature Project, an association bound by a common endeavor that includes, but is not limited to, exposing their children to agriculture and related values and skills.

Sprouts activities were held exclusively outside on the farm. They were not in or under any structure. There were no desks. They were not regulated by the state. The kids played on the farm and did farm-related activities under the care of their parents and other Sprouts parents.

The Township of Howell Orders Sprouts to stop meeting on the Domins' farm and the Domins to stop hosting Sprouts meetings on the farm

On September 16, 2022, John Aguiar, the Township's code enforcement official, for reasons unknown to Sprouts and not revealed to the Superior Court, entered the property without permission, invitation, consent, probable cause to investigate a crime, or a warrant. He walked around the farm without identifying himself, ignoring "no trespassing" signs, and taking photos without consent. DA80 at ¶5.

On September 19, 2022, Howell Township issued a "Notice of Violation" to Birds Farm, LLC. On October 19, 2022, Howell filed the verified complaint and moved for an emergency order based on Mr. Aguir's certification. The Notice of

Violation relayed Mr. Aguir's mistaken belief that a "school/day camp" was "operating from the property without any approvals" and ordered Sprouts members and the Domins to cease and desist "all activities associated with Sprouts Nature Project." DA60. The Notice of Violation also complained of: a recreational vehicle³ that was parked on the property, a temporary platform that the Notice of Violation described as a "deck," solar panels that were not in use, and a jacuzzi that never existed. DA80 at ¶6 (certification of Stanley Domin). Though it is not settled that the presence of the RV, pallet, and solar panels being stored (not used) violated any code, in the spirit of cooperation, the Domins removed the RV and pallet immediately after receiving the Notice of Violation. *Id.* at ¶8. The solar panels have since been installed on a shed. *Id.* The Domins submitted the necessary paperwork for a permit for the shed and the panels, but while this litigation was pending, the Township denied the permit solely because the Domins had not disassociated Sprouts from the farm. DA108. Thus, when Judge Lucas made her ruling, the only relief that Howell was actually seeking was an order prohibiting Sprouts from meeting on the farm.

³ Howell Township asserted that the recreational vehicle was being used "as living space." Defendants have no idea how the Township came to this conclusion, but it is false. It was never used as a living space when it was present on the property. DA80 at ¶7.

The Zoning

The farm is zoned ARE-2. “ARE” stands for Agricultural Real Estate Zone. DA42. All ARE zones allow the following principal uses: agriculture and horticulture, single family residences, municipal buildings, community residences, and multigenerational accommodations. DA42. ARE-2 has a purpose distinct from the other ARE Zones, which “is to minimize the impacts of development in areas located outside of the centers identified in the Township's Master Plan. The goals include not only the preservation of rural and agricultural uses and preservation of rural character, but in addition to act as a buffer between zones of greater development.” DA51. Permitted principal uses in ARE-2 also include “public recreation (passive or active) facilities, including soccer and baseball fields.” *Id.* Developers can apply for conditional use permits to develop solar generation facilities, community residences for the developmentally disabled and community shelters for victims of domestic violence. DA52.

Agricultural Use is defined as:

Land which is devoted to the production of plants and animals useful to man, including but not limited to forages, and sod crops, grain and feed crops; dairy animals and dairy products; livestock, including beef, cattle, sheep, swine, horses, ponies, mules or goats, including the breeding, boarding, training and grazing of any or all such animals except that livestock shall not include dogs; bees and apiary products; fur animals; trees and forest products, or when devoted to and meeting the requirements and qualifications for payments or other compensation

pursuant to a soil conservation program under an agreement with an agency of the federal government.

2T36:5-19.

Horticultural use is defined as:

Land which is devoted to the production of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government

2T:36:20-37:4.

LEGAL ARGUMENT

I. THE SUPERIOR COURT USED THE WRONG STANDARD OF REVIEW (Raised below 2T21:4-22:9)

Howell's authority to regulate land use is broad, but it is limited by the Constitution and "when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest." *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981). The "standard of review is determined by the nature of the right assertedly threatened or violated rather than by the power being exercised of the specific limitation imposed." *Id.*

Here, Sprouts members assert that their right to association under the First and Fourteenth Amendments and the Fourteenth Amendment right to direct the care and upbringing of their children are infringed by this application of Howell's zoning law.

However, the Superior Court did the analysis backwards, framing the question before the court as “whether the defendants are using the subject premises in violation of the zoning ordinance” instead whether this application of the zoning law infringed Sprouts’ First Amendment and Fourth Amendment rights. 2T37:4-9 The Court found “that the Township has presented clear and convincing evidence that the Sprouts is impermissibly using the property zoned for agriculture and horticulture for uses not explicitly authorized or conditionally permitted” and therefore ruled in Howell’s favor. 2T50. However, as discussed in Part II(D), had the court engaged in the constitutional analysis, the question would instead have been whether Sprouts’ use of the land to associate with each other is incompatible with the zoned use. *Schad*, 452 U.S. at 74-75 (holding that convictions for violating zoning law that prohibited live nude dancing violated the First and Fourteenth Amendments because the town “presented no evidence that live entertainment is incompatible with the permitted uses” and therefore could not be a reasonable time place or manner restriction). Here, Sprouts simply *meeting* on the land a few hours a day to engage in activities centered around agriculture and horticulture is wholly compatible with the zoning.

The Superior Court applied the wrong standard of review, and this was error.

II. SPROUTS MEMBERS ARE ENGAGED IN CONSTITUTIONALLY PROTECTED ACTIVITY AND THE CORRECT LEVEL OF ANALYSIS IS STRICT SCRUTINY FOR EACH RIGHT ASSERTED (Raised below 2T21:4-22:9)

The right to freely associate with others is a fundamental right protected under the First Amendment's right to assembly and also the liberty clause of the Fourteenth Amendment. As the Supreme Court has explained:

[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

Roberts v. U.S. Jaycees, 468 U.S. 609, 617–18. (1984). “[W]hen the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated.” *Id.* Here, the Sprouts families are engaged in a common endeavor of building a community with other families in which their children can socialize, learn about farming and animal care, and develop a love for nature. The Township seeks to interfere with this common endeavor taking place entirely among private members of a private association on private property owned by members of the association. This infringes on their 14th Amendment right to association. In addition, a central purpose of the

common endeavor is communicate knowledge and impart skills to members' children, which is protected under the First Amendment. Thus, both forms are implicated here.

A. Sprouts members are engaged in protected association under the First Amendment

Sprouts members came together, both by formal association in the Private Membership Association, and physically in real life on the farm for the specific purpose of sharing ideas, knowledge, and skills with each other and to pass these values and knowledge on to their children. Passing on ideas and values to the next generation is private expressive activity and has been recognized by the Supreme Court as a constitutionally protected form of association. *Boy Scouts of Am. v. Dale*, 530 *U.S.* 640, 650 (2000) (stating that “[i]t seems indisputable that an association that seeks to transmit such a system of values engages in expressive activity”). To warrant protection, the expressive nature of the activity need only be *de minimis*. In *Pi Lambda Phi Fraternity, Inc. v. Univ. of Pittsburgh*, 229 F.3d 435, 443 (3d. Cir. 2000) (stating “there is a *de minimis* threshold for expressive activity claims”).

Here, Sprouts clearly meets the *de minimis* threshold for expressive activity under the First Amendment. Howell calls what Sprouts is doing impermissible “education.” However, it is undeniable that education is an expressive activity. Thus, even under Howell’s framing of the matter, Sprouts members are engaged in private expressive activity, thus triggering strict scrutiny.

Moreover, the Domins, in addition to their rights as Sprouts members, also have the liberty, as the farm owners, to invite whomever they wish onto their land for a few hours a day to socialize with their children, support the association to which they belong, and engage in expressive activities with others in their community.

B. Sprouts members are engaged in protected association under the Fourteenth Amendment

The freedom of association protected under the substantive due process clause of the Fourteenth Amendment protects intimate association with others working toward a common goal or endeavor. Typical hallmarks of such an association are relative smallness, selectivity, and seclusion from others. *Pi Lambda*, 229 F.3d at 441. Factors to be considered include the group’s “size, purpose, policies, selectivity, [and] congeniality.” *Id.*

Here, it is readily apparent that this is a small and private association, by necessity. All members must have children, the children are home educated and available to meet during the day on weekdays, all members must necessarily be local to Howell, and members necessarily share the common value and belief that they want their children to be exposed to and to learn about agriculture, farming, animals, and for nature to be an important part of their childhood and upbringing. The association and its gatherings are private and not open to the public.

C. Howell’s actions infringe on the fundamental right of Sprouts parents to direct the upbringing and education of their children

The Sprouts families also have a well-established fundamental right as parents to direct the care and upbringing of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (recognizing that “the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized” and that this “includes the right ‘to direct the upbringing and education of children’”) (citing *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535 (1925)).

Here, the Sprouts families have specifically chosen to formally associate with other families who share similar values to enrich their home educated children with skills related to agriculture and nature. They meet with likeminded families so their children can socialize, form friendships, and learn life skills these parents value. This is a deliberate parental choice protected by the Fourteenth Amendment.

D. Because fundamental rights are directly infringed, strict scrutiny applies for each right

Because barring Sprouts members and the Domins from continuing to meet with each other on the farm intrudes on their fundamental rights under the Fourteenth Amendment, strict scrutiny applies. *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978) (stating that “a government practice or statute which restricts fundamental rights...is to be subjected to strict scrutiny and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available”) (internal citations omitted); *Washington v. Glucksberg*, 521

U.S. 702, 721 (1997) (stating that “the Fourteenth Amendment ‘forbids the government to infringe ... ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”) (quoting *Reno v. Flores*, 507 U.S. 292, 301 (1993)).

Strict scrutiny and First Amendment analysis also applies because Howell’s actions are a direct impingement on Sprouts members’ First Amendment rights, not incidental. Nor is this a situation where speech and nonspeech elements are combined. The only relief Howell was seeking by the time Judge Lucas ruled was a court order prohibiting Sprouts members from associating with each other on the farm because they were allegedly engaged in impermissible education of Sprouts children. This is a direct infringement on members’ speech and associational rights under the First Amendment and triggers strict scrutiny. *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 680 (2010) (stating that “this Court has rigorously reviewed laws and regulations that constrain associational freedom...we have subjected restrictions on that freedom to close scrutiny; such restrictions are permitted only if they serve “compelling state interests” that are “unrelated to the suppression of ideas”—interests that cannot be advanced “through ... significantly less restrictive means” (cleaned up) (citing *Roberts v. United States Jaycees*, 468 U.S. at 623)).

Moreover, even if Howell's order barring Sprouts from meeting on the farm did only incidentally impinge on Sprouts members' constitutional rights, strict scrutiny would still apply because the freedom of association here is related to free speech purposes. *Salvation Army v. Dep't of Cmty. Affs. Of State of NJ*, 919 F.2d 200 (3d. Cir. 1990) (stating that "[u]nlike the derivative right of religious association, the right to associate for free speech purposes does not require that the challenged state action be directly addressed to the constitutionally protected activity...strict scrutiny is to be applied to infringements on the freedom of association for free speech purposes even when the challenged action is not specifically directed to the exercise of that right"). The Third Circuit noted, "[t]o invoke this [strict] scrutiny, it is sufficient that [the Salvation Army] seeks to communicate a message." *Id.* at 200. Here, the purpose of Sprouts meeting is to communicate knowledge, values, and ideas to their member children. The purpose of engaging in the association is speech, so strict scrutiny applies even if the freedom of association was infringed upon incidentally to Howell regulating land use.

Finally, in the context of zoning laws infringing on First Amendment speech and associational rights, Howell must show that the use it is trying to curtail is *incompatible* with the zoning. *See Schad*, 452 U.S. at 74-75 (holding that convictions for violating zoning law that prohibited live nude dancing violated the First and Fourteenth Amendments because the town "presented no evidence that live

entertainment is incompatible with the permitted uses” and therefore could not be a reasonable time place or manner restriction).

Howell’s use of its zoning laws to bar Sprouts members from meeting at the Domins’ farm infringes on three fundamental rights, but it is only necessary to find that the actions impinge on one to trigger strict scrutiny.

III. HOWELL’S ACTIONS ARE UNCONSTITUTIONAL UNDER A STRICT SCRUTINY ANALYSIS AND THE ORDER APPEALED IS UNCONSTITUTIONALLY VAGUE

To survive strict scrutiny, Howell must proffer a compelling interest and show that its actions taken in support of that interest actually “further” the interest and are narrowly drawn. Here, Howell’s total ban on Sprouts activities on the farm cannot survive strict scrutiny.

Howell’s first asserted interest, in enforcing its zoning laws, is circular. It presumes that Sprouts members gathering on the farm violates the zoning ordinance and then asserts that its interest in enforcing its laws is a compelling enough reason to order Sprouts to stop gathering on the farm. However, whether Howell can constitutionally order Sprouts members to stop meeting on the farm is the issue the court must decide, so it cannot be asserted as an interest *before* the constitutional analysis.

Howell also asserted an interest in guiding appropriate land use and development in a manner which best serves the health, safety, and welfare of its

residents. However, Howell presented no evidence or argument as to how its action, ordering Sprouts members to stop gathering on the farm, furthers this interest. The only reference Howell makes to the health, safety, or welfare of its residents in its papers is the offensive insinuation that the loving parents of Sprouts children are endangering their children by having them participate in association activities. DA26 (Township’s brief in support of order to show cause stating that Sprouts activities are done “in a manner that endangers the attending children”); DA27 (Howell claiming that “Defendants have erected several unauthorized structures and continued an unlawful use of the property in a manner that endangers the health and safety of child attendees”); DA85 at ¶7 (Certification of Howell official in which Howell alleges it entered the Domins’ farm because it was “concerned about a potential matter affecting the health, safety, and welfare of the children”). Howell articulated no factual basis for its unwarranted concern aside from the fact that the homeschooled children were not in school, which is not a concern of the Land Use Department. The parents of the children gathering at Sprouts are actively engaged and loving parents creating fun and educational activities for their kids and the Howell Township Zoning official’s concern that the children are out “during a school day” is misplaced, presumptuous, insulting, and should never have been the basis for a court action.

Moreover, under *Schad*, Howell had the burden to show that Sprouts members' use of the land to teach their children about farming, raising and caring for animals and nature exploration and play is incompatible with the use of the land. As relayed in the lease, and the certifications of the individual Sprouts members, and the facebook posting and descriptions of classes, Sprouts' purpose is to teach children to take care of farm animals, learn to farm, and develop other outdoor and nature skills in a community environment.⁴ It is a matter of common sense that teaching about and learning about agriculture is an agricultural use of the land and certainly not incompatible with it. Moreover, it is directly in line with Howell's definition of Agriculture and Horticulture. It is also in line with the other permitted uses in the ARE-2 zone, like recreation. Because Howell's asserted interest in promoting the health, safety, and welfare of its residents is not furthered by barring Sprouts from meeting on the farm, Howell's actions cannot pass strict scrutiny under this asserted interest.

Because Howell's asserted interests are not furthered by the action of barring all Sprouts Nature Project activities from the farm are not narrowly tailored to achieve those interests. Sprouts members are now totally barred from meeting on the

⁴ The lease states "formal" academic studies, but there were no formal academic studies taking place on the land. This was the wrong word to describe Sprouts' purpose. There is semi-structured learning in that enrichment activities are planned by parents in advance, but that's the extent of "formality." DA74 at ¶8.

farm and have been ordered to “cease all operations.” DA5. This incredibly broad restriction is the opposite of narrowly tailored and may even be unconstitutionally vague because it does not put the Domins or Sprouts on notice of what is not “in compliance” with the law and ARE-2 zoning. The Superior Court listed factors that it found important in ruling the way it did, including that the programs are separated by age, that participating members contribute to the cost, that the meetings take place at regularly scheduled times, and that children are provided “with a degree of educational instruction.” 2T48:7-49:3. However, it is not clear which, if any of these factors, were allegedly in violation of the zoning code. If the Domins began hosting educational classes for adult Sprout members at the farm, would that violate the zoning laws? What if the activities were free (to the member participants)? What if they were just planning session? If Sprouts programs were 100% recreational with no educational component, would that take it outside the domain of the zoning laws? These unanswered questions raised by the Order demonstrate the wisdom in restricting the government’s ability to regulate private associations between people unless it can demonstrate that it has a compelling interest and that its actions cannot be achieved by any more narrow means. These unanswered questions raised by the Order represent a chilling of expressive activity because it is not clear which if any of these activities would be permitted under the Order.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court reverse the Superior Court's Order barring Sprouts from meeting at the farm.

Law Offices of Dana Wefer, LLC
Attorney for Appellants

BY: s/Dana Wefer

DANA WEFER, ESQ.

Dated: June 22, 2023

IN THE APPELLATE DIVISION OF THE STATE OF NEW JERSEY

No. A-002144-22

TOWNSHIP OF HOWELL,

Plaintiff-Respondent

v.

SPROUTS PMA, KIMBERLY HOULI, LEANNE COFFEY, BIRDS FARM,
LLC,

Defendants-Appellants,

On appeal from the Superior Court of Monmouth County, Civil Division, Appeal
from Order of Judge Lourdes Lucas

DEFENDANT'S APPENDIX VOLUME I
DA1-DA132

Submitted June 22, 2023

Dana Wefer- 036062007
Law Offices of Dana Wefer, Esq.
P.O. Box 374
290 Hackensack Street
Wood-Ridge, NJ 07075
Telephone: 973-610-0491
DWefer@WeferLawOffices.com
Attorney for Defendants/Appellants

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