

O'TOOLE SCRIVO, LLC

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(973) 239-5700
*Attorneys for Plaintiff,
Borough of Far Hills*

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action - Mount Laurel

**NOTICE OF CROSS-MOTION TO
ENFORCE LITIGANT'S RIGHTS
PURSUANT TO RULE 1:10-3**

To: Craig M. Gianetti, Esq.
Michael J. Fitzpatrick, Esq.
Day Pitney LLP
1 Jefferson Road
Parsippany, NJ 07054
*Attorneys for Pulte
Homes of NJ, Limited
Partnership*

Ashley J. Lee, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ
*Attorneys for Fair Share
Housing Center*

James T. Kyle, PP/AICP
Kyle & McManus Associates
2 East Broad Street, Second Floor
Hopewell, NJ 08525
Special Master

PLEASE TAKE NOTICE that, on **Friday, April 12, 2024**, or as soon thereafter as counsel may be heard, the undersigned counsel for Plaintiff Borough of Far Hills ("Far Hills"), shall cross-move before the Hon. Kevin M. Shanahan, A.J.S.C., at the Somerset County Courthouse, 20 North Bridge Street, Somerville, New Jersey 08876,

for an Order for the enforcement of litigant's rights pursuant to Rule 1:10-3 in this matter; and

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Defendants shall rely on the enclosed Brief, Certification of Michael F. Sullivan, ASLA, AICP with attached exhibits, Certification of Paul W. Ferriero, P.E. P.P., C.M.E. with attached exhibits, Certification of Steve Mahoney with attached exhibits, Certification of Shana L. Goodchild with attached exhibits, Certification of Albert E. Cruz, Esq. with attached exhibits, Certification of Joseph V. Sordillo, Esq. with attached exhibits, and Certification of Lawrence S. Cutalo, Esq., with attached exhibits.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is enclosed.

PLEASE TAKE FINAL NOTICE that oral argument is requested in accordance with the New Jersey Court Rules.

O'TOOLE SCRIVO, LLC
Attorneys for Plaintiff,
Borough of Far Hills

By: /s/ Lawrence S. Cutalo
Lawrence S. Cutalo

Dated: April 4, 2024

O'TOOLE SCRIVO, LLC

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SUPERIOR COURT OF NEW JERSEY
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Civil Action - *Mount Laurel*

ORDER

THIS MATTER, having been brought before the Court on motion by O'Toole Scrivo, LLC, counsel for Plaintiff Borough of Far Hills ("Borough"), for an Order Enforcing Litigant's Rights Pursuant to Rule 1:10-3, and the Court having considered the papers submitted, argument of the parties, and for good cause having been shown:

IT IS on this _____ day of _____, 2024;

ORDERED that the Borough's Motion to Enforce Litigant's Rights is hereby **GRANTED**; and it is further

ORDERED that:

1. Pulte Homes of NJ, Limited Partnership ("Pulte") has violated Section 905(A)(5) of the Borough's Land Management Ordinance and Condition Nos. 33 and 38 of the Borough of Far Hills Planning Board ("Board") Resolution No. 2022-10 ("Resolution") by, in the absence of review and

approval from the full Board, rendering those material changes to the Preliminary and Final Major Site Development and Subdivision Plans dated March 19, 2021, last revised October 1, 2021 (“Approved Plans”), that resulted in the Borough’s issuance of its January 18, 2024, Notice of Violation.

2. In accordance with Condition Nos. 33 and 38 of the Resolution, Pulte must appear before the full Board and obtain its review and approval of an amended site plan should Pulte wish to make or carry out any such material changes to its Approved Plans, or obtain any similar such relief.

AND IT IS FURTHER ORDERED that Defendants shall serve a copy of this Order on all counsel of record within seven days of the date of this Order.

HON. KEVIN M. SHANAHAN, A.J.S.C.

Opposed

Unopposed

O'TOOLE SCRIVO, LLC

Thomas P. Scrivo, Esq.
Lawrence S. Cutalo, Esq.
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IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
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SUPERIOR COURT OF NEW JERSEY
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Civil Action - *Mount Laurel*

CERTIFICATION OF COUNSEL

Lawrence S. Cutalo, Esq., hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey and a partner with the law firm of O'Toole Scrivo, LLC, co-counsel for Plaintiff, Borough of Far Hills ("Borough"). As such, I am familiar with the facts stated herein.

2. I make this certification in opposition to Pulte Homes of NJ, Limited Partnership's ("Pulte") motion to intervene and enforce litigant's rights, and in support of the Borough's cross-motion to enforce litigant's rights.

3. Attached as Exhibit A is a true and accurate copy of the Order Granting Far Hills Temporary Immunity from Mount Laurel Lawsuits entered by this Court on August 25, 2015.

4. Attached as Exhibit B is a true and accurate copy of the Notice of Motion to Intervene and Enforce Litigant's Rights that

Melillo Equities, LLC, filed in this matter on February 22, 2023.

5. Attached as Exhibit C is a true and accurate copy of the Notice of Motion to Enforce Litigant's Rights and to Revoke Immunity that Fair Share Housing Center ("FSHC") filed in this matter on March 1, 2023.

6. Attached as Exhibit D is a true and accurate copy of correspondence that Melillo's counsel filed on March 17, 2023, withdrawing its Motion to Intervene and Enforce Litigant's Rights filed February 22, 2023.

7. Attached as Exhibit E is a true and accurate copy of correspondence that FSHC's counsel filed on March 22, 2023, withdrawing its Motion to Enforce Litigant's Rights and to Revoke Immunity filed March 1, 2023.

8. Attached as Exhibit F is a true and accurate copy of the Order of Final Judgment of Compliance and Repose ("Final JOR") that the Court entered in this matter on November 14, 2023.

9. Attached as Exhibit G is a true and accurate copy of the decision of In re Monroe Twp. Housing Element and Fair Share Plan, 2015 WL 10844850 (Law Div. July 9, 2015).

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

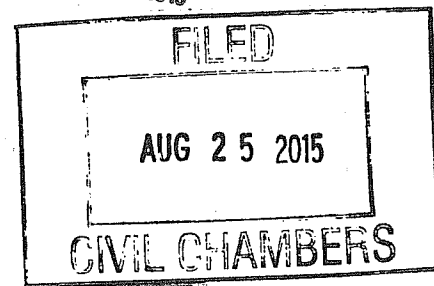
Dated: April 4, 2024

By: /s/ Lawrence S. Cutalo

Lawrence S. Cutalo

EXHIBIT A

RECEIVED AUG 27 2015



JEFFREY R. SURENIAN AND ASSOCIATES, LLC
Brielle Galleria
707 Union Avenue, Suite 301
Brielle, NJ 08730
(732) 612-3100
Attorneys for Declaratory Plaintiff, Borough of Far Hills
By: Jeffrey R. Surenian (Attorney ID: 024231983)
Michael A. Jedziniak (Attorney ID: 012832001)

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

DOCKET NO: SOM-L- 903-15

CIVIL ACTION – MOUNT LAUREL

ORDER GRANTING FAR HILLS
TEMPORARY IMMUNITY FROM
MOUNT LAUREL LAWSUITS

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, Jeffrey R. Surenian, Esq. and Michael A. Jedziniak, Esq. appearing on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough”); and the Far Hills Planning Board (hereinafter “Planning Board”) having previously adopted a Housing Element and Fair Share Plan for all three housing cycles; and the Borough having endorsed said plan and voluntarily filed said plan with the New Jersey Council on Affordable Housing for review and approval; and the Borough and its Planning Board having accordingly secured protections from expensive exclusionary zoning litigation; and the Supreme Court and Legislature having encouraged the effort to achieve compliance voluntarily that Far Hills Borough exhibited (Mount Laurel II, 92 N.J. at 214 and N.J.S.A. 52:27D-303); and COAH having failed to adopt new Round 3 regulations by the October 22, 2014 deadline the Supreme Court established in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015)(“In

re COAH”); and COAH’s failure having prevented trial judges from approving affordable housing plans filed with them because the Supreme Court had directed them to follow COAH’s “decisions, criteria and guidelines” “wherever possible” (Mount Laurel III, 103 N.J. at 63); and the Supreme Court having further determined that municipalities are not responsible for COAH’s failure to adopt new regulations in a timely fashion and that therefore municipalities should not suffer prejudice because of COAH’s failure; and the Supreme Court having determined that the task of implementing the Mount Laurel doctrine should revert from COAH to the courts because of COAH’s failure to adopt new regulations by the deadline the Court imposed; and, accordingly, the Supreme Court having determined that our trial courts in lieu of COAH must now “establish . . . [the] presumptive constitutional housing obligations for each municipality” and “identify the permissible means which a Borough’s proposed affordable housing plan, housing element, and implementing ordinances can satisfy that obligation” (In re COAH 221 N.J. at 33); and that the Supreme Court having further determined that municipalities under COAH’s jurisdiction should enjoy the same protections from exclusionary zoning litigation in a Court proceeding that the New Jersey Fair Housing Act (“FHA”) conferred on them in a COAH proceeding; and there being no reason to confer lesser protections on municipalities that sought to comply voluntarily in court than on municipalities that sought to comply voluntarily at COAH since the Supreme Court ruled that it did not believe that “the Legislature wanted lower income housing opportunities to develop in two different directions at the same time” (Mount Laurel III, 103 N.J. at 63); and the Supreme Court having further emphasized the importance and value of voluntary municipal compliance (In re COAH, 221 N.J. at 34); and the immunity doctrine having arisen as a result of specially designated trial judges implementing the charge of the Supreme Court in Mount Laurel II to foster voluntary compliance; and Far Hills Borough having

committed itself to comply voluntarily by filing a duly adopted affordable housing plan with the Court for its approval and through other means; and the Borough wishing to complete the process of complying voluntarily now that the Court will establish the standards with which the Borough must comply and thereby break the logjam created by COAH's inaction; and it appearing that temporary immunity should be reaffirmed (1) to bar the filing and serving of any unnecessary Mount Laurel lawsuits; (2) to promote voluntary compliance; and (3) to facilitate the resolution of all issues concerning the Borough's Mount Laurel responsibilities to be resolved expeditiously and with as little additional burden to the public as possible; and the Court having considered the pleadings and related papers filed in this matter and the arguments of counsel; and good cause appearing.

IT IS on this 25th day of August, 2015, ORDERED as follows:

1. The Court hereby enters this Protective Order granting the Borough of Far Hills, the governing body of the Borough of Far Hills, and the Planning Board of the Borough of Far Hills temporary immunity from the filing and serving of any Mount Laurel lawsuits. *until Dec, 2015.*
2. The protection from Mount Laurel lawsuits created by the Order commences on June 8, 2015, the effective date of In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015).
3. The Borough shall submit a Housing Element and Fair Share Plan to the Court within five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply.
4. The protections from Mount Laurel suits contemplated in this Order shall remain in effect for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply.

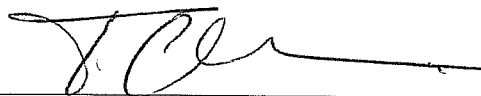
If the Court denies the relief in Paragraph 3 and 4 above, the Borough seeks an Order granting the following relief in lieu thereof:

5. The protections from Mount Laurel suits contemplated in the Order shall remain in effect for ~~five (5) months from the date the Borough filed its Declaratory Judgment Complaint.~~ *until Dec 8, 2015*

6. ~~If the Borough files a Housing Element and Fair Share Plan within the five-month deadline established above, the immunity from Mount Laurel lawsuits shall remain in force pending further Order of the Court.~~

7. Nothing herein should be construed to invalidate the Borough's Round 2 grant of substantive certification from COAH or any provisions thereof, which is presumed to be valid.

8. Counsel for the Borough shall provide all parties on the Service/Notice List with a copy of this Order within seven (7) days of receipt.



THOMAS C. MILLER, P.J.Cv.

See attached Statement of Reasons dated _____

IN THE MATTER OF THE
APPLICATION OF BOROUGH OF FAR
HILLS, A Municipal Corporation of the
State of New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
DOCKET NO. SOM-L-903-15

CIVIL ACTION
(Mount Laurel)

I. PRELIMINARY STATEMENT

This matter comes to the Court as a Declaratory Judgment action brought by the Borough of Far Hills pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and the Supreme Court’s decision in In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 20 (2015). The Borough has filed a Verified Complaint which it requests the following relief:

1. Providing the Borough five (5) months to file a Housing Element and Fair Share Plan with the Court, commencing on the date the Court determines the criteria and guidelines with which the Borough must comply.

2. Reaffirming the right of the Borough and its Planning Board temporary immunity from Mount Laurel lawsuits commencing from June 8, 2015 and remaining in effect for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply; or, if the Court declines to commence the start date as the date the Court makes this determination, for five (5) months from the date the Court deems appropriate.

3. Extending immunity provided that the Borough adopts, endorses and files a Round 3 Housing Element and Fair Share Plan prior to the expiration of the initial five-month period.

4. The review and approval of Borough’s Housing Element and Fair Share Plan, as may be supplemented and amended during the aforementioned five-month period and thereafter.

5. The entry of subsequent orders periodically extending immunity until such time as the Court enters a Judgment of Compliance and Repose formally approving the Borough’s Housing Element and Fair Share Plan.

6. Approving the Borough's Mount Laurel Spending Plan, in its current form or as amended in the future, and declaring that the Borough is free to expend the funds consistent with the programs contemplated in its Spending Plan.

7. Defining the circumstances and proofs needed to demonstrate when Mount Laurel funds are properly committed pursuant to N.J.S.A. 52:27D-329.2 and 329.3.

Far Hills also requests that the Court enter the following temporary relief:

1. Providing the Borough five (5) months to file a Housing Element and Fair Share Plan with the Court, commencing on the date the Court determines the criteria and guidelines with which the Borough must comply

2. Reaffirming the right of the Borough and its Planning Board temporary immunity from Mount Laurel lawsuits commencing from June 8, 2015 and remaining in effect for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply; or, if the Court declines to commence the start date as the date the Court makes this determination, for five (5) months from the date the Court deems appropriate.

Far Hills contends that since it has steadfastly pursued administrative approval of its housing plan, received substantive certification from Council on Affordable Housing (COAH) under the now invalidated COAH Third Round Rules, and seeks to further advance its obligation under the *Mount Laurel* Doctrine it respectfully requests that the Court enter an Order granting it temporary immunity.

II. PLAINTIFF'S PROCEDURAL HISTORY AND FACTUAL BACKGROUND¹

Chronological History of the Mount Laurel Doctrine

In 1986, COAH adopted rules defining the municipalities' affordable housing obligations for the first "Round" of the COAH process. N.J.A.C. 5:92-1.1 to -18.20, Appendices A to F.

In 1994, COAH adopted its Round 2 rules. N.J.A.C. 5:93-1.1 to -15.1, Appendices A to H; 26 N.J.R. 2300 (June 6, 1994).

In December 2004, COAH adopted the initial version of its Round 3 rules. N.J.A.C. 5:94-1.1 to -9.2, Appendices A to E; N.J.A.C. 5:95-1.1 to -19.4; 36 N.J.R. 5748, 5895 (Dec. 20, 2004).

¹ For the purposes of this application, the Court has adopted the Procedural History and Factual Background from Plaintiff's submission.

In 2007, the Appellate Division issued its opinion on challenges to the first iteration of the Round 3 rules. In re N.J.A.C. 5:94 & 5:95, 390 N.J.Super. 1 (App. Div.), certif. denied, 192 N.J. 71–72 (2007). There, the court affirmed in part, reversed in part, and remanded the matter to COAH for adoption of *revised* Round 3 rules in conformance with that decision. Id. at 11.

In 2008, COAH adopted revised Round 3 rules, which was the second iteration of Round 3 regulations. N.J.A.C. 5:96–1.1 to –20.4; N.J.A.C. 5:97–1.1 to –10.5, Appendices A to F; 40 N.J.R. 2690, 3161 (June 2, 2008).

In October of 2010, the Appellate Division addressed the challenge to the second iteration of Round 3 regulations. The Court invalidated several substantive regulations including the regulations by which COAH allocated obligations for Round 3 based upon a so-called “growth share” approach. In re N.J.A.C. 5:96 & 5:97, 416 N.J.Super. 462, 485 (App. Div. 2010), aff’d as modified, 215 N.J. 578 (2013). The Appellate Division ordered COAH to adopt new regulations within five months of that decision, i.e. on or before February 26, 2011, to cure the deficiencies the Court had found with the regulations COAH had adopted in 2008. Id. at 511.

By March of 2011, the Supreme Court stayed the Appellate Division’s decision, and granted a number of petitions for certification. See 205 N.J. 317 (2011).

On September 26, 2013 -- two and one half years after granting certification -- the Supreme Court ruled. It not only affirmed the Appellate Division’s decision to invalidate certain regulations, but also invalidated all the Round 3 regulations COAH adopted in 2008. In re N.J.A.C. 5:96 & 5:97, supra, 215 N.J. at 586. Like the Appellate Division, the Supreme Court gave COAH five months, i.e. February 26, 2014, to adopt its *third* set of Round 3 rules. Ibid.

On February 26, 2014 – the very deadline set by the Court to adopt rules -- COAH filed a motion for an extension of time.

On March 14, 2014, the Supreme Court entered an Order granting COAH's motion for an extension. 220 N.J. 355, 355–57 (2014). However, the March 14, 2014 Order directed COAH to meet firm deadlines for the adoption of the Rules and for each interim rule-making step required by the Administrative Procedure Act (APA), N.J.S.A. 52:14B–1 to –24. Ibid. The Court further ordered that if COAH did not adopt Third Round Rules by October 22, 2014 and publish them in the *New Jersey Register* by November 17, 2014, the Court would entertain applications for relief, including “a request to lift the protection provided to municipalities through N.J.S.A. 52:27D–313.” Id. at 356. The Court stated that “if such a request is granted, actions may be commenced

on a case-by-case basis before the Law Division or in the form of 'builder[']s remedy' challenges.” Id. at 356.

COAH responded responsibly to the Supreme Court’s order – at least at first. It proposed new regulations in a timely fashion, received roughly 3,000 comments and even scheduled a meeting for October 20, 2014 to consider adoption of the regulations it had previously proposed by the October 22, 2014 deadline the Supreme Court had established by its March 14, 2014 decision. At its meeting on October 20, 2014, however, the COAH board members split 3–3 on the vote. Consequently, the COAH board violated the Supreme Court’s order requiring final adoption by October 22, 2014.

On October 31, 2014, FSHC filed a motion in aid of litigant’s rights pursuant to Rule 1:10–3 and the Court’s March 14 Order, which permitted such motion practice in the event that COAH failed to adopt Third Round Rules by October 22, 2014.

On January 6, 2015, the Supreme Court heard oral argument on the motion.

On March 10, 2015, the Supreme Court issued its decision in response to the FSHC Motion via In re COAH. The Court ruled that COAH was a nonfunctioning entity and that trial courts therefore would be the only branch of government implementing the Fair Housing Act and other affordable housing laws of the state. Accordingly, the Court fashioned a transitional procedure and repeatedly emphasized its desire to follow the procedures established by the Fair Housing Act “as closely as possible.” This process permits municipalities formerly under COAH’s jurisdiction to file Declaratory Judgment Actions (“DJ Actions”) and Motions for Immunity.

***Facts Offered by the Borough to Demonstrate its
History of Voluntary Compliance***

The following facts offered by the Plaintiff in support of its position that it has sought to comply voluntarily and without the need for a developer or affordable housing advocacy group to compel the Borough to comply through exclusionary zoning litigation. Plaintiff submits in the Certification of David Banisch, P.P., A.I.C.P., dated July 2, 2015, to support its proposition that the Borough of Far Hills has spent the past 15 years achieving and seeking to maintain voluntary compliance with its Mount Laurel obligations.

On June 5, 2000, the Borough petitioned COAH for substantive certification of its Round 2 Plan.

On February 7, 2001, COAH granted the Borough Round 2 substantive certification. See Banisch Cert. at Exhibit A. The Borough therefore secured 37 affordable housing credits to apply to its Prior Round obligations. No interested party appealed the Borough's grant of Round 2 substantive certification.

The Borough's 6-year period of repose ended on February 6, 2007. On January 9, 2007, prior to the Round 2 expiration date, the Borough adopted and endorsed its *initial* Round 3 Plan, and the Borough petitioned COAH for substantive certification of that Plan.

On January 25, 2007, the Appellate Division invalidated COAH's first set of Round 3 rules. In re N.J.A.C. 5:94 & 5:95, 390 N.J.Super. 1 (App. Div.), certif. denied, 192 N.J. 71-72 (2007). In response to that opinion, COAH adopted revised Round 3 rules, which became effective in October of 2008.

In September 2008, Governor Corzine signed Highlands Executive Order 114 (EO-114) which, among other things, required the Highlands Council and COAH to coordinate revised Round 3 fair share calculations for Highlands municipalities. EO-114 also directed the NJDEP to coordinate water supply and wastewater management planning with the NJ Highlands Regional Master Plan.

In November 2008, COAH and the NJ Highlands Council signed a joint Memorandum of Understanding, which established the basis for Highlands municipalities to defer petitioning COAH for substantive certification of their Round 3 fair share plans until June 8, 2010.

The Borough complied with this deadline.

Specifically, on May 24, 2010, the Planning Board adopted and the governing body endorsed the Borough's current Housing Element and Fair Share Plan (2010 Plan), and the Borough petitioned COAH, again, for Round 3 substantive certification of that Plan.

After filing its 2010 Plan, the Borough took the following additional actions:

1. On August 23, 2010, the Borough Council adopted Ordinance No. 2010-09, entitled "An ordinance authorizing the purchase of property, Block 1, Lot 8, 46 Peapack Road in the amount not to exceed \$455,000.00, with a purchase price of \$415,000 (additional funding used for usual and customary closing expenses)." This property will be used in the Borough's amended Housing Element and Fair Share Plan once its new Mount Laurel obligations are determined.
2. On August 23, 2010, the Borough Council adopted an ordinance entitled "An ordinance authorizing the issuance of a municipal bond in the sum of \$455,000, (including \$21,200 down payment required by law; for a principal amount not exceeding \$423,800) for the acquisition of 46 Peapack Road."

3. On November 8, 2010, Far Hills Borough adopted Ordinance No. 2010-11 to address COAH's requirements regarding compliance with the Borough's Prior Round and Third Round Affordable Housing Obligations, in accordance with COAH's regulations.
4. On April 9, 2012, the Borough Council adopted Ordinance No. 2012-08 entitled "An ordinance authorizing the granting of an affordable housing deed restriction on Block 8, Lot 1."
5. On April 20, 2011, the closing finalized on Block 8, Lot 1, 46 Peapack Road which was purchased pursuant to Ordinance No. 2010-09 for affordable housing development.
6. In March, 2011, the Borough of Far Hills entered an Memorandum of Agreement with Hotz Development, after solicitation of qualified developers for affordable housing partnership for affordable housing development at three sites including: (1) 46 Peapack Road, (2) 63 Peapack Road, and (3) 10 Peapack Road, pursuant to the Borough's affordable housing obligations under the amended 2010 Fair Share Plan, adopted pursuant to COAH's revised third round rules and the NJ Highlands Council and COAH Memorandum of Agreement.
7. On May 18, 2011, NJDEP issued a Letter of Interpretation for Block 16, Lot 2 (Fairgrounds Lot) that established the limits of development on that lot.
8. On April 22, 2012, the Far Hills Planning Board amended the Land Use Plan Element of the Master Plan and created the "Affordable Housing Overlay" zone (AHO). The AHO designated two parcels of Borough-owned land for affordable housing development, including (1) Block 8, Lot 1, 46 Peapack Road, Borough-acquired for affordable housing development across from the Far Hills Fairgrounds; and (2) Block 16, Lot 2, which is a 5-acre Borough-owned parcel located adjacent to the Far Hills Fairgrounds.
9. On June 11, 2012, the Far Hills Borough Council adopted Resolution No. 12-087 entitled: "A resolution authorizing payment of \$136,104.27 toward repayment of bond issued for the purchase of 46 Peapack Road property for affordable housing."
10. In July of 2012, Far Hills Borough expended \$136,104.27 on debt repayment on the bond issued to purchase 46 Peapack Road.
11. In July 2012, Far Hills Borough submitted to COAH an affordable housing trust fund certification of consistency with FHA requirements to spend or commit to spend trust funds within four (4) years.
12. In July of 2013, Far Hills Borough again submitted to COAH an affordable housing trust fund certification of consistency with FHA requirements to spend or commit to spend trust funds within four (4) years.
13. On December 3, 2013, Far Hills Borough expended \$34,361.59 to acquire additional wastewater treatment capacity needed to support affordable housing development pursuant to its adopted Fair Share Plan.
14. On November 24, 2014, Far Hills Borough refined its developers development with Hotz Development Group to develop, construct or otherwise build affordable housing at three sites, as follows: 46 Peapack Road – a minimum of 4 family rental units or a group home; 10 Peapack Road – three affordable housing family rental units at 8 & 10 Peapack Road; and 63 Peapack Road a

100% affordable housing development of up to a maximum of 36 units, unless additional adjacent property is acquired by the Borough.

Finally, on January 5, 2015, the Borough adopted a “catalyst resolution” (Resolution 15-040), which directs its Mount Laurel professionals to take all reasonable actions to maintain the Borough’s immunity and to help it achieve compliance as expeditiously as possible. See Banisch Cert. at Exhibit B.

It also states: “**The Borough hereby affirms its commitment to satisfy its affordable housing obligations, however they may ultimately be defined, voluntarily and in the absence of any additional Mount Laurel lawsuits.**” Ibid. (emphasis added)

In light of these various actions, and by filing this Complaint and the associated Motion for Temporary Immunity from Mount Laurel Lawsuits, Far Hills submits that it has demonstrated its unquestionable commitment to comply voluntarily rendering any exclusionary lawsuit unnecessary.

III. COURT’S DECISION

IS THE BOROUGH ENTITLED TO TEMPORARY IMMUNITY AS IT RECREATS A FAIR SHARE PLAN?

A. Regarding the Supreme Court’s *Mount Laurel* Process

i) The *Mount Laurel* Doctrine

The New Jersey Supreme Court prohibited the discriminatory use of zoning powers and mandated that each developing municipality “must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income.” S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975)

Thereafter, in 1983, the New Jersey Supreme Court reaffirmed the constitutional obligation that towns provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing.” S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 92 N.J. 158, 205 (1983) (citing Mount Laurel I, *supra*, 67 N.J. at 174), (together with Mount Laurel I, the *Mount Laurel Doctrine*).

“The *Mount Laurel* series of cases recognized that the power to zone carries a constitutional obligation to do so in a manner that creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families.” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 3-4 (2015); (footnote omitted).

It is the intent and purpose of the *Mount Laurel Doctrine* to prohibit the discriminatory use of zoning powers and zoning practices which have the exclusionary effect of making housing unavailable to persons of low and moderate income and to provide remedies to address such practices when they are proven to exist.

ii) Regarding the Council on Affordable Housing and 3rd Round Rules

The Legislature codified the *Mount Laurel Doctrine* in the Fair Housing Act (“the Act”), N.J.S.A. 52:27D-301, et seq. and further established COAH as the administrative agency charged with implementing and administering the Act.

Under the Act, COAH is empowered, through its procedural and substantive rules to establish municipal affordable housing obligations, and review and approve housing plans submitted to it by granting “substantive certification” if they create a realistic opportunity for the creation of affordable housing. N.J.S.A. 52:27D-313. Under a grant of substantive certification, a municipality is insulated to a substantial extent from exclusionary zoning litigation for a period of ten years². Ibid.

²COAH initially adopted substantive rules, governing the period from 1987 to 1993, (“The First Round Rules”), N.J.A.C. 5:92-1.1 to -18.20, Appendices A to F. It thereafter adopted substantive rules governing the period from 1987 to 1999, (“The Second Round Rules”), N.J.A.C. 5:93-1.1 to -15.1, Appendices A to H. After a lengthy period of study and review ultimately characterized by the New Jersey Superior Court - Appellate Division as “dramatic and inexplicable,” In re Six Month Extension of N.J.A.C. 5:91 et seq., 372 N.J. Super. 61, 95-96 (App. Div. 2004), certif. denied, 182 N.J. 630 (2005), COAH proposed Initial Third Round Rules on October 6, 2003.

Upon receipt of voluminous comments, COAH re-proposed Third Round Rules which were adopted on December 20, 2004. 36 N.J.R. 5895(a). These Initial Third Round Rules, which contained a “growth share” approach, were designed to address a cumulative municipal affordable housing obligation beginning 1987 and ending 2014.

The Initial Third Round Rules were invalidated in a significant number of respects, and the matter remanded to COAH, by the Superior Court - Appellate Division on January 25, 2007. In Re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, (App. Div. 2007), certif. den. 192 N.J. 71 (2007).

On October 20, 2008, COAH adopted Third Round Rules intended to assess municipal affordable housing obligations for the period from 1999 to 2018 utilizing a “growth share” methodology. N.J.A.C. 5:96 and 5:97. The revised Third Round Rules were initially invalidated by the Appellate Division on October 8, 2010, in In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010). That ruling was ultimately affirmed and modified by the Supreme Court on September 26, 2013, In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013), and COAH was ordered to promulgate new rules, utilizing a First and Second Round methodology, within five months of that decision. Upon COAH’s requests, the Court extended the time for adoption under an Order entered on March 14, 2014. Ultimately, however, COAH failed to adopt regulations in a stale-mated 3-3 vote. In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 10 (2015).

Consequently, an application was made to the Supreme Court by the Fair Share Housing Center (FSHC), (a party which had challenged COAH’s rules), to enforce litigants’ rights under Rule 1:10-3. On March 10, 2015, in In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), the Court granted FSHC’s application, finding that “There is no question that COAH failed to comply with this Court’s March 2014 Order that was designed to achieve the promulgation of Third Round Rules and the maintenance of a functioning COAH,” such that “the administrative forum is not capable of functioning as intended by the [Fair Housing Act] due to the lack of lawful Third Round Rules assigning constitutional obligations to municipalities,” and, accordingly, “the courts may resume their role as the forum of first instance for evaluating municipal compliance with *Mount Laurel* obligations. . . .” Id. at 19 – 20.

iii) Jurisdiction of this Court and Authority to Enter Order

The Law Division of the Superior Court, Somerset County, has jurisdiction over the within matter which seeks a Declaratory Judgment of Third Round Mount Laurel Compliance and Repose pursuant to R. 4:42-3, R. 4:3-1(a)(4), N.J.S.A. 2A:16-53, J.W. Field v. Twp. of Franklin, 204 N.J. Super. 445, 456-458 (Law Div. 1985), favorably referenced in Hills Dev. Co. v. Bernards Twp., 103 N.J. 1, 29-30 (1986), N.J.S.A. 52:27D-313(a), and In re Adoption of N.J.A.C. 5:96 & 5:97, 221 215 N.J. 1 (2015), and venue of the action is before the designated Mount Laurel Judge for

Vicinage 13 in accordance with paragraph 10 of the implementing order accompanying the 2015 Decision. *Id.* at 36.

As the Court held in *In re Adoption of N.J.A.C. 5:96 & 5:97*, 221 215 N.J. 1 (2015) (the “2015 Decision”), part of the process of judicial review of a municipal Third Round Housing Plan Element and Fair Share Plan (“HPE&FSP”) includes the Mount Laurel trial courts providing municipalities with temporary immunity from exclusionary zoning litigation during the period when the court is reviewing the HPE&FSP. As the Court explained:

“Because municipalities that received a grant of substantive certification promulgated housing plans in compliance with the invalidated growth share based Third Round Rules, additional court review of such towns’ housing plans will be necessary. The ordinances adopted by any such municipality, in furtherance of an approved housing element, must be evaluated to determine if they provided for a realistic opportunity for the municipality to achieve its “fair share of the present and prospective regional need for low and moderate income housing.” Mount Laurel II, *supra*, 92 N.J. at 205, 456 A.2d 390 (citing Mount Laurel I, *supra*, 67 N.J. at 174, 336 A.2d 713). Supplementation of a plan may be necessary to ensure to the court’s satisfaction that the town has provided a realistic opportunity for its fair share or present and prospective regional affordable housing need in keeping with prior rounds’ methodologies. The consideration to be employed in that analysis are addressed in Part V., *infra*.

That said, towns in this category may choose affirmatively to seek, through a declaratory judgment action filed on notice to FSHC and interested parties, a court order declaring its housing element and implementing ordinances – as is or as to be supplemented – constitutionally sufficient. We also acknowledge that a municipality that had received a grant of substantive certification may elect to wait to be sued. In either case, **while not entitled to the statutory presumption of validity the FHA normally would provide, these towns deserve an advantage in the judicial review that shall take place.** Implemented ordinances should not be lightly disturbed unless necessary; supplemental actions to secure compliance with newly calculated prospective need may provide a preferred court for obtaining constitutional compliance.

While reviewing for constitutional compliance the ordinances of a town that achieved substantive certification, courts should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during that necessary review process, unless such process is unreasonably protracted. As courts adapted processes to manage the multiplicity of pre-FHA filed Mount Laurel actions, see, e.g. *J.W. Field*, *supra*, 204 N.J. Super. 445, 449 A.2d 251, the present day courts handling these new matters should employ, similar flexibility in controlling and prioritizing litigation. We repose such flexibility in the Mount Laurel trust designated judges in the vicinages, to whom all Mount Laurel compliance-related matters will be assigned post-order, and trust

those courts to assiduously assess whether immunity, once granted, should be withdrawn, if a particular town abuses the process for obtaining a judicial declaration of constitutional compliance. Review of immunity orders therefore should occur with periodic regularity and on notice.”

Id. at 25-26 (emphasis supplied)

B. Construction of the Statutes in Question In A Manner Which Advances The Legislative Policy And Purpose

In construing a statute, the court’s “fundamental duty is to effectuate the intent of the Legislature.” Merin v. Maglaki, 126 N.J. 430, 435 (1992). Judges must also consider the **legislative policy** underlying the statute and “any history which may be of aid.” State v. Madden, 61 N.J. 377, 389 (1972) (emphasis added).

“It is a **fundamental duty** of this court to construe a statute in a manner which **advances the legislative policy** and purpose.” Royal Food Distributors, Inc. v. Dir., Div. of Taxation, 15 N.J.Tax 60, 73 (1995) (emphasis added) citing Lesniak v. Budzash, 133 N.J. 1, 8 (1993); Voges v. Bor. of Tinton Falls, 268 N.J. Super. 279, 285 (App. Div. 1993), certif. denied, 135 N.J. 466 (1994). As eloquently stated by Justice Heher in discussing the meaning of Section 18 of the “Unsatisfied Claim and Judgment Fund Law:”

The sense of a law is to be collected **from its object** and the nature of the subject matter, the contextual setting, and the statutes *In pari materia*; and the import of a particular word or phrase is controlled accordingly. Isolated terms cannot be invoked to defeat a ‘reasonable construction.’ Wright v. Vogt, 7 N.J. 1 (1951). See also State v. Brown, 22 N.J. 405 (1956). The statute is to be liberally construed to advance the remedy, due regard being had to the protection of the Fund against fraud and abuse **and to the fulfillment of the essential legislative policy**. The literal sense of terms is not to have ascendancy over the **reason and spirit** of the expression as a whole.

[Giles v. Gassert, 23 N.J. 22, 33-34 (1956) (emphasis added).]

The Court’s goal is to fulfill “**the essential legislative policy**” of the FHA and to give meaning to its “**reason and spirit**.”

i) Purpose of The FHA

To understand the purpose of the FHA, it is important to understand the facts and circumstances that gave rise to the legislation. In January of 1983, a few years prior to the enactment of the FHA in July of 1985, the Supreme Court decided Mount Laurel II. That landmark

decision precipitated a flood of over 100 Mount Laurel suits. See Frizell, 36 N.J. Prac., Land Use Law § 18.4 (2d ed.); see also J.W. Field Co. v. Tp. of Franklin, 204 N.J. Super. 445, 54-55 (Law Div. 1985) (wherein Hon. Judge Serpentelli stated that “[t]he experience of this court demonstrates that the level of Mount Laurel litigation *has increased dramatically* since Mount Laurel II and every suit has been brought by a builder rather than a nonprofit or public agency.”) (emphasis added).

Given the flood of builder’s remedy lawsuits precipitated by Mount Laurel II, it is understandable why the Legislature intervened and enacted a law that targeted the builder’s remedy and so vigorously sought to curtail its role.³

The Legislature clearly stated its purpose in Section 303, entitled: “Legislative ***Declarations and Intention.***” In this section, the FHA states:

The Legislature ***declares*** that the State's preference for the resolution of existing and future disputes involving exclusionary zoning ***is*** the mediation and review process set forth in this act and ***not litigation.*** . . .

[Ibid. (emphasis added).]

The Legislature followed its declaration with its express intent:

[I]t is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing.

[Ibid. (emphasis added).]

It is evident that the FHA represented the Legislature’s declaration that “New Jersey has seen way too much builder’s remedy litigation. We need to restrict such litigation and facilitate the ability of a municipality to comply voluntarily without such litigation. That is how we intend to implement the affordable housing policies of our state.”

As the bill worked its way through the legislative process,⁴ former Governor Thomas H. Kean expressed his understanding of the purpose of the legislation:

³An examination of J.W. Field Co., Inc. v. Tp. of Franklin, 204 N.J. Super. 445 (Law Div. 1985), reveals that no less than *eleven* developers had brought builder’s remedy suits against the Borough.

⁴ Senators Lipman, Stockman, and Lynch initially introduced the FHA on June 21, 1984 as S-2046. See Legis. History of the FHA at <http://repo.njstatelib.org:8080/handle/10929.1/22933>

[I]s designed to provide an administrative mechanism to resolve exclusionary zoning disputes **in place of protracted and expensive litigation**. The expectation is that through these procedures, municipalities operating within State guidelines and with State oversight will be able to define and provide a reasonable opportunity for the implementation of their Mt. Laurel obligations.

To accomplish this the bill establishes a **voluntary system** through which municipalities can submit plans for providing their fair share of low and moderate income housing to a State Council on Affordable Housing which would certify the plan...

[State of New Jersey Executive Department Veto Message for the Senate Committee Substitute for Senate Bill No. 2046 and Senate Bill No. 2334, April 26, 1985 (emphasis added).]

One of the purposes of the Legislation is clear. The Legislature sought to limit builder's remedy lawsuits and facilitate voluntary municipal compliance.

ii) The Legislature Advanced The Purpose of the FHA By Empowering Municipalities To Obtain Immunity Easily So They Could Pursue Plan Approval Free From The Considerable Burden Of Exclusionary Zoning Lawsuits

The Legislature sought to limit the role of the builder's remedy so clearly that it imposed a *moratorium* on the remedy and created a variety of ways for municipalities to obtain immunity from exclusionary zoning litigation. Consider the following:

1. The Legislature imposed a moratorium on trial judges awarding builder's remedies from July 2, 1985, the effective date of the Act, until five months from when COAH established its criteria and guidelines through the rulemaking process. N.J.S.A. 52:27D-328 (referencing the five-month time frames established in N.J.S.A. 52:27d-309).
2. The Legislature also created two classes of municipalities -- (a) municipalities subject to ongoing builder's remedy litigation, and (b) municipalities not engaged in such litigation -- and took special measures to protect each class from builder's remedy lawsuits. N.J.S.A. 52:27D-309 and 316.
3. *As to municipalities embroiled in ongoing Mount Laurel litigation*, the Legislature established a very soft standard - the "manifest injustice" standard -- for municipalities to obtain immunity by securing a transfer of their lawsuits from the courts to COAH.⁵

⁵ In interpreting N.J.S.A. 52:27D-316, the Supreme Court refers to "the Act's clear and strong preference for Council rather than court treatment" and notes that "the "preference" is set forth explicitly [in N.J.S.A. 52:27D-303]; the Act as a whole is better described as a "mandate" for administrative resolution." Mount Laurel III, 103 N.J. at 48.

Through such transfers, municipalities embroiled in litigation not only secured immunity, but also, to the extreme consternation of developers, secured the right to vacate any builder's remedies previously awarded by the trial judge. N.J.S.A. 52:27D-316. Mount Laurel III, 103 N.J. at 54-55.

4. *As to municipalities not embroiled in Mount Laurel litigation*, the Legislature established an **extraordinarily** easy way to obtain immunity from builder's remedy lawsuits. All such a municipality would have to do to obtain immunity would be to file a "resolution of participation" within four months from the enactment of the FHA. N.J.S.A. 52:27D-309. A "Resolution of Participation" is a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with the Act. N.J.A.C. 5:93-1.3.
5. Regardless of whether the municipality obtained immunity by securing an early transfer of its case from the court or by adopting a resolution of participation within four months from the enactment of the FHA, that municipality could obtain additional immunity from builder's remedy lawsuits by filing a housing element and fair share plan with COAH within five months from COAH's adoption of "criteria and guidelines." N.J.S.A. 52:27D-309 and 316.
6. If a municipality failed to file a plan within this five month window following COAH's adoption of "criteria and guidelines", it could obtain immunity thereafter if it filed a housing element and fair share plan with COAH before an exclusionary zoning lawsuit is filed in Court. N.J.S.A. 52:27D-309 and 316.

Those summaries highlight the Legislature's desire to diminish the role of the builder's remedy in existing and future Mount Laurel disputes and explains the lengths to which the Legislature went to achieve these goals.

Two additional facts further demonstrate that the Legislature intended to limit the builder's remedy and facilitate voluntary compliance. First, the Legislature made it easier to obtain immunity even prior to the enactment of the FHA. Before the enactment of the FHA, a municipality had to "stipulate noncompliance and obtain the court's approval of a proposed fair share number." J.W. Field, supra, 204 N.J. Super. at 456. After the enactment of the FHA, a municipality that had not been sued merely had to adopt a "resolution of participation." N.J.S.A. 52:27D-309. Even if a municipality had already been sued, it could easily transfer the matter to COAH, thereby *vacating any builder's remedy orders* and securing immunity from additional lawsuits, provided that the case had not reached a final and unappealable judgment. See Mount Laurel III, 103 N.J. at 54-55 (interpreting the term "manifest injustice" in N.J.S.A. 52:27D-309 so narrowly that a municipality

could easily transfer and obtain immunity provided that the case had not proceeded to a final and unappealable judgment). Since the Legislature was presumptively aware of the immunity procedure (see Farmers Mut. Fire Ins. Co. of Salem v. New Jersey Prop.-Liab. Ins. Guar. Ass'n, 215 N.J. 522, 543-44 (2013)), this Court should give great weight to the fact that the FHA drastically *lowered* the bar to secure and retain immunity. Indeed, such action shows that the Legislature was *not content* with the common law immunity standard. See Farmers Mut., *supra*, 215 N.J. at 543 (“If the Legislature were content with the [court’s] decision . . . **there would have been little point to** [amend the relevant statute.]”) (emphasis added).

Second, not only did the Legislature radically lower the common law pre-immunity requirements, the initial enacted version of the FHA allowed towns that secured COAH’s jurisdiction *to take up to six years* to do nothing before deciding whether to petition the agency to certify its Housing Element and Fair Share Plan. See Jedziniak Cert. at Exhibit J, Page 12. Although a subsequent amendment to the FHA reduced this period to two years, **providing automatic immunity and six years of immunity without any additional action** those actions illustrate the Legislature’s determination to curtail the builder’s remedy cause of action.

C. The Scope and Nature of the Judicial Process

The Supreme Court thus reinstated a judicial mechanism to address municipal *Mount Laurel* obligations. The Supreme Court’s decision indicates that municipalities will be reviewed against the First and Second Round Rules and the mechanisms those rules permit.

The mechanisms permitted under the Prior Round Rules include the following:

- a. Rehabilitation (N.J.A.C. 5:93-5.2)
 - i. Rehabilitation Program requires municipalities to spend \$10,000 per unit (\$8,000 hard costs, \$2,000 soft costs).
 - ii. Alternatively, this requirement can be satisfied with a new construction credit or an Elder Cottage Housing Opportunity (ECHO), which is a conditional use in all three of the Township’s residential districts: Agricultural Residential (“AR-1”) Zone (Ordinance Section 11-286 (F)); Farmland Preservation (“FP”) Zone (Ordinance Section 11-300(F)); and the Village Residential (“VR”) Zone 11-303(F).
- b. Municipally Sponsored Construction & Gut Rehabilitation (N.J.A.C. 5:93-5.5),

Four requirements:

 - i. Must have municipal control of the site.

- ii. Administrative mechanism to construct the proposed housing.
 - iii. Funding plan and evidence of adequate funding capacity.
 - iv. Timetables for construction of the units.
- c. Inclusionary Development Zoning (N.J.A.C. 5:93-5.6)
- i. Must conform to requirements of N.J.A.C. 5:93-5.3 - “Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area-wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area-wide water quality management plan submitted to and under review by DEP.
 - ii. Single-family developments – 4 units/acre, 15% set-aside.
 - iii. 5 units/acre, 17.5% set-aside.
 - iv. 6 units/acre, 20% set-aside.
- d. Alternative Living Arrangements (N.J.A.C. 5:93-5.8)
- i. “Means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.”
 - ii. Credit issued per bedroom.
 - iii. Minimum affordability controls of 10 years. To be eligible for a rental bonus, controls must be in effect for at least 30 years.
- e. Accessory Apartments (N.J.A.C. 5:93-5.9), which are permitted as conditional uses in all three of the Township’s residential zones: the Single Family Agricultural Residential Zone (Ordinance Section 11-291(H)), Village Residential Zone (Ordinance Section 11-308(E)), and the Farmland Preservation Zone (Ordinance Section 11-300 (G)).
- i. Up to 10 accessory apartments may be used to address a housing obligation.
 - ii. Must provide at least \$10,000 per unit to subsidize the creation of the apartment.

iii. Minimum affordability controls of 10 years. To be eligible for a rental bonus, controls must be in effect for at least 30 years.

f. Purchase Existing Homes (N.J.A.C. 5:93-5.10) - Purchase homes that have been vacant for at least 18 months and resell them at affordable prices and/or rents.

g. Write-down/Buy-down (N.J.A.C. 5:93-5.11) - (Most recently known as market to affordable)

i. Up to 10 units may be converted.

ii. Buy and resell homes at an affordable price.

iii. Must spend at least \$20,000 per unit.

iv. Place a 30-year deed restriction on the home.

h. Assisted Living Residence (N.J.A.C. 5:93-16)

i. Apartments in these facilities qualify if the resident qualifies as a low/moderate income household or if the resident is the recipient of a Medicaid waiver.

ii. 30 year deed restriction shall be placed on the assisted living residence.

Under that system, municipalities that have complied with the *Mount Laurel Doctrine* may initially seek a declaratory judgment, and are entitled to immunity from exclusionary zoning lawsuits, before being subject to challenges by developers and interest groups. In that regard, the Supreme Court held, in part, that: “[W]e establish a transitional process before allowing exclusionary zoning actions against towns that had sought to use the [Fair Housing Act] mechanisms in recognition of the various stages of municipal preparation that exist as a result of the long period of uncertainty attributable to COAH's failure to promulgate Third Round Rules.” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 20 (2015).

The process developed by the Supreme Court seeks to track the process established under the Fair Housing Act:

Our goal is to establish an avenue by which towns can demonstrate their constitutional compliance to the courts through submission of a housing plan and use of processes, where appropriate, that are similar to those which would have been available through COAH for the achievement of substantive certification. Those processes include conciliation, mediation, and the use, when necessary, of special masters. The end result of the processes employed by the courts is to achieve adoption of a municipal housing element and implementing ordinances deemed to be presumptively valid if thereafter subjected to challenge by third parties. Our approach in this transition is to have courts provide a substitute for the substantive

certification process that COAH would have provided for towns that had sought its protective jurisdiction. And as part of the court's review, we also authorize, as more fully set forth hereinafter, a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings.

Id., at 23-24.

The process devised by the Supreme Court plainly directs that only municipal declaratory judgment actions will be received by the courts for consideration during a transitional period:

During the first thirty days following the effective date of our implementing order, the only actions that will be entertained by the courts will be declaratory judgment actions filed by any town that either (1) had achieved substantive certification from COAH under prior iterations of Third Round Rules before they were invalidated, or (2) had “participating” status before COAH.

Id. at 5-6.

Only upon the expiration of the thirty day period may a party institute a “constitutional compliance” action against a municipality: “*After that thirty-day period expires*, a challenge to a town's constitutional compliance may be filed against a municipality by FSHC or any other interested party.” Id. at 27; (emphasis supplied). Even then, no “builder’s remedy” action may proceed until a court ultimately finds that a municipality’s plan does not adequately meet its affordable housing obligation. Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed. Id. at 29.

D. The Court’s Authorization of Temporary Immunity

The Court directed that moving forward, the process developed is meant “to track the progress provided for in the [Fair Housing Act].” Id. at 29. Drawing from the Fair Housing Act, the Court noted that with regards to municipalities that had received substantive certification “[o]rdinarily, *N.J.S.A.* 52:27D-313 and -317 would afford the ordinances implementing the housing elements of such municipalities a strong presumption of validity in any exclusionary zoning action” however, providing “that same presumption of validity based solely on substantive certification in these circumstances would be to ignore [the Court’s] acknowledgement of the problems with the ‘growth share’ methodology on which the invalidated Third Round Rules were premised.” Id. at 24. Therefore, the Court determined that because “municipalities that received a grant of substantive certification promulgated housing plans in compliance with the invalidated

growth share based Third Round Rules, additional court review of such towns' housing plans will be necessary." Id. at 25

The Court also noted that certified towns "may choose affirmatively to seek, through a declaratory judgment action filed on notice to FSHC and interested parties, a court order declaring its housing element and implementing ordinance – as is or as to be supplemented – constitutionally sufficient." Id. at 26. Moreover, the Court noted that although a certified municipality may not be "entitled to the statutory presumption of validity the FHA normally would provide, [certified] towns deserve an advantage in the judicial review that shall take place" and "[i]mplemented ordinances should not be lightly disturbed unless necessary" Id. Rather, the Court prefers a course in which "supplemental actions" are taken "to secure compliance with newly calculated prospective need...for obtaining constitutional compliance." Id.

As such, the Court directed that in reviewing the ordinances of a township that received substantive certification, "courts should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during that necessary review process, unless such process is unreasonably protracted." Id. Further, the Court direct that no builder's remedy are authorized to proceed against a town with substantive certification "unless a court determines that the substantive certification that was granted is invalid or that no constitutionally compliant supplementing plan is developed and approved by the court after reasonable opportunity to do so, and the court determines that exclusionary zoning actions, including actions for a builder's remedy, are appropriate and may proceed in a given case." Id. at 26-27.

Far Hills is one of the municipalities that was affected by the signed Memorandum of Understanding between COAH and the NJ Highlands that permitted certain municipalities to defer petitioning COAH for substantive certification of their Round 3 Fair Share Plans until June 8, 2010. Subsequently, the Borough petitioned for Round 3 substantive certification on or about May 24, 2010. COAH did not act upon the Borough's petition.

i) Court's Role in the Determination of Need and Review of Housing Plans

Finally, upon submission of a municipal housing element and fair share plan, courts are to conduct an individualized assessment of the submission based on the court's determination of present and prospective regional need for affordable housing as allocated to the municipality using mechanisms outlined in the Act and the assistance of "interested parties." Id. at 29-30.

ii) The Judicial Process is Preemptive

The Supreme Court has established a detailed, and preemptive, process for the judiciary's consideration of *Mount Laurel* matters. It provides for a series of steps for judicial consideration of *Mount Laurel* following an initial period reserved for municipalities to trigger court jurisdiction. Those steps likewise proceed from municipal applications for immunity for lawsuits and the development of municipal fair share plans. Where a town has availed itself of the procedural mechanism crafted by the Supreme Court, that mechanism is exclusive and no other actions or related efforts to circumvent the process should be tolerated.

E. Plaintiff's Request for Temporary Relief

Far Hills requests that the Court order that:

1. Provide the Borough five (5) months to file a Housing Element and Fair Share Plan with the Court, commencing on the date the Court determines the criteria and guidelines with which the Borough must comply
2. Reaffirm the right of the Borough and its Planning Board temporary immunity from Mount Laurel lawsuits commencing from June 8, 2015 and remaining in effect for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply; or, if the Court declines to commence the start date as the date the Court makes this determination, for five (5) months from the date the Court deems appropriate.

In making that request of the court, Far Hills acknowledges that it will need to assess to the continued viability of the accessory apartment and special needs components of its Fair Share Plan and perhaps even develop additional mechanisms to ensure that additional be provided. Far Hills acknowledges that it will also need to devise strategies to address the rehabilitation obligation that has not been previously identified and to compensate for the loss of any bonus credits.

Far Hills also indicates that its 2010 Housing Element will be revised within the five month immunity period that the Borough has requested from the Court. Far Hills indicates that this will provide the Borough with the necessary time to update some of the basic data in the plan such as demographics, as well as address whatever affordable housing obligation and/or methodology the Court determines is appropriate for the Borough.

F. Should the Court Grant the Borough and the Board Temporary Immunity from any and all Exclusionary Zoning Lawsuits to Allow the Court to Review the Borough's Affordable Housing Plan Undaunted by the Filing of Exclusionary Zoning Lawsuits?

After the Mount Laurel II decision, 92 N.J. 158 (1983), and prior to the 1985 adoption of the Fair Housing Act, N.J.S.A. 52; 27D-301 et seq. (the “FHA”), Judge Serpentelli, one of the original three Mount Laurel judges, established an immunity procedure to be utilized in Mount Laurel litigation,⁶ which he explained in J.W. Field v. Twp. of Franklin, 204 N.J. Super. 445, 456-458 (Law Div. 1985). After balancing all of the “overriding policy objectives” established by the New Jersey Supreme Court in Mount Laurel II, Judge Serpentelli determined that “immunity” from Mount Laurel lawsuits, including but not limited to builder’s remedy lawsuits, should be conferred upon any municipality that committed to comply voluntarily with its affordable housing obligations through either stipulating to noncompliance and agreeing to comply in an on-going lawsuit or filing a Declaratory Judgment action seeking a judgment of compliance and repose. Id.

The immunity mechanism was created to encourage municipal voluntary compliance and to refocus efforts away from unnecessary and expensive litigation and towards voluntary compliance. Although the Supreme Court never expressly reviewed this type of order, the Court favorably referenced this immunity procedure in Hills Dev. Co. v. Bernards Twp., 103 N.J. 1, 29-30, 62-64 (1986) as a creative and effective management tool in a Mount Laurel case, noting that this innovative procedure had been used and praising the trial judges for developing innovative techniques to implement the Mount Laurel doctrine. To repeat from above, after balancing all seven “overarching policy objectives” established by the Court in Mount Laurel II, Judge Serpentelli in J.W. Field conferred immunity from Mount Laurel lawsuits upon any municipality that committed to comply voluntarily. More specifically, if a municipality had been sued, the immunity would insulate the municipality from subsequent suits. If the municipality had not been sued, the immunity would attach upon the filing of a Declaratory Judgment action to empower the municipality to comply free from any Mount Laurel lawsuits. J.W. Field, 204 N.J. Super. at 456.

The 2015 Decision formally approves a temporary immunity procedure as part of the process of judicial review of a municipal Third Round HPE&FSP. As set forth above in this

⁶ “Mount Laurel litigation” or a “Mount Laurel lawsuit” refers to exclusionary zoning litigation filed against a municipality and includes (a) “constitutional compliance actions” challenging a municipality’s ordinances as unconstitutional under the Mount Laurel doctrine and usually brought by public interest plaintiffs and (b) “builder’s remedy” actions in which a plaintiff developer (as distinguished from a public interest plaintiff) seeks not only a declaration that a municipality’s ordinances are unconstitutional under the Mount Laurel doctrine but also seeks a site specific re-zoning of its property, which must include a substantial amount of low and moderate income housing which has been defined by the Supreme Court as a minimum of 20% of the project. See, Mount Laurel II, 92 N.J. at 279.

opinion, the Court held in the 2015 Decision that part of the process of judicial review of a Third Round HPE&FSP includes the Mount Laurel trial court providing the municipality with temporary immunity from exclusionary zoning litigation during the period when the court is reviewing the HPE&FSP, even if supplementation of the HPE&FSP is required during the proceedings. 221 N.J. at 24.

As the Court explained, “towns that had submitted their HPE&FSP and had petitioned for substantive certification and had obtained substantive certifications” and that now affirmatively seek to obtain a court declaration that their affordable housing plans are presumptively valid should have no more than five months in which to submit their supplemental housing element and affordable housing plan [and] [d]uring that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding.” Id. at 27-28. As the Court held, “as part of the court’s review [of a municipality’s Third Round HPE&FSP], . . . we authorize . . . a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court’s review proceedings, even if supplementation of the plan is required during the proceedings.” Id. at 24. “[T]he trial court may enter temporary periods of immunity prohibiting exclusionary zoning actions from proceeding pending the court’s determination of the municipality’s presumptive compliance with its affordable housing obligation.” Id. at 28.

The Borough has now filed a Declaratory Judgment action seeking to voluntarily comply with the Borough’s Third Round Mount Laurel affordable housing obligation, and intends for its Board to adopt and the Borough subsequently to endorse an amended Third Round HPE&FSP, the 2015 HPE&FSP, which will be submitted to the court for review and approval.

Two of the FHA’s criteria for securing immunity are relevant in this case, and they illustrate that the Legislature sought to facilitate the ability of municipalities to obtain immunity.

First, merely by adopting a “resolution of participation” within four months from the effective date of the Act, a municipality not subject to a builder’s remedy suit at that point could achieve immunity. N.J.S.A. 52:27D-309(a). Second, any municipality could obtain immunity by filing a Housing Element and Fair Share Plan with COAH prior to the institution of exclusionary zoning litigation in court. N.J.S.A. 52:27D-309 and 316.

The Court is satisfied that the Borough of Far Hills satisfied both these criteria.

In addition to securing Round 2 substantive certification from COAH, Plaintiff has also satisfied the “resolution of participation” criterion by recently adopting a “catalyst resolution”

(Resolution 15-040), which directs its Mount Laurel professionals to take all reasonable actions to maintain the Borough's immunity and to help it achieve compliance as expeditiously as possible. Plaintiff's Exhibit B. In the Court's view, the Resolution clearly satisfies the "resolution of participation" requirement.

The filing of the Plaintiff's Declaratory Judgment corroborates that action. A municipality that files a Declaratory Judgment action is not simply promising to participate at some future date and preserving the possibility that it may change its mind in the interim. Rather, the action *fulfills the promise* contemplated by a "resolution of participation" by actually participating. Moreover, such action exposed the municipality to the potential draconian "remedies for non-compliance" established by the Supreme Court in Mount Laurel II if it later chose to renege on its commitment to comply voluntarily. Mount Laurel II, 92 N.J. at 285-86. No such risk or burden attaches to a municipality that merely adopted a resolution of participation.

The Plaintiff has also satisfied the second criterion, which requires a town to file an Affordable Housing Plan prior to the filing of a builder's remedy suit. In fact, contemporaneously with the filing of this action, the Plaintiff attached its adopted Housing Element and Fair Share Plan. See Plaintiff's Exhibit A to the Declaratory Judgment Complaint, incorporated herein by reference. Since Far Hills has filed its duly adopted and endorsed Affordable Housing Plan with this Court before a developer instituted a builder's remedy lawsuit in court, the Borough satisfied this second statutory criterion to secure immunity. N.J.S.A. 52:27D-316.

Moreover, by filing an amended plan within the five months allotted by the Supreme Court, the Borough that it will reaffirm its entitlement to immunity based upon the standards established by the Legislature in the FHA.

Since Far Hills passes both statutory criteria under the FHA for immunity, this Court will enter an Order which fulfills "**the essential legislative policy**" of the FHA and to give meaning to its "**reason and spirit**" by temporarily immunizing the Plaintiff from exclusionary zoning litigation. Giles v. Gassert, 23 N.J. at 33-34.

The Court will enter an Order in accordance with this opinion.

COURT'S CONCLUSION

Far Hills has participated in the COAH process to produce realistic and achievable plans for meeting its affordable housing obligations in full compliance with COAH requirements.

Certification of the most recent 2008 plan is clear evidence of this. The Borough continues in good faith to honor and implement those plans and add to its stock of affordable housing.

Going forward, the Borough represents that it will continue to assess the continued viability of the rehabilitation, accessory apartment and special needs components of its plan and develop additional mechanisms if necessary to ensure that affordable units are provided.

The Court GRANTS the Borough's Motion for Temporary Immunity.

Counsel for Plaintiff is directed to prepare an appropriate Order in accordance with the Court's decision.

EXHIBIT B

DAY PITNEY LLP
ONE JEFFERSON ROAD
Parsippany, New Jersey 07054
Craig M. Gianetti (036512003)
(973) 966-6300

Attorneys for Movant/Interested Party Melillo Equities, LLC

IN THE MATTER OF THE APPLICATION OF
THE BOROUGH OF FAR HILLS, COUNTY OF
SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

(CIVIL ACTION- *MOUNT LAUREL*)

**NOTICE OF MOTION TO
INTERVENE AND MOTION TO
ENFORCE LITIGANT'S RIGHTS**

TO:

Nancy L. Holm
Surenian, Edwards & Nolan, LLC
311 Broadway, Suite A
Point Pleasant Beach, NJ 08730
*Attorneys for Declaratory Plaintiff, Borough of
Far Hills*
Joseph V. Sordillo, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer
& Flaum, PC
15 Mountain Blvd.
Warren, NJ 07059
*Attorneys for Declaratory Plaintiff, Borough of
Far Hills*
Thomas C. Miller, A.J.S.C. (Ret.)
Somerset County Superior Courthouse
20 N. Bridge Street,
Somerville, NJ 08876
Special Master-March 16, 2022 CMO

Ashley J. Lee, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
*Counsel for Intervenor-Defendant Fair Share
Housing Center*
James T. Kyle, PP/AICP
Kyle & McManus Associates
2 East Broad Street, Second Floor
Hopewell, NJ 08525
Special Master

PLEASE TAKE NOTICE that, on March 17, 2023 at 9 a.m., or as soon thereafter as
the matter may be heard, the undersigned attorneys for Movant/Interested Party Melillo Equities,
LLC ("*Melillo*") will move before the Honorable Thomas C. Miller, A.J.S.C., at the Somerset
County Superior Courthouse, 20 North Bridge Street, Somerville, New Jersey, for an Order

permitting the intervention of Melillo in this matter pursuant to R. 4:33 as an intervenor and for the enforcement of litigant's rights pursuant to R. 1:10-3 in this matter; and


PLEASE TAKE FURTHER NOTICE that in support of the within motion, Melillo shall rely upon the Legal Brief, Certification of Craig M. Gianetti (with Proposed Answer), Certification of Anthony Melillo, and Certification of James Mullen submitted herewith and

PLEASE TAKE FURTHER NOTICE that Melillo requests oral argument if the Motion is opposed; and

PLEASE TAKE FURTHER NOTICE that at that time and place aforesaid, Melillo will request that the proposed form of Order submitted herewith be entered by the Court.

DAY PITNEY LLP
Attorneys for Melillo Equities, LLC

Dated: February 22, 2023

By: 

CRAIG M. GIANETTI
A Member of the Firm

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a true copy of the within Notice of Motion, Legal Brief, Certification of Craig M. Gianetti (with Proposed Answer), Certification of Anthony Melillo, and Certification of James Mullen, Proposed Order, were all served on counsel of record by email and eCourts. The undersigned further certifies that on this date, a true copy of the within Notice of Motion, Legal Brief, Certification of Craig M. Gianetti, Certification of Anthony Melillo, and Certification of James P. Mullen, Proposed Order, and Proposed Answer were all served on the following counsel by eCourts and e-mail:

Nancy L. Holm
Surenian, Edwards & Nolan, LLC
311 Broadway, Suite A
Point Pleasant Beach, NJ 08730
Attorneys for Declaratory Plaintiff, Borough of Far Hills
Joseph V. Sordillo, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC
15 Mountain Blvd.
Warren, NJ 07059
Attorneys for Declaratory Plaintiff, Borough of Far Hills
Thomas C. Miller, A.J.S.C. (Ret.)
Somerset County Superior Courthouse
20 N. Bridge Street,
Somerville, NJ 08876
Special Master-March 16, 2022 CMO

Ashley J. Lee, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Counsel for Intervenor-Defendant Fair Share Housing Center
James T. Kyle, PP/AICP
Kyle & McManus Associates
2 East Broad Street, Second Floor
Hopewell, NJ 08525
Special Master

Dated: February 22, 2023

By:



CRAIG M. GIANETTI

EXHIBIT C

Fair Share Housing Center

510 Park Boulevard

Cherry Hill, New Jersey 08002

P: 856-665-5444

F: 856-663-8182

Attorneys for Fair Share Housing Center

By: Tanushree Bansal, Esq. (412492022)

tanushreebansal@fairsharehousing.org

**In the Matter of the Application of the
Borough of Far Hills, County of Somerset.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Somerset County
Docket No. SOM-L-903-15

**CIVIL ACTION
(Mount Laurel)**

**Notice of Motion to Enforce Litigant's
Rights and to Revoke Immunity**

To: Clerk, Superior Court of New Jersey
Somerset County Courthouse
20 N. Bridge Street,
Somerville, NJ 08876

Nancy L. Holm
Surenian, Edwards & Nolan, LLC
311 Broadway, Suite A
Point Pleasant Beach, NJ 08730
Attorneys for Declaratory Plaintiff, Borough of Far Hills

Joseph V. Sordillo, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC
15 Mountain Blvd.
Warren, NJ 07059
Attorneys for Declaratory Plaintiff, Borough of Far Hills

On Notice To:

James T. Kyle, PP/AICP
Kyle & McManus Associates
2 East Broad Street, Second Floor

Hopewell, NJ 08525
Special Master

Thomas C. Miller, A.J.S.C. (Ret.)
Somerset County Superior Courthouse
20 N. Bridge Street
Somerville, NJ 08876
Special Master-March 16, 2022 CMO


Craig M. Gianetti, Esq.
Day Pitney, LLP
1 Jefferson Road
Parsippany, NJ 07054
Attorneys for Interested Party Melillo Equities, LLC

PLEASE TAKE NOTICE that, on March 17, 2023 at 9:30 a.m., or as soon thereafter as counsel may be heard, Fair Share Housing Center, by undersigned counsel, will apply through a motion to the Superior Court of New Jersey, before the Honorable Thomas C. Miller, A.J.S.C, at the Somerset County Superior Courthouse, 20 North Bridge Street, Somerville, New Jersey, or through electronic video-conferencing or teleconferencing required by the court, for an Order to Enforce Litigants Rights and to Revoke Immunity of the Borough of Far Hills.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Fair Share Housing Center will rely upon the enclosed brief, proposed order, and certification of counsel.

Oral argument is requested.

Dated: March 1, 2023



Tanushree Bansal, Esq.
Fair Share Housing Center

EXHIBIT D



BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK PROVIDENCE WASHINGTON, DC

CRAIG M. GIANETTI
Attorney at Law

One Jefferson Road
Parsippany, NJ 07054-2891
T: (973) 966-8053 F: (973) 206-6273
cgianetti@daypitney.com

March 17, 2023

VIA E-FILING

Hon. Kevin M. Shanahan, A.J.S.C.
New Jersey Superior Court, Somerset County
Somerset County Court House
20 N. Bridge Street
Somerville, NJ 08876

Re: In Re Borough of Far Hills (*Mount Laurel*)
Docket No.: SOM-L-000903-15
Motion to Intervene & Enforce Litigants Rights

Dear Judge Shanahan:

This office represents interested party and Movant Melillo Equities, LLC (“Melillo”) in connection with the above referenced matter. Melillo’s Motion to Intervene and Motion to Enforce Litigant’s Rights (the “Motion”) is currently scheduled to be heard on March 24, 2023.

Please be advised that Melillo and the Borough of Far Hills (“Borough”) have come to a settlement and resolution of its issues; as such, Melillo will be withdrawing its Motion. I would like to thank Judge Miller for mediating this matter and bringing it to a resolution

Should you require anything further, please do not hesitate to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. M. Gianetti'.

Craig M. Gianetti

CMG/AMK

cc: Hon. Thomas Miller, J.S.C. (retired)
Jim Kyle, P.P., special master
Joseph Sordillo, Esq.
Nancy Holm, Esq.
Josh Bauers, Esq.



Hon. Owen C. McCarthy, J.S.C.
Monmouth County Courthouse
March 17, 2023
Page 2

Tanushree Bansal, Esq.

EXHIBIT E

FAIR SHARE HOUSING CENTER

Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Rachel N. Lokken, Esq.
Zoey Chenitz, Esq.
Ashley J. Lee, Esq.
Tanushree Bansal, Esq.
Esmé Devenney, Esq.
Will Fairhurst, Esq.

March 22, 2023

Via eCourts

Hon. Kevin M. Shanahan, A. J.S.C.
New Jersey Superior Court, Somerset County
Somerset County Court House
20 N. Bridge Street
Somerville, New Jersey, 08876

Re: In Re Borough of Far Hills
Docket No.: SOM-L-000903-15

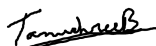
Dear Judge Shanahan:

Please accept this letter on behalf of Fair Share Housing Center (“FSHC”), the defendant-intervenor in the above-captioned Mt. Laurel declaratory judgment action proceeding before the court. FSHC filed a Motion to Enforce Litigant’s Rights (the “Motion”) on March 1, 2023 which is currently scheduled to be heard on March 24, 2023.

Please be advised that since the filing of the Motion, FSHC and the Borough of Far Hills (“the Borough”) have come to a resolution of the issues described in the Motion; as such, FSHC will be withdrawing its Motion.

Thank you for your attention to this matter.

Sincerely,



Tanushree Bansal
Counsel for Fair Share Housing Center

c: VIA ECOURTS AND EMAIL:
Hon. Thomas Miller, J.S.C. (retired)
Jim Kyle, P.P., Special Master
Craig M. Gianetti, Esq.

FAIR SHARE HOUSING CENTER

Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Rachel N. Lokken, Esq.
Zoey Chenitz, Esq.
Ashley J. Lee, Esq.
Tanushree Bansal, Esq.
Esmé Devenney, Esq.
Will Fairhurst, Esq.

Nancy Holm, Esq.
Joseph Sordillo, Esq.

EXHIBIT F

SURENIAN, EDWARDS, BUZAK, & NOLAN LLC

311 Broadway, Suite A

Point Pleasant Beach, NJ 08742

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Far Hills

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Nancy L. Holm (Attorney ID: 013442006)

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
OF FAR HILLS, COUNTY OF
SOMERSET**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

DOCKET NO.: SOM-L-903-15

CIVIL ACTION – *MOUNT LAUREL*

**ORDER OF FINAL JUDGMENT OF
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Surenian, Edwards, Buzak & Nolan, LLC, on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough” or “Far Hills”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed James P. Kyle, P.P., A.I.C.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master”); and FSHC having participated in the Borough’s DJ Action as an “interested party”; and the Borough and FSHC having entered into a Settlement Agreement on October 15, 2018 (hereinafter the “FSHC Settlement Agreement”); and said FSHC Settlement Agreement having set agreed-upon fair share obligations and how the Borough would satisfy same; and the FSHC Settlement Agreement having been approved during a Fairness Hearing held on December 20, 2018, which was memorialized by an Order entered by the Court on February 26, 2019; which

was thereafter amended; and the Borough having subsequently prepared a Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) (Exhibit P-1), and all supporting documentation in accordance with the FSHC Settlement Agreement; and a Compliance Hearing having been scheduled for November 17, 2020 to approve the Borough’s Fair Share Plan; and said Fair Share Plan having been put on file for public review at Borough Hall more than 30 days prior to the scheduled Compliance Hearing date of November 17, 2020; and counsel for the Borough having prepared a Notice Certification (Exhibit P-23), to document that proper 30-day notice of the Compliance Hearing had been given; and the Fair Share Plan, as well as other additional documents, resolutions, and ordinances having been submitted to the Court Master and FSHC for review; and the Borough having received no objections to the Fair Share Plan; and the Compliance Hearing having been held on November 17, 2020, during which Exhibits P-1 to P-24 were marked into evidence; and the Court having considered the testimony taken during the Compliance Hearing, as well as the comments of counsel; and the Court having issued a Conditional Judgment of Compliance and Repose on December 16, 2020 (“Conditional JOR”), which included conditions that needed to be satisfied prior to the Court entering a Final Judgment of Compliance and Repose; and the Borough having submitted evidence to the Court Master and FSHC of satisfaction of the remaining conditions; and the Court Master having determined that the Borough satisfied all of the remaining conditions; and good cause having been shown;

It is hereby ordered on this 14th day of November, 2023, as follows:

1. The Borough of Far Hills’s Fair Share Plan (Exhibit P-1) is hereby approved and the Borough is granted a Judgment of Compliance and Repose as to its Rehabilitation Share, its Prior Round Obligation (1987-1999), and its Third Round Obligation (the last comprised of both the Gap (1999-2015) and the Prospective Need (2015-2025)), pursuant to the Court approved Settlement Agreement entered into between the Borough and FSHC on October 15, 2018, the

Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) (“FHA”), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court’s Mount Laurel IV decision.

2. The Borough’s Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Borough shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builder’s Remedy lawsuits.

3. As per the Court approved Settlement Agreement between the Borough and FSHC, and as established in the Borough’s Fair Share Plan, the Borough’s Rehabilitation Obligation is 4, the Borough’s Prior Round Obligation (1987-1999) is 38, and the Borough’s Third Round Obligation (Gap (1999-2015) plus Prospective Need (2015-2025)) is 75.

4. The Borough will address its 4-unit Rehabilitation Obligation with a municipally-run rehabilitation program, due to the fact that there is no longer a Somerset County Home Improvement Program.

5. The Borough will satisfy its Prior Round Obligation of 38 as follows:

- a. 8 family for-sale units from the Polo Club development;
- b. 6 age-restricted rental units located at 6 Dumont Road;
- c. 5 family rental units from the proposed Hotz project, including 5 rental bonuses from that project; and
- d. 5 family rental units and 4 age-restricted rental units from the Mellilo inclusionary project.

6. The Borough will satisfy its Gap + Prospective Need Obligation of 75 as follows:

- a. 17 family for-sale units from Polo Club development.
- b. 8 bedroom credits from Matheny Group Home project.

- c. 2 family rental units from the Hotz Apartment project, which also earn 2 rental bonus credits for the project.
- d. 20 family rental units from the Mellilo inclusionary project, which will generate 9 rental bonus credits.
- e. The Borough will also implement a 10-unit Accessory Apartment program.

7. The Borough has provided documentation to the Court Master and FSHC in response to the conditions set forth in paragraph 7 of the December 16, 2020 Conditional JOR, and upon review, the Court Master has informed the Court that the Borough has fully satisfied those conditions.

8. The Borough's adopted Affordable Housing Ordinance and Development Fee Ordinance, as amended, are hereby approved. The Borough's Spending Plan is hereby approved by the Court, and the Borough will be free to expend funds in its Affordable Housing Trust Funds in accordance with the Settlement Agreement between the Borough and FSHC, the Borough's Fair Share Plan, the FHA, applicable COAH regulations, and all other applicable law.

9. The Court acknowledges that several terms of the respective Affordable Housing Agreements between the Borough and the developers of the Hotz, Mellilo, and Matheny projects remain outstanding, and those obligations will be addressed by the parties in due course as those projects move through the development process.

10. Counsel for the Borough shall provide copies of this Order to all counsel of record and the Court Master within seven (7) days of receipt.

/s/Kevin M. Shanahan,A.J.S.C.

Honorable Kevin M. Shanahan, A.J.S.C.

EXHIBIT G

2015 WL 10844850 (N.J.Super.L.) (Trial Order)
Superior Court of New Jersey, Law Division.
Civil Part (Mt. Laurel)
Middlesex County

In the Matter of the Adoption of the MONROE TOWNSHIP HOUSING
ELEMENT AND FAIR SHARE PLAN AND IMPLEMENTING ORDINANCES.

No. MID-L-3365-15.
July 9, 2015.

Opinion

Jerome J. Convery, Esq. and Marguerite M. Schaffer, Esq. (Shain, Schaffer & Rafanello, P.C.) appeared on behalf of the Township of Monroe.

Thomas F. Carroll, III, Esq. and Stephen Eisdorfer, Esq. (Hill Wallack, LLP) appeared on behalf of proposed intervener, Monroe 33 Developers, LLC.

Kevin D. Walsh, Esq., appeared on behalf of proposed intervener Fair Share Housing Center.

Douglas K. Wolfson, Judge.

***1 WOLFSON, J.S.C.**

I. Jurisdictional Posture

Following the March 10, 2015 decision of the Supreme Court of New Jersey in *In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing*, 221 N.J. 1 (2015), hereinafter referred to as *Mount Laurel IV*, the adjudication of a municipality's compliance with its constitutional obligation to create a realistic opportunity for producing a fair share of affordable housing was removed from the Council on Affordable Housing ("COAH") and returned to the judiciary. The Supreme Court instructed the designated *Mount Laurel* judges within the State to adjudicate the issue of whether a given municipality's housing plan satisfies its *Mount Laurel* obligations and provided detailed guidelines regarding the manner in which the judges should do so. The within matter comes before me by virtue of that grant of jurisdiction.

II. Statement of the Case

The Township of Monroe filed this declaratory judgment action pursuant to the authorization provided by *Mt. Laurel IV*, *supra*, 221 N.J. 1, seeking a judicial declaration that its housing plan is presumptively valid, and, while the declaratory matter relating to its constitutional compliance proceeds to adjudication, a five-month period of temporary immunity from exclusionary zoning lawsuits. Monroe 33 Developers, LLC ("Monroe 33") sought to intervene as a defendant and for leave to file a counterclaim, which included a demand for site-specific relief - a

In re Monroe Tp. Housing Element and Fair Share Plan..., 2015 WL 10844850...

builder's remedy. Fair Share Housing Center ("FSHC") also sought to intervene as a defendant and for leave to file a counterclaim challenging the constitutionality of Monroe's affordable housing plan.

For the reasons set forth below, the Township of Monroe's motion for a five-month period of immunity is **GRANTED**; the cross-motions of Monroe 33 Developers, LLC and Fair Share Housing Center to intervene as defendants are **GRANTED**; the cross-motion of Monroe 33 Developers, LLC to file a counterclaim seeking site-specific relief is **DENIED without prejudice**; and the cross-motion of FSHC to file a counterclaim challenging Monroe's proposed compliance plan is **GRANTED**.

III. Procedural History

Throughout its opinion in *Mt. Laurel IV*, *supra*, 221 N.J. 1, the Supreme Court addressed COAH's failure to adopt revised constitutional rules ("Third Round Rules") regarding municipal housing obligations under the Fair Housing Act, N.J.S.A. 52:27D-301 to -392 (the "FHA"). As a result of COAH's failure to comply with prior Orders of the Supreme Court, a new procedure was established whereby the issues relating to compliance with a municipality's constitutional obligation to create a realistic opportunity for producing a fair share of affordable housing would be returned to the courts.¹

¹ See *Mt. Laurel IV*, *supra*, 221 N.J. at 6 ("Our order effectively dissolves, until further order, the FHA's exhaustion-of-administrative-remedies requirement. Further, as directed, the order allows resort to the courts, in the first instance, to resolve municipalities' constitutional obligations under *Mount Laurel*."); see also *Southern Burlington County NAACP v. Twp. Of Mount Laurel*, 67 N.J. 151 (1975) (hereinafter referred to as *Mt. Laurel I*); and see *Southern Burlington County NAACP v. Twp. Of Mount Laurel*, 92 NX 158 (1983) (hereinafter referred to as *Mt. Laurel II*).

*2 Recognizing that some municipalities had embraced the COAH process in good faith, but were stymied by that agency's inability to function, the Supreme Court set forth procedures by which municipalities that had either received substantive certification from COAH or had filed resolutions of participation prior to the judicial invalidation of COAH's the third-round methodology, could seek a judicial declaration that its housing plan satisfied its constitutional obligations. The process outlined by the Court affords such towns a reasonable opportunity to demonstrate constitutional compliance to a court's satisfaction (including time to take curative action if the municipality's plan requires further supplementation), without the specter of a builder's remedy action hanging over them like a "sword of Damocles."² Importantly, the Supreme Court authorized the courts to grant a period of temporary immunity for up to five months, "preventing any exclusionary zoning actions from proceeding,"³ to those municipalities that promptly sought such declaratory relief.⁴

² See e.g., *Mt. Laurel IV*, *supra*, 221 N.J. at 3 ("In the event of a municipality's inability or failure to adopt a compliant plan to a court's satisfaction, the court may consider the range of remedies available to cure the violation, consistent with the steps outlined herein and in our accompanying order."); *id.* at 24 ("[A]s part of the court's review, we also authorize... a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings.").

³ *Id.* at 23-24.

⁴ See *id.* at 5-6. ("We will establish a transitional process and not immediately allow exclusionary zoning actions to proceed in recognition of the various states of municipal preparation that exist as a result of the long period of uncertainty attributable to COAH'S failure to promulgate Third Round Rules. During the first thirty days following

In re Monroe Tp. Housing Element and Fair Share Plan..., 2015 WL 10844850...

the effective date of our implementing order, the only actions that will be entertained by the courts will be declaratory judgment actions filed by any town that either (1) had achieved substantive certification from COAH under prior iterations of Third Round Rules before they were invalidated, or (2) had “participating” status before COAH.”).

Accordingly, I am tasked with determining first, whether Monroe has demonstrated an entitlement to a period of immunity, and second, whether the procedures and protocols crafted by the Supreme Court authorize the relief sought by the proposed interveners.

IV. The Township of Monroe's Request for Temporary Immunity

The Township of Monroe enjoys “participating” status and has now affirmatively sought judicial approval of its affordable housing plan through the filing of its declaratory judgment action. Thus, it “should receive like treatment to that which was afforded by the FHA to towns that had their exclusionary zoning cases transferred to COAH when the Act was passed.” *Mt. Laurel IV, supra, 221 N.J. at 27, citing N.J.S.A. 52:27D-316.*⁵ These towns received “insulating protection” by virtue of their submission to COAH’s jurisdiction, “provided that they prepared and filed a housing element and fair share plan within five months.” *N.J.S.A. 52:27D-316*. So too here, as a “participating” town, Monroe similarly has “no more than five months in which to submit their supplemental housing element and affordable housing plan. During that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding.” *Mt. Laurel IV, supra, 221 N.J. at 27-28*.

⁵ While the Court cautioned that the judicial role “is not to become a replacement agency for COAH,” the process developed in *Mt. Laurel IV* “seeks to track” the processes provided for in the FHA “as closely as possible,” so as to create “a system of coordinated administrative and court actions.” *Id. at 6, 29*.

Since Monroe had actually devised a housing element and took action toward adopting ordinances in furtherance of its plan, it has earned a more “favorable” or “generous” review of its request for immunity.⁶ Even where granted, however, immunity “should not continue for an undefined period of time; rather, the trial court’s orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance.” *Id. at 28*. Only where that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is “**determined to be constitutionally noncompliant**” may exclusionary zoning actions seeking a builder’s remedy proceed against “certified” or “participating” towns.⁷

⁶ For those municipalities that made good faith attempts to implement their affordable housing obligations by, for example, devising a housing element and taking action toward adopting ordinances in furtherance of its plan, the Supreme Court “expect[s] a reviewing court to view more favorably such actions than that of a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance.” *Id. at 28*.

⁷ *Id. at 33* (emphasis added); *see also id. at 29* (“Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder’s remedy to proceed.”).

*3 Based upon my preliminary review of the Township’s submissions, detailed below, I am satisfied that Monroe has made a good faith attempt to satisfy its affordable housing obligations, and hence, deserves immunity from

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exclusionary zoning actions, on the condition that it prepares and files its housing element and fair share plan within five months (as would have been required if it were subject to COAH's jurisdiction).⁸

⁸ See *N.J.S.A. 52:27D-316(a)* (“If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer [to COAH], or promulgation of criteria and guidelines by the council pursuant to section 7 of this act, whichever occurs later, jurisdiction shall revert to the court.”).

In or around December 2008, Monroe adopted its Third Round Housing Element and Fair Share Plan, as well as its Third Round Housing Trust Fund Spending Plan. Promptly thereafter, the Township petitioned COAH for substantive certification by submitting: (1) a document regarding the status of inclusionary development Stratford Monroe with its proposed two-hundred and five (205) affordable units; (2) a document regarding the status of inclusionary development Monroe Manor with its proposed one-hundred and twenty-seven (127) affordable units; and (3) a document encompassing a general description of the Township's Rehabilitation Program, which included sixty-one (61) units proposed for rehabilitation.

During early 2009, Monroe created the Planned Residential Development Affordable Housing District (“PRDAH”). Said district requires that 23.03% of the dwelling units be designated and set aside for low- and moderate-income households. According to the Board Planner for the Monroe Township affordable Housing Board (“the Planner”), the PRDAH zone should produce two-hundred and ninety-three (293) age-restricted affordable housing units and one-hundred and eight (108) family rental affordable housing units.

During 2011, the Monroe Township Planning Board denied a developer's application to construct a previously-approved plan to all non-age restricted units. Through a reconsideration by the parties, said developer dedicated part of its site to the municipality for a municipally sponsored 100% affordable housing complex which is expected to yield one-hundred and fifty (150) family rental units. Later in 2011, the Monroe Township Zoning Board approved an application which required the construction of twenty-six (26) affordable family rental units at the Monroe Chase site, ten (10) of which have already been constructed.

In May 2012, the Township amended its Third-Round Housing Element and Fair Share plan to include a municipally sponsored affordable housing project and, in addition, designated two new overlay zones - actions intended to produce additional affordable housing. The Township Council also passed a Resolution endorsing the recommendation of its Affordable Housing Board reserving and dedicating funds for affordable housing purposes, and thereafter adopted an ordinance authorizing the creation of an Affordable Housing Irrevocable Trust.

In February 2014, a developer was granted a use variance for construction of residential units on State Highway 33. The approval required construction of forty-seven (47) affordable family rental units in the VC-2 Village Center Overlay Zone. In July 2014, as a result of other, unrelated litigation, the Township also rezoned two sites - one along Route 33, which, when developed, will yield one-hundred and thirty-one (131) affordable age-restricted rental units; and another known as “the Villages,” which, when developed, will generate an additional sixty-six (66) affordable age-restricted rental units.

*4 In September 2014, Monroe amended the Affordable Housing Mixed Use Development/Highway Development overlay zone (hereinafter “AHMUD/HD overlay zone”), which, according to the Planner, should produce two-hundred and ninety-five (295) affordable housing units under a 100% municipally sponsored development. Monroe also amended the VC-1 and VC-2 Village Center overlay zones to create mixed-use environments which, according to the Planner should produce an additional one-hundred (100) affordable housing

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units and twelve (12) family rental affordable housing units, respectively, under the set-aside provisions of those zones.

As the Supreme Court recognized: "...not all towns that had only 'participating' status may have well-developed plans to submit to the court initially. A town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed." Undoubtedly, Monroe (a "participating" municipality) has provided *prima facie* documentation of its good faith efforts to comply with its fair share obligation. Accordingly, the Township's motion seeking a five-month period of temporary immunity from exclusionary zoning suits is granted.⁹

⁹ See *Mt. Laurel IV*, *supra*, 221 N.J. at 27-28; see also N.J.S.A. 52:27D-316(a).

V. Proposed Interveners' Motions to File Answers and Counterclaims

a. The Right of Interested Parties to Participate in the Adjudication of Constitutional Compliance

Both substance and procedure permit, and perhaps, demand that "interested parties" be permitted to "participate" in any assessment of a municipality's purported compliance with its affordable housing obligation. First, absent intervention, a municipality's declaratory judgment action would be, essentially, unopposed. While the appointment of a Special Master is, ideally, both a welcome and necessary protocol, a blanket rule prohibiting any interested party from intervening, fundamentally silences potentially useful and critical voices which may have legitimate insights or analyses relevant to the constitutionality of the town's proposed plan. Second, while I am mindful of the Supreme Court's clear mandate to adjudicate such actions as quickly as prudence and justice will allow, it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations.

The Supreme Court was unequivocal in its mandate that all declaratory judgment cases are to be brought on notice to interested parties and with an opportunity for them to be heard. *Id.* at 35. I can discern no legitimate basis, therefore, to deny any interested party the opportunity to intervene as a defendant, albeit limited to the question of whether the particular town has complied with its constitutional housing obligations. Accordingly, Monroe 33 and FSHC's motions to intervene as defendants and to file Answers are both granted.

b. Counterclaims Seeking Site-Specific Relief - i.e., Builder's Remedy Actions -are Barred as Against "Certified" or "Participating" Municipalities

Despite the Supreme Court's clear directive affording interested parties an "opportunity to be heard," I am equally confident that this right does not extend so far as to authorize them to contest the municipality's site selections and/or methods of compliance by suggesting or claiming that other sites (owned or controlled by them) are superior to, or perhaps, better suited for an inclusionary development. While such parties' "participation" may, of course, include proofs related to whether the proposed affordable housing plan passes constitutional muster, so long as the plan does so, the municipality's choices (including site selection and the manner and methods by which it chooses to satisfy its affordable housing obligations) remains, as it was under the FHA and COAH's oversight¹⁰, paramount. Accordingly, claims that a "better" and/or "more suitable" site is, or may be available will not be

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entertained in any declaratory judgment action brought by a certified or participating municipality. Simply stated, to hold otherwise would be to permit an interested party to do indirectly that, which the Supreme Court has specifically prohibited from being done directly.

¹⁰ See generally *N.J.S.A. 52:27D-309-311*; see also *Hills Dev. Co. v. Bernards Tp.*, 103 N.J. 1. 22 (1986) (hereinafter referred to as *Mt. Laurel III*) (Under the FHA, municipalities retain the right “to exercise their zoning powers independently and voluntarily” along with the means to determine what combination of ordinances and other measures will achieve their fair share of affordable housing).

i. Monroe 33's Counterclaim

*5 At its core, Monroe 33's counterclaim seeks site-specific relief- i.e., a builder's remedy, relief that goes beyond the limited participation envisioned the Supreme Court. In discussing whether and when exclusionary zoning actions and builder's remedies would actually be permitted (or, if permitted, “stayed”), the Court used various limiting phrases such as “may be brought”¹¹ and “may proceed.”¹² Irrespective of its choice of language, the Supreme Court's overarching intent was clearly to foreclose such litigation until such time as constitutional compliance has been judicially addressed and found “wanting.” *Mt. Laurel IV*, *supra*, 221 N.J. at 29. Then, and only after the court has concluded that a municipality is “determined to be noncompliant” (by refusing to supplement or amend its plan to remedy any perceived deficiencies) would exclusionary zoning actions be warranted.¹³ Limiting participation of interested parties in such a fashion comports with the specified protocols mandated by the Supreme Court that: (1) interested parties must be given notice and an opportunity to be heard **on the issue of constitutional compliance**; and (2) exclusionary zoning suits are not authorized unless the court fully addressed the issue of constitutional compliance, and has determined the town's affordable housing plan to be deficient.¹⁴

¹¹ See e.g., *Mt Laurel IV*, *supra*, 221 N.J. at 28.

¹² See e.g., *id.* at 26, 27 and 35.

¹³ *Id.* at 33; see also n. 6, *supra*.

¹⁴ See *id.* at 33-34 (stating that if the court is unable to secure “prompt voluntary compliance from municipalities... with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, **then** the court may authorize exclusionary zoning actions seeking a builder's remedy to **proceed.**” (emphasis added)).

Barring interested parties from pursuing builder's remedies, either via an independent action, or as here, by way of a counterclaim, results in no discernible prejudicial impact.¹⁵ Indeed, site-specific relief is wholly irrelevant to the larger, and preliminary, question of constitutional compliance. Builders choosing to participate as defendants¹⁶ in constitutional compliance actions pending before the trial courts may do so in much the same manner as they would have, had COAH not ceased to function; a parallel process that neither affords builders any greater rights, nor deprives them of any that they would have had, including the rights to participate in the processes authorized under both *Mount Laurel II* and the FHA - conciliation, mediation, with the use and assistance of special masters.¹⁷ Certainly, the Court's dissolution of the FHA's exhaustion-of-administrative-remedies requirement and its resurrection of the judiciary's role as the forum of first resort to evaluate municipal compliance was not intended to signal a return to *Mount Laurel II* and its “reward-based” system for vindicating the constitutional rights of the poor.¹⁸ In point of fact, the Court's newly established framework fundamentally alters that “reward-based”

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approach. In so doing, it rendered obsolete the “first to file” priority scheme adopted in *J.W. Field Co., Inc., v. Franklin Tp.*, 204 N.J. Super. 445 (Law Div. 1985), since the ultimate location and satisfaction of a certified or participating municipality's affordable housing obligation ought be based upon a more interactive process, guided by the equities¹⁹ of the particular participants and principles of sound planning,²⁰ rather than on a race to the courthouse.²¹

- 15 As recognized nearly thirty years ago in *Mt. Laurel III*:
If there is any class of litigant that knows the uncertainties of litigation, it is the builders. They, more than any other group, have walked the rough, uneven, unpredictable path through planning boards, boards of adjustments, permits, approvals, conditions, lawsuits, appeals, affirmances, reversals, and in between all of these, changes in both statutory and decisional law that can turn a case upside down. No builder with the slightest amount of experience could have relied on the remedies provided in *Mt. Laurel II*, in the sense of justifiably believing that they would not be changed, or that any change would not apply to the builders. *Id.*, *supra*, 103 N.J. at 55.
- 16 Irrespective of whether a “certified” or “participating” municipality chooses to file a declaratory judgment action or waits to be sued, **“the trial court may grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding[.]”** *Mt. Laurel IV*, *supra*, 221 N.J. at 35.
- 17 As noted by the Supreme Court in *Mt. Laurel II*, *supra*, 92 N.J. at 283, special masters were intended to be “liberally used” to provide expertise and to assist the parties as “a negotiator, a mediator, and a catalyst.” *See also N.J.S.A. 52:27D-315* (mediation and review process by council).
- 18 The procedures articulated herein are not intended to prevent builders or other interested parties from bringing exclusionary zoning actions against any municipality that was neither certified nor participating. Indeed, the approximate 200 towns that never subjected themselves to COAH's jurisdiction remain “open to civil actions in the courts... [and] will continue to be subject to exclusionary zoning actions as they have been since inception of *Mount Laurel*...” *Mt. Laurel IV*, *supra*, 221 N.J. at 23.
- 19 As opposed to the “date of filing,” such equitable considerations could include, for example, an assessment of “whether any project was clearly more likely to result in actual construction than other projects and whether any project was clearly more suitable from a planning viewpoint than other projects.” *See J.W. Field Co., Inc., supra*, 204 N.J. Super. at 460.
- 20 The Court has consistently demonstrated its sensitivity to and the importance of sound planning and environmental conditions over builder preference. *See, e.g., Mount Laurel II, supra*, 92 N.J. at 211 (The obligation to encourage lower income housing, therefore will depend on “natural long-range land use planning” rather than upon “sheer economic forces.”); *and see id.* at 238 (“the Constitution of the State of New Jersey does not require bad planning.”).
- 21 While the priority system articulated in *J.W. Field Co., Inc., supra*, 204 N.J. Super. 445, has never been specifically embraced by any appellate authority, it has, for all intents and purposes, become embedded and generally followed in *Mount Laurel* jurisprudence for more than thirty years. It seems reasonable to conclude that it remains a viable protocol for determining priorities among multiple plaintiffs in litigation against towns that were neither “certified” nor enjoyed “participating status” before COAH. Nonetheless, with regard to the certified and participating municipalities now before the courts, the Court encouraged “present day courts” to employ “flexibility in controlling and prioritizing litigation.” *Mt. Laurel IV, supra*, 221 N.J. at 26.

*6 Indeed, even under *Mount Laurel II*, no builder's remedy would be awarded unless the plaintiff's proposed site was **“located and designed in accordance with sound zoning and planning concepts, including its environmental impact.”**²² As originally intended, builder remedies were authorized to incentivize builders to vindicate this constitutional imperative largely because the Court's landmark decision in *Mount Laurel I* was

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widely ignored and failed to achieve the desired goal of producing balanced communities and affordable housing, but also because, after eight years, the decision had produced only “papers, process, witnesses, trials and appeals.”²³

²² *Mount Laurel II, supra*, 92 N.J. at 218 (emphasis added); see also *id.* at 279 (a builder's remedy award is only appropriate where a builder demonstrates that “the construction can be implemented without substantial negative environmental or planning impact.”).

²³ *Mount Laurel II, supra*, 92 N.J. at 199; see also *Oreo Farms & Greenhouses, Inc. v. Colts Neck*, 192 N.J. Super. 599, 601 (Law. Div. 1983) (wherein Judge Serpentelli, one of the three original *Mount Laurel* judges, recognized that “unless a strong judicial hand was applied, *Mount Laurel I* would not result in the housing which had been expected.”). Consequently, the builder's remedy was designed “to assure a builder who shouldered the burden of *Mount Laurel* litigation that the end result of a successful litigation would be some specific relief in terms of a right to proceed with construction of a specific project.” *Oreo Farms, supra*, 192 N.J. Super. at 602. At present, the framework crafted in *Mt. Laurel IV, supra*, 221 N.J. 1, has replaced, at least temporarily, the builder's remedy as the “strong judicial hand.”

By way of contrast, the Supreme Court's current framework expressly *prohibits* exclusionary zoning litigation until *after* the compliance phase of the declaratory judgment action has concluded.²⁴ As such, a builder/plaintiff may be hard pressed to assert convincingly that its actions were the catalyst or procuring cause in vindicating the constitutional rights of low and moderate income persons. This is especially so in the context of a municipally initiated declaratory judgment action, or one defended by a town that was “certified” or enjoyed “participating status” but opted to “wait until sued” before seeking a judicial blessing of its affordable housing plan.²⁵

²⁴ *Mt. Laurel IV, supra*, 221 N.J. at 35-36.

²⁵ See *Mt. Laurel IV, supra*, 221 N.J. at 28 (stating that both “certified” and “participating” towns have the option either to proceed with their own declaratory judgment actions during the thirty-day period post the effective date of the Order, or to wait until their affordable housing plan is challenged for constitutional compliance).

This is not to say that participation by builders or other interested parties in the constitutional compliance action is unwelcome or unnecessary. In fact, the opposite is true. Involvement of, and input from such parties may be among the most beneficial sources of practical and economic information in helping to achieve expedient municipal compliance. By engaging in mediation, negotiation, conciliation, and, with the assistance and planning expertise of special masters, there exists a unique opportunity for municipal officials, on the one hand, and ready, willing and able builders, on the other, to craft mutually workable plans for the construction of affordable housing.²⁶ In addition to the practical benefits that such a streamlined approach provides all participants, such a cooperative resolution of these competing interveners may very well diminish the likelihood of future litigation.

²⁶ Compare, *Mount Laurel II, supra*, 92 N.J. at 284 (acknowledging the need for the special master to “work closely” with all those connected to the litigation, including “interested developers.”).

ii. FSHC's Counterclaim

*7 As distinct from Monroe 33's pleading, FSHC's counterclaim *does not* seek site-specific relief. Instead, its two-count counterclaim alleges: (1) that the Township's Housing Plan Element and Fair Share Plan is unconstitutional - i.e., a violation of its *Mount Laurel* obligation; and (2) that the Township has violated the New Jersey Civil

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Rights Act, *N.J.S.A. 10:6-2*, by failing to comply with the *Mount Laurel* doctrine and other sources of law. Since both of these claims fit squarely within the scope of issues authorized by the Supreme Court in *Mount Laurel IV* - challenges to compliance - FSHC's motion for leave to file its counterclaims is hereby granted.

VI. Conclusion

The Supreme Court's newly crafted framework for ensuring municipal compliance with *Mount Laurel* obligations, unlike the “reward” based process envisioned in *Mount Laurel II*, is not dependent upon site-specific remedies to achieve constitutional compliance.²⁷ Instead, as envisioned by the Supreme Court, “certified” and “participating” towns will likely subject themselves to a judicial evaluation of their constitutional compliance either by initiating declaratory judgment actions, or defending them - circumstances which, for all practical purposes, preclude, at least during the compliance phase of litigation, any party from being a “successful” plaintiff as required by *Mount Laurel II*.²⁸ Accordingly, all declaratory judgment actions involving “certified” or “participating” municipalities shall be subject to the procedures and protocols set out below:

²⁷ To be clear, this conclusion pertains only to “certified” or “participating” towns (whether they filed declaratory judgment actions or whether they chose to “wait to be sued”), and not to those towns that were neither “certified” nor “participating.” Nothing in this opinion is meant to diminish the rights of parties seeking builder's remedies through the filing of exclusionary zoning actions in the latter category of town. The builder's remedy schemes laid out by both *Mt. Laurel II* and *J.W. Field Co., Inc.* seem perfectly viable *in those towns that made no effort to satisfy their fair share obligations*, as the need to incentivize builders to bring constitutional compliance and/or exclusionary zoning litigation in such towns remains of paramount importance. See *Mt. Laurel IV*, *supra*, 221 *N.J.* at 23.

²⁸ See *Mt. Laurel II*, *supra*, 92 *N.J.* at 279.

1. Interested parties shall be permitted to intervene, but only for the limited purpose of participating (through mediation, negotiation, conciliation, etc.) in the court's adjudication of the subject municipality's constitutional compliance with its affordable housing obligation;
2. Interested parties shall not be permitted to file exclusionary zoning/builder's remedy actions, via counterclaims or through independently filed separate actions, until such time as the court has rendered an assessment of the town's affordable housing plan and has decided that the municipality is constitutionally noncompliant, and is determined to remain so by refusing to timely supplement its plan to correct its perceived deficiencies; and
3. If, after having received a full and fair opportunity to comply with its constitutional obligations, the court concludes that a municipality is “determined to be noncompliant,” builders and any other interested parties may then initiate and prosecute exclusionary zoning actions against the town, through which any builder's remedies to be awarded would be guided by equitable considerations and principles of sound planning, and not upon who filed first.

Adherence to these protocols will help focus the litigation and assist in fostering a prompt, efficient, and fair resolution of the constitutional compliance issues, without unnecessary distractions or impediments from builder/developers or other interested parties.

*8 It is so ordered.

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IN THE MATTER OF THE
APPLICATION OF THE BOROUGH
OF FALL HILLS, COUNTY OF
SOMERSET.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION – SOMERSET COUNTY
:
: DOCKET NO. SOM-L-903-15

Civil Action

**BRIEF OF PLAINTIFF BOROUGH OF FAR HILLS IN OPPOSITION TO
PULTE HOMES OF NJ, LIMITED PARTNERSHIP’S MOTION
TO INTERVENE AND ENFORCE LITIGANT’S RIGHTS AND IN SUPPORT OF
THE BOROUGH’S CROSS-MOTION TO ENFORCE LITIGANT’S RIGHTS**

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Land Management Ordinance Section 905(A)(5)..... *passim*
N.J.A.C. 5:23-2.15(f)(4)(ii)(1).....37, 38
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Rule 4:33-1.....21, 22
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Rule 4:69-6(a)2, 16

PRELIMINARY STATEMENT

Nearly a decade after the Borough of Far Hills (“Borough”) first filed this action in 2015, and months after the Borough secured a final judgment of repose confirming its immunity against all Mount Laurel lawsuits, Pulte Homes of NJ, Limited Partnership (“Pulte”) filed an eleventh hour motion improperly seeking to intervene in this lawsuit under the guise that the Borough is somehow “unreasonably delaying” and “obstructing” the construction of affordable housing in Pulte’s inclusionary development project. These contentions are mere subterfuge. After sifting through all of the smoke and mirrors, it becomes clear that Pulte’s motion has nothing to do with affordable housing at all. Rather, Pulte is merely attempting to excuse its blatant failure to comply with its conditions of site plan approval by invalidating the Notice of Violation that the Borough properly issued after discovering Pulte’s non-compliance.

Pulte’s gamesmanship should not be condoned. Nor can it, given the patent lack of merit to Pulte’s application. When the Borough’s Planning Board (“Board”) issued a Resolution granting Pulte site plan approval on February 7, 2022, the Board did so based on its review of an October 1, 2021 version of Pulte’s site plans. Those plans did not contain the 17-foot high retaining wall that exceeded the maximum height allowed for such structures under the Borough’s Land Management Ordinance (“LMO”), and principally gave rise to the Notice of Violation. Instead, after Pulte obtained site plan approval, it attempted to materially change its plans as part of Resolution Compliance by adding the subject retaining wall, significantly increasing the amount and severity of non-conforming retaining walls throughout the development, and substantially altering the grading of the property resulting in significant changes to the roadway and building elevations throughout the project.

In an attempt to justify its misconduct, Pulte stresses that the March 1, 2023, version of its plans that included all of these material changes were approved by the Board Engineer during Resolution Compliance, after Pulte failed to properly disclose to him its material changes. In any event, under the clear terms of the LMO and the Resolution of Approval, the Board Engineer lacked any legal authority to approve those material changes, rendering his approval utterly void. Indeed, Section 905(A)(5) of the LMO plainly prohibits any walls exceeding six (6) feet – such the 17-foot retaining wall that Pulte snuck into its site plans – from being erected in the absence of a design waiver. Under the Municipal Land Use Law, only the Board – not a Board Engineer – has authority to grant such a design waiver. Equally clear, Condition Nos. 33 and 38 of the Resolution’s conditions of approval plainly require any material changes to the approved plans to be brought back to the full Board for review and approval. Pulte did not abide by those conditions.

And its disregard for controlling authority and proper procedure did not end there. When the Borough’s Zoning Officer served Pulte with the Notice of Violation that gave rise to this dispute, Pulte had the option of either curing its violations, appealing the Zoning Officer’s decision within twenty (20) days pursuant to N.J.S.A. 40:55D-72a, or filing a prerogative writ action challenging the determination pursuant to Rule 4:69-6(a). Pulte did not avail itself of any of these remedies. Instead, Pulte responding to the notice by complaining that the Borough was purportedly interfering with affordable housing. In a demonstration of its continued good faith, the Borough’s attorney tempered the Notice of Violation to specifically indicate that it did not prohibit Pulte from applying for zoning permits for its affordable housing building.

Rather than show reciprocal good faith, Pulte ignored the Borough, and, as such, was issued a Notice of Default as authorized by the parties’ Developer’s Agreement. Then, after Pulte had already slept on its rights, and without providing the Borough with any alleged default notice or

opportunity to cure any perceived non-compliance, Pulte improperly filed the instant motion, claiming that the Borough is somehow obstructing the construction of Pulte's inclusionary development. This is despite that Pulte's construction on the project in fact continues to date.

At bottom, given Pulte's clear violation of the LMO and Resolution, Pulte cannot establish that the Borough's Notice of Violation was at all improper as to warrant the Court granting its motion to enforce litigant's rights. Moreover, Pulte has failed to establish any entitlement to intervene at this late juncture. Although the Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV") affords interested parties like Pulte limited standing to be heard in such action as this one on the sole question of whether a town has complied with its affordable housing obligations, Pulte's ability to participate ends there. Pulte is not entitled to wholesale intervention and need not become a party to this action to be heard on the issues it raises in its motion. Indeed, the multitude of relief that Pulte seeks in its Proposed Order, including the ability to seek a builder's remedy, contravenes both the dictates of Mount Laurel IV and the immunity conferred to the Borough through its Final Judgment of Repose.

Against this backdrop, the Court should deny Pulte's motion. Instead, the Court should grant the Borough's cross-motion to enforce litigant's rights as to compel Pulte to do what the Resolution required of it in the first place: return to the full Board for amended site plan approval.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

I. The Borough Commences this Action by Filing a Declaratory Judgment Complaint and the Court Grants the Borough Immunity from all Mount Laurel Lawsuits

On July 2, 2015, Plaintiff Borough of Far Hills ("Borough") commenced this action ("DJ Action") by filing a declaratory judgment complaint to approve the Borough's Housing Element and Fair Share Plan, along with a motion for temporary immunity from all Mount Laurel lawsuits, in response to Mount Laurel IV. (See Certification of Joseph V. Sordillo, Esq. ("Sordillo Cert."),

¶ 3.) On August 25, 2015, the Court entered an Order granting the Borough’s motion and providing it with temporary immunity from all Mount Laurel lawsuits. (See Certification of Lawrence S. Cutalo, Esq. (“Cutalo Cert.”), Ex. A.) This immunity continues to date. (Cutalo Cert., Ex. F.)

II. The Fair Share Housing Center Settlement Agreement

On October 15, 2018, the Borough and Fair Share Housing Center (“FSHC”) reached a settlement concerning the Borough’s affordable housing obligations and executed a settlement agreement memorializing this resolution (“FSHC Settlement Agreement”). (See Pulte’s Mot., Certification of Craig M. Gianetti, Esq. (“Gianetti Cert.”), Ex. A; Sordillo Cert., ¶ 4.) The FSHC Settlement Agreement was approved by the Court at a duly-noticed Fairness Hearing held on December 20, 2018. (Gianetti Cert., Ex. F; Sordillo Cert. ¶ 5.)

The FSHC Settlement Agreement included the inclusionary development project consisting of 105 age-restricted townhomes and an apartment building with 29 affordable units (“Development” or “Kimbolton Project”) on the property located on Block 5, Lot 4 at 220 Route 202, Far Hills, New Jersey (“Property” or “Kimbolton Site”), which is the subject of Pulte Homes of NJ, Limited Partnership’s (“Pulte”) pending motion to intervene and to enforce litigant’s rights. (Gianetti Cert., Ex. A; Sordillo Cert., ¶ 10.) The Development was originally proposed by Pulte’s predecessor-in-interest, Melillo Equities, LLC (“Melillo”), and previously referred to in this action as the “Errico Acres Site.” (Sordillo Cert., ¶¶ 11-13.)

On February 26, 2019, the Court entered an Order (“Fairness Order”) approving the FSHC Settlement Agreement. (Gianetti Cert., Ex. F.) Section 6(d) of the FSHC Settlement Agreement requires the Borough to generally cooperate with the developer’s efforts to obtain required approvals and refrain, in the absence of consent, from imposing any development standards that are “unreasonably cost generative.” (Gianetti Cert., Ex. A, § 6(d) (emphasis added).)

III. The Affordable Housing Agreement

On December 9, 2019, the Borough and Melillo entered into an Affordable Housing Agreement (“AHA”) in connection with the Development. (Gianetti Cert., Ex. E.) Similar to the FSHC Settlement Agreement, Section 4.3 of the AHA contains general language requiring that “[t]he Borough shall cooperate in all efforts of [the developer] to secure necessary municipal, county and state permits and approvals.” (Gianetti Cert., Ex. E, § 4.3.) Likewise, Section 4.4 of the AHA, reiterates the requirement that “the Borough will not impose development standards and/or requirements” that “have not otherwise been agreed to by the Parties” or been “set forth in th[e] [AHA],” that “would otherwise be considered to be ‘cost generative.’” (*Id.*, Ex. E, § 4.4.)

Section 5.2 of the AHA requires the parties to, among other things, “comply with any and all . . . laws . . . ordinances . . . [and] resolutions” applicable to the Development. (*Id.*, Ex. E, § 5.2.) Further, Section 9.15 requires that, in the event of default, the defaulting party must be given notice and an opportunity to cure. (*Id.*, Ex. E, § 9.15.) Importantly, it is only in the event that the defaulting party is provided such notice and opportunity to cure, but “fails to cure within forty-five (45) days” that the non-defaulting party may “exercise any and all rights and remedies,” including the right to file “a motion for enforcement of litigant’s rights.” (*Ibid.*)

IV. The Borough Rezones the Property to Make Section 905(A)(5) of the Land Management Ordinance Directly Applicable to Pulte’s Development

Shortly after executing the AHA, the Borough rezoned the Property on December 23, 2019, by adopting Ordinance 2019-08, establishing the TH-6-IAR Affordable Housing Overlay (AHO) Zone for the Property. (See Certification of Albert E. Cruz, Esq. (“Cruz Cert.”), ¶ 4.) On December 23, 2019, the Borough adopted an amended site-specific inclusionary development ordinance for the Development, Ordinance No. 2019-08. (*Ibid.*)

Section O of the Ordinance provides that, unless otherwise provided in the Site-Specific

Ordinance, the Borough’s Land Management Ordinance (“LMO”) applied to the Development: “O. Except to the extent modified herein, existing provisions of the Far Hills Borough [LMO] shall apply to [the] development of Block 5. Lot 4 [*i.e.*, the Property], including but not limited to . . . Design and Improvement Standards (Article IX)”. (Cruz Cert., ¶ 4, Ex. A.) Section 905 of Article IX, as amended on June 12, 2006, specifically provides at subsection (A)(5) that “[i]n all zoning districts, fences and walls shall be installed no higher than six (6’) feet”. (Cruz Cert., ¶ 6, Ex. B.)

V. **Pulte’s Site Plan Application**

On April 9, 2021, Pulte applied to the Borough’s Planning Board (“Board”) for preliminary and final site plan approval, preliminary and final subdivision approval, and other approvals including variance relief (“Site Plan Application”). (See Sordillo Cert., ¶ 18.) After public hearings held on July 5, 2021, August 2, 2021, August 14, 2021, September 22, 2021, October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, and January 3, 2022, the Board, on January 3, 2022, granted preliminary and final major subdivision approval and preliminary and final major site plan approval and variance relief with conditions. (*Id.*, ¶ 20.)

As a crucial point of distinction, the plans that Pulte submitted to the Board for review and approval were Pulte’s Preliminary and Final Major Site Development and Subdivision Plans, prepared by Robert A. Kennedy, PE, of Gladstone Design, Inc. (“Gladstone”), dated March 19, 2021, last revised October 1, 2021 (“Hearing Plans” or “Revision 1”). (See Certification of Michael F. Sullivan (“Sullivan Cert.”), ¶¶ 9-12.) Indeed, the October 1, 2021, Hearing Plans were the plans that were reviewed by the Board at the time that the Board voted to approve Pulte’s site plan application. (See Certification of Shana L. Goodchild (“Goodchild Cert.”), ¶¶ 7-8.)

Whereas, the version of the plans pursuant to which Pulte carried out the material site plan changes that gave rise to the parties’ instant dispute, was Pulte’s Preliminary and Final Major Site

Development and Subdivision Plans, prepared by Gladstone, dated March 19, 2021, last revised March 1, 2023 (“Resolution Compliance Plans” or “Revision 8”). (Sullivan Cert., ¶¶ 9-12.)

Importantly, although the October 1, 2021, Hearing Plans contained certain retaining walls, the retaining wall that is the subject of Pulte’s pending motion situated at the terminus of Errico Lane and adjacent to Fox Hunt Court (“Errico Retaining Wall”) was not included in those Hearing Plans. (Id., ¶ 30.)

VI. The Board’s Resolution and Conditions of Site Plan Approval

On February 7, 2022, the Board adopted Resolution No. 2022-10 memorializing its approval of Pulte’s Site Plan Application, inclusive of the Hearing Plans (“Resolution”). (See Gianetti Cert., Ex. I.) This approval, however, was subject to multiple conditions. (Ibid.)

Condition No. 33 provides that:

Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval.

[Id., Ex. I at 19, Condition No. 33 (emphasis added).]

Condition No. 38 requires that:

The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event that the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case.

[Id., Ex. I at 20, Condition No. 38 (emphasis added).]

VII. Pulte Sneaks In Material Changes to the Hearing Plans Without Obtaining Approval of the Full Board

Pulte ultimately revised the approved Hearing Plans “eight times” after the Resolution was adopted, by “adjusting grade elevations across the site to direct stormwater flows” and by “adding retaining walls.” (See Pulte’s Mot., Gladstone Cert., ¶ 11-15.) Pulte made the first such revision on March 15, 2022, by revising the Hearing Plans to purportedly “address comments relating to stormwater management” made by the Board Engineer. (*Ibid.*) According to Pulte, “[i]t was on this revision that the grading was adjusted and the [Errico] Retaining Walls were added,” which reach up to “seventeen feet” in height, in violation of Section 905(A)(5) of the LMO. (*Ibid.*) Rather than seek Board approval of this material and unlawful change, as Resolution Condition Nos. 33 and 38 required, Pulte attempted to make the change as part of Resolution Compliance. (*Ibid.*)

Pulte, by and through its engineer, Gladstone, submitted its revised site plans containing the newly-added Errico Retaining Wall to the Board Engineer, Paul W. Ferriero, PE, PP, CME, of Boswell Engineering (“Board Engineer”), by cover letter dated March 15, 2022 (“Gladstone March 15, 2022 Letter”). (Ferriero Cert., ¶ 20.) The Gladstone March 15, 2022 Letter included a narrative regarding revisions to the plans and expressly referenced revisions to the Grading Plan, Sheet 16, but did not say that a new, some seventeen foot high retaining wall (*i.e.*, the Errico Retaining Wall) was added to the plans. (*Id.*, ¶ 21.) Nor did the March 15, 2022 Letter otherwise call attention to the Errico Retaining Wall. (*Ibid.*)

According to the Board Engineer, based on his over thirty (30) years of experience as a municipal engineer, the Errico Retaining Wall, particularly given its non-conforming height, should have been identified in Gladstone’s March 15, 2022 Letter and labeled on Grading Plan, Sheet 16. (*Id.*, ¶ 25.) Indeed, the Board Engineer specifically indicates in his Certification that a new seventeen (17) foot high retaining wall is a “material change to the Site Plan and requires full

Planning Board approval at a public hearing.” (Id., ¶ 26.) Likewise, the Borough’s special consulting planner, Michael F. Sullivan, AICP (“Sullivan”), reached the same conclusion regarding the materiality of this change, as set forth below.

VIII. The Amended Order of Final Judgment of Compliance and Repose

On March 16, 2022, the Court entered an Amended Order of Final Judgment and Repose (“AJOR”), which re-affirmed and supplemented the terms of the Conditional Order of Final Judgment and Response (“JOR”) that the Court entered on December 15, 2020. (Gianetti Cert., Ex. H.) In the AJOR, the Court indicated that “[t]he Borough’s Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2023, and during this ten (10) year period the Borough shall have repose from all Mount Laurel lawsuits[.]” (Id., Ex. H, ¶ 2.)

The AJOR includes a vague indication in Paragraph 4 that “[w]ith respect to the [AHA] between the Borough and [Melillo] dated December 9, 2019, the Borough has ongoing obligations.” (Id., Ex. H, ¶ 4.) In addition, Paragraph 3(b) of the AJOR contemplated that the parties would “agree” on a “modification of the UHAC phasing requirements,” which would “be confirmed in a fully executed Developer’s Agreement[.]” (Id., Ex. H, ¶ 3(a).)

IX. The Developer’s Agreement

On March 17, 2023, the Borough and Pulte entered into a Developer’s Agreement (“Developer’s Agreement”). (See Mullen Cert., Ex. C.) Paragraph 3, “Developer Bound,” provides that Pulte “will faithfully discharge all of the obligations” set forth in the Resolution and “install the public site improvements” in accordance with the “Borough Code” and “any applicable County, State or otherwise agency required approvals.” (Id., Ex. C, ¶ 3.) Similarly, Paragraph 4, “Construction Subject to Ordinance,” provides that Pulte “shall construct and design all

improvements strictly in accordance with” the “Resolution” and “the Land Use Ordinance of the Borough of Far Hills.” (Id., Ex. C, ¶ 4.)

Similarly, Paragraph 22, “Compliance with Resolution Conditions and Applicable Laws,” provides that Pulte “shall comply with the Ordinances of the Borough and all other applicable laws in the State of New Jersey” and “shall be required to obtain any and all other approvals . . . required by any . . . board . . . having jurisdiction over the application or over the Property and/or the improvements authorized by the Approval,” such as the Board. (Id., Ex. C, ¶ 22(a), (e).) Paragraph 22 further provides that “[a]ll conditions of the Resolution shall be complied with and acted upon by [Pulte] unless otherwise amended by formal action of the [Board].” (Id., Ex. C, ¶ 22(f).)

In the event that Pulte were to materially breach any of these obligations, the Borough is specifically authorized under the Developer’s Agreement to withhold permits and declare Pulte to be in default. Specifically, Paragraph 37, “Reliance of Borough,” provides that any failure by Pulte to “adhere to the material terms of any agreement incorporated within the Resolution or this Agreement,” or any “material deviation from the board-approved plans,” shall “be deemed a material breach of this Agreement” and “the Borough shall have the right to withhold Building Permits and Certificates of Occupancy as a temporary measure until such breach has been resolved by the Parties in accordance with the terms and cure provisions of Section 34.” (Id., Ex. C, ¶ 37.) Further, Paragraph 34, “Developer’s Default,” provides that if Pulte “materially defaults under its obligations,” the “Borough Engineer shall send written notice to [Pulte] advising of its failure to comply,” and, if Pulte “has neither complied with the notice to correct, nor taken affirmative steps toward correcting such default, within thirty (30) days following receipt of the written notice . . . the Borough may . . . “withhold the issuance of any further building permit(s) and/or certificate(s) of occupancy until the material violation has been corrected.” (Id., Ex. C, ¶ 34.)

Pursuant to Paragraph 14, “Phasing of Development,” the phasing for the affordable units is generally dependent on Pulte’s ability to secure certificates of occupancy for the market-rate for-sale townhouses. (*Ibid.*) Paragraph 16, however, provides that “[p]rior to the issuance of a permanent Certificate of Occupancy for a particular townhouse or apartment unit, [Pulte] shall have installed all of the improvements needed to service the townhouse or apartment unit . . . in accordance with the Approval and all applicable governmental agency approvals[.]” (*Id.*, Ex. C, ¶ 16.) Consequently, if Pulte’s failed install unit improvements in accordance with the applicable approvals, as is necessary to obtain certificates of occupancy, Pulte alone would be responsible for failing to proceed with affordable housing construction on-schedule. (*Ibid.*)

X. Rather than Obtain Approval of the Full Board, Pulte Continues to Make Material Changes to the Hearing Plans Via Resolution Compliance

After initially revising the Hearing Plans in March 2022 to add the Errico Retaining Wall, Pulte continued to make unauthorized retaining wall and grade elevation revisions to the Hearing Plans to purportedly address stormwater comments of the Board Engineer. (*See* Sullivan Cert., ¶¶ 12-18.) Pulte made its last revision to the Hearing Plans on March 1, 2023 (“Resolution Compliance Plans”). (Sullivan Cert. 11.) Sheet 16 from the Grading Plan of the Hearing Plans reflected that the area where the Errico Retaining Wall is located would have an elevation of approximately 260 feet. (*See* S. Khan’s Mot., Certification of Sohail Khan (“Khan Cert.”), ¶ 5; Certification of Daniel L. Steinhagen, Esq. (“Steinhagen Cert.”), Ex. A.) Sheet 16 in the Resolution Compliance Plan, however, shows that the grades in that area have been raised up to approximately 270 feet, which is 10 feet higher than what was on the Hearing Plan that the Board approved. (Khan Cert., ¶ 10; Steinhagen Cert., Ex. D at 5.) As a result of this change, the Errico Retaining Wall is now visible from every room in Proposed Intervenor Sohail Khan’s neighboring home. (Khan Cert., ¶¶ 10-13.)

In addition to creating an eyesore, Pulte also, by raising the grades on the Property, had to steepen the pitch of the pipes adjacent to the bioretention basin at the base of the Errico Retaining Wall. Specifically, the Hearing Plans that the Board approved showed a 56-foot long, 18-inch pipe that had a slope of 0.91%. (Khan Cert., ¶ 16; Steinhagen Cert., Ex. D at 1.) The Resolution Compliance Plans, however, show that Pulte increased the slope of its pipes to 2.32% (almost triple the original slope). (Khan Cert., ¶ 16; Steinhagen Cert., Ex. D at 2.) This change results in stormwater being discharged onto the neighboring property with much greater velocity than anticipated by the Board when it approved the Hearing Plans. (Khan Cert., ¶ 16.)

Pulte made several other material changes to its site plan without proper Board review and approval. As Sullivan has explained in his accompanying Certification, the Resolution Compliance Plans materially modified the Hearing Plans that the Board approved by: (1) reducing the length of nature paths throughout the Development from 4,618 feet to 780 feet, resulting in a 16.8% reduction in length; (2) increasing the length of retaining walls in the Development by 1,367 feet from a total of 2,678 feet to total of 4,045 feet in length; (3) increasing the amount of retaining walls with non-conforming heights in violation of the Section 905(A)(5) of the LMO from 763 feet of non-conforming retaining walls to 1,679 feet of non-conforming retaining walls, representing an increase of 120%; (4) increasing the number of retaining walls with non-conforming heights in violation of Section 905(A)(5) of the LMO from three (3) such walls to ten (10) such walls; (5) increasing the roadway elevations throughout the Development, including an increase of nearly ten (10) feet to the elevation of Errico Lane alone; and (6) substantially revising the grading plan, resulting in elevations to 94 townhouse units – or, 89.5% of all of the townhouses – throughout the Development. (Sullivan Cert., ¶¶ 13-19.)

The Board Engineer reviewed Gladstone's material changes in the Resolution Compliance

Plans and issued a resolution compliance letter on March 14, 2023, which purported to approve the changes. (Gladstone Cert., ¶ 15.) As previously indicated, the Board Engineer was misled by Pulte and Gladstone's failure to properly bring attention to its material changes. (Ferriero Cert., ¶¶ 21-25.) On March 15, 2023, the Board Secretary, at the recommendation of the Board Engineer, signed the Resolution Compliance Plans containing the improper retaining wall, elimination of parts of the nature walk, and grading modifications. (See Gladstone Cert., ¶ 16.)

Notwithstanding this measure, Resolution Condition Nos. 33 and 38 prohibited the approval of the Resolution Compliance Plans without Pulte first returning to the full Board for amended site plan approval. (See Gianetti Cert., Ex. I at Condition Nos. 33, 38.) Indeed, as Sullivan explains in his certification, site layout means both a horizontal and vertical view. (Sullivan Cert., ¶¶ 30-33.) Accordingly, when Pulte raised the grade at the Development, Pulte changed both the horizontal and vertical layout of the Development. (Ibid.) The change to the horizontal layout impacted the view of adjoining properties. (Ibid.) The horizontal layout change required that, pursuant to Condition 33 and the Developer's Agreement, Pulte return to the Board for amended site plan approval. (Ibid.) Similarly, the addition of a new retaining wall approximately three hundred feet (300') long and as high as seventeen (17') feet is a new structure at the Development, not part of the Hearing Plans that the Board approved. (Ibid.) The new structure required that, pursuant to Condition 38 and the Developer's Agreement, Pulte return to the Board for amended site plan approval. (Ibid.)

Significantly, Pulte, its counsel and its professionals specifically represented to the Board that any substantive changes to its site plan following approval would be brought back to the Board. (Sullivan Cert., ¶ 26.) Indeed, Pulte's counsel, Craig Gianetti, Esq., stated at the July 5, 2021, hearing that, "after the project gets fully engineered and they get more into you know, the

grading, the topography, the stormwater management . . . sometimes there are minor adjustments that are made to the plans . . . where the applicant has to seek relief from it.” (Ibid.) Later at that hearing, the Board’s planner, David Banisch, PP, AICP (“Board Planner”), indicated that, if any agencies “required any significant change to the board’s approval,” the “applicant would return for the board’s review and approval of any significant change,” to which Mr. Gianetti responded, “And that’s fine. And we are agreeable to that. That’s not uncommon.” (Ibid.) In addition, Pulte’s engineer, Kennedy, indicated at the hearing that, if, after consulting with the Board Engineer, “there is changes to the plan, the public and the board will certainly have a chance to understand any of those changes.” (Ibid.) Despite these assurances, Pulte never sought the full Board’s review and approval of its material revisions in the Resolution Compliance Plans, and worse, refused to return to the Planning Board once the Borough learned of the material plan changes.

Although the Borough ultimately issued building permits on July 28, 2023, and August 21, 2023, which Pulte contends authorized it to construct the Errico Retaining Wall and other material changes, (see Mullen Cert., ¶ 10, Exs. D-E), the Borough did so based on the Board Engineer’s improper determination of Resolution compliance.

XI. The Borough First Becomes Aware of Pulte’s Unauthorized Material Changes to the Site Plan

On or about October 16, 2023, Borough officials became aware that the non-conforming Errico Retaining Wall was constructed at the Development but not presented to the Board for review and approval. (Cruz Cert., ¶ 18.). On December 18, 2023, the Borough called for a meeting with Pulte representatives to discuss the retaining walls. (Id., ¶ 19.)

On December 19, 2023, the Borough met with Pulte representatives to discuss that Pulte’s material changes required full Planning Board approval, including necessary variance or design waiver relief, a plan to mitigate the impact of the retaining wall on the adjoining properties on Fox

Hunt Court and potential modifications to the street and parking layout above the retaining wall. (*Id.*, ¶ 20.). Additionally, the Borough requested an annotated site plan comparison showing the changes in the retaining walls and the grading at the Development since the Board approval on February 7, 2022. (*Id.*, ¶ 21.). Because the Borough and Pulte representatives were unable to agree on whether Pulte would return to the Board, the Borough and Pulte agreed to meet again on January 11, 2024. (*Id.*, ¶ 22.). Pulte agreed to prepare the comparison site plan and distribute it to the Borough representatives prior to the January 11, 2024 follow-up meeting. (*Id.*, ¶ 23.).

On January 2, 2024, the Borough Attorney sent Pulte a letter memorializing the discussions on December 19, 2023, and that the comparison site plan Pulte was to provide in anticipation of the January 11, 2024 meeting. (*Id.*, ¶ 25, Ex. G.). On January 2, 2024, the Borough Attorney also notified Pulte that until the disagreement regarding Pulte’s return to the Board was resolved, “all construction by Pulte at the [] Development [was] at Pulte’s sole risk”. (*Id.*, Ex. G.). On January 11, 2024, representatives of the Borough and Pulte met a second time and reviewed the comparison site which showed a number of material changes to the site plan but were unable to reach an agreement that Pulte would return to the Board for variance or a design waiver for the retaining walls and grading changes. (*Id.*, ¶ 27.)

XII. The Notice of Violation

On January 18, 2024, the Borough issued a Notice of Violation to Pulte in connection with Pulte’s unauthorized retaining wall and grading changes (“Notice of Violation”). (*Id.*, ¶ 28, Ex. H.) In the Notice of Violation, the Borough informed Pulte that: (1) by installing retaining walls in excess of six (6) feet without first obtaining a design waiver pursuant to N.J.S.A. 40:55D-51, Pulte violated Section 905(A)(5) of the Borough’s LMO (“Retaining Wall Violation”); (2) by increasing the grades throughout the development by as much as eleven (11) feet resulting in

changes to the height of the roadway network, Pulte violated Condition No. 33 in the Resolution (“Roadway Network Violation”); and (3) by implementing its grading changes, Pulte effectively increased the height of its buildings by as much as eight (8) feet more than the maximum building height that was approved by the Board (“Building Height Violation”). (Id., Ex. H, §§ A-C.)

As a result of Pulte’s non-compliance, the Borough indicated in the Notice of Violation that, in accordance with Section 302(A) of the Borough’s LMO, no further zoning permits would be issued until Pulte cured its violations. (Id., Ex. H, § D.) Nevertheless, the Borough notified Pulte that it had thirty (30) days from receipt of this Notice of Violation to “cure” the violations by making an appropriate “application to the Planning Board.” (Id., Ex. H, §§ A-C.)

To the extent that Pulte wished to challenge the January 18, 2024, Notice of Violation instead of cure its violations before the Board, Pulte had to either: (1) appeal the Zoning Officer’s determination to the Board within twenty (20) days (*i.e.*, by February 7, 2024) pursuant to N.J.S.A. 40:55D-72(a); or (2) file an action in lieu of prerogative writs within forty-five (45) days (*i.e.*, by March 4, 2024) pursuant to Rule 4:69-6(a). (Cruz Cert., ¶ 30.) It did none of these things.

XIII. Pulte’s Response to the Notice of Violation

Instead, by correspondence dated February 14, 2024, Pulte’s counsel responded to the Notice of Violation (“Response to Notice of Violation”) and simply expressed its disagreement with each violation. (Id., Ex. I.) In the Response to Notice of Violation, Pulte contended that a design waiver was not required for the Retaining Wall Violation merely because the Board’s planner and engineer made reference to planned retaining walls exceeding six feet in certain review letters from 2021 but never indicated that a design waiver was required for those walls. (Id., Ex. I at 1-2.) Further, Pulte contended that because it implemented its non-compliant retaining walls into revised plans in an effort to address stormwater management comments received from the

Board’s engineer and the NJDEP, and the Board’s engineer attempted to sign off on those revised plans, Pulte’s non-compliance should somehow be excused. (Id., Ex. I at 2.)

With respect to the Roadway Network Violation, Pulte contended that because the changes that Pulte rendered to the “height” of the roadway network purportedly did not constitute changes to the “layout” of the roadway network, those changes did not trigger Condition No. 33 in the Resolution sufficient to require Pulte to obtain Board approval for the changes. (Id., Ex. I at 2-3.) Further, concerning the Building Height Violation, Pulte argued that because it rendered its grading changes after the Board hearings and in an effort to comply with stormwater management comments received by the Board Engineer and the NJDEP, its non-compliant building heights should somehow be excused. (Id., Ex. I at 3.)

XIV. The Borough Tempers the Notice of Violation to Exclude Permitting Restrictions for the Affordable Housing Building

By correspondence dated February 27, 2024, the Borough’s counsel responded to Pulte’s Response to the Notice of Violation. (Id., Ex. J.) In this correspondence, the Borough’s counsel made clear that Section D of the Notice of Violation, in which the Borough indicated that it would not issue any zoning permits to Pulte until Pulte cured its violations, “does not apply to Zoning Permits for the affordable housing building to be constructed by Pulte” in the Development. (Ibid.) In a further demonstration of good faith, the Borough’s counsel indicated that “[t]he Zoning Officer will review a Zoning Permit Application for this building in an expedited manner,” but that “[a]ll other terms and conditions of the [Notice of Violation] remain in effect.” (Ibid.)

XV. Pulte Makes No Effort to Cure its Violations and the Borough Issues a Default Notice

Ultimately, Pulte did not respond to the Borough’s February 27, 2024, correspondence or otherwise make any effort to cure the infractions set forth in the Notice of Violation. (Cruz Cert., ¶ 38.) As such, by correspondence dated March 4, 2024, the Borough issue Pulte a Notice of

Default (“Notice of Default”). (*Id.*, Ex. K.) In the Notice of Default, the Borough indicated that, “[f]or the reasons described in the Notice of Violation, [the development] is not being constructed in accordance with the Application Documents.” (*Ibid.*) Accordingly, the Borough informed Pulte that, “pursuant to Paragraph 34 of [the] Developer’s Agreement,” the Borough “declares a default” against Pulte, which, like with the Notice of Violation, Pulte had thirty (30) days to cure. (*Ibid.*)

XVI. Without Following Proper Default Procedure, Pulte Files a Baseless Motion to Enforce Litigant’s Rights

Pulte allowed its cure periods to expire without ever appealing the Zoning Officer’s determination, curing its non-compliance by filing an amended site plan application with the Board, or filing a prerogative writ action challenging the Notice of Violation or Notice of Default. (Cruz Cert., ¶ 35.) Instead, on March 12, 2024, fifty-three (53) days after the Notice of Violation was issued, Pulte filed the instant Motion to Intervene and Enforce Litigant’s Rights. (*Id.*, ¶ 36.) Further, Pulte filed its application without ever serving the Borough with any notice of default in accordance with Section 9.15 of the AHA. (*Id.*, ¶¶ 35-38.)

In its motion, Pulte principally argues that, by issuing the Notice of Violation and Notice of Default, the Borough somehow violated: (1) its obligation under Section 6(d) of the FSHC Settlement Agreement and Section 4.3 of the AHA to “cooperate” with Pulte’s efforts to obtain necessary approvals and permits for the development; (2) its obligation under Section 6(d) of the FSHC Settlement Agreement and Section 4.4 of the AHA to avoid imposing any “unreasonably” “cost-generative” development standards or requirements that the parties have not otherwise agreed to; (3) its obligation under Section 4.3 of the AHA to take all “reasonable steps” to facilitate construction of the development; and (4) the vague acknowledgement in the AJOR that the Borough has “ongoing obligations” under the AHA. (*See* Pulte’s Mot., Br. at 20-21, 22-23.)

More particularly, Pulte contends that the Borough’s issuance of the Notice of Violation

violated its general obligation to cooperate with Pulte's development efforts and avoid imposing unreasonably cost-generative requirements because, according to Pulte, the Board's engineer approved Pulte's material site plan changes giving rise to the Notice of Violation. (Ibid.)

XVII. The Borough's Has a Demonstrated History of Commitment Toward its Affordable Housing Obligations

In its motion, Pulte contends that the Borough is engaged in a course of conduct to frustrate the construction of affordable housing at the Development. However, the record demonstrates nothing but steady progress toward completion of Pulte's inclusionary development.

Early on in this matter, the Borough's professionals prepared a Fair Share Plan ("HEFSP"), and all supporting documentation in accordance with the October 15, 2018, FSHC Settlement Agreement and the recommendations of the Court Master, and the Fair Share Plan was adopted by the Board on August 5, 2019, and endorsed by the Borough Council on July 8, 2019. (Sordillo Cert., ¶ 4-7.) The Borough and FSHC executed an Amended Settlement Agreement on July 6, 2020. (Gianetti Cert., Ex. B.) On November 17, 2020, the Court approved the Borough's HEFSP at a duly-noticed Compliance Hearing and, on December 16, 2020, entered a Conditional Order of Final Judgment of Compliance and Repose ("Conditional JOR"), which included six (6) conditions that needed to be satisfied. (Id., Ex. G; see also Sordillo Cert., ¶¶ 7-8.)

On March 16, 2022, the Court entered the AJOR, which acknowledged the Borough's satisfaction of most of the JOR conditions, and included that within 120 days, that two (2) remaining conditions be satisfied, the second of which concerned development phasing. (Gianetti Cert., Ex. H; Sordillo Cert., ¶ 9.) The Borough satisfied the first of those two final conditions within the 120-day time period. On August 10, 2022, in a conference call held between FSHC, Melillo, Pulte, Borough counsel, and Borough affordable housing counsel, the phasing issue had

still not been fully negotiated between FSHC and Pulte/Melillo. (Sordillo Cert., ¶ 44.) That language was not fully agreed to by FSHC and Pulte until September 21, 2022. (Id., ¶ 45.)

From September 2022 through February 2023, the Borough worked cooperatively with Pulte to finalize the Developer's Agreement and address any other matters relative to development of the affordable housing units at the Development. (See generally Sordillo Cert., ¶¶ 46-76.) On February 22, 2023, Melillo filed a Motion to Intervene and Enforce Litigant's Rights, alleging, as Pulte does here, that the Borough is unreasonably delaying its compliance with its Planning Board approvals. (Cutalo Cert., Ex. B.) On March 1, 2023, FSHC filed a similar motion. (Id., Ex. C.) Before opposition was submitted, the Court held mediation, the parties resolved the issues, and FSHC and Melillo withdrew their Motions. (Id., Exs. D-E.) Subsequently, on November 14, 2023, the Court entered an Order of Final Judgment of Compliance and Repose ("Final JOR"), stating that the Borough has fully satisfied all its conditions. (Id., Ex. F.)

XVIII. The Borough Has Been Steadily Cooperative with Pulte's Permitting Efforts for its Inclusionary Development

In a similar manner, the Borough has been overwhelmingly cooperative with Pulte's permitting efforts for its inclusionary development. Pulte first applied for a Zoning Permit from the Borough Zoning Officer on May 16, 2023. (Cruz Cert., ¶ 8.) Since then, Pulte applied for Zoning Permits on June 12, 2023, July 11, 2023, September 29, 2023 and March 4, 2024. (Ibid.) All but the last of these permits were approved, as confirmed by the 2023 Zoning Cash Record. (Id., ¶ 10, Exs. C-D.) A total of eleven (11) Zoning Permits were issued during this period. (Ibid.)

Similarly, Pulte first applied for a Construction Permit on June 13, 2023. (Cruz Cert., ¶ 12.) Since then, Pulte applied for Construction Permits on June 28, 2023, July 20, 2023, July 26, 2023, August 9, 2023, August 21, 2023, October 2, 2023, October 4, 2023, November 2, 2023, December 7, 2023, December 8, 2023, February 27, 2024, and February 28, 2024. (Ibid.) All

Construction Permits were issued, with the last Permit issued on March 11, 2024, as demonstrated by the Permit Fee Log Detail. (Id., ¶ 12, Ex. E.) A total of twenty-four (24) Construction Permits were issued during this period. (Id., ¶ 14, Ex. F.) Pulte has been steadily applying for Zoning Permits and Construction Permits since May 16, 2023, and receiving them, with the last Construction Permit issued March 11, 2024. (Cruz Cert., ¶ 16.)

XIX. Pulte’s Construction Continues at the Development To Date

Notwithstanding that Pulte failed to obtain amended site plan approval from the full Board and failed to timely appeal or cure the Notice of Violation, construction by Pulte of the site improvements and one townhome building at Development and the water line along Route 202 continues to date. (Cruz Cert., ¶ 49.) Moreover, as of April 2, 2024, construction of the wastewater treatment plant at the Development had commenced, albeit without the necessary Zoning and Building Permits and without the necessary Construction Code Official inspections. (See Certification of Steve Mahoney (“Mahoney Cert.”), ¶ 3.) Further, construction of the foundation walls of wastewater treatment plant have been completed. (Ibid.)

For the reasons that follow, Pulte’s motion should be denied in its entirety.

LEGAL ARGUMENT

POINT I

PULTE CANNOT SATISFY THE LEGAL STANDARD FOR INTERVENTION AND MAY ONLY BE HEARD ON THE LIMITED ISSUE OF WHETHER THE BOROUGH’S ALLEGED CONTRACTUAL VIOLATIONS CONSTITUTE NON-COMPLIANCE WITH ITS AFFORDABLE HOUSING OBLIGATIONS

Through its intervention motion, Pulte seeks to inject itself into this litigation at the eleventh hour and be afforded wholesale participation in the proceeding. Under either the Rule 4:33-1 intervention as of right standard, or the Rule 4:33-2 permissive intervention standard,

Pulte's request is unsustainable. Both standards prohibit intervention where, as here, it is untimely sought and would prejudice the rights of the original parties if granted.

Given that Pulte's attempt, through its motion, to contravene the immunity afforded to the Borough through the FSHC Settlement Agreement and Judgments of Repose, the application is highly prejudicial to the Borough. Moreover, because Pulte filed its motion almost a decade after this action commenced, its application is woefully untimely. These circumstances, coupled with the fact that FSHC already adequately represents Pulte's interest in securing affordable housing compliance, militate heavily in favor of denying Pulte's intervention application. Instead, under Mount Laurel IV, Pulte should only be afforded "limited party" status and be heard on the narrow issue of whether the Borough has complied with its affordable housing obligations. To the extent that Pulte seeks to intervene for any other purpose, its motion should be denied.

A. Intervention Should Not Be Granted Where it is Untimely Sought and Would Prejudice the Rights of the Existing Parties

To qualify for intervention as a matter of right under Rule 4:33-1, the movant must "(1) claim 'an interest relating to the property or transaction which is the subject of the transaction,' (2) show [it] is 'so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest,' (3) demonstrate that the '[movant's] interest' is not 'adequately represented by existing parties,' and (4) make a 'timely' application to intervene." Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998) (citation omitted). While Rule 4:33-1 should "be liberally construed," courts have made clear that the "test is 'whether the granting of the motion will unduly delay or prejudice the rights of the original parties.'" Atl. Employers Ins. Co. v. Tots & Toddlers Pre-Sch. Day Care Ctr., 239 N.J. Super. 276, 280 (App. Div. 1990).

In a similar manner, Rule 4:33-2 allows a court to grant permissive intervention where the movant has a "claim or defense" that shares "a question of law and fact in common" with "the

main action.” R. 4:33-2. When determining whether permissive intervention is appropriate, the rule expressly requires that the “court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties” Ibid.

Accordingly, under either standard, “intervention should be denied if the [movant’s] interests are adequately represented by existing parties and/or intervention will prejudice the rights of one of the original parties.” White v. White, 313 N.J. Super. 637, 640-41 (Ch. Div. 1998) (emphasis added). In addition, under both standards, “[a]n essential prerequisite to intervention is timeliness, which should be equated with diligence and promptness.” Hanover Twp. v. Town of Morristown, 118 N.J. Super. 136, 143 (Ch. Div. 1972), aff’d, 121 N.J. Super. 536 (App. Div. 1972). A movant “should not be permitted to stand on the sidelines, watch the proceedings and express [its] disagreement only when the results of the battle are in and [it was] dissatisfied.” Ibid.

B. Pulte Should Be Denied Intervention Because it Untimely Filed its Application and is Seeking to Prejudice the Borough’s Immunity Against Affordable Housing Litigation

For multiple reasons, Pulte cannot satisfy either standard for intervention. A principal reason is timeliness. The Borough commenced this action on July 2, 2015, by filing a Declaratory Judgment Complaint and Motion for Temporary Immunity from Mount Laurel Lawsuits. That was 3,176 days – or nearly nine (9) years – before Pulte filed its intervention motion on March 12, 2024. In other words, Pulte “stood on the sidelines” for almost a decade before attempting to inject itself into this action. This alone warrants denial of Pulte’s motion.

Beyond this, Pulte fails to appreciate the extreme prejudice that intervention would visit upon the Borough at this juncture. The Borough has enjoyed immunity from Mount Laurel litigation since the Court entered an Order granting the Borough’s Motion for Temporary Immunity some 3,145 days ago on August 25, 2015. That immunity was again recognized in the FSHC Settlement Agreement entered into on October 15, 2018. It was also acknowledged in the

Condition JOR that the Borough secured on December 16, 2020, the Amended JOR that the Borough secured on March 16, 2022, and the Final JOR that this Court entered on November 14, 2023. Any municipality entitled to immunity is insulated from interested parties such as Pulte becoming parties to the litigation – particularly when the municipality has secured a Judgement of Repose like the Borough did. To grant Pulte wholesale intervention would eviscerate this immunity, thereby significantly prejudicing the Borough.

For completeness, intervention should also be denied because FSHC already adequately represents Pulte’s purported interest in preventing the Borough from allegedly delaying affordable housing construction. Indeed, this the very position that FSHC took when it filed its March 1, 2023, motion to enforce litigant’s rights. By any measure, therefore, intervention is unwarranted.

C. While Pulte is Not Entitled to Intervene, It Has Limited Standing to Be Heard on Whether the Borough Has Violated its Affordable Housing Obligations

Its failure to satisfy the intervention standard aside, Pulte need not become a party to this lawsuit to be able to enforce its rights relative to the project. Indeed, Pulte may be heard on its claims pursuant to the limited standing conferred to interested parties under Mount Laurel IV.

In that case, the Supreme Court stated that in all declaratory judgment actions brought by a municipality seeking an affirmative declaration of constitutional compliance with its affordable housing obligation, any “interested parties” must be afforded “notice and opportunity to be heard.” Mount Laurel IV, 221 N.J. at 23. Trial courts have interpreted this mandate to mean that interested parties may be heard in the lawsuit, but their participation is “limited to the question of whether the particular town has complied with its constitutional housing obligations.” In re Monroe Twp. Housing Element and Fair Share Plan, 2015 WL 10844850, at *4 (Law Div. July 9, 2015). Participation of any other form or for any other purpose “goes beyond the limited participation envisioned by the Supreme Court.” Id. at *5.

Here, to the extent that the Court permits Pulte to intervene at all in this litigation, its participation should be limited to its claims that the Borough's alleged contractual violations constitute a failure to comply with its affordable housing obligations. Participation of any other form – such as the wholesale intervention that Pulte seeks – “goes beyond the limited participation envisioned by the Supreme Court” and should not be condoned.

D. While Disputing that the Board Engineer Misled Him, the Borough Does Not Oppose Sohail Khan's Motion for Limited Intervention

For completeness, the Borough does not oppose the limited intervention motion filed by proposed intervenor Sohail Khan (“Khan”). The Borough merely disputes any suggestion by Khan that the Board Engineer misled him. Within his motion papers, Khan included a November 22, 2023, e-mail in which the Board Engineer stated that the retaining wall adjacent to Khan's property “has been on the site plans reviewed and approved by the Planning Board.” (Ferriero Cert., ¶ 27, Ex. K.) As the Board Engineer explained in his Certification, that e-mail “was not intended to mislead Khan” and instead, “was sent based on [his] over thirty years of experience that a 17 foot high retaining wall would have been shown on the Site Plan that Pulte filed with and explained to the Planning Board during the public hearings.” (*Id.*, ¶ 28.) To the extent that Pulte has opposed Khan's motion, Pulte has no standing to do so given that it is not a party to this action.

POINT II

THE COURT SHOULD DENY PULTE'S MOTION TO ENFORCE LITIGANT'S RIGHTS BECAUSE PULTE HAS VIOLATED THE TERMS AND CONDITIONS OF AN ORDINANCE AND ITS PLANNING BOARD APPROVALS BY MAKING MATERIAL CHANGES TO ITS SITE PLANS THAT MUST BE REVIEWED AND APPROVED BY THE FULL PLANNING BOARD

By requesting that this Court grant its motion to enforce litigant's rights, Pulte would have the Court conclude that the Borough somehow willfully failed to comply with an order or judgment

sufficient to warrant relief pursuant to Rule 1:10-3. The Borough, however, did not violate anything. Rather, given that Pulte, without proper review and approval of the Board, materially modified its site plans to implement non-compliant retaining walls, roadway network changes, grade changes, and building height changes, the Borough was well-within its contractual rights to issue the Notice of Violation. The motion to enforce litigant's rights, therefore, should be denied.

A. Pulte Cannot Satisfy the Legal Standard for a Motion to Enforce Litigant's Rights

On this application, Pulte seeks relief by way of a motion to enforce litigant's rights pursuant to Rule 1:10-3. Rule 1:10-3 only "applies to 'parties who willfully fail to comply with an order or judgment.'" Loigman v. Twp. Comm. of Middletown, 308 N.J. Super. 500, 503 (App. Div. 1998) (emphasis added); see also Hynes v. Clarke, 297 N.J. Super. 44, 57 (App. Div. 1997) ("The comment to R. 1:10-3 makes clear that the rule only applies to parties who willfully fail to comply with an order or judgment."). In this context, "willfully" means with "a conscious, intentional failure or reckless indifference." Arrow Mfg. Co. v. West New York, 18 N.J. Tax 574, 578 (Tax 2000) (assessing willfulness for purposes of Rule 1:10-3).

In order to grant a motion to enforce litigant's rights, therefore, the court must find that the non-movant has, with a conscious intentional failure or reckless indifference, "failed to comply with [an] order and that the court's assistance is necessary to secure compliance." N.J. Dep't of Env'tl. Prot. v. Mazza and Sons, 406 N.J. Super. 13, 29 (App. Div. 2009). Indeed, "[t]he scope of relief in a motion in aid of litigants' rights is limited to remediation of the violation of a court order." Abbott ex rel. Abbott v. Burke, 206 N.J. 332, 371 (2011).

Here, Pulte has failed to demonstrate that the Borough at all violated, much less willfully violated, any "order or judgment." Rather, Pulte bases its motion on an incorrect contention that the Borough somehow violated its contractual obligations under the FSHC Settlement Agreement

and AHA to cooperate with Pulte's efforts to obtain necessary permits and approvals and avoid implementing any unreasonably cost-generative development requirements.

Pulte, however, has not even made that showing. Nor can it. As set forth more fully below, the Borough had authority to issue the Notice of Violation and Notice of Default after Pulte, in violation of the LMO and Resolution conditions, materially modified its site plan without obtaining a design waiver or proper review and approval from the Board at a public hearing. Consequently, Pulte has not, and cannot, satisfy the Rule 1:10-3 standard for relief.

B. The Borough Did Not Breach Any Obligations by Issuing the Notice of Violation and Notice of Default Because Pulte's Material Site Plan Changes Violated the Borough's Land Management Ordinance and the Resolution's Conditions of Approval

Section 905(A)(5) of the LMO plainly prohibited Pulte from amending its site plan to include new retaining walls exceeding six (6) feet. Pulte ignored this mandate. Equally plain is the language of Resolution Condition Nos. 33 and 38, which prohibited Pulte from rendering grading changes materially altering roadway networks and building heights in the development without first obtaining review and approval from the full Board. Pulte ignored that requirement too. Given Pulte's non-compliance with these clear provisions, the Borough was well-within its rights to issue the Notice of Violation and Notice of Default. The Court, therefore, need not look any further than the unambiguous language of a municipal ordinance and resolution to determine that Pulte's motion lacks any merit.

"[T]he rules of construction which apply to statutes and municipal ordinances apply equally to municipal resolutions." Borough of Haledon v. Borough of N. Haledon, 358 N.J. Super. 289, 308 (App. Div. 2003) (citations omitted). "Those principles require that a resolution should be interpreted to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" Ibid. The first step of statutory construction requires an examination of

the language of the resolution.” Ibid. “The meaning derived from that language controls if it is clear and unambiguous.” Ibid. These principles of construction further dictate that resolutions and “[o]rdinances should be liberally construed in favor of the municipality.” City Council v. Brown, 249 N.J. Super. 185, 191 (App. Div. 1991). Indeed, courts “give deference to a municipality’s informal interpretation of its ordinances” and resolutions. Fallone Props., LLC v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 561 (App. Div. 2004).

Particularly in light of this deferential standard, it is clear that Pulte’s material changes to the approved site plan violated the plain language of LMO Section 905(A)(5) and Resolution Condition Nos. 33 and 38. The plain language of Article IX, Section 905(A)(5) of the LMO requires that “[i]n all zoning districts, fences and walls shall be installed no higher than six feet (6’).” (Cruz Cert., Ex. B (emphasis added).) There can be no dispute that the retaining walls giving rise to the Retaining Wall Violation violated Section 905(A)(5). By Pulte’s own admission, these new retaining walls reach up to “seventeen feet” in height, a whopping eleven feet higher than the maximum height allowed by the ordinance. (See Gladstone Cert., ¶ 11.) As such, the Retaining Wall Violation was properly issued for this reason alone.

Further, because Pulte’s site plan amendment adding these retaining walls materially changed the project and its structures, the amendment violated the plain language Condition No. 38 of the Resolution as well. Condition No. 38 clearly provides that the development “shall be implemented in accordance with the plans submitted and as approved” and that “[i]n the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans,” the applicant “shall submit any such material changes to [the] Board for review, approval and/or determination as may be the case.” (See Gianetti Cert., Ex. I, Condition No. 38 (emphasis added).) In the land use context, a change

is de minimis if it is “[t]rifling; minimal or of a fact or thing so insignificant that a [tribunal] may overlook it in deciding an issue or case.” Nuckel v. Little Ferry Planning Bd., 208 N.J. 95, 100 n.2 (2011). By contrast, a change is “material” if it is “[o]f such a nature that knowledge of the item would affect a person’s decision-making.” Black’s Law Dictionary 1124 (10th ed. 2014). This is consistent with the requirement in New Jersey that any “significant or substantial revision” to an approved site plan constitutes “abandonment of an earlier plan” and requires “a new application” to the Board for site plan approval. See, e.g., Davis v. Planning Bd. of City of Somers Point, 327 N.J. Super. 535, 541-42 (App. Div. 2000).

To be certain, the 17-foot high Errico Retaining Wall that Pulte attempted to sneak into its March 1, 2023 Resolution Compliance Plans is distinct from any of the retaining walls that were included in the October 1, 2021, Hearing Plans that the Board reviewed and approved. (Sullivan Cert., ¶¶ 8-11.) Adding a non-conforming retaining wall that far exceeds the maximum height allowable for such walls under the Borough’s LMO does not constitute a “trifling” or de minimis change to plans. Indeed, with respect to retaining walls, the Resolution Compliance Plans materially modified the Hearing Plans by: (1) increasing the length of retaining walls in the Development by 1,367 feet from a total of 2,678 feet to a total of 4,045 feet in length; (2) increasing the length of non-conforming retaining walls in the Development from 763 feet to 1,679 feet, representing an increase of 120%; and (3) increased the number of retaining walls with non-conforming heights from three (3) such walls to ten (10) such walls. (Sullivan Cert., ¶¶ 12-18.) Clearly, these changes were “material changes” to the project and structures on the property which, pursuant to the clear terms of Condition No. 38, had to be submitted to the “Board for review [and] approval[.]” (See Gianetti Cert., Ex. I, Condition No. 38 (emphasis added).) By any standard, therefore, the Retaining Wall Violation was properly issued.

So, too, were the Roadway Network Violation and Building Height Violations. The site plan changes giving rise to these infractions violated the plain language of Condition Nos. 33 and 38 in the Resolution. As Condition No. 33 makes clear, “[a]ny adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to . . . the roadway network” and “[a]ny such material change must be brought back to the Board for review as an amendment to the current approval.” (See Gianetti Cert., Ex. I, Condition No. 33 (emphasis added).)

In this matter, Pulte modified the approved Hearing Plans by “adjusting grade elevations across the site to direct stormwater flows” to address stormwater management comments of the Board Engineer and NJDEP. (See Gladstone Cert., ¶ 11.) Those grade elevation changes resulted in “changes to the height of the roadway network[.]” (See Gianetti Cert., Ex. F at 2.) Indeed, through the Resolution Compliance Plans, Pulte reduced the length of nature paths throughout the Development by 16.8% from 4,618 feet to 780 feet, and increased the roadway elevations throughout the Development substantially, including an increase of nearly ten (10) feet to the elevation of Errico Lane alone. (Sullivan Cert., ¶¶ 12-18.) Condition No. 33 plainly required that any such “changes to the . . . roadway network . . . be brought back to the Board for review as an amendment to the current approval.” Because Pulte implemented changes to the roadway network without re-appearing before the Board, it violated the plain language of Condition No. 33. The Roadway Network Violation, therefore, was properly issued.

With respect to the Building Height Violation, Pulte’s grading changes rendered certain buildings in the development “as much as eight (8) feet higher” than the building height that was approved by the Board, even after the Board granted Pulte a variance allowing for two (2) additional feet of building height. (See Gianetti Cert., Ex. I at 3.) Pulte’s grading changes resulted

in elevation changes to 94 townhouse units, representing 89.5% of all of the total townhouses throughout the Development. (Sullivan Cert., ¶¶ 12-18.) Against this backdrop, Pulte’s building height changes can hardly be characterized as “trifling.” Rather, they were material changes to structures on the property that, pursuant to Condition No. 38, required full Board approval.

In fact, Sullivan expressly indicated in his Certification that each of these changes to the retaining walls, roadway networks and grading throughout the Development were “material changes,” which, pursuant to the LMO and Resolution, required Pulte to obtain amended site plan review and approval, and additional relief, from the Board. (Sullivan Cert., ¶ 31.) Indeed, Pulte’s counsel assured the Board and its professionals at the July 5, 2021, hearing on its site plan application that Pulte would do just that if material changes were rendered. (*Id.*, ¶ 26.)

Simply put, because the Borough’s Notice of Violation is squarely supported by the plain language of the LMO and Resolution, Pulte cannot demonstrate any misconduct by the Borough that would warrant Rule 1:10-3 relief.

C. **Pulte’s Material Changes to the Site Plan Could Not Be Approved by the Board Engineer and Required Disclosure to the Public and Review by the Board at a Hearing**

Pulte attempts to circumvent the plain language of the LMO and Resolution by contending that its material site plan changes were approved by the Board Engineer. Given that the Board Engineer lacked any legal authority to approve those material changes, however, any such approval was void as a matter of law.

In New Jersey, where a municipal land use action is undertaken without legal authority, it is deemed void *ab initio* and has no legal effect. See Hilton Acres v. Klein, 35 N.J. 570, 581 (1961) (stating that a municipal land use action that directly violates law or lacks legal authority is “void

ab initio and has no legal efficacy”); Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41, 48 (App. Div. 2004) (same).

To this end, if an agent of a land use board approves a site plan change that was beyond their jurisdiction to entertain, the agent’s action is “utterly void” and “subject to collateral attack at any time.” Najduch v. Twp. of Independence Planning Bd., 411 N.J. Super. 268, 274 (App. Div. 2009) (citation omitted). Likewise, if the agent issues any building permit “in direct violation” of the local ordinance, the permit can be collaterally challenged. Sitkowski v. Lavalette Zoning Bd. of Adjust., 238 N.J. Super. 255, 262 (App. Div. 1990). Indeed, “where there is no semblance of compliance with or authorization in” the governing law, “the deficiency is deemed jurisdictional” and “reliance” on the unauthorized action “will not bar” any subsequent challenge. Jantausch v. Borough of Verona, 41 N.J. Super. 89, 94 (Law Div. 1956), aff’d, 24 N.J. 326 (1957).

Pulte’s changes to the site plan adding the subject retaining walls undisputedly violated the design and improvement standards set forth in Section 905(A)(5) of the LMO and required a design waiver. Pursuant to N.J.S.A. 40:55D-50(a), a site plan application only merits final approval if it “conform[s] to the standards established by ordinance[.]” If a site plan does not conform to the standards established by ordinance, the applicant must seek an exception from those requirements, or “design waiver.” See, e.g., Wawa Food Mkt. v. Planning Bd. of Borough of Ship Bottom, 227 N.J. Super. 29, 34 (App. Div. 1988) (describing design waiver procedure). Pursuant to N.J.S.A. 40:55D-51(b), which authorizes design waivers, it is only the “planning board” that has jurisdiction, when acting upon appropriate “applications,” to grant such “exceptions from the requirements” of the ordinance. N.J.S.A. 40:55D-51(b) (emphasis added). What is more, the Board can only grant such relief at a “hearing.” See N.J.S.A. 40:55D-10 (requiring that the “municipal agency shall hold a hearing on each application”).

Here, Pulte contends that its plan modifications adding the non-conforming retaining walls did not violate Section 905(A)(5) of the LMO because the Board's Engineer approved those modifications in his review letters issued July 31, 2023, and August 8, 2023. This argument lacks any legal basis. Pursuant to N.J.S.A. 40:55D-51(b), only the planning board – not the Board's Engineer – possesses the authority to grant such design waiver relief. Likewise, only the Board at a public hearing possessed the authority approve material changes to the site plan. To the extent that the Board Engineer attempted to approve material changes to the site plan or design waivers through Resolution Compliance, that approval was utterly void and has no legal effect. What is more, the Board Engineer stressed that he only issued such approval because Pulte and its engineer misled him by failing to specifically identify such revisions as its addition of the 17-foot Errico Retaining Wall in its revised plan submission and transmittal letter identifying plan changes, and by submitting plans with the same date with and without the Errico Retaining Wall. (Ferriero Cert., ¶¶ 23-25.) In any event, it is clear that: (1) the 17-foot tall Errico Retaining Wall shown on the March 1, 2023, Resolution Compliance Plans violates the 6-foot tall limit imposed upon walls in Section 905(A)(5) of the LMO; (2) the October 1, 2021, Hearing Plans that the Board approved did not contain any wall in the location where the Errico Retaining Wall now stands; and (3) the MLUL does not confer the power upon a Planning Board Engineer, under the guise of resolution compliance review, to authorize deviations from the terms of the LMO or to endorse plans containing substantial or material changes or changes violating conditions of approval. The Board Engineer's approval of the material retaining wall changes, therefore, was utterly void.

For similar reasons, the Board Engineer lacked any authority to approve Pulte's material grading changes that resulted in the Roadway Network Violation and Building Height Violation. As discussed in Point I(B), *above*, Condition No. 33 provides that any “adjustment to the site plan

to address stormwater management comments of the Board Engineer” that “result in any changes” to the “roadway network” “must be brought back to the Board for review as an amendment to the current approval.” (See Gianetti Cert., Ex. I, Condition No. 33 (emphasis added).) Further, Condition No. 38 provided that “any material changes” to the “structures on the Property,” such as the building height modifications resulting from Pulte’s grading changes, must be submitted to “th[e] Board for review [and] approval[.]” (Id., Ex. I, Condition No. 38 (emphasis added).) Importantly, both Pulte’s retaining wall and grading changes violated this Condition No. 38.

As a result, only the full Board was authorized to review and approve the retaining wall and grading changes that led to the Retaining Wall Violation, Roadway Network Violation and Building Height Violation. Any approval of these changes that may have been issued by the Board Engineer was void and does not excuse Pulte’s non-compliance.

This conclusion is reinforced by the Borough’s Stormwater Management Ordinance. On February 8, 2021, approximately one month before Pulte submitted its site plan application to the Board, the Borough adopted an amendment to its Stormwater Management Ordinance. (Steinhagen Cert., Ex. E at 22.) The Stormwater Management Ordinance provides at subsection (c) of Section 916-3, “Waivers and Exceptions,” that “[a]ll applications subject to the review of the Land Use Board,” such as stormwater management designs (*e.g.*, Errico Retaining Wall, etc.), “shall be reviewed by the Board” as part of “site plan review,” and that any such applications shall not “be reviewed by the Board Engineer.” (Ibid.) Similarly, pursuant to Section 401(B) of the LMO, “[s]ite plan review and approval is required for all developments which do not meet the definition of ‘site plan, exempt’ in Section 201.C.” (Steinhagen Cert., Ex. E at 4.) A “development” under the LMO includes “. . . the construction of any structure,” such as the Errico Retaining Wall, and a “site plan, exempt” means “A site plan shall not be required for single-

family dwellings unless such dwellings involve a home occupation or other conditional use.” (Id., Ex. E at 3.) Thus, the Errico Retaining Wall required site plan approval.

The defectiveness of the Board Engineer’s purported approval is further reinforced by New Jersey case law, which makes clear that the Board alone – not the Board Engineer or the NJDEP – may determine the adequacy of a stormwater management plan. Pulte contends that its site plan amendments were authorized simply because they were carried out to address stormwater management comments of the NJDEP along with the Board Engineer, who ultimately attempted to approve the amendments. The changes made by Pulte to the stormwater management functions resulted in massive grade changes, elevation changes, and retention basin changes that were never reviewed by the full Board. Those changes triggered roadway network change, the elimination of the nature path, and the addition of the Errico Retaining Wall.

Our case law, however, has specifically rejected the contention that any person or entity other than the planning board may determine compliance of stormwater management plans. See, e.g., Save Hamilton Open Space v. Hamilton Twp. Planning Bd., 404 N.J. Super. 278, 284-85 (App. Div. 2008). Specifically, in Save Hamilton, the planning board approved the applicant’s subdivision application but did not pass on the applicant’s stormwater management plan, instead deferring to the NJDEP. Id. at 279. Ultimately, on appeal, the court concluded that no agency other than the planning board is authorized to review and approve an applicant’s stormwater management plan. Id. at 282 (finding that the regulatory scheme does “not provide for DEP review to determine such compliance” and “it is the responsibility of the municipal land-use agency to determine compliance”) (emphasis added). Indeed, as the Supreme Court noted in In re Fresh Wetlands Permits, 185 N.J. 452 (2006), “Clearly . . . the municipal planning board has jurisdiction over [a] storm water drainage plan.” This further underscores the conclusion that the Board

Engineer lacked authority to review and approve Pulte’s material site plan amendments aimed at addressing stormwater management as well as the stormwater management plan itself. At bottom, only the full Board has jurisdiction render such a review and approval. The Board Engineer cannot usurp that authority and his defective approvals, therefore, are void.

D. Pulte Cannot Rely On Equitable Principles to Excuse its Material Violations of Conditions of its Approvals

Recognizing the weakness of its legal position, Pulte grasps at straws by asking the Court to undertake the extreme measure of applying equitable estoppel against the Borough. More particularly, Pulte asks the Court to apply this doctrine to prevent the Borough from enforcing the LMO and Resolution simply because the Board Engineer approved non-conforming plan amendments that he had no jurisdiction to entertain. Pulte’s request is unsustainable.

Equitable estoppel applies in circumstances where “one may, by voluntary conduct, be precluded from taking a course of action that would work injustice and wrong to one who with good reason and in good faith has relied upon such conduct.” Summer Cottagers’ Ass’n of Cape May v. City of Cape May, 19 N.J. 493, 503-04 (1955). “[T]he equitable estoppel doctrine is rarely invoked against a municipality because it could impair essential government functions.” Grasso, 375 N.J. Super. at 47. The doctrine may be “applied against a municipality only in very compelling circumstances, where the interests of justice, morality and common fairness dictate that course.” Maltese v. Twp. of N. Brunswick, 353 N.J. Super. 226, 244-45 (App. Div. 2002).

In the land use context, “the doctrine of equitable estoppel will not be employed” based on a municipal official’s issuance of development approvals if the applicant cannot demonstrate “good faith reliance” on the approvals. Grasso, 375 N.J. Super. at 47 (citation omitted). To this end, if the applicant’s reliance stems from their having “failed to read the ordinance,” this “precludes a finding of good faith reliance[.]” Ibid.

Further, although “a municipality may be estopped from enforcing its zoning ordinance if a landowner makes substantial expenditures on good faith reliance on [an approval] that was issued because of a municipal official’s erroneous, but at least debatable, interpretation of the zoning ordinance,” this is not the case where the municipal official’s action is “taken in direct violation of law or without legal authority.” Id. at 47-48 (citations omitted). Indeed, there is nothing “debatable” correct about a legally void action, and an approval “issued contrary to a zoning ordinance or building code cannot ground any rights in the applicant.” Hilton Acres v. Klein, 35 N.J. 570, 581 (1961).

Here, Pulte cannot satisfy the “good faith reliance” standard sufficient to warrant the extreme relief of applying equitable estoppel against a municipality. Put simply, Pulte is a sophisticated developer with sophisticated counsel. Had Pulte and its counsel simply read Section 905(A)(5) of the LMO, which plainly prohibits retaining walls exceeding six (6) feet, they would have known that a design waiver from the Board was required pursuant to N.J.S.A. 40:55D-51(b) in order to include such non-conforming walls in its amended site plans. In a similar manner, Pulte should have realized from its reading of Resolution Condition Nos. 33 and 38 that no municipal official or entity other than the Board itself had any authority to review and approve Pulte’s other material changes identified by Sullivan.

This is not a case in which the propriety of the Board Engineer’s approval was “debatable.” Instead, the Board Engineer’s approval was issued in direct violation of law. Such plainly void municipal action cannot ground any rights in Pulte, and precludes any finding of good faith reliance sufficient to warrant the imposition of extreme estoppel relief against the Borough. Indeed, the building permits issued to Pulte that are predicated on the Board Engineer’s determination of resolution compliance are utterly void because the “prior approvals” required by N.J.A.C. 5:23-

2.15(f)(4)(ii)(1) were not present. See N.J.A.C. 5:23-2.15(f)(4)(ii)(1) (“No [construction] permit shall be issued until all required State, county and local approvals are in place.”). Those void permits, therefore, do not support any “good faith reliance” argument.

Pulte’s decision to rush to the Court before following appropriate default procedure or attempting to cooperate with the Borough underscores Pulte’s lack of good faith. Importantly, although Section 9.15 of the AHA authorizes a moving party to “apply to the Court for relief, by way of a motion for enforcement of litigant’s rights” if the non-moving party fails to cure an alleged default, this right only vests in the moving party if they have first “provide[d] notice of the default” and afforded the non-movant “forty-five (45) days” to “cure the default.” (See Gianetti Cert., Ex. E, § 9.15.) Reflective of its bad faith, Pulte failed to these express pre-conditions before filing its motion.

Further, although Pulte would have the Court believe that the Borough is impeding Pulte’s efforts to construct affordable housing merely by enforcing the LMO and Resolution, this is not so. Indeed, after receiving Pulte’s response to the Notice of Violation, the Borough’s counsel issued Pulte’s counsel correspondence on February 27, 2024, specifically advising that Section D of the Notice of Violation, in which the Borough indicated that it would not issue any zoning permits until Pulte cured its violations, “does not apply to Zoning Permits for the affordable housing building to be constructed by Pulte” in the development. (See Mullen Cert., Ex. G (emphasis added).) Moreover, Pulte overlooks that, in the Notice of Violation, the Borough not only provided Pulte with the thirty (30) day cure period that Paragraph 34 of the Developer’s Agreement required, but went one step further and provided Pulte with clear guidance regarding how to cure its defaults. Namely, “by making an application to the Planning Board.” (Id., Ex. F.) Furthermore, as the certifications submitted by the Borough Attorneys confirm, the Borough has

actively engaged and worked with Pulte at all relevant times to meet compliance, and on countless occasions has not hesitated to issue permits for the project when appropriate. (See generally Sordillo Cert., ¶¶ 77-80; Cruz Cert., ¶¶ 8-17.) Indeed, even to date, construction continues at the Development. (Cruz Cert., ¶ 49.) These actions by the Borough demonstrate cooperation and a good faith effort to facilitate construction.

On the other hand, Pulte’s refusal to follow the Borough’s guidance, file an amended site plan application with the Board, proceed with its affordable housing construction, follow proper default procedure, or lodge a proper challenge to the Notice of Violation, shows nothing but bad faith. “The equitable maxim that ‘he who seeks equity must do equity’ has application here.” Sovereign Bank v. Kuelzow, 297 N.J. Super. 187, 197 (App. Div. 1997). While Pulte asks the Court to grant it extreme equitable relief against the Borough, Pulte does so without clean hands. At bottom, Pulte should not be rewarded for its obstinacy and disregard for controlling authority through application of the equitable estoppel doctrine. By any measure, therefore, Pulte’s motion to enforce litigant’s rights should be denied.

POINT III

THE COURT SHOULD GRANT THE BOROUGH’S CROSS-MOTION AND ORDER PULTE TO COMPLY WITH THE RESOLUTION CONDITIONS RETURN TO THE BOARD TO SEEK AMENDED SITE PLAN APPROVAL

Given that Pulte has clearly violated Condition Nos. 33 and 38 of the Resolution by rendering material changes to its approved site plans without full review and approval of the Board, the Court should grant the Borough’s cross-motion to enforce litigant’s rights and compel Pulte to seek amended site plan approval from the Board.

A motion to enforce litigant’s rights is a mechanism “to coerce [a party] into compliance with the court’s order for the benefit of the private litigant[.]” Pasqua v. Council, 186 N.J. 127,

140 (2006) (citation omitted), and “a device to enable a litigant to enforce his or her rights.” Mount Laurel IV, 221 N.J. at 17. “The scope of relief in a motion in aid of litigants' rights is limited to remediation of the violation of a court order.” Abbott, 206 N.J. at 371.

Here, the FJOR entered November 14, 2023, specifically acknowledges the parties' obligations under the AHA and requires that “those obligations will be addressed by the parties[.]” (Cutalo Cert., Ex. F, ¶ 9.) Section 5.2 of the AHA requires that the parties “shall comply with any and all . . . laws . . . ordinances . . . [and] resolutions.” (Gianetti Cert., Ex. E, § 5.2.) For the reasons set forth above, Pulte violated Condition Nos. 33 and 38 of the Resolution, along with Section 905(A)(5) of the LMO, by rendering material retaining wall, grading and building height changes to its approved site plan, without first seeking an amended approval or design waiver from the Board. As such, the Court should grant the Borough's cross-motion, find that Pulte has violated these conditions, and compel Pulte to return before the full Board for review and approval.

CONCLUSION

For the foregoing reasons, Pulte's motion should be denied and the Borough's cross-motion should be granted.

O'TOOLE SCRIVO, LLC
 14 Village Park Road
 Cedar Grove, New Jersey 07009
 (973) 239-5700
Attorneys for Borough of Far Hills

By: /s/ Lawrence S. Cutalo
 Lawrence S. Cutalo

Dated: April 4, 2024

O'TOOLE SCRIVO, LLC

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(973) 239-5700
*Attorneys for Plaintiff,
Borough of Far Hills*

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action - *Mount Laurel*

**CERTIFICATION OF
SHANA L. GOODCHILD**

SHANA L. GOODCHILD of full age, hereby certify as follows:

1. I am the Secretary for the Borough of Far Hills Planning Board.
2. I have served as the Secretary of the Planning Board from October 22, 2019 to present.
3. As such, I was the Planning Board Secretary at the time Pulte Homes of NJ, L.P. ("Pulte"), filed a development application seeking, among other things, Preliminary and Final Site Plan. Preliminary and Final Major Subdivision, and Variance approvals pertaining a ~ 42.304 acre wooded lot identified as 220 Route 202, former Block 5, Lot 4, seeking to construct a mixed use residential development containing 105 townhouse units and 29 apartment units (the "Application").

4. I make this Certification based on my own personal knowledge and based on my review of the Planning Board's file for the Application. I further make this Certification in Opposition to Pulte's Motion to Intervene and Enforce Litigant's Rights filed March 12, 2024 in the above-captioned matter.

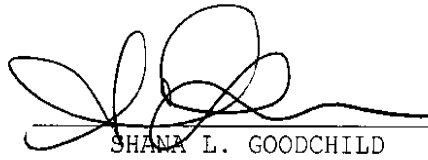
5. My responsibilities as Planning Board Secretary, include, among other things, intake of development applications and plans, preparing public meeting agendas, scheduling development applications, distributing development applications and plans to Planning Board members and professionals, maintaining files on development applications including plans and exhibits marked at hearings, attending Planning Board meetings and hearings, preparing meeting minutes, attending to Resolutions, and attending to publication of notices of decision and other legal notices.

6. On April 9, 2021, I received Pulte's Application, which included engineering plans entitled "Preliminary and Final Major Site Development and Subdivisions Plans" dated March 19, 2021 containing forty two (42) sheets prepared by Gladstone Design Inc. (the "Site Plan"). Attached hereto as Exhibit A is a true and accurate copy of Pulte's cover letter dated April 9, 2021. The foregoing were distributed to the Planning Board members prior to the first public meeting on the Application, which occurred on July 5, 2021.

7. On October 1, 2021, I received Pulte's revised plans, including a revised Site Plan with revision dates of October 1, 2021. Attached hereto as Exhibit B is a true and accurate copy of Pulte's cover letter dated October 1, 2021. The foregoing were distributed to the Planning Board members prior to the November 1, 2021 public meeting on the Application.

8. The Site Plan with the revision date of October 1, 2021, is the Site Plan reviewed by the Planning Board's members and is the Site Plan that was approved by the Planning Board when it voted to approve the Application at its public meeting on February 7, 2022.

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.



SHANA L. GOODCHILD

Dated: 4/3/24

EXHIBIT A



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, DC

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Attorney at Law

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cgianetti@daypitney.com

April 9, 2021

VIA HAND DELIVERY

Planning Board
c/o Shana L. Goodchild
Borough of Far Hills
6 Prospect Street
Far Hills, NJ 07009

**Re: Pulte Homes of NJ, Limited Partnership (“Applicant”)
Site Plan, Subdivision and Variance Application
Block 5, Lot 4; 220 Route 202, Far Hills, NJ (“Property”)**

Dear Ms. Goodchild:

This firm represents the Applicant in connection with an application for preliminary and final major site plan, preliminary and final major subdivision and variance relief relating to the Property. The Applicant is proposing to construct a multifamily residential development consisting of market-rate townhouses and affordable apartments consistent with the proposed project described in the Affordable Housing Agreement dated December 9, 2019 between the Borough of Far Hills and Melillo Equities, LLC. Pulte is a joint developer with Melillo Equities, LLC.

In connection with said application, enclosed please find the following application materials:

1. Seven (7) copies of the Borough of Far Hills Land Development Application;
2. Seven (7) copies of the Project Proposal;
3. Seven (7) copies of the Applicant’s Ownership Disclosure Statement;
4. Seven (7) copies of the letter requesting the Borough of Far Hills Tax Certification;
5. Seven (7) copies of the draft service agreement for management of the affordable housing units;



April 9, 2021

Page 2

6. Seven (7) copies of the Site Plan and Subdivision Plan prepared by Gladstone Design, Inc.;
7. Seven (7) copies of the Architectural Plans prepared by Minno Wasko;
8. Seven (7) copies of the Stormwater Management Report prepared by Gladstone Design, Inc.;
9. Seven (7) copies of the Environmental Impact Statement prepared by EcolSciences, Inc.;
10. One (1) copy of the application submitted to the Somerset County Planning Board;
11. Check in the amount of \$15,175.00 in payment of the application fee;
12. Check in the amount of \$10,200.00 in partial payment of the escrow deposit; and
13. Applicant's W-9 form.

The Applicant will submit a check under separate cover in payment of the additional required escrow deposit funds in accordance with our conversations with Borough Attorney, Joseph Sordillo. The Applicant will also submit an electronic copy of the enclosed materials.

The Applicant requests this matter be scheduled for the next available public hearing.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. M. Gianetti', written over a printed name.

Craig M. Gianetti

Enclosures

cc: Applicant Representatives (via e-mail)
Gladstone Design, Inc, (via e-mail)
Minno Wasko (via e-mail)

EXHIBIT B

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309
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www.gladstonedesign.com

Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanie, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

October 1, 2021
683-17

Ms. Shana Goodchild
Far Hills Borough Planning Board Secretary
6 Prospect Street
Far Hills, NJ 07931

Re: Pulte Homes – Far Hills
Preliminary and Final Major Site and Subdivision Plans
Block 5, Lot 4, US Highway Route 202
Borough of Far Hills, Somerset County, New Jersey
PB2021-07

Dear Ms. Goodchild,

On behalf of the applicant, Pulte Homes of NJ, LLP, please find attached the following revised plans and documentation in support of the application:

1. Seven (7) copies of the Site Plans entitled “Preliminary and Final Major Site Plans, Pulte Homes – Far Hills”, dated March 19, 2021, revised through October 1, 2021, prepared by Gladstone Design, Inc.
2. Seven (7) copies of the NJDOT Plans entitled “NJDOT Major Access Permit Application”, dated May 1, 2021, revised through August 20, 2021, prepared by Gladstone Design, Inc.
3. Seven (7) copies of the stormwater report entitled “Stormwater Management Report for Pulte Homes – Far Hills”, dated March 19, 2021, revised through October 1, 2021, prepared by Gladstone Design, Inc.
4. Seven (7) copies of Stormwater Management Facilities Summary Sheets, dated October 1, 2021, prepared by Gladstone Design, Inc.
5. Seven (7) copies of Subdivision Plan entitled “Preliminary and Final Major Subdivision Plat, Pulte Homes – Far Hills”, dated March 19, 2021, revised through October 1, 2021.

The revisions to the Site Plans are based upon comments contained in the Borough Engineer review letter dated July 2, 2021, and the Borough Planner review letter dated July 5, 2021. Additional comments and revisions were generated during a July 21st meeting with the Borough Engineer and Planner.

In response to the Ferriero Engineering review letter dated July 2, 2021, we offer the following comments and revisions:

I. Site Plan

A. Sheet 1 - Project Data/Vicinity Plan

1. The proposed street names are being evaluated and will be revised following input from the Planning Board. The similar and duplicate named roads will be revised to eliminate any confusion with 911 response. The Applicant is aware the street names must be approved by the Borough Council; such approval will be sought at the appropriate time.

B. Sheet 2 – Environmental Constraints Map – No comments

C. Sheet 3 – Site Removals Plan

1. A note has been added to the plan that all foundations are to be removed completely below grade and backfilled with properly compacted material.
2. A note has been added to the plan stating that all underground tanks are to be removed and mitigated in accordance with NJDEP requirements.

D. Sheets 4 through 10 – Site Dimension Plans

1. Testimony was provided to the Board regarding the status of the Wastewater Management Plan amendment for the sewer service area shown on the map. There have been no comments from NJDEP relative to the sewer service line shown on the map, final approval of the WQMP management plan amendment is pending.
2. A detail of the cobblestone apron at the end of the boulevard has been added to Sheet 38 of the Construction Details.
3. Vehicle turning templates for delivery and emergency vehicles have been provided showing the vehicle's movement throughout the site.
4. Testimony was provided to the Board regarding trash collection and mail delivery. The Site Plans have been revised to show common mailbox locations throughout the site for mail delivery. Trash and recycling for the townhouse units will be held in the individual units until the scheduled pick-up time. The trash and recycling for the apartment building will be collected within the building and maintenance personnel will take the trash and recycling to the refuse enclosure located in the parking lot. The homeowner's association will have sole responsibility these items.
5. The stormwater management calculations account for the optional patio/sunroom in the impervious surface calculations.
6. Testimony was provided to the Board regarding emergency generators for the development. The Applicant does not specifically offer emergency generators for the individual townhouse units, but it also does not preclude an

owner from installing one. A note has been added to the plan stating emergency generators must be installed completely within an individual's lot and is subject to review and approval by the Borough Zoning Officer. An emergency generator is not proposed, nor is it required by code, for the apartment building. An emergency generator is proposed for the sewer treatment building and associated components.

7. The surface treatment for the "maintained pedestrian walking paths" has been clarified to identify the surface treatment at various areas. During the July 21st meeting, the Borough Planner suggested the walking paths near the front of the development in the relatively flat area be of an accessible surface treatment. The impervious coverage calculation and stormwater management calculations have been revised to account for any new surfaces meeting the definition of impervious coverage. The remainder of the trails will be nature trails utilizing the native/planted groundcover, like a hiking trail.

E. Sheets 11 through 16 – Grading Plans

1. The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection has been revised to eliminate the low point preventing water from draining through the intersection. The southwest curb line of the intersection of Dillon Boulevard and Ayers Street has been revised to include a drainage inlet at the low points.
2. The area between units 4.70 and 4.71 has been revised to provide positive drainage away from the buildings. Additional spot elevations have been added to illustrate this revision.
3. The underground detention basin at the rear of the multifamily building has been eliminated, thus eliminating the conflict with the parking lot site lights.
4. Note #5 has been added to Sheet 16 of the Grading Plan stating that retaining walls greater than 48" will require site specific designs signed and sealed by a licensed New Jersey PE and construction permits issued by the Borough.
5. The stormwater management facilities at the rear of the multifamily building have been revised to eliminate the underground detention basin. There are no anticipated impacts to the wall from the system as the bio-retention basin is under drained and does not infiltrate into the soils. Additionally, as the retaining wall is greater than 48" in height, a site-specific design will be required, the design will need to account for the bio-retention basin.
6. The detailed tree removal plan has been reevaluated and it was found that some trees originally depicted to be removed can now be retained. This is due to revisions to the grading plan or the relocation of proposed improvements. The project proposes to remove less trees than was originally proposed.
7. The spot elevations at the retaining wall closest to unit 4.37 has been revised to accurately reflect the elevations in this area.
8. The earthwork note on Sheet 16 represents a surface-to-surface comparison

and does not account for foundation excavation, road boxes, or utility trenching. It is anticipated that the earthwork for the project will be relatively balanced at the time of construction. Testimony will be provided by either Pulte or the Traffic Consultant regarding the number of trucks anticipated for this work and the period over which the fill would be delivered to the site, if required.

F. Sheets 17 – 20 – Utility Plans

1. Testimony was provided regarding the anticipated routing of the water main to service the project. The water main is proposed to be extended from the existing water main near Sunnybranch Road and extend north along Route 202 to the site. The Water Main Extension Plans submitted to New Jersey American Water have been added to the Site Plans as supplemental plans. The location and size of the water main are subject to NJAW requirements and review.
2. The locations of the Fire hydrants will be reviewed and approved by the Borough Fire Official.
3. The Plans have been revised to eliminate sewer laterals connecting into manholes. A note has been added stating the same and that connections should be made downstream of manholes when possible.
4. The townhouse units will be serviced by natural gas and underground electric. The locations of the meters for each utility are dictated by the respective utility company. Should it be determined the meters are to be located on the front of the units, appropriate screening will be installed.
5. The sewer service from the multifamily building has been revised to eliminate the 4" sewer lateral from the multifamily building to the sewer treatment building. The sewer lateral for the multifamily building will now be pumped to the gravity sewer system. This configuration eliminates the need for multiple manholes and sanitary lateral near the wetland transition area and stream corridor.
6. Utility Note 11 has been removed from the plan. Based upon ongoing discussions with NJAW a hot-box enclosure will not be required for the multifamily building. Should this change, appropriate screening will be proposed around the enclosure.

G. Sheets 22 through 28 – Landscape Plan

1. The land cover around the site has been reevaluated based upon discussions with the Borough Planner and Engineer. Meadow plantings are now being proposed in areas where appropriate, such as large open areas, in landscape buffers, and in stormwater BMPs. The narrow meadows and those near the townhouses have been eliminated in favor of a more traditional lawn. The homeowner's association will have the responsibility of maintaining the meadows and preventing the transformation back to lawn. The land cover is consistent with that used in the stormwater management calculations.
2. The Plans have been revised to show the proposed reforestation areas as

designated on the map submitted to NJDEP.

H. Sheets 29 and 30 – Soil Erosion and Sediment Control Plan

1. The plan will be certified by Somerset-Union Soil Conservation District as a condition of any approval for the project. The certification will be obtained prior to the start of construction on the project.
2. The plan has been revised to show haybales placed in front of all outlet control structures. A note has been added stating these are to remain in place until the basins are stabilized.
3. Testimony has been provided in support of the steep slope variances that are requested. Testimony on efforts to minimize these disturbances has also been provided.

I. Sheets 31 and 32 – Lighting Plan

1. There was a discussion with the Borough Professionals during the July 21st meeting on the desired light levels throughout the community. The intent to the lighting design was to provide minimal lighting for safety and to maintain the rural characteristics of the area. An additional light fixture was added in the area of the proposed mailboxes at Ayers Street. The lighting plan has been revised to reflect these changes. Should it be determined by the Board that additional lighting is required, the Applicant will revise the plan.
2. During the July 21st meeting, the Applicant committed to having the building mounted lights on either side of the garage for the townhouses be included on a common building circuit, controlled similarly to the site lighting. The building mounted lights would be controlled by a photocell and not be controlled by the individual unit. The building mounted lights will account for additional site illumination. The locations of the proposed building mounted lights have been added to the plan and a note about controls added to the plan. Point-to-point and iso-lux calculations are not provided for the building mounted lights.

J. Sheets 33 through 37 – Profiles

1. The grading and drainage plans have been revised to address drainage concerns of intersecting streets. The profiles of the roadways have been updated to reflect any changes in the centerline profile of the road.

K. Sheets 38 through 42 – Construction Details

1. The accessible curb detail has been revised to clearly show the curb through the ramp as concrete for a smoother transition.
2. The color of the guiderail has been revised to the recommended color of brown power coat to stained using “Natina” or a similar product to produce the rust-colored look.
3. A note has been added to the retaining wall details stating that site-specific

designs and construction permits are required for walls greater than 48" in height.

II. Stormwater Management Report

A. At the time of submission of the Stormwater Management Report, hydrogeologic evaluation was ongoing and the findings were preliminary. As such the hydrogeologic report was stamped as "DRAFT". Subsequent soil investigation and hydrogeologic evaluation was performed within the footprints of the proposed stormwater BMPs in accordance with applicable NJDEP Stormwater Regulations. The narrative below details the revisions to the stormwater management design and report. It should be noted that the Stormwater Management Report is being submitted concurrently to NJDEP Division of Land Use Regulation for Stormwater Review.

B. Stormwater Comments:

1. The Stormwater Management Report included with this submission is signed and sealed by the design engineer.
2. Groundwater mounding analysis for each of the infiltration basins have been prepared utilizing the Hantush Excel Spreadsheet, provided by NJDEP, is included in Appendix C-4. The mounding analysis shows that the infiltration basins will not be negatively impacted by groundwater mounding. Groundwater levels are based upon those observed during the field soil investigation.
3. A completed Low Impact Development Checklist is included in Appendix G of the report to support the non-structural strategies being utilized by the project.
4. The stormwater conveyance system and calculations have been revised to accommodate the 100-year storm event. As the calculations show on the Pipe Computation Sheet in Appendix "D", the pipes are in a free flow condition and are not under pressure, therefore a hydraulic grade line profile of the entire collection system is not required.
5. Time of concentration calculations have been revised to eliminate the minimum or default value for the time of concentration. The time of concentration calculations are now consistent with the Chapter 5 of the NJDEP BMP Manual for both pre- and post- development conditions.
6. The discrepancy between the total disturbance listed within the stormwater report (23.09 acres) and the soil erosion plan sheet (25.70 acres) is due to Point of Analysis (POA) "A" being calculated utilizing method 1 of the N.J.A.C. (section 7:8-5.6(b)1). POA "A" was analyzed to not exceed the pre-construction 2-, 10-, and 100-year storm events, at any point in time. This method does not require reduction factor calculations and therefore will exclude the disturbance located in POA "A". POA "B" and POA "C" however, utilize method 3 (section 7:8-5.6(b)3) where reduction factors of 50, 75, and 80 percent have been applied to the pre-construction flows, as well as disturbance occurring within those POA's.

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7. The allowable flow calculations are based upon disturbance areas for POA "B" and POA "C". POA "A" is analyzed utilizing method 1 of the N.J.A.C. 7:8 (section 7:8-5.6(b)1), where it states that post-construction peak flows must be equal to or less than the pre-construction peak flows. No reduction factors or calculations are required for POA "A". Therefore, the only allowable flow rate calculations will be for POA "B" and POA "C", where a total of 23.09 acres of disturbance is proposed and utilized in the calculations.
8. Additional soil tests have been performed within the footprints of each basin to confirm soil characteristics, separation to estimated seasonal high ground water table elevations (and bedrock if applicable). A soil testing location map has also been provided to illustrate the soil testing locations in relation to each basin.
9. Additional Soil testing for Underground Basins #3G and #3I has been provided in accordance with NJBMP Manual Chapter 12. The soil logs extend at least 8 feet below the lowest elevation of the BMP, as well as any replacement soil that may be required below the bottom of the infiltration basins.
10. The permeability testing for Basin #3I has been revised to be within the soil stratum that the bottom of the basin will be placed. This testing has been performed in accordance with Chapter 12 of the NJDEP BMP Manual and has been provided within the geotechnical report prepared by "Dwyer Geosciences, Inc." entitled "Hydrologic Evaluation for Stormwater Recharge", dated August 2021. Based upon the results of the two permeability tests performed in Basin #3I, the lowest infiltration rate measured was 1.4 in/hr, a rate of 0.7 in/hr (factor of safety) was utilized in the routings.
11. The permeability testing for Basin #3G has been provided and is located within the basin footprint at the depth of the lowest elevation of the infiltration basin. This testing has been performed in accordance with Chapter 12 of the NJDEP BMP Manual and has been provided within the geotechnical report prepared by "Dwyer Geosciences, Inc." entitled "Hydrologic Evaluation for Stormwater Recharge", dated August 2021. Based upon the results of the two permeability tests performed in Basin #3G, the lowest infiltration rate measured was 3.4 in/hr, a rate of 1.7 in/hr (factor of safety) was utilized in the routings.
12. The ground elevations noted in the Hydrogeologic Evaluation for Stormwater Recharge note that the elevations are estimated based on site topographic mapping. Test Pit Log STP 17 incorrectly identifies the existing ground elevation of 268.0 while the actual elevation is approximately 256. Test Pit Log STP 4 is shown twice on the plan. STP 4 was excavated between Proposed Lot 4.11 and Prop. Lot 4.22, STP4 shown in basin #3L was not excavated and has been removed from the plan.
13. A test pit was performed in Basin #3L, SB3L-2 to confirm the depth of the seasonal high groundwater table. Based on the test pit information, the pit was dug 11 feet deep (approximately 249.00) from an existing grade elevation of approximately 260.00. Groundwater was not encountered within the test pit and the basin bottom (approximately 252.50) has over 1 foot of separation from the seasonal high ground water table, or in this case the

bottom of the test pit. Basin #3L is also not designed as an infiltration basin therefore 2 foot of separation between groundwater and the basin bottom is not required.

14. The test pit logs have been revised in the Hydrogeologic Evaluation for Stormwater Recharge to state whether groundwater and/or mottling was encountered. If groundwater and/or mottling was encountered, the elevation of the groundwater and/or mottling has been provided within the report. The seepage found in STP4 was not considered groundwater.
15. Stormwater BMP summary sheets have been prepared for each of the basins outlining the design parameters of the basin and its compliance to the NJDEP BMP Manual.
16. The NRCS Soil Survey mapped soils on the property are Hydrologic Soil Group "C" soils. On-site soil testing found areas of soil permeability consistent with the mapped soil group. The project utilizes HSG "C" soils in the design assumptions and no reclassification of the soils will be sought.
17. Two additional soil test pits and soil permeability tests have been performed within the basin footprint for Basin #3F. The additional test pits extend 8 feet below the lowest elevation of the Basin. This testing has been performed in accordance with Chapter 12 of the NJDEP BMP Manual and has been provided within the geotechnical report prepared by "Dwyer Geosciences, Inc." entitled "Hydrologic Evaluation for Stormwater Recharge", dated August 2021. Based upon the results of the two permeability tests performed in Basin #3F, the lowest infiltration rate measured was 2.7 in/hr, a rate of 1.35 in/hr (factor of safety) was utilized in the routings.
18. Two additional soil test pits and soil permeability tests have been performed within the footprint for Basin #3H. The additional test pits extend 8 feet below the lowest elevation of the Basin. This testing has been performed in accordance with Chapter 12 of the NJDEP BMP Manual and has been provided within the geotechnical report prepared by "Dwyer Geosciences, Inc." entitled "Hydrologic Evaluation for Stormwater Recharge", dated August 2021. Based upon the results of the two permeability tests performed in Basin #3H, the lowest infiltration rate measured was 2.8 in/hr, a rate of 1.4 in/hr (factor of safety) was utilized in the routings.
19. Two additional soil test pits and soil permeability tests have been performed within the footprint for Basin #3H. The additional test pits extend 8 feet below the lowest elevation of the Basin. This testing has been performed in accordance with Chapter 12 of the NJDEP BMP Manual and has been provided within the geotechnical report prepared by "Dwyer Geosciences, Inc." entitled "Hydrologic Evaluation for Stormwater Recharge", dated August 2021. Based upon the results of the two permeability tests performed in Basin #3H, the lowest infiltration rate measured was 2.8 in/hr, a rate of 1.4 in/hr (factor of safety) was utilized in the routings.
20. The Stormwater Report incorrectly identified the permeability testing to be tube permeameters, the report has been revised to indicate the permeability tests performed were double-ring infiltration tests as shown in the Hydrogeologic Evaluation for Stormwater Recharge.

21. The Low Impact Development narrative section of the Stormwater Report has been revised to provide additional information regarding phasing techniques to minimize soil compaction.
22. Supporting calculations for the user defined rating table values have been provided in Appendix "C-2" of the Stormwater Report.
23. Hydraulic grade calculations have been modeled on all the outlet structures and provided in Appendix "D" of the stormwater report. A tailwater analysis between interconnected basins has also been provided in Appendix "D".
24. Stormwater Basins #2A and #3B has been revised to set an outlet control slightly above the water quality design storm event as specified in Chapter 9.7 Small-Scale Bio-Retention Systems of the NJDEP BMP Manual.
25. Basin #3F has been revised to set an outlet control slightly above the water quality design storm event. Basin #3F is considered a Small-Scale Bio-Retention System as it has a contributory drainage area less than 2.5-acres.
26. Basin #3H has been revised to set an outlet control slightly above the water quality design storm event. Basin #3H is considered a Small-Scale Bio-Retention System as it has a contributory drainage area less than 2.5-acres.
27. Basin #3F has a contributory drainage area of 2.16 acres, which complies with Table 5.2 of the Stormwater regulations. Basins with a contributory drainage area less than 2.5 acres are considered green infrastructure. Basin #3I does discharge into Basin #3F, however, the entire water-quality design storm is infiltrated in Basin #3I and the 2-, 10-, and 100-year storm events pass through Basin #3F to Basin #3E.
28. The stormwater management system has been redesigned to eliminate the surface and underground extended detention basins. The underground detention basin in the parking lot of the multifamily building has been eliminated. The underground detention basin previously proposed at the end of Baldwin Ave. has been converted to a large-scale bio-retention basin with an underdrain. The surface extended detention basin has been converted to a large-scale bio-retention basin with an underdrain. The large-scale bio-retention basins comply with Table 2 in the Stormwater regulations as the provide stormwater runoff quantity control only.
29. The project complies with the green infrastructure standards of the Stormwater regulations. Bio-Retention Basin #3F is Green Infrastructure as it has a contributory drainage area of less than 2.5 acres and provides water quality and groundwater recharge. The stormwater management system has been redesigned to eliminate the surface and underground extended detention basins. Two large-scale bio-retention basins are now proposed. No variances or deviations from the standards will be sought from the Green Infrastructure Standards.
30. A note has been added to the Utility Plans stating that leaf guards will be installed on all gutters for the townhouses and multifamily building. Leaf guards provide pretreatment for the roof areas that are tributary to

Underground Infiltration Basin #3I as they prevent leaves and other debris from adversely impacting the functionality of the infiltration basin.

31. The roof areas for the entire development, including those tributary to the proposed infiltration basins will have pretreatment provided via gutter guards that prevents leaves and other debris from entering the storm system. The overland flow that is directed to Underground Infiltration Basin #3G will be pretreated by a bio-swale to filter pollutants and debris. Basin #3H is a small-scale bio-retention basin providing 80% TSS removal for the entire water quality design storm as well as providing groundwater recharge. The larger storm events will pass through the controls placed on the outlet structure for which will contain trash racks that will prevent debris from entering Underground Basin #3G.
32. The reference material within Appendix H has been updated with the Part 630 Hydrology National Engineering Handbook (Chapter 9 Hydrologic Soil-Cover Complexes and Chapter 15 Time of Concentration. The appropriate calculations have been updated throughout the report.
33. The time of concentration calculations have been revised to be consistent with the requirements of Part 630 Hydrology National Engineering Handbook, Chapter 15 Time of Concentration which utilize the McCuen-Speiss Method for sheet flow and Figure 15-4 – Velocity Versus Slope for Shallow Concentrated Flow.
34. The maximum time of concentration flow coefficient of 0.40 has been utilized for wooded sheet flow. The calculations for existing and proposed conditions have been updated throughout the report.
35. The velocities for all existing and proposed conditions of the shallow concentrated flow have been revised to utilize Figure 15-4 of the National Engineering Handbook, Chapter 15.
36. A second TC path calculation from the vicinity of the pool area toward the westerly side of the drainage area has been provided within the stormwater report under Appendix “A” to confirm that the hydraulically most distant path is being utilized.
37. The drainage boundaries have been updated to accurately reflect the drainage boundary of existing and proposed drainage area #3. The drainage calculations have been updated to account to the additional tributary drainage area from portions of Lot 3.03 Block 5 to Point of Analysis C.
38. The grading plan has been revised and the boundary of proposed drainage area #3A has been updated to include the portion of Baldwin Avenue and the tributary drainage to inlet #3B-8 in Baldwin Avenue.
39. The grading plan has been revised to include a swale along the cul-de-sac shoulder above basin #3A to drain in the wetlands area adjacent to basin #3A. This area is undetained and analyzed in drainage area #3.
40. The grading plan has been revised between lots 4.91 and 4.94 to accurately reflect the drainage patterns as analyzed in the stormwater report.

Stormwater runoff will be directed to either Basin #3B or Basin #3C.

41. The grading plan has been revised to accurately reflect the drainage patterns as analyzed in the stormwater report. Stormwater runoff will be directed to either Basin #3B or Basin #3C.
42. Additional spot elevations have been added to the grading plan to demonstrate storm runoff will be directed away from the wastewater treatment plant.
43. The drainage inlet in Errico Lane has been revised to an "E" inlet within the road gutter to support the analysis utilized in the stormwater report.
44. Additional spots have been provided to confirm the drainage patterns as analyzed in the stormwater report for the area between proposed Lots 4.70 and 4.71.
45. Additional spots have been provided to demonstrate positive drainage along proposed Lot 4.74.
46. Comment is no longer relevant as Basin #3R has been removed from the site plan. The drainage patterns in the lower parking lot of the multifamily building have been revised to direct runoff to an enlarged Basin #3M. The stormwater report has been updated throughout to reflect this revision.
47. Comment is no longer relevant as Basin #3R has been removed from the site plan. The drainage patterns in the lower parking lot of the multifamily building have been revised to direct runoff to an enlarged Basin #3M. The stormwater report has been updated throughout to reflect this revision.
48. Comment is no longer relevant as Basin #3R has been removed from the site plan. The drainage patterns in the lower parking lot of the multifamily building have been revised to direct runoff to an enlarged Basin #3M. The stormwater report has been updated throughout to reflect this revision.
49. The grading plan has been updated and the at the intersection of Dillon Avenue and the multifamily building parking lot to reflect the area being tributary to Basin #3M. The stormwater report has been updated throughout to reflect this revision.
50. The grading plan has been updated at the intersection of Ayers Street and Baldwin Avenue to reflect the area being tributary to Basin #3F. The stormwater report has been updated throughout to reflect this revision.
51. The grading plan has been updated to accurately reflect the drainage patterns between Basin #3E and Basin #3L as analyzed in the stormwater report.
52. The drainage boundary just downstream of Basin #3F has been revised to accurately reflect the areas tributary to Basin #3C and Basin #3B. The stormwater report has been updated throughout to reflect this revision.
53. The grading plan has been updated and "E" inlets have been provided in the

area behind Lots 4.83-4.86. Stormwater runoff from this area will be directed towards Basin #3E.

54. The drainage area boundary for Basin #2A has been revised to accurately reflect the additional contributory area flowing towards Basin #2A.
55. The roof drainage system, including the gutters, downspouts, and laterals, will be sized in accordance with the National Standard Plumbing Code. The National Standard Plumbing Code utilizes the 100-year storm event.
56. An additional column has been added to the Pipe Computation Sheet in Appendix "D" showing the flow to each inlet. The chart shows that the flows are all less than 6 c.f.s., which is the typical maximum capacity of a "B" inlet per RSIS. As the flow is less than 6 c.f.s. the inlets have capacity to handle the 100-year storm.
57. Basin #3C has been revised from an underground basin to a large-scale bio-retention basin. The drainage boundaries have been revised to reflect this change. The stormwater report has been updated throughout to reflect this revision.
58. The land cover analysis has been revised to remove certain meadow areas and utilize an lawn land cover under proposed conditions. Areas of meadow that have been retained will be included in the Operations and Maintenance Manual prepared for the project after any approvals are granted for the project. The meadow areas will have a regularly adhered to maintenance schedule to ensure they continue to provide the stormwater management functions of the meadow.
59. There is an accessible gravel walking path provided towards the front of the property in the area of the groundwater recharge field for wastewater. The remainder of the walking path around the perimeter of the site will be the natural ground cover. The stormwater report has been revised to reflect the land cover of the walking path.
60. Soil erosion and sediment control measures are designed in accordance with the current New Jersey Soil Erosion and Sediment Control rules. An application will be made to Somerset-Union Soil Conservation District following any favorable approval by the Board.
61. Comment is a statement of fact; should additional comments relative to the hydrology calculations, proposed quantity, and water quality routing, drain time calculations, and stormwater plan and details be provided, the appropriate revisions will be made.
62. The stormwater management facilities for the project have been redesigned and the existing and proposed calculations have been revised to address comments contained within this report and to be in accordance with the applicable requirement of NJAC 7:8 and the NJDEP BMP Manual. The application is also subject to NJDEP Stormwater Management review and approval.

III. Sales Trailer and Model Home Plan

- A. The signs and feather flags are part of the Applicant's marketing material for the project. Testimony will be provided to the Board by a representative of the Applicant regarding the signage.
 - B. Testimony will be provided by the Applicant regarding the estimated length of time the sales trailer and model home will be operational (3-years) .
 - C. Testimony will be provided by the Applicant regarding water and sewer service for the model homes. The Applicant will work with the Borough Building Department for any special provisions for a certificate of occupancy should be required should these services not be provided.
- IV. Preliminary and Final Subdivision Plan
- A. Deed, descriptions, and lot closure calculations will be submitted for review as a condition of any approval from the Board.
 - B. Approval of the lot numbers will be sought from the Borough Tax Assessor as a condition of any approval from the Board.
 - C. All signatures will be provided on the Plat prior to being submitted for signature. This should be a condition of any approval from the Board.
- V. Boundary and Topographic Survey – no comment
- VI. Architectural Plans – no comment
- VII. Environmental Impact Statement
- A. The Traffic Report prepared by Dolan & Dean referenced in the Environmental Impact Statement was submitted under separate cover.

In response to the Banisch Associates review letter dated July 5, 2021, we offer the following comments and revisions:

General Description:

1. Comment is a statement of fact; no response required.
2. Comment is a statement of fact; no response required.
3. Comment is a statement of fact; no response required.
4. Comment is a statement of fact; no response required.
5. Comment is a statement of fact; no response required.
6. Comment is a statement of fact; no response required.
7. Comment is a statement of fact; the layout of the site varies slightly from the Concept

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Plan contained within the settlement agreement. The variations are based upon the actual locations of the environmental constraints.

8. The settlement agreement outlines a series of terms, conditions and obligations, a summary of those terms are below along with any relevant commentary.
 - 1.1.1 Density – Comment is a statement of fact; the project conforms to the Settlement Agreement and the TH-6-IAR Zone.
 - 1.1.2 Height – Comment is a statement of fact. There are 34 townhouse units that do not comply with the 36' height limitation due to a walk-out condition at the rear of the unit. A variance is being sought for the 34 townhouse units exceeding the 36' height limitation.
 - 1.1.3 Setbacks – Comment is a statement of fact. A variance is required for construction of the groundwater recharge field within the 200' Scenic Corridor easement adjacent to Route 202. The perimeter buffer has been revised to be depicted as an easement limited to buffer trees/plantings and the meandering pathway.
 - 1.1.4 Age-Restriction – Comment is a statement of fact. The 105 townhouse units are proposed to have an age-restriction subject to Board approval.
 - 1.1.5 Amenities – Comment is a statement of fact. The walking path extends around the perimeter of the tract and is accessible from all stub-street sidewalks. The surface treatment of the path has been added to the plan. The area at the front of the site will include an accessible gravel path, the remainder of the paths will be natural ground cover. Should it be required by the Board, signage will be placed at appropriate locations indicating the path is for use by the community only. As discussed during the July 21st meeting, an outdoor amenity space (play field) has been provided adjacent to the multifamily building in the area of the lower parking lot. This amenity space will be turf grass. A passive recreation area, also turf grass, is provided at the front of the project site.
 - 1.1.6 Parking – Comment is a statement of fact; parking is being provided as required by NJ Residential Site Improvement Standards (RSIS).
 - 1.1.7 Scenic Corridor / Open Lands / Development Restrictions – Comment is a statement of fact. No above grade improvements are proposed within the 200' Scenic Corridor, however the below grade groundwater recharge field is proposed in a portion of the 200' Scenic Corridor, a variance will be sought for construction of the recharge field.
 - 1.1.8 Sanitary Sewer – Comment is a statement of fact; an on-site wastewater treatment plan and disposal bed are proposed.
 - 1.1.9 Final Plans / Architectural Design – Comment is a statement of fact, the Applicant and the Project Architect will refine the architectural plans based upon on-going discussions with the Board.
 - 1.1.10 Phasing of Development – Comment is a statement of fact. Testimony will be provided to the Board by a representative of the Applicant regarding the phasing

of the project and delivery schedule of the affordable apartment building relative to the market-rate units. The phasing and delivery of the affordable building is subject to Fair Share Housing approval.

9. Comment is a statement of fact; no response required.
10. Comment is a statement of fact; no response required.
11. Comment is a statement of fact; no response required.
12. Testimony was provided to the Board regarding the overall site plan, including the proposed improvements, parking and circulation, proposed landscaping, and the proposed building improvements (by Project Architect).
13. Comment is a statement of fact; no response required.
14. Roadway Access:
 - a. Comment is a statement of fact; no response required.
 - b. Comment is a statement of fact; no response required.
 - c. The Applicant will explore the opportunity to have a light installed on the utility pole across from the proposed access. NJDOT and JCP&L will have final determination over the need for a light on the existing utility pole.
 - d. Comment is a statement of fact; no response required.
 - e. Comment is a statement of fact; no response required.
15. Roads, curbs, sidewalks: comment is a statement of fact; no response required
16. Townhouses:
 - a. Comment is a statement of fact; no response required.
 - b. Testimony was provided to the Board explaining why the driveway does not count for two parking spaces.
 - c. Testimony will be provided identifying the model units and the proposed temporary parking spaces.
 - d. A phasing plan has not been prepared. Testimony will be provided to the Board by a representative of the Applicant regarding the sequencing of the project.
 - e. Testimony will be provided regarding the proposed sewer treatment building, including the type and frequency of service vehicles to the site the various components of the sewer treatment system.
17. Affordable Apartment Building:
 - a. Comment is a statement of fact; no response required.
 - b. Comment is a statement of fact; no response required.
 - c. Comment is a statement of fact; no response required.
 - d. Comment is a statement of fact; no response required.
 - e. Shrubs have been added to the parking areas around the site to reduce headlight glare from parked cars.
 - f. A guiderail has been added to the parking area adjacent to the retaining wall for additional fall protection.
 - g. Testimony was provided regarding how residents will dispose of trash and recycling. A sidewalk has been added from the access door at the southside of the building to the sidewalk to the dumpster enclosure. Alternate locations for the dumpster

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- enclosure were analyzed to potentially reduce the vehicle movement of the refuse vehicle. After review, it was determined the location of the dumpster enclosure as depicted on the plans is appropriate.
- h. Comment is a statement of fact; cross access and maintenance agreements will be prepared for Lots 4.01 and 4.02 and submitted for review. These documents be included in the homeowner's association documents.
 - i. An open play area has been added in the southeast corner of the lower parking lot for use by the apartment building residents. A passive recreation area, also turf grass, is provided at the front of the project site.
18. Testimony will be provided to the Board by the project planner outlining the projects conformance to the affordable housing requirement of the Settlement Agreement.
19. On-site recreation areas are not required in lieu of a municipal contribution from the developer to the Borough for off-site recreation improvements. After discussions with the Borough Planner, additional amenity areas have been identified around the site for passive recreation, no formal amenity areas are proposed.
20. Testimony has been provided to the Board regarding the on-site parking and how the parking distribution will accommodate residents and visitor parking.
21. Utility Plan – Sheets 17-22:
- a. Testimony was provided regarding the anticipated routing of the water main to service the project. The water main is proposed to be extended from the existing water main near Sunnybranch Road and extend north along Route 202 to the site. The Water Main Extension Plans submitted to New Jersey American Water have been added to the Site Plans as supplemental plans. The 12" water main size is based on NJAW requirements for new water mains.
 - b. It is not anticipated that an accessory structure for the water connection to the site is needed. Should one be required, the exterior design of the structure will be submitted to the Board for review and comment. The water main is being extended to service the proposed development, the construction of the main does not limit other potential water service hook-ups. Any future water service hook-ups would be subject to an application to New Jersey American Water.
22. Landscaping Plan – Sheets 23-28:
- a. Testimony has been provided to the Board explaining how the proposed Landscaping Plan and ground cover are related to compliance with the stormwater management requirements.
 - b. Comment is a statement of fact; no response required.
 - c. Comment is a statement of fact; the Applicant will continue to work with the Borough Planner to refine the landscape plan, specifically supplemental planting in the scenic corridor easement and buffer areas.
 - d. Comment is a statement of fact; no response required.
 - e. Comment is a statement of fact; an Operation and Maintenance Manual, as required by State and local requirements, will be prepared for the stormwater management system. The O&M details the maintenance of the bioretention basin plant species.
 - f. Comment is a statement of fact; reforestation and infill planting is proposed along the 300' front setback and in the southern wooded area.
 - g. Comment is a statement of fact; the meadow areas have been refined based on

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discussions with the Board Professionals, testimony will be provided regarding the long-term care and maintenance of the meadow areas.

- h. Comments are statement of fact; no responses required.
- i. Comment is a statement of fact; the provision is intended to ensure the supplemental buffer plantings effectively screen the development from off-site. This provision is intended to extend to the frontage as well, the note has been revised accordingly.
- j. The plan has been revised such that the plant symbols match the quantities depicted.
- k. Testimony will be provided regarding the species selected for the site. The plant species selected are either native or naturalized to Planting Zone 6B.
- l. The Applicant will work the Borough Planner to identify the extents of vegetation removal in the existing hedgerow along Route 202. Notes have been added to the plan specifying that invasive exotic trees, shrubs, and vines are to be removed and supplemented with new planting. The means and methods for implementation have also been identified.

23. Building Architecture Plans – testimony has been provided by the Project Architect regarding the proposed building architecture. The Applicant is working the Board and Board Professionals to refine the architectural plans to be in character with the area and what was represented during the Settlement Agreement. A supplemental narrative from the Project Architect will be prepared detailing the building architecture revisions.

24. Comment is a statement of fact; the hours for refuse collection and loading activities are consistent with the requirements of the Borough and surrounding municipalities. Testimony will be provided to the Board regarding refuse collection and loading activities anticipated on the site.

25. Comment is a statement of fact; no response required.

26. A note has been added to the Sheet 1 of the Site Plan outlining the various outside agency approvals required for the project.

27. Comment is a statement of fact; no response required.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

GLADSTONE DESIGN, INC.



Matt Draheim, L.L.A.

Cc: Craig Giannetti, Esq., Project Attorney

Pulte Home of NJ, LLP., Applicant

Enclosures

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IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action – Mount Laurel

**CERTIFICATION OF
STEVE MAHONEY**

Certification of Steve Mahoney, Construction Code Official

I, Steve Mahoney, of full age, hereby certify and say:

1. I am the Construction Code Official for the Borough of Far Hills and have served in that capacity since February 22, 2016.
2. I make this Certification based upon my personal knowledge. I further make this Certification in Opposition to Pulte Homes of NJ, Limited Partnership's Motion to Intervene and Enforce Litigant's Rights filed on March 12, 2024 in the above-captioned matter.
3. As of April 2, 2024, construction of the wastewater treatment plant at the Kimbolton Development had commenced without the necessary Zoning and Building Permits and without the necessary Construction Code or Subcode Official inspections. Construction of the foundation walls of the wastewater treatment plant has been completed. Because construction of the foundation occurred without Zoning and Building Permits and without inspections by the me, on April 2, 2024, the I issued Notices of Violation to Arroyo Cap III-2, LLC, the owner of the property on which Kimbolton is located, Pulte as the agent for Arroyo, and MGK Industries, Inc., contractor constructing the wastewater treatment plant with an opportunity to cure.
4. Attached as Exhibit A is a true copy of the Notices of Violation.
5. Additionally, the attached pictures show a light stanchion. Construction contractors do not normally own, rent, or place lighting equipment on site unless there is an intention to perform construction at night.

wastewater treatment plant with the light stanchions shown.

7. Construction occurred notwithstanding that Pulte knew of its obligation to obtain Zoning and Construction Permits.

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



Steve Mahoney
Construction Code Official

Dated: April 3, 2024.

EXHIBIT A



NOTICE OF VIOLATION

Permit #
Date Issued
April 2 2024
- or -
Control #

IDENTIFICATION

Work Site Location Kimbolton Development Block _____ Lot _____ Qualification Code _____

Owner in Fee _____ Agent/Contractor PULTE HOMES OF NJ LIMITED
Address _____ PARTNERSHIP
Address 750 Route 202, Suite 500, Bridgewater NJ 08807

To: Owner Other: _____
 Agent/Contractor

DATE OF INSPECTION: N/A DATE OF THIS NOTICE: April 2, 2024 COMPLIANCE DUE DATE : April 23, 2024

ACTION

TAKE NOTICE that you have been found to be in violation of the State Uniform Construction Code Act and Regulations promulgated thereunder in that:

N J A.C. 5:23-2.14 (a) Failure to obtain a permit. SEE ADDENDUM ATTACHED

You are hereby **ORDERED** to terminate the said violations on or before April 23, 2024

No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

~~Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties of up to \$2,000 per week per violation, and a certificate of occupancy will not be issued until such penalty has been paid.~~

If you wish to contest this **ORDER**, you may request a hearing before the Construction Board of Appeals of the _____ County _____ of _____ Somerset _____, within 15 days of receipt of this **ORDER** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

Your application for appeal must be in writing, setting forth your address and name, the address of the building or site in question, the permit number, the specific sections of the Regulations in question, and the extent and nature of your reliance on them. You may include a brief statement setting forth your position and the nature of the relief sought by you. You may also append any documents that you consider useful.

~~The fee for an appeal is \$ 100.00 and should be forwarded with your application to the Construction Board of Appeals Office at :20 Grove Street Somerville, NJ 08876~~

If you have any questions concerning this matter, please call: 908-234-0611

NOTICE of Violation: Steve Mahoney 4-2-24

Date:

This Notice of Violation is issued to Pulte Homes of NJ, Limited Partnership, and MGK Industries, Inc., for their failure to obtain Zoning and Construction Permits from the Borough of Far Hills prior to commencing construction of a wastewater treatment plant at Kimbolton Development within the Borough. Additionally, Pulte and MGK failed to have the construction footings and foundation wall inspected by the borough Construction Code Officials.

Pulte and MGK are to take the following corrective action on or before April 22, 2024:

1. Obtain from the Borough Zoning Officer a Zoning Permit.
2. Obtain from the Borough Construction Official a Construction Permit
3. Provide a certification or report from the designer of record (architect or Engineer) that the footings and foundation for the wastewater treatment facility comply with the plans for the facility and the requirements of the Uniform Construction Code.

Failure to either provide an explanation why the above are not necessary or provide the above by April 22, 2024 will result in the appropriate action being taken against Pulte and MGK.

Stephen Mahoney

Construction Official

Far Hills Borough

P.O.Box 249

6 Prospect St.

Far Hills New Jersey, 07931



NOTICE OF VIOLATION

Permit #
Date Issued
April 2 2024
- or -
Control #

IDENTIFICATION

Work Site Location Kimbolton Development Block _____ Lot _____ Qualification Code _____
Owner In Fee _____ Agent/Contractor MGK INDUSTRIES INC
Address _____ Address 240 S. ROLAND ST. POTTSTOWN, PA 19464

To: Owner Other: _____
 Agent/Contractor _____

DATE OF INSPECTION: N/A DATE OF THIS NOTICE: April 2, 2024 COMPLIANCE DUE DATE : April 23, 2024

ACTION

TAKE NOTICE that you have been found to be in violation of the State Uniform Construction Code Act and Regulations promulgated thereunder in that:

N J A.C. 5:23-2.14 (a) Failure to obtain a permit. SEE ADDENDUM ATTACHED

You are hereby **ORDERED** to terminate the said violations on or before April 23, 2024

No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this **ORDER** may result in the assessment of penalties of up to \$2,000 per week per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If you wish to contest this **ORDER**, you may request a hearing before the Construction Board of Appeals of the County of Somerset, within 15 days of receipt of this **ORDER** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

Your application for appeal must be in writing, setting forth your address and name, the address of the building or site in question, the permit number, the specific sections of the Regulations in question, and the extent and nature of your reliance on them. You may include a brief statement setting forth your position and the nature of the relief sought by you. You may also append any documents that you consider useful.

The fee for an appeal is \$ 100.00 and should be forwarded with your application to the Construction Board of Appeals Office at :20 Grove Street Somerville, NJ 08876

If you have any questions concerning this matter, please call: 908-234-0611

NOTICE of Violation: Steve Mahoney 4-2-24

This Notice of Violation is issued to Pulte Homes of NJ, Limited Partnership, and MGK Industries, Inc., for their failure to obtain Zoning and Construction Permits from the Borough of Far Hills prior to commencing construction of a wastewater treatment plant at Kimbolton Development within the Borough. Additionally, Pulte and MGK failed to have the construction footings and foundation wall inspected by the borough Construction Code Officials.

Pulte and MGK are to take the following corrective action on or before April 22, 2024:

1. Obtain from the Borough Zoning Officer a Zoning Permit.
2. Obtain from the Borough Construction Official a Construction Permit
3. Provide a certification or report from the designer of record (architect or Engineer) that the footings and foundation for the wastewater treatment facility comply with the plans for the facility and the requirements of the Uniform Construction Code.

Failure to either provide an explanation why the above are not necessary or provide the above by April 22, 2024 will result in the appropriate action being taken against Pulte and MGK.

Stephen Mahoney

Construction Official

Far Hills Borough

P.O.Box 249

6 Prospect St.

Far Hills New Jersey, 07931



NOTICE OF VIOLATION

Permit #
Date Issued
April 2 2024

- or -
Control #

IDENTIFICATION

Work Site Location Kimbolton Development Block _____ Lot _____ Qualification Code _____

Owner in Fee ARROYO CAP III-2, LLC Agent/Contractor _____

Address 18575 JAMBOREE ROAD SUITE 350 IRVINE Address _____
92612

To: Owner Other: _____
 Agent/Contractor _____

DATE OF INSPECTION: N/A DATE OF THIS NOTICE: April 2, 2024 COMPLIANCE DUE DATE : April 23, 2024

ACTION

TAKE NOTICE that you have been found to be in violation of the State Uniform Construction Code Act and Regulations promulgated thereunder in that:

N J A.C. 5:23-2.14 (a) Failure to obtain a permit. SEE ADDENDUM ATTACHED

You are hereby **ORDERED** to terminate the said violations on or before April 23, 2024

No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this **ORDER** may result in the assessment of penalties of up to \$2,000 per week per violation, and a certificate of occupancy will *not* be issued until such penalty has been paid.

If you wish to contest this **ORDER**, you may request a hearing before the Construction Board of Appeals of the County of Somerset, within 15 days of receipt of this **ORDER** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

Your application for appeal must be in writing, setting forth your address and name, the address of the building or site in question, the permit number, the specific sections of the Regulations in question, and the extent and nature of your reliance on them. You may include a brief statement setting forth your position and the nature of the relief sought by you. You may also append any documents that you consider useful.

The fee for an appeal is \$ 100.00 and should be forwarded with your application to the Construction Board of Appeals Office at :20 Grove Street Somerville, NJ 08876

If you have any questions concerning this matter, please call: 908-234-0611

Notice of Violation: Steve Mahoney Date: 4-2-24

This Notice of Violation is issued to Pulte Homes of NJ, Limited Partnership, and MGK Industries, Inc., for their failure to obtain Zoning and Construction Permits from the Borough of Far Hills prior to commencing construction of a wastewater treatment plant at Kimbolton Development within the Borough. Additionally, Pulte and MGK failed to have the construction footings and foundation wall inspected by the borough Construction Code Officials.

Pulte and MGK are to take the following corrective action on or before April 22, 2024:

1. Obtain from the Borough Zoning Officer a Zoning Permit.
2. Obtain from the Borough Construction Official a Construction Permit
3. Provide a certification or report from the designer of record (architect or Engineer) that the footings and foundation for the wastewater treatment facility comply with the plans for the facility and the requirements of the Uniform Construction Code.

Failure to either provide an explanation why the above are not necessary or provide the above by April 22, 2024 will result in the appropriate action being taken against Pulte and MGK.

Stephen Mahoney

Construction Official

Far Hills Borough

P.O.Box 249

6 Prospect St.

Far Hills New Jersey, 07931

EXHIBIT B





O'TOOLE SCRIVO, LLC

Thomas P. Scrivo, Esq.
Lawrence S. Cutalo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
(973) 239-5700
*Attorneys for Plaintiff,
Borough of Far Hills*

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action - Mount Laurel

**CERTIFICATION OF
MICHAEL F. SULLIVAN, ASLA, AICP**

MICHAEL F. SULLIVAN, ASLA, AICP, of full age, hereby certify as follows:

1. I am a licensed professional planner and licensed landscape architect in the State of New Jersey. I am certified by the American Institute of Certified Planners. I am a principal of Clarke Caton Hintz, P.C., a planning, architecture, and landscape architecture firm.

2. I have been licensed as a landscape architect since 1990 and as a professional planner since 1992. I have extensive experience and knowledge of municipal planning, zoning regulations and the process of review and approval of development applications by municipal authorities, including planning boards, boards of adjustment and governing bodies. (A true copy of my Curriculum Vitae is attached hereto as Exhibit A.)

3. I have extensive experience and knowledge of the nature and content of documentation necessary to pursue local approvals for site plans and subdivisions, including land use, site design, grading, stormwater management, landscape design, conservation, lighting, architecture, detailing and technical reports. (Id.)

4. I have been engaged by the Borough of Far Hills as a Special Consulting Planner to assist in the evaluation and comparison of the plans for a project now known as Kimbolton, an inclusionary multifamily housing project under development by Pulte Homes of NJ, L.P. ("Pulte"), located at 220 Route 202, Far Hills, New Jersey (formerly Block 5, Lot 4). My knowledge and experience in municipal planning and, more specifically, the review and approval process for site plans and subdivisions, qualifies me to make this Certification and render opinions as to these matters.

5. I make this Certification in Opposition to Pulte's Motion to Intervene and Enforce Litigant's Rights and in response to a Motion to Intervene filed by Sohail Khan in the above-captioned matter. I am fully familiar with the facts, documents, and opinions set forth herein.

6. Public hearings on the Pulte's development application seeking Preliminary and Final Site Plan, Preliminary and Final Major Subdivision, and Variance approvals (the "Application") were conducted by the Planning Board on July 5, 2021, August 2, 2021,

August 14, 2021 (site visit), September 22, 2021, October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, January 3, 2022 and February 7, 2022. The plans dated October 1, 2021 (AKA Revision 1) are the plans the Planning Board reviewed and considered prior to taking action to approve the major site plan and subdivision on February 7, 2022.

7. In connection with my Certification and my analysis and opinions herein, I reviewed the documents set forth in Exhibit B.

8. In addition, on March 21, 2024, I visited the properties abutting the project site, including 3 Fox Hunt Court (block 5 lot 6.02) and 196 US Route 202 (block 5 lot 5) in Far Hills, New Jersey. I observed that the site is currently under construction. (Exhibit C, "Existing Conditions - March 24, 2024" prepared by me on April 4, 2024 shows existing conditions as of March 24, 2024.)

9. I reviewed two versions of subdivision and site plans for the Pulte's Application, now known as Kimbolton, entitled:

a. Pulte Homes-Far Hills, Preliminary and Final Major Site Development and Subdivision Plans, Block 5 Lot 4, Prepared by Ronald A. Kennedy, PE, Gladstone Design, Inc., dated March 19, 2021, last revised October 1, 2021 (AKA Revision 1).

b. Pulte Homes-Far Hills, Preliminary and Final Major Site Development and Subdivision Plans, Block 5 Lot 4, Prepared by Ronald A. Kennedy, PE, Gladstone Design,

Inc., dated March 19, 2021, last revised March 1, 2023 (AKA Revision 8).

10. The plans dated October 1, 2021 (AKA Revision 1) is the version of the plans that were submitted to the Planning Board for review and approval and that were, ultimately, approved by the Planning Board during a public hearing on February 7, 2022, subject to conditions contained in Resolution #2022-10.

11. The plans dated March 1, 2023 (AKA Revision 8) is the version of the plans that were revised by Pulte pursuant to the conditions of the Planning Board approval and enumerated in Resolution #2022-10.

12. The plans dated March 1, 2023 (AKA Revision 8) contain substantive, material changes to the layout and site elements that were approved by the Planning Board, including proposed topography and grading, elevations of roadways, elevations of buildings, increases in the extent and number of retaining walls, increases in the height of retaining walls and a reduction in the length of nature paths.

13. **Nature Path Reduction:** The plans dated October 1, 2021 (AKA Revision 1) contained 4,618 LF of nature paths which created a circuit of paths which, roughly, encircled the proposed development and provided connections to the internal network of walkways and sidewalks. The function and character of this

pedestrian network was described by the Pulte's engineer, Ronald A. Kennedy, of Gladstone Design, Inc. during the public hearing:

[We have a network of paths that are constructed that connect to the sidewalks. So while there is internal sidewalks along the road systems, what we are taking advantage of with these large setbacks is we have a looped trail system that would go around the perimeter of the property. There is some old culvert crossings or bridge crossings that are down here, along the high tension lines that are along the railroad tracks that we would go under, and then connect back out to some of the sidewalk systems that are in the multi-family, and connect back into some of the ends of this these court yards. . . . a resident could walk around the perimeters of the property or they can connect to the sidewalk systems that are on the road system.

[(Exhibit D is a true copy of excerpts of the July 5, 2021 Transcript, T76-77.)]

14. The plans dated March 1, 2023 (AKA Revision 8) deleted 780 LF of nature paths. This reduction represents a 16.8% reduction in the length of nature paths. Furthermore, the removal of a path segment on the southwest edge of the site eliminated the ability of pedestrians to complete the "circuit" within the perimeter buffer area as originally intended. (Exhibit E, prepared by me on or around April 4, 2024, sets forth the proposed nature path as approved by the Board in the plans dated October 1, 2021 with the plans dated March 1, 2023, which eliminate 780 LF of the proposed nature path and the full "circuit" of path within the

perimeter buffer that was represented to be constructed by the Pulte.)

15. The Extent of Retaining Walls Increased Substantially:

The October 1, 2021 (AKA Revision 1) plans contained 2,678 LF of retaining walls. The plans dated March 1, 2023 (AKA Revision 8) include an additional 1,367 LF of retaining walls, for a total of 4,045 LF of retaining walls. This represents a substantial, 51% increase in the overall length of retaining walls to be installed as part of the development. (Exhibit F entitled "Retaining Walls October 1, 2021" and "Retaining Walls March 1, 2023" prepared by me on or around April 4, 2024 (2 Sheets), shows the increase in the overall length of retaining walls made by Pulte in the plans dated March 1, 2023.)

16. The Height of Retaining Walls is Nonconforming: Section 905 entitled "Fences, Walls and Sight Triangles" of Article IX of the Land Management Ordinance, Subsection A.5, requires that in all zoning districts, fences and walls shall be installed no higher than six feet (6'). Walls on both the October 1, 2021 (AKA Revision 1) plan and the plans dated March 1, 2023 (AKA Revision 8) contain retaining walls that do not conform to the maximum permitted wall height. However, the extent and severity of these nonconformities increased substantially with Revision 8, which was drafted after the Planning Board approval. (Exhibit E, "Retaining Wall Heights October 1, 2021" and "Retaining Wall Heights March 1, 2023",

prepared by me on April 4, 2024 (2 Sheets), depict the foregoing information. The Table below titled "Retaining Walls Taller Than 6.0 Feet: Revision 1 Plan" and Table below titled "Retaining Walls Taller Than 6.0 Feet: Revision 8 Plan" also depict this information.)

17. **The Extent of Nonconforming Retaining Walls Increased Substantially:** The October 1, 2021 (AKA Revision 1) plans contained 763 LF* of retaining walls that exceed the maximum permitted wall height of six feet. The plans dated March 1, 2023 (AKA Revision 8) contain 1,679 LF* of retaining walls that exceed the maximum permitted wall height of six feet. This is an increase of 916 LF of nonconforming retaining walls, an increase of 120%. See Id.¹

18. **The Severity of Nonconforming Retaining Walls:** Both the October 1, 2021 (AKA Revision 1) version and the March 1, 2023 (AKA Revision 8) version of the plans contain retaining walls that do not conform to the maximum permitted wall height of six feet. Of the retaining walls that exceeded six feet in height on the October 1, 2021 (AKA Revision 1) plans, there were three walls that ranged in height from 7.5 feet to 22.4 feet. Of the retaining

¹These calculations are based on wall runs between known spot elevations (top wall/bottom wall) depicted on the plans. Since points at which the walls cross the six-foot height threshold are not identified with a spot elevation, and since the segmented walls appear to contain steps in some areas, this office could not determine the exact extent of the walls that exceed six feet. That means that the lengths of walls calculated by this office are conservative, in that they likely undercount the overall length of walls that exceed six feet in height.

walls that exceed six feet in height on the plans dated March 1, 2023 (AKA Revision 8) there are 10 walls that range in height from 6.3 feet to 24.5 feet. The following tables identify the heights of individual walls on each plan version, which are numbered to locate them on the wall height exhibits. (See Exhibit F, "Retaining Wall Heights"; See Table "Retaining Walls Taller Than 6.0 Feet: Revision 1 Plan" and Table "Retaining Walls Taller Than 6.0 Feet: Revision 8 Plan.")

Retaining Walls Taller Than 6.0 Feet: Revision 1 Plan			
ID #	Known Length Exceeding 6.0 ft	Height (ft)	
		Min	Max
1	106.00	11.90	17.80
2	542.00	14.00	22.40
3	115.00	7.50	9.70
4	N/A	N/A	N/A
5	N/A	N/A	N/A
6	N/A	N/A	N/A
7	N/A	N/A	N/A
8	N/A	N/A	N/A
9	N/A	N/A	N/A
10	N/A	N/A	N/A
11	N/A	N/A	N/A
Total	763.00		

Retaining Walls Taller Than 6.0 Feet: Revision 8 Plan			
ID #	Known Length Exceeding 6.0 ft	Height (ft)	
		Min	Max

1	N/A	N/A	N/A
2	524.00	13.00	24.50
3	120.00	8.00	9.90
4	198.00	10.00	17.00
5	247.00	9.00	17.00
6	244.00	7.00	13.00
7	96.00	8.10	8.30
8	231.00	8.00	8.20
9	19.00	8.00	8.00
10	0.00	6.90	6.90
11	0.00	6.30	6.30
Total	1,679.00		

19. **Changes in Roadway Elevations:** The October 1, 2021 (AKA Revision 1) plans contained 4,965 LF of roadways. The plans dated March 1, 2023 (AKA Revision 8) contain no significant changes in the overall combined length of roadways. However, the March 1, 2023 plans include revisions to the roadway profiles that either increased or decreased the elevation of several roadways. In comparing the October 1, 2021 (AKA Revision 1) profiles to the March 1, 2023 (AKA Revision 8) profiles, approximately 1,798 LF of roadways were either raised or lowered more than 0.5 feet (changes in elevation less than 0.5 feet were considered to be minor). This equates to 36% of roadways whose elevations were modified in a substantial, material way post-approval. (See Exhibit G, prepared by me April 4, 2024 (8 Sheets) entitled "Changes in Roadway Elevations", "Changes in Baldwin Ave Road Profile Sta. 8+12 to 13+50", "Changes in Baldwin Ave Road Profile Sta. 13+50 to 17+50", "Changes in Baldwin Ave Road Profile Sta. 17+50 to 22+70", "Changes

in Errico Lane Road Profile", "Changes in Hall Court Road Profile", "Changes in Sutter Court Road Profile", "Changes in Voorhees Court Road Profile", and table "Changes in Roadway Elevations", prepared by me on or around April 4, 2024.)

20. Of these roadways, Errico Lane was increased substantially, with a maximum increase in elevation of nearly 10 feet. Hall Court's and Baldwin Avenue's elevations were also increased, substantially, with maximum increases between four and six feet. The following table contains a breakdown of the increases in the roadway elevations of those roads with changes of 0.5 feet or greater.

Changes in Roadway Elevations						
Roadway Segment	Max Change (ft)	Min Change (ft)	Average Change (ft)	Segment Length (ft)	Length of Segment That Increased by at least 0.5 ft	Percentage of Segment that Increased by at least 0.5 ft
Errico Lane Sta. 0+00 to 5+59	9.76	2.25	5.27	559	559	100.0%
Hall Court Sta. 0+00 to Sta. 1+93	4.99	4.15	4.41	193	193	100.0%
Baldwin Avenue Sta. 8+12 to Sta. 13+50	5.51	1.45	3.48	538	538	100.0%

Baldwin Avenue Sta. 13+50 to Sta. 17+50	4.37	0.12	1.58	400	200	50.0%
Sutter Court Sta. 0+00 to Sta. 1+88	2.20	0.00	1.10	188	88	46.8%
Baldwin Avenue Sta. 17+50 to Sta. 22+70	1.78	0.12	0.61	520	170	32.7%
Voorhees Court Sta. 0+00 to Sta. 1+63	1.43	- 0.83	0.09	163	50	30.7%

21. **Changes in Townhouse Building Elevations:** The October 1, 2021 (AKA Revision 1) contains 105 townhouse units within buildings containing groups of either four or five units. The plans dated March 1, 2023 (AKA Revision 8) include revisions to the grading plans that changed the elevations of the townhouse buildings/units. These are substantial changes. In comparing the approved grading plan to the post-approval grading plan, specifically through a comparison of the finished floor elevations, 70 townhouse units had an increase in the finished floor elevation. This represents 66.7% of the total number of units. 24 units were lowered in elevation, representing 22.9% of all townhouses. Overall, 94 townhouse units had their elevations changed after Board approval, which is 89.5% of all townhouses.

(See Exhibit H, "Changes in Townhouse Building Elevations" prepared by me on or around April 4, 2024, and table "Changes in Townhouse Building Elevations.")

22. 36 townhouses (34.3%) had an increase in the finished floor of less than two feet. 24 townhouses (22.9%) had an increase in the finished floor of at least two feet but less than four feet. These averaged an increase of 0.84 feet. Seven townhouses (6.7%) had an increase in the finished floor of at least four feet but less than six feet. These averaged an increase of 5.02 feet. One townhouse (1.0%) had an increase in the finished floor of at least six feet but less than eight feet. This townhome increased in elevation 7.33 feet. Two townhouses (1.9%) had an increase in the finished floor of at least eight feet but less than 10 feet. Both of these townhouses increased 8.33 feet.

23. The plans dated March 1, 2023 (AKA Revision 8) illustrate widespread increases in the elevations of the townhouses. The most significant increases in elevation are located in the southwest portion of the development on proposed lots 4.42 -4.46. These homes are elevated from 4.33 feet to 8.33 feet above the approved elevations. This creates a roof elevation at this location that is, commensurately, 8.3 feet above that which was approved, based on the approved architectural plans.

24. The extent of increases in the townhouse building elevations is widespread and the degree of change, in some cases,

is substantial. To the extent that height variances were granted for certain buildings containing walkout basements, the proposed elevation of the building in relation to the overall site, US Route 202 and adjacent properties may have been a factor in the Board's consideration of the variance and which the Planning Board was deprived of considering, since the grading plan was modified after the granting of the variances.

Changes in Townhouse Building Elevations					
Change	No.	%	Avg (ft)	Max (ft)	Min (ft)
Decrease: up to 1.5 ft	24	22.90%	-0.8	- 0.25	-1.5
No Change	11	10.50%	0.00	0.00	0.00
Increase: Less than 2.0 ft	36	34.30%	0.84	1.75	0.08
Increase: 2.0 ft but less than 4.0 ft.	24	22.90%	2.69	3.75	2.75
Increase: 4.0 ft but less than 6.0 ft.	7	6.70%	5.02	5.8	4.33
Increase: 6.0 ft but less than 8.0 ft.	1	1.00%	7.33	7.33	7.33
Increase: 8.0 ft but less than 10.0 ft.	2	1.90%	8.33	8.33	8.33
Increase: All	70	66.70%	2.2	8.33	0.08
All	105	100.00%	1.28	8.33	-1.5

25. Changes to the Grading Plan and Increases in the Elevations of Buildings, Roads and Other Site Elements Conflict with Applicant's Representations: The applicant submitted and represented plans dated October 1, 2021 (AKA Revision 1) to the Planning Board that exhibited the proposed grading and elevations

of buildings and roadways, as well as the overall site. During the public hearing, the Planning Board expressed concerns regarding the heights of buildings and their visibility relative to US Route 202 and adjacent properties. Furthermore, the Board expressed concern regarding the height variances associated with the townhouses with walkout basements. In response to concerns from the Planning Board, the Pulte's engineer Ronald A. Kennedy, represented to the Planning Board that the building elevations would be coordinated to closely follow the existing grade:

[We try to keep as much of the site grading around each unit to existing grade, and use the grades that we have there to situate each unit.

[(Exhibit D, July 5, 2021 Transcript at T60.)]

So as far as the peaks on the roof having do with the variances, is the peaks would be the same, whether we have walkouts or not. So in the non-walkout condition, from the new roadway, it's the same height whether it's walkout or.

[(Id. at T142.)]

Despite these representations, the plans dated March 1, 2023 (AKA Revision 8) contain substantial increases in the elevations of the townhouse buildings, roadways, and retaining walls.

26. Applicant Agreed to Return to Planning Board with any Substantial Changes to Plans: Based on the testimony of the applicant and its professionals at the Planning Board hearings, along with the exhibits presented to the Planning Board, there was no indication that substantive material changes would be necessary

to the plans as the Board understood them. Conversely, the Pulte's attorney Craig Gianetti, Esq., and engineer Ronald A. Kennedy, P.E. assured the Planning Board that any substantive changes would be brought back to the Board:

- a. [A]fter the project gets fully engineered and they get more into you know, the grading, the topography, the storm water management, as well as other outside agency approvals, like wetland delineations; sometimes there are minor adjustments that are made to the plans and those create potential variances, where applicant has to seek relief from it.

[(Id. at T7.)]

- b. [Board Planner Banisch]: Normally, Mr. Chairman, the way the board would likely deal would that, or at least what the we would suggest is if any of those agencies required any significant change to the board's approval, that the applicant would return for the board's review and approval of any significant change. So I think one way or another the board will be fully aware of what it's getting.

Mr. Gianetti: And that's fine. And we are agreeable to that. That's not uncommon.

[(Id. at T89.)]

- c. [MR. KENNEDY]: [T]here is a new set of rules that are very interpretive that we have to go through. And we have to go through DEP with interpreting these new rules. And we have to go through that with the town engineer. And in all of these new rules, we have put together a proposed design. There is some questions that the township engineer has raised. I am going to sit down with them, with the board's permission and go through some of those detailed technical issues. If there is changes to the plan, the public and the board will have certainly a chance to understand any of those changes.

[(Id. at T149-150.)]

- d. BOARD PLANNER: Condition 22 was one that you and I had a brief discussion about, Mr. Gianetti. Are you okay with that one?

ATTORNEY GIANETTI: Yes.

BOARD PLANNER: Okay. For the board's information, that is a general condition that requires that all plan revisions will be made consistent with all the representations made by the applicant, the conditions of approval suggested by our office and suggested by the engineer's office. So if there's any misunderstanding, the applicant's essentially agreeing to revise plans for consistency with conditions as outlined by the borough's professionals. And if there have been any oversights, the applicant agrees to address those in terms of plan revisions or conformity with the recommended conditions of approval.

ATTORNEY GIANETTI: When you say, "oversights," you are referring to testimony that was given, but not covered by a condition?

BOARD PLANNER: Or a revision.

ATTORNEY GIANETTI: Or a revision or review letter, okay.

BOARD PLANNER: Yeah. So, for example, something wasn't picked up that was - that you told the board, you know, you would make a revision or something like that, that would be addressed this way as well?

ATTORNEY GIANETTI: That's fine.

[Id. at July 5, 2021 Transcript, T43-44.]

27. Resolution of Approval Incorporated the Applicant's Representations Regarding Substantial Changes as Conditions:

Resolution #2022-10 memorialized the Planning Board decision on the Pulte application on February 7, 2022. Among numerous other specific technical conditions, it contains the following conditions that require Planning Board approval of any substantive

changes to the approved plans, consistent with the representations of the applicant during the hearings:

- a. Condition 33 requires that "Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review and an amendment to the current approval."
- b. Condition 38 requires that "The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case."

28. Substantial Changes to the Plans Not Presented to the Planning Board: Despite the representations of the applicant and the required conditions of approval, the changes to the layout and site elements depicted in the plans dated March 1, 2023 (AKA Revision 8) were not reviewed by the Planning Board or the public. As such, the Planning Board and the public had no opportunity to review and consider specific elements that had changed, such as the elevation of roads and buildings, increase in the extent and heights of retaining walls or the removal of the nature path segment. Such a review, pursuant to an amended site plan and subdivision, would have afforded the Planning Board to assess any negative impacts, measures to mitigate negative impacts and to act

on any necessary relief. The Planning Board was deprived of the opportunity to ensure that the plan would conform to the Land Management Ordinance and other land use policies of the Borough while protecting the public health, safety and welfare, which is the prime responsibility of the Planning Board. The public was also deprived of its right to see, hear and comment on such plan changes at a public hearing.

29. Non-Conforming Retaining Wall Heights Require Relief: Section 905 entitled "Fences, Walls and Sight Triangles" of Article IX of the Land Management Ordinance, Subsection A.5, requires that in all zoning districts, fences and walls shall be installed no higher than six feet (6'). The plans dated March 1, 2023 (AKA Revision 8) contain 1,679 LF of retaining walls that exceed the maximum permitted height of six feet in height, an increase of 916 LF over the October 1, 2021 plans (AKA Revision 1). Since this plan was revised to added post-approval by the Planning Board, the Board had no opportunity to consider the impact of these walls on the overall design of the site or the adjacent properties. Additionally, since the plans were not submitted to the Board for consideration, no relief was granted to permit these walls to exceed the maximum permitted wall height.

30. New Retaining Wall Impacts Adjacent Lots Block 5 Lot 6.02 and Block 5 Lot 5: A new retaining wall contained on the March 1, 2023 (AKA Revision 8) plans at the end of Errico Lane is as

high as 17 feet. The October 1, 2021 plans (AKA Revision 1) depicted no retaining wall in this location, with only a slight increase in the existing grade at the roadway/townhouse buildings. The new wall that was constructed at the end of Errico Court has a maximum height of 17 feet above grade with a top-of-wall elevation of 271. The home on adjacent block 5 lot 6.02 has a finished floor elevation of 234.6. The top of the wall is 36.4 feet in elevation above the first floor of the home. This wall is a large structure adjacent to and within the view of the interior of the home on both floors and from within the yard. Ground-based photographs are provided herein in an attempt to convey the visual and spatial impact, but in my opinion, the impact is worse in-person. The visual and spatial impact of this wall on the adjacent properties is acute, as can be seen in the exhibits depicting the vertical relationship (sections) between the wall and lots 5 and 6.02. This wall, like all that exceed six feet in height, requires relief. (See Exhibit I "Section A-A'", "Section A-A' Enlargement", "Section B-B'" (3 Sheets) prepared by me on April 4, 2024 , and Exhibit J "Site Photos" (7 sheets).)

31. The plans dated March 1, 2023 (AKA Revision 8) contain widespread, substantive, material changes to the layout and site elements that were approved by the Planning Board as depicted on the October 1, 2021 plans (AKA Revision 1). These changes include modifications to the proposed topography and grading which

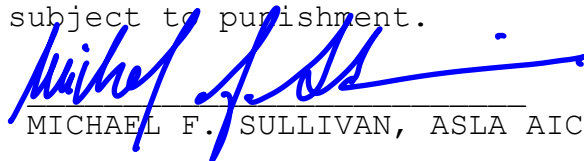
increased the elevations of roadways and increased the elevations of townhouse buildings, some of which are substantially higher than that which were represented to the Planning Board. Revision 8 also includes increases in the number of, and the horizontal extent of (as measured in lineal feet) retaining walls. While Revision 1 contained three retaining walls that exceeded the maximum permitted height of six feet, Revision 8 contains 10 retaining walls that exceed the maximum permitted height of six feet. The heights of the nonconforming walls on Revision 8 range from 6.3 feet to 24.5 feet in height. Finally, plan Revision 8 eliminated 780 LF of the proposed nature path shown on plan Revision 1, thus eliminating the full "circuit" of path within the perimeter buffer that was represented to be constructed by the applicant.

32. Although Resolution #2022-10 required the applicant to return to the Planning Board to approve any substantive changes as a result of satisfying the comments of the Borough Engineer or the NJDEP with respect to stormwater management, no application for an amended approval was made. By not complying with this condition of the approval, the Planning Board was unable to consider the proposed changes, was unable to hear from any members of the public or adjoining property owners as to potential negative impacts, and was unable to consider or require any measures that might be appropriate to mitigate any negative impacts, such as any impacts

to the adjacent lots 5 and 6.02. Furthermore, since the extent and height of 10 retaining walls on plan Revision 8 exceed the maximum permitted wall height, the Planning Board was unable to grant relief (variance/waiver) to the applicant to construct those walls.

33. The plans dated March 1, 2023 (AKA Revision 8) do not comply with all of the conditions of approval contained in Resolution #2022-10 and since an amended application was not made, no action was taken by the Planning Board to approve Revision 8 or to grant any relief inherent in that plan.

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.



MICHAEL F. SULLIVAN, ASLA AICP

Dated: 4/4/24

O'TOOLE SCRIVO, LLC

Thomas P. Scrivo, Esq.
Lawrence S. Cutalo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
(973) 239-5700
*Attorneys for Plaintiff,
Borough of Far Hills*

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action - *Mount Laurel*

**CERTIFICATION OF
PAUL W. FERRIERO, P.E., P.P.,
C.M.E.**

PAUL W. FERRIERO, P.E. P.P., C.M.E., of full age, hereby certify as follows:

1. I am a professional engineer, professional planner, and certified municipal engineer, licensed to practice in the State of New Jersey and am employed by Boswell Engineering.

2. I served as the Borough of Far Hills Planning Board ("Planning Board") Engineer and the Borough Engineer at the time Pulte Homes of NJ, L.P. ("Pulte"), filed a development application seeking, among other things, Preliminary and Final Site Plan, Preliminary and Final Major Subdivision, and Variance approvals pertaining to a ~ 42.304 acre wooded lot identified as 220 Route 202, former Block 5, Lot 4, seeking to construct a mixed use

residential development containing 105 townhouse units and 29 apartment units (the "Application").

3. I make this Certification in Opposition to Pulte's Motion to Intervene and Enforce Litigant's Rights and in response to a Motion to Intervene filed by Sohail Khan in the above-captioned matter. I am fully familiar with the facts, documents, and opinions set forth herein.

4. I have reviewed, among other things, the Certification of Ronald A. Kennedy, P.E. ("Kennedy") dated March 12, 2024, the hearing transcripts, and the review letters referenced herein.

5. Kennedy's engineering firm, Gladstone Design Inc., prepared "Preliminary and Final Major Site Development and Subdivisions Plans" dated March 19, 2021 containing forty two (42) sheets (the "Site Plan"), and a Stormwater Management Report dated March 19, 2021 ("SWM Report"), which were filed with the Planning Board on April 2, 2021.

6. I issued a review letter dated July 2, 2021, that contained, among other things, sixty-two (62) comments regarding Pulte's SWM Report. I noted that the hydrogeologic portion of the SWM Report was stamped draft. More specifically, the July 2, 2021 review letter also reviewed the drainage plan from Site Plan requested additional information regarding soil testing and questioned, among other things, how portions of the site would drain, at comments 37 to 57. Comment Number 62 specifically stated:

[the] stormwater management system is fundamental to the project being able to function. Based on the comments above, it appears that the project does not meet the standards for stormwater management and mitigation is required based on the standards of N.J.A.C. 7:8-4.6(a). It does not seem that the standards for mitigation can be demonstrated based on the project. Significant additional information/redesign of the stormwater management system is required.

Exhibit A is a true and accurate copy of Ferriero Engineering Review Letter dated July 2, 2021.

7. The first hearing on the Application was July 5, 2021, where Kennedy testified with regard to the Site Plan. With regard to stormwater management, Kennedy stated that Pulte would comply with the Ferriero Engineering's comments in the review letter dated July 2, 2021, Far Hill's stormwater standards, and the new DEP standards promulgated on March 2, 2021. (Exhibit B is a true copy of excerpts of the July 5, 2021 hearing transcript)(7/5/21 at T65:3-25). He further stated that it would be unwise to take up the Planning Board's time to go through the details of stormwater management and that such issues should be discussed at a separate meeting with just the Borough's professionals. Id. Kennedy stated that the new DEP standards may require design changes to the proposed stormwater management systems and grading. Kennedy acknowledged that "if there is changes to the plan, the public and

the board will have certainly a chance to understand any of those changes." Id. at T149 to 150.

8. On July 21, 2021, the Borough's professionals, including Paul Ferriero, P.E., Steven Bolio, P.E., David Banisch, P.P., and the Gladstone design team including Ronald Kennedy, PE, and Matthew Draheim met via zoom regarding my July, 2, 2021 review letter and Banisch's July 5, 2021 report.

9. On October 1, 2021, Gladstone Design filed with the Planning Board, revised Site Plans revised October 1, 2021, and a Stormwater Management Report, revised October 1, 2021.

10. At the November 1, 2021, hearing, Kennedy was recalled to testify on behalf of Pulte and a "Stormwater Management Exhibit" dated November 1, 2021, was marked "A-15". Kennedy testified:

there is a lot of detail in the design that is going to be reviewed by your borough engineer, but the general location haven't changed and the functionality of what those detention basins and bio-filtration basins really have not changed at all in the general purpose of what they're providing. It's a lot of technical details that you'll get a thorough review by your engineer in reviewing those."

Exhibit C is a true copy of excerpts of the November 1, 2021 hearing transcript at 11-01-21 T19:10-19.

Kennedy testimony regarding stormwater management took just three (3) pages of the hearing's transcript. Id. at T17 to T19.

11. On November 5, 2021, Ferriero Engineering issued another review letter that, among other things, contained eighty-four (84)

comments regarding Pulte's October 1, 2021 Stormwater Management Report. Such letter requested, among other things, additional soil testing for the stormwater management systems on site. Exhibit D is a true and accurate copy of Ferriero Engineering Review Letter dated November 5, 2021.

12. At the November 23, 2021 hearing, Kennedy testified that Gladstone would perform additional soil testing and provide the results to Ferriero Engineering. Exhibit E is a true copy of the November 23, 2021 transcript, 11/23/21 T8:4-21.

13. On December 2, 2021, Pulte sent Ferriero Engineering a letter containing a "draft summary of the findings" relative to the additional soil testing for the proposed stormwater management systems, which contained a Soil Testing Location Plan dated October 1, 2021, revised through December 2, 2021, that did not show a retaining wall at the terminus of Errico Lane and adjacent to Fox Hunt Court. Exhibit F is a true and accurate copy of Gladstone Design's letter dated December 2, 2021, and enclosed Soil Testing Location Map dated October 1, 2021 revised through December 2, 2021 (without retaining wall).

14. On December 3, 2021, Pulte's attorney, Craig Gianetti, Esq., sent an email to Arhtur McKenna, Esq., an attorney representing an objector, with a copy to the Board Secretary, that included the Soil Testing Location Plan prepared by Gladstone with the same date (October 1, 2021, revised through December 2, 2021)

as the copy sent to my office. The map attached to Mr. Gianetti's e-mail did not show a retaining wall at the terminus of Errico Lane. The Board Secretary forwarded Mr. Gianetti's e-mail and attached Soil Testing Location Plan to Ferriero Engineering. Exhibit G is a true copy of the December 3, 2021 chain with attached Soil Location Testing Map dated October 1, 2021, revised through December 2, 2021 (without retaining wall).

15. Notably, during resolution compliance, Ferriero Engineering requested a copy of the Soil Location Testing Map dated October 1, 2021, revised through December 2, 2021, from Gladstone Engineering on September 7, 2022. The same day, Gladstone provided a copy of the Soil Testing Location Plan by Gladstone Design dated October 1, 2021, revised December 2, 2021. The Soil Location Testing Plan dated October 1, 2021, revised December 2, 2021 and transmitted on September 7, 2022, despite having the same date, now depicted a retaining wall (15 feet) at the terminus of Errico Lane. Exhibit H is a true copy of the September 7, 2022 email chain with attached Soil Location Testing Map dated October 1, 2021, revised through December 2, 2021 (with retaining wall).

16. Two different Soil Location Testing Plans, with and without a retaining wall at the end of Errico Lane, and both having the same date (October 1, 2021, revised through December 2, 2021) were supplied to my firm by Gladstone Design. These Soil Location

Testing Plans, each having the same date, were inconsistent, unclear and deceptive.

17. At the December 6, 2021 hearing, Pulte's attorney claimed that Kennedy's testimony was unchanged, and in light of the soil testing map dated October 1, 2021, revised through December 2, 2021 submitted on December 2, 2021, the stormwater system would function properly and in compliance with DEP regulations. Exhibit I is a true copy transcript of the December 6, 2021 hearing, 12/6/21 T7:5-8:11.

18. Based on my review of the hearing transcripts, Kennedy did not testify at the December 6, 2021 hearing or any subsequent hearing on the Application.

19. On February 7, 2022, the Planning Board voted to approve the Site Plan, which did not include the 17 foot high retaining wall at the end of Errico Lane.

20. On March 15, 2022, Gladstone Design submitted revised Site Plans to Ferriero Engineering including a revised Grading Plan, Sheet 16, which was revised March 15, 2022, as well as a cover letter dated March 15, 2022 with a "narrative" regarding revisions to the plans ("Gladstone March 15, 2022 Letter"). Exhibit J is a true copy of Gladstone Design's March 15, 2022 letter and Grading Plan Sheet 16 revised March 1, 2022.

21. The Gladstone March 15, 2022 Letter expressly referenced revisions to the Grading Plan, Sheet 16, but did not say that a

new fifteen 15 foot high retaining wall was added. Id. at p. 9 ¶ 6. Such letter did not otherwise call out a new 15 foot high retaining wall at the terminus of Errico Lane adjacent to Fox Hunt Court. Id.

22. The revisions to the Grading Plan, including Sheet 16, were reviewed by Ferriero Engineering primarily to with regard to stormwater flows and drainage. Such plans showed that the stormwater peak flows had decreased from the October 1, 2021 stormwater design that discharged towards Fox Hunt Court.

23. Neither the revisions to the Grading Plan revised March 1, 2022 (Id.), the revisions to the Soil Testing Plan, nor the Gladstone March 15, 2022 Letter (Id.) set forth that a 15 foot high retaining wall was necessary to direct stormwater flows away from Fox Hunt Court.

24. The revised Grading Plan, Sheet 16, submitted March 15, 2022, and revised March 1, 2022, did in fact contain a new retaining wall at the terminus of Errico Lane which was shown at 15 feet high on the plans. Subsequent plan revisions depicted the wall as 17 feet high.

25. Based on my over thirty years of experience as a municipal engineer, the new 15 foot high wall (later revised to 17 feet) should have been identified in Gladstone's March 15, 2022 Letter and labeled on Grading Plan, Sheet 16, and should have been dimensioned on Pulte's Site Dimension Plan (Sheet 10).

26. The new 17 foot high retaining is a significant and material change to the Site Plan and requires full Planning Board approval at a public hearing.

27. I am aware that Mr. Khan's motion papers contain an email from me dated November 22, 2023, where I stated that the retaining wall on Errico Lane adjacent to his property "has been on the site plans reviewed and approved by the Planning Board since it was presented at the public hearings in front of the Board." Attached hereto as Exhibit K is a copy of the November 22, 2023 email string.

28. My November 23, 2023 email was not intended to mislead Mr. Khan. Rather, my email was sent based on my over thirty years of experience that a 17 foot high retaining wall would have been shown the Site Plan that Pulte filed with and explained to the Planning Board during the public hearings.

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.



Paul W. Ferriero, P.E., P.P.

Dated: 4/4/24

Exhibit A



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME
Mark S. Denisiuk, PE, CME, LEED AP
Mark Kataryniak, PE, PTOE
Joseph S. Kosinski, PG, CFM, LEED
C. Richard Quamme, PE, CME
Jess H. Symonds, PE

July 2, 2021

Thomas Rochat, Chairman
Far Hills Borough Land Use Board
6 Prospect Street
Far Hills, New Jersey 07931

Re: Residences at Overleigh
Block 5, Lot 4
US Hwy Route 202
Borough of Far Hills
Our Project No. 21FH203

Dear Mr. Rochat:

The applicant for the above referenced project is seeking preliminary and final major site plan, preliminary and final major subdivision and variance approval to permit the construction of a multi-family residential development. The property is located in the TH-6-IAR Townhouse Inclusionary Age-restricted Residential zoning district and consists of approximately 41.5 acres. The existing property, known as Block 5 Lot 4 located on New Jersey State Route 202, contains several single family and multi-family residential buildings, with related site improvements. The applicant is proposing to construct a mixed residential development consisting of 105 age-restricted for-sale townhouse units and a multifamily apartment building consisting of 29 affordable units (25 non-age restricted rental affordable housing units and four age-restricted rental affordable housing units). Proposed site improvements include a walking path, roadways, parking areas, utilities, lighting, landscaping, stormwater management and associated improvements. The applicant is also proposing a subdivision of the property to create one lot for the apartment development and one lot for the townhouse development. The townhouse lot will be further subdivided into individual lots for each of the townhouse units. The proposed subdivision will result in the creation of 107 total lots. The following information has been submitted in support of the application:

- Cover letter prepared by Craig M. Gianetti, Day Pitney LLP, dated April 9, 2021.
- Land Development Application with Proposal.
- Disclosure of Corporate Ownership (affiliated with Pulte Homes of NJ, Limited Partnership (Applicant)).
- Checklist Details Required for Preliminary Major Subdivision Plats and Preliminary Major Site Plans.
- Checklist Details Required for Final Major Subdivision Plats and Final Major Site Plans.

• • •

■ 180 Main Street • P.O. Box 571 • Chester, NJ 07930 • 908-879-6209 • Fax: 908-879-6597
□ 17 Model Avenue • P.O. Box 577 • Hopewell, NJ 08525 • 609-466-0002 • Fax: 609-466-2008
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- Professional Services Agreement, Affordable Housing Services prepared by CGP&H, undated.
- Request for tax certification prepared by Nicole Magdziak, Day Pitney LLP, dated February 16, 2021.
- Preliminary and Final Major Site Development and Subdivision Plans, consisting of forty- two (42) sheets, dated March 19, 2021 prepared by Ronald A. Kennedy, PE, Gladstone Design, Inc.
- Boundary & Topographic Survey, consisting of one sheet, dated December 11, 2020 prepared by Kurt T. Hanie, PLS, Gladstone Design, Inc.
- Preliminary and Final Major Subdivision Plat consisting of two sheets dated March 19, 2021 prepared by Kurt T. Hanie, PLS.
- Sales Trailer and Model Home Plot Plan consisting of one sheet, dated March 19, 2021 prepared by Ronald A. Kennedy, PE.
- Architectural Plans consisting of twelve sheets dated April 9, 2021 prepared by Minno Wasko Architects and Planners, Lambertville, NJ.
- Stormwater Management Report dated March 19, 2021 prepared by Gladstone Design, Inc. (unsigned).
- Environmental Impact Statement dated April 8, 2021 prepared by EcolSciences, Inc., Rockaway, NJ.
- Certified 200 Foot Property List prepared by Edward L. Kerwin, Assessor dated March 10, 2020.
- County of Somerset Planning Board review letter dated April 29, 2021 and May 14, 2021.
- NJDOT Major Access Application Cover Letter dated December 15, 2020 prepared by Douglas J. Polyniak, PE, Dolan & Dean Consulting Engineers, LLC.
- Correspondence dated May 4, 2021 to Elaine Schwartz, NJDOT, prepared by Gary W. Dean, Dolan & Dean Consulting Engineers, LLC, unsigned.

A review of the above referenced documents results in the following comments for the Board's consideration.

I. Site Plan

A. Sheet 1 – Project Data/Vicinity Plan

1. General Note 19 indicates proposed street names for the project. These need to be revisited and evaluated by the emergency services departments. There are a number of similar names within the project (Ayers St, Ayers Ln) that are duplicative and Schley is a name currently used by another street within the Borough. This will lead to confusion with 911 response. All street names must be approved by the Borough Council after appropriate review.

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B. Sheet 2 – Environmental Constraints Map – No comments

C. Sheet 3 – Site Removals Plan

1. A note should be added to the plan that all foundations are to be removed completely below graded and backfilled with properly compacted material.
2. A note should be added to the plan stating that all underground tanks are to be removed and mitigated in accordance with NJDEP requirements.

D. Sheets 4 through 10 – Site Dimension Plans

1. The status of the WMQP management plan amendment for the sewer service area shown on the map should be provided to the Board.
2. A detail for the cobblestone pavers at the end of the boulevard should be provided.
3. Vehicle turning templates should be provided for delivery and emergency vehicles at the round about and all dead end areas.
4. Testimony should be provided regarding trash collection, mail delivery, etc. Will there be common mailbox locations? Will trash and recycling be held in individual units until collection? The layout will necessitate numerous backup movements for delivery and collection vehicles with the associated back up warning beepers on the vehicles. There may be future complaints from residents in this regard, however those would be solely the responsibility of the developer and HOA to address.
5. The engineer should confirm that the stormwater management calculations include the impervious surfaces associated with the optional patio/sunroom.
6. Recent trends show that townhouse owners are requesting permits for emergency generators, decks, patios, etc. The developer should discuss how these would be handled from an HOA approval perspective. The Board should consider if these would be site plan amendments that would need to return to the Board or if they could be handled simply by zoning and building permits. If the latter is the case, this should be specifically spelled out in the resolution to avoid future issues related to the permissibility of these improvements and the applicability of any setbacks.
7. The plans show a network of “maintained pedestrian walking paths”. The surface treatment of these paths should be included in the plans. If the surface is other than grass or meadow, the design engineer should confirm this was accounted for in the stormwater design.

E. Sheets 11 through 15 – Grading Plan

1. The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection needs to be examined. It appears there is a low point along the curb line that will not drain through the intersection. A drainage inlet may be required. There

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- is a similar issue at two points along the southwest curb line of the intersection of Dillon Boulevard and Ayers Street.
2. Additional spot elevations and grading needs to be provided between units 4.70 and 4.71. The area is flat and will be subject to poor drainage.
 3. Site light poles are shown penetrating into and very close to the underground stormwater system near the multifamily building. Details need to be provided as to how this will work with the pipe and stone stormwater system.
 4. There are a number of retaining walls throughout the site and many are in excess of 48" tall. These will all require site specific designs and construction permits.
 5. The underground stormwater system and bioretention system at the rear of the multifamily building is in close proximity to a retaining wall with heights up to 17 feet. Testimony should be provided regarding any anticipated hydrostatic loads these stormwater facilities may place on the walls and how the loads and potentially saturated soil would impact the choice of wall material.
 6. The engineer should re-evaluate the detailed tree removal. For example, between unit 4.31 and the property corner, there are a number of mature hardwood trees that are shown to be removed with no apparent disturbance in the area. Further towards the large recharge bed, there are more trees that seem to be removed because of conflicts with the proposed path and water line – both of which could be relocated to avoid the conflict. Additionally, the location of the existing trees should be checked because the plan shows an 18" oak tree in a shed on the adjacent lot behind unit 4.37.
 7. The retaining wall closest to 4.37 needs to have the proposed grades check. There are three locations shown. All have two bottom of wall elevations and one top of wall elevation and all are the same number – 269.0.
 8. Sheet 16 notes that there is a proposed net fill of 8,000 cubic yards. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site.

F. Sheets 17 through 22 – Utility Plan

1. The plan shows the water main serving the site extending from Route 202 south. The location of the connection to the existing system should be discussed and plans prepared for the extension of the utility line.
2. Fire hydrant locations should be approved by the Fire Official.
3. No sewer laterals should be shown connecting to manholes. The laterals should connect to the main and downstream of the manhole if possible.
4. It is anticipated that the townhouse units will be served by natural gas. It is expected that the gas and electric meters for each of the townhouses will be mounted on the front of the units. This should be confirmed.

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Block 5, Lot 4

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5. The multifamily building is shown with a 4" sanitary sewer lateral with cleanouts. This needs to be upgraded to a minimum 6" line with manholes at each bend in the pipe to facilitate proper maintenance.
6. Utility Note 11 on sheet 22 states that a hot box may be required for the water service to the multifamily building. Testimony should be provided regarding the anticipated size and location of the structure. Screening should be provided.

G. Sheets 22 through 18 – Landscape Plan

1. The plan shows extensive areas of meadow around the site. Some of these are in close proximity to some of the townhouse units. The mechanism for keeping these areas as meadow should be described. It is anticipated that some of the townhouse owners may expect maintained lawn around their homes and this would be inconsistent with the plan and stormwater design. Some of the meadow areas, such as the narrow one between units 4.03-4.06 and the boulevard may be difficult to maintain as meadow. Other areas, like the proposed tree area between the townhouses and Route 202 and through the perimeter landscape buffers, show lawn under the trees where meadow may be more appropriate.
2. The plans show a plant schedule for a reforestation area that was designated on a map submitted to DEP. The location of this reforestation area should be provided to the Board.

H. Sheets 29 and 20 – Soil Erosion and Sediment Control Plan

1. This plan will need to be certified by the Somerset-Union Soil Conservation District.
2. It is recommended that haybales be placed in front of all outlet structures until the basins are stabilized.
3. Testimony needs to be presented in support of the steep slope variance and any efforts made to minimize these disturbances.

I. Sheets 31 and 32 – Lighting Plan

1. In general, the lighting levels throughout the townhouse portion of the project are very low and do not provide enough illumination for the anticipated vehicular and pedestrian traffic through the site. It is expected that mail will be delivered to common boxes and pedestrians will be using the streets to access these boxes and for other reasons. For the most part, the streets have zero footcandles of illumination. Additional lighting is necessary. The amount of lighting will need to be balanced between the intrusion into the units and safe lighting levels on the ground surface. Based on the 14 foot height of the lighting source and the architectural plans, it appears the light sources will be below any bedroom windows at the front of the units and fully shielded so the glare should not be a major issue.

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2. The plan does not include any building mounted lights. Since these are generally in the control of the unit owners, they cannot be counted on for providing adequate illumination around the site.

J. Sheets 33 through 37 – Profiles

1. As noted above, there are curb lines with low spots that need to be addressed. It is recommended that the design engineer review the profiles of intersecting streets to determine where these conflicts exist and make the appropriate modifications to the grading and drainage plans.

K. Sheets 38 through 42 – Construction Details

1. The accessible curb ramp detail should clearly show that the curb through the ramp should be concrete to provide a smoother transition.
2. The guide rail notes that it is to be “rust colored”. It is recommended that the guiderail be brown powder coated to stained using “Natina” or a similar product. Weathering steel posts have proven problematic over time and are susceptible to corrosion.
3. As noted above, site specific wall designs will be required.

II. Stormwater Management Report

A. The following comments below are made relative to the stormwater report and other documents submitted. It should be noted that the comments below are preliminary only since the hydrogeologic report is stamped as “DRAFT”. Additional comments may be provided after the final version of this report is submitted. Further when the final report is filed, a cover letter should be included that identifies any changes between the draft report and the final report.

B. Stormwater comments:

1. The stormwater management report submitted with the drop box link was signed by the Engineer. The hard copy of the report that was submitted to our office was not signed. Signed and sealed stormwater reports need to be provided to our office and the Board Secretary for any future submittals.
2. A groundwater mounding analysis is required for each individual basin that infiltrates. It is unknown whether the basins will be negatively impacted as currently designed without the mounding analysis being provided.
3. The Low Impact Development Checklist (Appendix G), is blank. While pages 16 and 17 of the report provide a description of the Low Impact Development nonstructural strategies being incorporated into the design, the information within the checklist in Appendix G needs to be provided in order to help evaluate the strategies being

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- implemented. At this time, it is not clear whether the project complies with the use of nonstructural strategies.
4. The stormwater conveyance system has been designed for a 25-year storm event. The 100-year storm event needs to be checked to ensure the stormwater conveyance system has capacity without overtopping into other drainage areas. Hydraulic grade line calculations should be provided in the analysis. This is needed to ensure the design assumptions within the quantity (peak rate reduction) analysis is consistent with capacity of the stormwater conveyance system.
 5. Some of the drainage areas utilize a minimum time of concentration of 6.0 minutes. According to Chapter 5, dated November 2020, of the NJDEP BMP Manual, "There is no longer a minimum or default value that may be used for the time of concentration. Tc for pre- and post-construction conditions must be calculated based on the aforementioned requirements." The analysis needs to be revised accordingly.
 6. The total disturbance identified on page 2 of the report (26.1 acres) and the table at the top of page 9 (24.32 acres) are not consistent. The soil erosion and sediment control plans indicate 26.1 acres of disturbance is being proposed. Clarification is required.
 7. The allowable flow rate calculations are based upon 24.1 acres of disturbance. It appears the calculations should be revised utilizing the 26.1 acres of disturbance as noted on the soil erosion and sediment control calculations.
 8. Based on the mapped locations of the soil logs provided on the site plans, no soil testing was provided in the vicinity of Basins #3C (underground detention basin), 3D (designed with an underdrain), 3E (above ground detention basin), 3N and 3R (bio-retention basin designed with an underdrain). Additional information/soil testing should be provided to confirm separation to the estimated seasonal high ground water (and bedrock if applicable) elevations is being met for basins #3C, 3D, 3E, 3N, 3R.
 9. Only one soil test location was located within the infiltration area for Basin #3G (underground infiltration basin) and #3I (surface infiltration basin). The test pit logs (STP 14, STP 15 (outside basin 3I) and STP 20) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the BMP, or two times the maximum water depth in the basin, whichever results in a deeper depth. It is noted, according to Chapter 12, of the NJDEP BMP Manual, the depth is measured from any replacement soil that may be required below the bottom of the basin. This is the case for all types of stormwater basins. Additional soil testing should be provided to confirm groundwater elevations and separation to the estimated seasonal high ground water and bedrock elevations is being met for basins #3G and 3I in accordance with Chapter 12, Soil Testing criteria, of the NJDEP BMP Manual.

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10. The permeability testing for Basin 3I (STP14 and STP15) is above the bottom of the basin. Additional permeability testing in accordance with Chapter 12 of the NJDEP BMP Manual needs to be provided. It is also noted the infiltration rate being needs to be based on the lowest tested permeability rate (the lowest tested rate within STP 14 appears to be 3.0 in/hr (1.5 in/hr design rate), while the calculations were based on a tested rate of 4.7 in/hr (2.4 in/hr design rate).
11. No permeability testing was provided for Basin #3G. Page 15 of the stormwater report (Groundwater Recharge, 2nd bullet) indicates for Bioretention Basin 3G that “permeability testing was not provided for this basin location. However, the soils in the test pit within the vicinity of the basin displayed favorable soils for stormwater recharge.” Chapter 12 of the NJDEP BMP Manual specifies on Page 6. “Proximity of soil exploration(s) to the actual location of a BMP. The final location of a proposed BMP can differ from the location of a soil exploration. As long as the proposed BMP is within the same soil mapping unit, a new soil exploration is not required under the following circumstances:
 - If the soil explorations that have been performed are still within the infiltration area of the BMP at its new location or
 - If the new location of the BMP is within 25 feet, in any direction, of all of the original soil exploration location(s).
- Based on this, additional soil testing needs to be provided for Infiltration Basin 3G.
12. Test Pit Log STP17 is noted with a ground elevation of 268.0 while the elevation based on the location depicted on the grading plan appears to be approximately 256. In addition, STP4 is noted with a ground elevation of 275.5 while the grading plan elevation is approximately 259.0. Clarification is required.
13. It appears, based on the seepage noted within STP4, that the ESHGWT is above the basin floor of Bio-retention Basin #3L. Additional information is required on whether this basin can be constructed and function in accordance with the GI requirements (one-foot minimum separation is required to ESHGWT).
14. The test pit logs should specifically state whether groundwater and mottling were encountered. If encountered, then the ESHGWT should be provided in the test pit log. The summary of test pit information (Table 1) provided in the report indicates for STP4 that groundwater was greater than 12’ below grade, while the Test Pit Log for STP4 indicates seepage at 2.3 feet. Clarification is required.
15. The geo-technical section of the report should include a specific narrative on how each proposed BMP meets NJDEP requirements as it relates to separation to groundwater, bedrock (if applicable), and permeability (if applicable), and their suitability based on onsite soil conditions.

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16. The geo-technical section of the report should include a narrative with respect to the NRCS Soil Survey mapped soils and whether the mapped soils are accurate with respect to field observations and soil testing (NJDEP BMP Manual Chapter 12: Soil Testing Criteria, subsection 1c). If the soil survey is inaccurate with respect to field conditions, then soil testing to determine HSG or default HSG in accordance with Chapter 12 would need to be utilized for the analysis.
17. Two soil logs with permeability testing need to be provided within Bioretention Basin 3F. The test pit logs (STP26 and STP 27) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the bmp, or two times the maximum water depth in the basin, whichever results in a deeper depth (which is measured from any replacement soil that may be required below the bottom of the basin). Additional soil and permeability testing is required.
18. Only one test pit (STP12) was provided in the proximity (10' from the infiltration area) of Bioretention Basin #3H, and it is too shallow. The test pit log indicates rain infiltration at 4.0 feet (it is not clear what is meant by "rain infiltration"). It is noted that Chapter 12 of the BMP Manual specifies "Stormwater infiltration BMP's must not be installed in soils that exhibit artesian groundwater conditions." Clarification is required. In addition, no permeability testing has been provided for Bioretention Basin #3H (a minimum of two permeability tests is required in the infiltration area of the basin floor in the most restrictive soil horizon below the bottom of the basin). Additional soil and permeability testing is required.
19. Page 15 of the stormwater report (Groundwater Recharge, 3rd bullet) indicates for Bioretention Basin 3H that "permeability testing was not provided for this basin location. However, the soils in the test pit within the vicinity of the basin displayed favorable soils for stormwater recharge." Chapter 12 of the NJDEP BMP Manual specifies on Page 6. "Proximity of soil exploration(s) to the actual location of a BMP. The final location of a proposed BMP can differ from the location of a soil exploration. As long as the proposed BMP is within the same soil mapping unit, a new soil exploration is not required under the following circumstances:
 - If the soil explorations that have been performed are still within the infiltration area of the BMP at its new location or New Jersey Stormwater Best Management Practices Manual November 2020 Chapter 12: Soil Testing Criteria Page 16
 - If the new location of the BMP is within 25 feet, in any direction, of all of the original soil exploration location(s).

Based on this, additional soil testing needs to be provided for Bioretention Basin 3H.

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20. Page 15 of the stormwater report (Groundwater Recharge) indicates permeability testing was based on tube permeameter tests while Appendix H indicates double-ring infiltration tests were performed. Clarification is required.
21. Additional information should be provided in the report about the phasing techniques being utilized to minimize soil compaction (low impact development nonstructural strategy no. 6 on Page 16).
22. Additional information needs to be provided in the report on how the user defined rating table was calculated for Bioretention Basins #2A, 3A, 3B, 3D, 3L, 3N and 3R.
23. The outlet pipes were not modeled in the Bioretention Basin, Infiltration Basin, and Extended Detention Basin routing analysis. The outlet pipes should be modeled under inlet and outlet control conditions, as they may control runoff through the control structures at higher elevations in the basins. Also, interconnected basins need to be analyzed under tailwater conditions (instead of assuming free flow conditions).
24. Chapter 9.7 Small-Scale Bio-Retention Systems specifies on page 7 that “..on-line systems...the invert of the lowest quantity control outlet is set at the water surface elevation of the WQDS.” The lowest quantity outlet designed within Bio-retention Basins #2A, 3B need to be revised to meet this requirement.
25. Bioretention basin #3F does not utilize an infiltration rate within the quantity routing analysis, however the riser box that will control runoff for the higher storm events is set 3.35’ above the basin floor. This exceeds the 12” maximum runoff depth allowed in small-scale bioretention systems. It is noted the water quality storm elevation is 0.69’ above the basin floor. The routing needs to be revised to include a low-level outlet set at the water quality routed elevation (Chapter 9.7 Small-Scale Bio-Retention Systems page 7; Chapter 10.1 Large-Scale Bio-Retention Systems page 5). The NJDEP BMP Manual also notes the large scale Bioretention systems must not include exfiltration in the routing calculations.
26. Bioretention Basin #3H does not utilize an infiltration rate within the quantity routing analysis, however the riser box that will control runoff for the higher storm events is set 1.30’ above the basin floor. This exceeds the 12” maximum runoff depth allowed in small-scale bioretention systems. It is noted the water quality storm elevation is 0.65’ above the basin floor. The routing needs to be revised to include a low-level outlet set at the water quality routed elevation.
27. The total contributory drainage area to Bioretention Basin #3F exceeds 2.5 acres and therefore the does not meet the standards for Green Infrastructure (GI). According to 7:8-5.2 “Stormwater management measures for major development” Table 5.2 within paragraph (f) “Green Infrastructure BMPs for Stormwater Runoff Quantity (or for Groundwater Recharge and/or Stormwater Runoff Quality with a Waiver or Variance

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- from N.J.A.C. 7:8-5.3)” the basin will require a variance since it is being designed for groundwater recharge and stormwater runoff quality but does not meet the GI requirements for those measures.
28. According to 7:8-5.2 “Stormwater management measures for major development” Table 5.3 within paragraph (f) “BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3” the use of extended detention basins will require variances. None of the proposed extended detention basins have been designed for groundwater recharge and they do not appear to have been designed for water quality. Basins 3C, 3E, and 3M are intended to be used for stormwater runoff quantity.
 29. Additional information needs to be provided to address whether it is technically impracticable to meet the green infrastructure standards. As currently designed, Bio-retention basin 3F does not meet GI for water quality and groundwater recharge, while Extended Detention Basins 3C, 3E, 3M do not meet GI for stormwater quantity. Additional information is required prior to confirming whether the other basins will meet the GI requirements. The Engineer shall provide a breakdown in the report for any variances being sought from the GI standards.
 30. Pretreatment is required for the runoff (roof area) that is tributary to underground infiltration basin 3I.
 31. Pretreatment is required for the direct runoff (80% TSS removal) that is tributary to underground infiltration basin 3G. Runoff from Bioretention Basin 3H that is tributary to Basin 3G will also need to be pretreated to 80% TSS removal if Basin 3H does not meet the GI requirements.
 32. The TR55 reference material included in the report (Appendix H) needs to be replaced with the Part 630 Hydrology National Engineering Handbook (Chapter 9 Hydrologic Soil-Cover Complexes and Chapter 15 Time of Concentration).
 33. The Engineer shall confirm whether the Tc calculations are consistent with the requirements of Part 630 Hydrology National Engineering Handbook (NEH) Chapter 15.
 34. The maximum Tc sheet flow coefficient that can be used for woods in New Jersey is 0.40. Revise the Tc calculations as applicable.
 35. The velocities provided as part of the shallow concentrated flow segments for EDA#1 (PDA#1), EDA#2 and EDA#3 appear to be faster based on the land cover and slope than would be calculated from Figure 15-4 of the NEH Chapter 15. Clarification is required.
 36. A second Tc flow path should be analyzed within EDA#3 to confirm the hydraulically most distance path is being analyzed. It is recommended a second Tc

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- path starting in the vicinity of the pool area towards the westerly side of the drainage area be provided.
37. Based on the topography, it appears a portion of EDA#3 and PDA#3 may be tributary to Lot 3.03 Block 5 (easterly property line). The Engineer should confirm the drainage boundaries.
 38. Based on the grading plan, it appears PDA#3A should be expanded to include the portion of Baldwin Avenue and any area tributary to Baldwin Avenue up to inlet 3B-8.
 39. It is not clear where the swale area at the cul-de-sac shoulder above Basin 3A will drain to.
 40. Additional information should be provided demonstrating how the area behind proposed lots 4.91 to 4.94 will drain. The entire area behind the units appears to be a low point. The plans indicate two bottom of wall elevations for the lower wall. The drainage area map indicates this area is split between being tributary to PDA3B and PDA3C.
 41. Based on the grading, it appears a large portion of PDA3C will be tributary to Baldwin Court which is tributary to PDA3B. Clarification is required.
 42. Additional spot elevations should be provided behind the sewerage treatment plant to confirm drainage patterns.
 43. Based on the grading, it appears the majority of the intersection of Errico Lane and Baldwin Avenue would be tributary to PDA3D and not PDA3F.
 44. Additional spot grades need to be provided to confirm drainage patterns between proposed lots 4.70 and 4.71.
 45. Additional spot grades need to be provided to demonstrate positive drainage along proposed lot 4.74.
 46. The 250 contour in the area of Bioretention Basin 3R does not appear to be correct. Additional spot grades should be provided to confirm drainage patterns.
 47. A low point in the corner of the parking lot across from Basin 3N (250.83) appears to bypass Basin 3R. Additional information needs to be provided to confirm the drainage boundary of Basin 3R.
 48. Based on the grading, it appears a portion of the rear parking lot of the multifamily building is tributary to Basin 3N and not Basin 3R. Additional information should be provided to confirm drainage boundaries.
 49. The intersection of the multifamily building parking lot and Dillon Avenue appears to be tributary to Basin 3N and not Basin 3L. Revise as necessary.
 50. The intersection of Ayers Street and Baldwin Avenue appears to be tributary to Basin 3F and not Basin 3H based on the grades provided. Revise as necessary.

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51. Confirm the drainage boundaries between Basin 3E, Basin 3L and the bypass area.
52. Based on the grading and the topography, it appears a portion of the area tributary to Basin 3C is tributary to Basin 3B just downstream of Basin 3F. Revise as necessary.
53. A low spot appears to be proposed at the corner of the patio behind Lot 4.83 that concentrates runoff from the rear of Lots 4.83 through 4.86. It appears a drainage structure/system may be needed in this area. The drainage area analysis includes this area with Basin 3E while it appears to be within the drainage area for Basin 3D. The drainage boundary needs to be confirmed.
54. The northerly boundary of the drainage area tributary to Basin 2A should be confirmed. Based on the grading and topography, it appears additional area may be tributary to Basin 2A. Revise as necessary.
55. Roof drainage calculations (gutters/downspouts/laterals) need to be sized for the 100-year storm event since if they were to overflow, the overflow may be tributary to different stormwater basins than what was used in the quantity analysis.
56. The capacity of the inlet grates should be provided and checked against the 100 year-storm event to confirm they will not overflow/bypass to different drainage areas.
57. The Engineer should confirm whether proposed Inlet 3C-4 (located within tributary drainage area 3D) should be changed to a manhole since the quantity analysis does not include surface runoff to the inlet (the inlet is tributary to Basin 3C).
58. The proposed land cover map (Figure 5 in the report) depicts meadow land cover between and adjacent to some of the townhouse buildings. These areas need to be deed restricted against their removal since they are part of the stormwater management system for the site. The maintenance of these areas will need to be included in an Operations and Maintenance Manual (which should be submitted once the stormwater management system has been approved).
59. The engineer should confirm the land cover being used for the walking path.
60. Review and approval of the soil erosion and sediment control calculations are deferred to the Somerset-Union Soil Conservation District.
61. Additional comments relative to the hydrology calculations, proposed quantity and water quality routings, drain time calculations, groundwater recharge calculations, emergency spillway calculations, and stormwater plan and details are deferred until additional information addressing the above comments are provided as the design of the stormwater management system may change.
62. The stormwater management system is fundamental to the project being able to function. Based on the above comments, it appears that the project does not meet the standards for stormwater management and mitigation is required based on the standards of NJAC 7:8-4.6(a). It does not seem that the standards for mitigation can

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be demonstrated based on the project. Significant additional information/redesign of the stormwater management system is required.

III. Sales Trailer and Model Home Plan

- A. The plan shows a substantial number of signs and feather flags. The Board should evaluate the appropriateness and number of the signs.
- B. The applicant should provide an estimate of the length of time these materials will be in place.
- C. Based on the notes, it appears the model homes will not have water and sewer service. This should be confirmed. Special provisions may be required for a certificate of occupancy in these circumstances.

IV. Preliminary and Final Subdivision Plan

- A. Deeds, descriptions and lot closure calculations should be submitted and approved as a condition of any approval by the Board.
- B. All lot numbers are to be approved by the tax assessor.
- C. All signatures by the applicant, surveyor, etc. will need to be on the plan before it is submitted for signature.

V. Boundary and Topographic Survey – No comment

VI. Architectural Plans – No comments

VII. Environmental Impact Statement

- A. The report references a traffic report by Dolan and Dean. This was not in the information provided for review.

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I trust the above comments are useful to the Board in its review of the application.

Very truly yours,



Paul W. Ferriero, PE, CME
Borough Engineer

cc: Board Members
Peter Henry, Esq.
David Banisch, PP
Kimberly Coward, Zoning Officer
Steven Mahoney, Construction Official
Ronald A. Kennedy, PE
Craig M. Gianetti, Esq.

Exhibit B

STATE OF NEW JERSEY
 COUNTY OF SOMERSET
 BOROUGH OF FAR HILLS

-----x

APPLICATION/PUBLIC HEARING:
 Application No. PB2021-07
 Pulte Homes of NJ, Limited Partnership/
 Residences at Overleigh
 Block 5, Lot 4
 220 Route 202
 Prel./Final Subdivision and Site Plan Variance
 PLANNING BOARD MEETING Regular Meeting
 MONDAY JULY 5, 2021
 TIME: 7:00 P.M.

BOARD MEMBERS:
 Tom Rochat, Chair, Class IV
 Richard Rinzler, Vice Chair Class IV
 Robert Lewis, Class IV
 Marilyn Layton Class IV
 Sheila Tweedie, Secretary Class III
 Paul J. Vallone, M.D., Mayor Class I
 Jack Koury, Alternate #1
 Suzanne Humbert Alternate #2

Shana L. Goodchild: Board Secretary

Peter Henry, Board Attorney
 David Banisch, Board Professional
 Steven Bolio, Board Professional

1 T R A N S C R I P T of the above-entitled
 2 matter by and before GERALDINE ADINOLFI, a Certified
 3 Court Reporter of the State of New Jersey, License
 4 Number 30XI00228000.
 5
 6
 7
 8
 9

A P P E A R A N C E S:

10 DAY PITNEY, ESQS.
 11 BY: CRAIG GIANETTI, ESQ.
 12 1 Jefferson Road
 13 Parsippany, New Jersey 07054
 Attorneys for the Applicant

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1 I N D E X
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1 MR. ROCHAT: Okay. We have
 2 application, public hearing on PB2021-07, Pulte
 3 Homes of New Jersey. We have --
 4 MR. GIANETTI: Yes. Good evening
 5 members of the board, Craig Gianetti, of the law
 6 firm Day Pitney on behalf of the applicant, Pulte
 7 Homes of New Jersey LP.
 8 MR. ROCHAT: Okay.
 9 MR. GIANETTI: If there's nothing
 10 from any professionals, I can give a brief
 11 introduction before I call our witnesses. As noted
 12 the applicant is Pulte Homes of New Jersey LP and
 13 they are also the contract purchaser of the
 14 property.
 15 MR. HENRY: I hate to interrupt, but
 16 before we launch, I think it probably is something
 17 that everybody ought to be aware of from the start,
 18 that we determined the way to handle tonight's
 19 meeting is to let testimony go until 9 -- until 10
 20 o'clock, but to stop the testimony if you have a
 21 witness who is not likely to finish by 10, at about
 22 quarter of 10, to give members of the public who may
 23 have questions for that witness on the testimony
 24 heard tonight to ask those questions. And then to
 25 stop it at 10 o'clock, so that the board can handle

1 or this project will have to go through thorough
 2 review at DEP for storm water management as well.
 3 So all I can say is we will comply
 4 with the standards. We will comply with Far Hills'
 5 standard. We will comply with Mr. Bolio's comments.
 6 We have to comply with DEP standards. We've gone
 7 through a hand full of these since March already.
 8 And realized there is a lot of little nuances
 9 associated with these new standards that have to be
 10 taken into account. A lot of details, and a storm
 11 water report that used to be an inch or so thick is
 12 now two or three inches thick. So a lot of detail
 13 goes in to this.
 14 So what I would ask from the board
 15 and the chair is on storm water management and some
 16 of these other site comments that were made in both
 17 review letters, after this meeting that we could
 18 arrange for a meeting with the professionals to go
 19 through some of these details, because there is a
 20 lot of details. And to take the board's time to go
 21 through the details, doesn't seem too wise, to get
 22 through each of these nuances. So what we would ask
 23 is that we meet with the professionals and go
 24 through the details of storm water management, and
 25 some of the other review comments that were in your

1 management plan for both the Borough of Far Hills
 2 and Somerset County, Somerset County holds the waste
 3 water management plan. And go through that process.
 4 We have been through probably a year into that
 5 process already, we probably have another six months
 6 or so to go with the waste water management planning
 7 on this property. And we are going through all the
 8 various approvals components of studying the land,
 9 studying the environmental resources and
 10 constraints, studying any endangered species that
 11 are associated not only with this property, but the
 12 region. We have done extensive soil testing on the
 13 property, with hydro geologists to determine the
 14 best location for where the disposal needs to go
 15 back into the ground and the best location from a
 16 hydro geological standpoint is where my pointer is
 17 now in the property. And we will then have to go
 18 through a process called an NJPDES permit which is
 19 New Jersey pollutant discharge elimination system.
 20 And basically that process is to
 21 determine if the ground handle this effluent, and
 22 what the effects to the ground on the property, the
 23 soils on the property, they hydro geology on the
 24 property, as well as the neighboring properties.
 25 And that has been studied on our end and

1 letter.
 2 But again the notion is, we have to
 3 comply, we will. We have enough land here, there is
 4 42 acres. And we will make the storm water
 5 management work on the property.
 6 I talked a little about sanitary
 7 sewers for this property. When we are started this
 8 project, we looked at doing an on site sanitary
 9 sewer, and we looked at tying into the public sewers
 10 and running a line down 202 from this site down into
 11 the village. And then connect ultimately into EDC.
 12 After a lot of study and consideration, we are
 13 proposing an on site waste water management system.
 14 And as I said earlier in my testimony, the sewer
 15 treatment building we are being proposed is in this
 16 location right here. And then we are proposing a
 17 disposal system that would be in the front of the
 18 property, which would be, basically, an oversized
 19 septic system that's up in the front portion of the
 20 property in a cleared area. And I will go through
 21 some of those details up in here.
 22 The steps that we have to go through
 23 for waste water management plans is three fold at
 24 the state of New Jersey. The first element is
 25 getting approval for amending the waste water

1 applications have been presented to DEP, for that
 2 NJPDES process. And we are just starting that
 3 process. And again, that the will take probably 6
 4 months to 9 months to go through that process with
 5 state of New Jersey.
 6 And the last element of the sanitary
 7 sewer system would be what a called treatment works
 8 approval. That's basically the design, the
 9 treatment system and disposal system. And
 10 ultimately that will be all the details of the
 11 piping, all the detail of what goes on in the
 12 treatment facility. And then ultimately with the
 13 disposal facility.
 14 But with these types of systems, by
 15 the time it leaves this treatment plant, it has to
 16 meet New Jersey drinking water standards. Can't say
 17 I would ever drink from a glass coming out of that
 18 sewer plant, but that is what it has to meet. So it
 19 has the highest standards, that before it leaves
 20 that building, before it gets pumped up to this
 21 location and discharged into the ground, it will
 22 have to meet very high standards of drinking water
 23 before it goes back into the ground.
 24 Next item on utilities is water and I
 25 have an exhibit for that, I would like to share. So

1 details that we would review with the township
2 engineer.
3 DR. MELLENDICK: Excuse me.
4 MR. KENNEDY: I said it would be
5 technical details that we would talk with township
6 engineer.
7 DR. MELLENDICK: So would the
8 citizens, residents be allowed to hear these
9 discussions or have a tape of them or what.
10 MR. KENNEDY: No. They typically
11 aren't taped.
12 But we would come back and testify on
13 any discussions that we had on any clarifications
14 that we would make on the plans.
15 DR. MELLENDICK: On what -- when you
16 talk about clarifications, what specification or
17 clarifications are you talking about exactly?
18 Because you weren't clear about that in your
19 presentation.
20 MR. KENNEDY: Well, I thought I was.
21 But again, it's pretty direct. Is,
22 there is a new set of rules that are very
23 interpretive that we have to go through. And we
24 have to go through DEP with interpreting these new
25 rules. And we have to go through that with the town

1 engineer.
2 And in all of these new rules, we
3 have put together a proposed design. There is some
4 questions that the township engineer has raised. I
5 am going to sit down with them, with the board's
6 permission and go through some of those detailed
7 technical issues. If there is changes to the plan,
8 the public and the board will have certainly a
9 chance to understand any of those changes.
10 DR. MELLENDICK: So and then when
11 would that off line conversation or interaction take
12 place?
13 MR. KENNEDY: We haven't set that up
14 yet.
15 DR. MELLENDICK: I see. And would
16 the residents --
17 MR. KENNEDY: I can't hear.
18 MR. GIANETTI: He broke up.
19 MR. ROCHAT: George?
20 MS. TWEEDIE: We seem to have lost
21 George. But Mr. Chairman, it is 10 -- it's 7
22 minutes after 10, and we only have until 10:15 to
23 finish our business.
24 DR. MELLENDICK: All right. I want
25 to say one thing to that -- that sounded like you

1 Sheila. I don't know.
2 MS. TWEEDIE: It was.
3 DR. MELLENDICK: Okay I can't see
4 you.
5 But I would say that going forward,
6 with such a borough altering discussion, I think
7 that we need to allow more than the tail end of the
8 presentation for public comment and questions. I
9 think that going forward, obviously, there will be
10 many more presentations about this. But to stuff
11 the question and comments section for the residents
12 into 15 or 20 minutes at the end is totally
13 unacceptable. So I think the presentation --
14 MR. HENRY: Mr. Mellendick --
15 DR. MELLENDICK: So I think the
16 presentations --
17 MR. HENRY: -- this is it not a time
18 for comment.
19 DR. MELLENDICK: -- presentations
20 need to end --
21 MS. GOODCHILD: Mr. Chairman, I have
22 one additional --
23 DR. MELLENDICK: -- 9:15. So that
24 people can have an honest and regular opportunity to
25 comment and opine, and not shut it down, the way you

1 have always been doing, since you took charge of
2 this planning board, not too long ago.
3 MR. ROCHAT: There will be more
4 opportunities to ask questions, Mr. Mellendick.
5 Shana.
6 MS. GOODCHILD: I have one additional
7 resident; Guy Decourges.
8 MR. ROCHAT: Okay.
9 MR. DECOURGES: Good evening,
10 everybody. I have a question regarding the
11 electrical grid.
12 So we talked a lot about the problems
13 with the electric grid here, the resident from the
14 Polo Club, their experience with that. So since we
15 are building such a large development and high-cost
16 townhouses; is there a way to build in some sort of
17 renewable energy, so we are less depending on the
18 grid? Is the developer put some thought into that?
19 What's the impact of power supply on the rest of
20 borough?
21 MR. KENNEDY: That's an interesting
22 question.
23 It's typically on a project like this
24 is a site isn't that suited for other alternative
25 energies that would be meaningful to do anything

Exhibit C

STATE OF NEW JERSEY
 BOROUGH OF FAR HILLS
 PLANNING BOARD
 MONDAY, NOVEMBER 1, 2021
 COMMENCING AT 7:00 P.M.

.....
 IN THE MATTER OF : TRANSCRIPT OF
 APPLICATION : PROCEEDING
 Application No. PB2021-07 :
 Pulte Homes of NJ, Limited :
 Partnership/Residences at :
 Overleigh :
 Block 5, Lot 4 :
 220 Route 202 :
 Prel./Final Subdivision and Site :
 Plan and Variance :

.....
 B E F O R E:
 BOROUGH OF FAR HILLS, PLANNING BOARD
 THERE BEING PRESENT:
 TOM ROCHAT, CHAIRMAN
 RICHARD RINZLER, VICE CHAIRMAN
 SHEILA TWEEDIE, COUNCILWOMAN/SECRETARY
 PAUL J. VALLONE, MD, MAYOR
 ROBERT LEWIS, MEMBER
 MARILYN LAYTON, MEMBER
 JOHN LAWLOR, MEMBER
 JACK KOURY, ALTERNATE MEMBER #1
 SUZANNE HUMBERT - ALTERNATE MEMBER #2 (ABSENT)

Hudson Court Reporting & Video (732) 906-2078

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 9
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 11

A L S O P R E S E N T:

12
 13 SHANA L. GOODCHILD, BOARD SECRETARY
 14 DAVID BANISCH, P.P., BOARD PLANNER
 15 STEVE BOLIO, P.E., BOARD ENGINEER
 16
 17
 18
 19
 20
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 22
 23
 24
 25

1 I N D E X

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4	RONALD KENNEDY, AIA	9	
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17 E X H I B I T S

18	NO.	DESCRIPTION	ID	EVID
19	A-14	Overall Site Rendering		
20		Dated 11/01/21	11	
21	A-15	Stormwater Management		
22		Systems Exhibit, dated		
23		11/01/21	18	
24	A-16	Landscape Plan, dated		
25		11/01/21	20	
	A-17	Stream Buffer Exhibit,		
		Dated 11/01/21	23	

1 CHAIRMAN ROCHAT: All right.
 2 Next we have application 2021-7, Pulte
 3 Homes.
 4 I believe we have Mr. Gianetti.
 5 MR. GIANETTI: Yes. Good evening,
 6 Chairman, members of the Board. Craig Gianetti, the
 7 law firm Day Pitney, on behalf of the Applicant,
 8 Pulte Homes of New Jersey, L.P.
 9 This is a continued application for
 10 preliminary and final major site plan and subdivision
 11 approval for property located at 220 Route 202, Block
 12 5, Lot 4.
 13 This is the, believe it or not, I think
 14 the sixth hearing on the application. We were before
 15 the Board July 5th, August 2nd, we had a site visit
 16 August 14th, then hearings September 22nd and
 17 October 4th.
 18 You know, the Board will recall that
 19 this is an application for an inclusionary
 20 development consisting of 105 acres with townhouse
 21 dwellings and apartment buildings consisting of 29
 22 affordable units, of which 25 of the affordable units
 23 will be family and four of them will be age
 24 restricted, we are totaling 134 residential units.
 25 Property located in -- IAR zone where

1 again, as opposed to a meadow that was originally
2 proposed in the application.

3 The other area I'm going to move to is
4 a small 40-by-50-foot area that is just off the
5 corner, this would be the southwest corner of the
6 multifamily building, and that would be another lawn
7 area or level play area that would be a 40-by-50 area
8 off the southwest corner of the building.

9 MR. GIANETTI: And if I may, just for
10 the record, you know, pursuant to the settlement
11 agreement with the borough and Melillo Equities it
12 provided that in lieu of providing recreation
13 amenities on-site, that the applicant would make a
14 payment for, you know, recreation facilities to the
15 town, you know, to the borough that would be used
16 for, you know, facilities in town.

17 Even with providing the recreation
18 within this -- on this property, you know, net
19 payment would still be made for recreation
20 facilities.

21 THE WITNESS: The next change that we
22 did, which was a lot of clarifying some of the
23 detailed stormwater management, I'd like to bring in
24 another exhibit, I guess this would be A-15.

25 MR. HENRY: Right.

1
2 (Whereupon, Stormwater Management
3 Systems Exhibit, dated 11/01/21 is marked as
4 Exhibit A-15 for identification.)

5 THE WITNESS: And again, Peter, it's
6 called Stormwater Management Systems Exhibit, date is
7 the same, November 1st, 2021.

8 MR. HENRY: Thank you.

9 THE WITNESS: And, again, what it does
10 is highlight in these green and red areas the
11 different stormwater management features on the
12 property.

13 And for the most part, the locations of
14 them haven't changed, but the details of them have
15 that are in the stormwater report.

16 So there's basins that are -- in green
17 colors that are surface basins that I'm pointing to
18 around the south part of the property -- excuse me --
19 the west part of the property.

20 And then in these red shades, they're
21 underground detention that's infiltration and
22 detention.

23 And, again, it's the same locations as
24 the original application, there's just detail changes
25 that were made to the plans.

1 There is other areas that we had around
2 the multifamily building that were slight changes to
3 those in the shape, slight changes of the shape below
4 these two buildings that are in the -- just to the
5 west of the multifamily building, and an underground
6 basin that was proposed where my pointer is now at
7 the end of Baldwin was changed to a surface basin,
8 and then some minor changes to the basin that's on
9 the lower portion of the property away from 202.

10 So I'll say this, there's a lot of
11 detail in the design that is going to be reviewed by
12 your borough engineer, but the general locations
13 haven't changed and the functionality of what those
14 detention basins and bio-filtration basins really
15 have not change at all in the general purpose of what
16 they're providing.

17 It's a lot of technical details that
18 you'll get a thorough review by your engineer in
19 reviewing those.

20 The next area I want to touch upon is
21 the landscaping plan. And this particular plan,
22 again, it's a simple -- it's entitled Landscape Plan,
23 today's date, November 1st, 2020 [sic].

24 MR. GIANETTI: We could mark this A-16.

25 MR. HENRY: Probably 2021.

1 THE WITNESS: '21, sorry.

2 Sorry, thank you.

3 (Whereupon, Landscape Plan, dated
4 11/01/21 is marked as Exhibit A-16 for
5 identification.)

6 THE WITNESS: And what this plan shows
7 is that the various tree plantings that are being
8 proposed and supplementing around the perimeters of
9 the property. And it also shows the plantings that
10 would be around each of the bio-filtration systems
11 that are, essentially, the detention basins.

12 And there's enhanced plantings that are
13 required based on the green infrastructure technology
14 that we're using today for detention basin and
15 stormwater management.

16 A couple things that are changing on
17 this plan is originally we had tree removal of 631
18 trees and with some of the fine elements in grading
19 in this revision, we're down to 609 tree removal, so
20 actually we're removing less trees than what was
21 previously proposed.

22 And with the changes that we were
23 making to the plans we actually reduced the area of
24 site disturbance. In the original plan it was 26.1
25 acres and now it's 25.7 acres, so we slightly reduced

Exhibit D



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME
Mark S. Denisiuk, PE, CME, LEED AP
Mark Kataryniak, PE, PTOE
Joseph S. Kosinski, PG, CFM, LEED
C. Richard Quamme, PE, CME
Jess H. Symonds, PE

November 5, 2021

Thomas Rochat, Chairman
Far Hills Borough Land Use Board
6 Prospect Street
Far Hills, New Jersey 07931

Re: Residences at Overleigh
Block 5, Lot 4
US Hwy Route 202
Borough of Far Hills
Our Project No. 21FH203

Dear Mr. Rochat:

The applicant for the above referenced project is seeking preliminary and final major site plan, preliminary and final major subdivision and variance approval to permit the construction of a multi-family residential development. The property is located in the TH-6-IAR Townhouse Inclusionary Age-restricted Residential zoning district and consists of approximately 41.5 acres. The existing property, known as Block 5 Lot 4 located on New Jersey State Route 202, contains several single family and multi-family residential buildings, with related site improvements. The applicant is proposing to construct a mixed residential development consisting of 105 age-restricted for-sale townhouse units and a multifamily apartment building consisting of 29 affordable units (25 non-age restricted rental affordable housing units and four age-restricted rental affordable housing units). Proposed site improvements include a walking path, roadways, parking areas, utilities, lighting, landscaping, stormwater management and associated improvements. The applicant is also proposing a subdivision of the property to create one lot for the apartment development and one lot for the townhouse development. The townhouse lot will be further subdivided into individual lots for each of the townhouse units. The proposed subdivision will result in the creation of 107 total lots. The following information has been submitted in support of the application:

- Cover letter prepared by Craig M. Gianetti, Day Pitney LLP, dated April 9, 2021.
- Land Development Application with Proposal.
- Disclosure of Corporate Ownership (affiliated with Pulte Homes of NJ, Limited Partnership (Applicant)).
- Checklist Details Required for Preliminary Major Subdivision Plats and Preliminary Major Site Plans.
- Checklist Details Required for Final Major Subdivision Plats and Final Major Site Plans.

• • •

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Re: Residences at Overleigh
Block 5, Lot 4
US Hwy Route 202
Our Project No. 21FH203

- Professional Services Agreement, Affordable Housing Services prepared by CGP&H, undated.
- Request for tax certification prepared by Nicole Magdziak, Day Pitney LLP, dated February 16, 2021.
- Preliminary and Final Major Site Development and Subdivision Plans, consisting of forty- two (42) sheets, dated March 19, 2021, revised October 1, 2021 prepared by Ronald A. Kennedy, PE, Gladstone Design, Inc.
- Boundary & Topographic Survey, consisting of one sheet, dated December 11, 2020 prepared by Kurt T. Hanie, PLS, Gladstone Design, Inc.
- Preliminary and Final Major Subdivision Plat consisting of two sheets dated March 19, 2021 revised October 1, 2021 prepared by Kurt T. Hanie, PLS.
- Sales Trailer and Model Home Plot Plan consisting of one sheet, dated March 19, 2021 revised October 1, 2021 prepared by Ronald A. Kennedy, PE.
- Architectural Plans consisting of twelve sheets dated April 9, 2021 prepared by Minno Wasko Architects and Planners, Lambertville, NJ.
- Stormwater Management Report dated March 19, 2021 revised October 1, 2021 prepared by Gladstone Design, Inc.
- Environmental Impact Statement dated April 8, 2021 prepared by EcolSciences, Inc., Rockaway, NJ.
- Certified 200 Foot Property List prepared by Edward L. Kerwin, Assessor dated March 10, 2020.
- County of Somerset Planning Board review letter dated April 29, 2021 and May 14, 2021.
- NJDOT Major Access Application Cover Letter dated December 15, 2020 prepared by Douglas J. Polyniak, PE, Dolan & Dean Consulting Engineers, LLC.
- Correspondence dated May 4, 2021 to Elaine Scwartz, NJDOT, prepared by Gary W. Dean, Dolan & Dean Consulting Engineers, LLC, unsigned.
- NJDOT Major Access Application Permit Application dated May 1, 2021, revised through August 20, 2021 prepared by Gladstone Design, Inc.
- Correspondence prepared by Matt Draheim, LLA, Gladstone Design, Inc. dated October 1, 2021.

A review of the above referenced documents results in the following comments for the Board's consideration.

I. Site Plan

A. Sheet 1 – Project Data/Vicinity Plan

1. General Note 19 indicates proposed street names for the project. These need to be revisited and evaluated by the emergency services departments. There are a number of similar names within the project (Ayers St, Ayers Ln) that are duplicative and

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Schley is a name currently used by another street within the Borough. This will lead to confusion with 911 response. All street names must be approved by the Borough Council after appropriate review. – New. A note has been provided on the plans indicating the street names are subject to approval from the Borough Council.

2. Additional information needs to be provided regarding compliance with the recent DCA regulations on the provision of electric vehicle parking stalls.
3. A developers agreement must be executed prior to construction.
4. Correspondence indicates the water main extension plans submitted to New Jersey American Water have been added to the Site Plans as supplemental plans. These plans are not listed on the cover sheet with the other supplemental plans. Also, the plans were not found for this review.
5. Hard copies of the truck turning movement plans were not found with the current submission. Review of the truck turning movements is deferred at this time.

B. Sheet 2 – Environmental Constraints Map – No comments

C. Sheet 3 – Site Removals Plan – No comments

D. Sheets 4 through 10 – Site Dimension Plans

1. Approval for the WMQP from NJDEP should be a condition of any favorable resolution.
2. Vehicle turning templates should be provided for delivery and emergency vehicles at the round about and all dead end areas.

E. Sheets 11through15 – Grading Plan

1. The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection needs to be examined. It appears there is a low point along the curb line that will not drain through the intersection. A drainage inlet may be required. There is a similar issue at two points along the southwest curb line of the intersection of Dillon Boulevard and Ayers Street. – New. The grades at the bulb of the nose are flat and may result in ponding along the northerly side of the driveway entrance center island. An inlet may be required. Consideration to steepening the curb line along the southerly side of the intersection of Dillon Boulevard and Ayers Street should be given. The inlet grates (3L-17 and 3L-18) should be lowered to help facilitate drainage. The 281.73 spot elevation at the accessible ramp appears to be too low on the northerly curb line (approximate 6% grade across the landing).
2. Site light poles are show penetrating into and very close to the underground stormwater system near the multifamily building. Details need to be provided as to how this will work with the pipe and stone stormwater system.
3. There are a number of retaining walls throughout the site and many are in excess of 48” tall. These will all require site specific designs and construction permits.

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4. The underground stormwater system and bioretention system at the rear of the multifamily building is in close proximity to a retaining wall with heights up to 17 feet. Testimony should be provided regarding any anticipated hydrostatic loads these stormwater facilities may place on the walls and how the loads and potentially saturated soil would impact the choice of wall material.
5. The engineer should re-evaluate the detailed tree removal. For example, between unit 4.31 and the property corner, there are a number of mature hardwood trees that are shown to be removed with no apparent disturbance in the area. Further towards the large recharge bed, there are more trees that seem to be removed because of conflicts with the proposed path and water line – both of which could be relocated to avoid the conflict. Additionally, the location of the existing trees should be checked because the plan shows an 18” oak tree in a shed on the adjacent lot behind unit 4.37. – New. There are still some trees that appear to be removed in order to construct the path. Final approval for the tree removal should be coordinate with the Borough Planner and Borough Engineer prior to clearing. This should be a condition of any favorable resolution.
6. Sheet 16 notes that there is a proposed net fill of 8,000 cubic yards. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site. – New. The plans indicate 3,000 cubic yards of fill are currently proposed. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site.
7. The stone driveway entrance pillar should not be constructed over the proposed storm sewer pipe. Revise accordingly.
8. Correct the spot grades between units 4.65 and 4.66.
9. Spot grades should be provided along the side of unit 4.91 to confirm drainage will be directed away from the building.
10. Based on the spot grades behind units 4.93 and 4.94, the area does not appear to drain. Revise as necessary. In addition, additional spot grades should be provided along the side of unit 4.94 to ensure drainage is directed away from the building.

F. Sheets 17 through 22 – Utility Plan

1. The plan shows the water main serving the site extending from Route 202 south. The location of the connection to the existing system should be discussed and plans prepared for the extension of the utility line.
2. Fire hydrant locations should be approved by the Fire Official.

G. Sheets 22 through 18 – Landscape Plan

1. The plan shows extensive areas of meadow around the site. Some of these are in close proximity to some of the townhouse units. The mechanism for keeping these areas as meadow should be described. It is anticipated that some of the townhouse

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owners may expect maintained lawn around their homes and this would be inconsistent with the plan and stormwater design. Some of the meadow areas, such as the narrow one between units 4.03-4.06 and the boulevard may be difficult to maintain as meadow. Other areas, like the proposed tree area between the townhouses and Route 202 and through the perimeter landscape buffers, show lawn under the trees where meadow may be more appropriate. – As discussed between the Borough Planner, Borough Engineer and the applicant's engineer (via a meeting on July 21, 2021), the surface treatment over the sanitary disposal field will be kept as open (lawn) space for recreational purposes. Meadow areas have been revised and the locations depicted on Figure 5 "Proposed Land Cover Map" dated March 19, 2021, revised October 1, 2021. It is noted the meadow area is still depicted between units 4.03-4.06 and the boulevard, however correspondence from the applicant's engineer indicates responsibilities for maintaining the meadow areas will be the responsibility of the homeowner's association. As part of the maintenance responsibilities for the stormwater management system, an Operations and Maintenance Manual will be required for the project. The Manual will need to include the meadow and wooded areas as part of the stormwater management measures to be maintained. In addition, these areas will also need to be deed restricted/encumbered by an easement to prevent their removal.

2. Additional surface treatment is required for the areas that are being planted with trees and are being considered "wooded area in good condition" within the post developed drainage area analysis. The surface treatment should not consist of lawn areas that will be regularly mowed. Additional notes and detailing need to be provided for these areas.

H. Sheets 29 and 20 – Soil Erosion and Sediment Control Plan

1. This plan will need to be certified by the Somerset-Union Soil Conservation District.
2. Conduit outlet protection and stability calculations are subject to review and approval of the Somerset-Union Soil Conservation District.

I. Sheets 31 and 32 – Lighting Plan

1. In general, the lighting levels throughout the townhouse portion of the project are very low and do not provide enough illumination for the anticipated vehicular and pedestrian traffic through the site. It is expected that mail will be delivered to common boxes and pedestrians will be using the streets to access these boxes and for other reasons. For the most part, the streets have zero footcandles of illumination. Additional lighting is necessary. The amount of lighting will need to be balanced between the intrusion into the units and safe lighting levels on the ground surface. Based on the 14 foot height of the lighting source and the architectural plans, it appears the light sources will be below any bedroom windows at the front of the units and fully shielded so the glare should not be a major issue. – As discussed between

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the Borough Planner, Borough Engineer and the applicant's professionals, and included in correspondence from the applicant's engineer, building mounted lighting on either side of the garage for the townhouses will be included in a common circuit and controlled similarly to the site lighting. The building mounted lighting will be controlled by a photocell and not by the individual units. The building mounted lighting will account for additional site illumination in addition to the street lighting being proposed, which is consistent with the discussion that took place.

2. Details for the building mounted lighting need to be provided on the plans. The plans shall note that these lights will be on from dusk to dawn as previously discussed at the July 21, 2021 meeting.

J. Sheets 33 through 37 – Profiles

1. In accordance with NJAC 5:21-7.3(e), no pipe size in the storm drainage system shall be less than 15 inches in diameter. Design engineers may use a 12-inch diameter pipe as a cross-drain to a single inlet. The 12" diameter pipes depicted on the profiles (and utility plans) should be revised to 15" diameter (except for the cross drains if 12" has been proposed). This appears to be applicable to the profiles for Dillon Blvd., structures 3H-8 to 3H-7 on Ayers Street, and structures 3F7A to 3F7.
2. Label the storm sewer information for the pipe run from structures 3B-11 to #A-22 on Baldwin Avenue.

K. Sheets 38 through 42 – Construction Details

1. The accessible curb ramp detail should clearly show that the curb through the ramp should be concrete to provide a smoother transition.
2. As noted above, site specific wall designs will be required.
3. The detail for the cobblestone pavers should include the gravel thickness.
4. Restoration details need to be provided for the proposed watermain extension. The restoration within local roads shall include the area from one edge of the watermain trench to the curb line, with final paving 2' beyond the trench to the curb line. The plans for the water main extension should be incorporated into the site plans.
5. A final review for all details for the stormwater management systems will be performed for general consistency with NJDEP and or RSIS requirements once the stormwater management system has been approved.

II. Stormwater Management Report

- A. The following comments below are made relative to the stormwater report and other documents submitted. Previous comments have either been satisfactorily addressed, or have been amended or superseded by the comments below. Additional comments based on the revised submission are also offered below.
- B. Stormwater comments:

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1. A groundwater mounding analysis is required for each individual basin that infiltrates. It is unknown whether the basins will be negatively impacted as currently designed without the mounding analysis being provided. – New. The mounding analysis for each of the basins needs to be expanding to analyze the hydraulic impact along both the x and y axis of the basin (two separate analysis) where only one axis has been analyzed.
2. The stormwater conveyance system has been designed for a 25-year storm event. The 100-year storm event needs to be checked to ensure the stormwater conveyance system has capacity without overtopping into other drainage areas. Hydraulic grade line calculations should be provided in the analysis. This is needed to ensure the design assumptions within the quantity (peak rate reduction) analysis is consistent with capacity of the stormwater conveyance system. – New. The conveyance system has been designed for a 100 year design storm. Correspondence indicates a hydraulic grade line calculation is not required since the pipes are in a free flow condition. Downstream tailwater effects need to be considered in the analysis. Pipe inverts also need to be provided within the analysis to confirm drainage characteristics. For example, it is noted that the pipe inverts from RL #3M-11 to FES #3M -10 appear to have been switched based on the grades/inverts provided. The downstream end of the roof drain will also under pressure as Basin 3M fills.
3. Only one soil test location was located within the infiltration area for Basin #3G (underground infiltration basin) and #3I (surface infiltration basin). The test pit logs (STP 14, STP 15 (outside basin 3I) and STP 20) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the BMP, or two times the maximum water depth in the basin, whichever results in a deeper depth. It is noted, according to Chapter 12, of the NJDEP BMP Manual, the depth is measured from any replacement soil that may be required below the bottom of the basin. This is the case for all types of stormwater basins. Additional soil testing should be provided to confirm groundwater elevations and separation to the estimated seasonal high ground water and bedrock elevations is being met for basins #3G and 3I in accordance with Chapter 12, Soil Testing criteria, of the NJDEP BMP Manual. – New - The descriptions used for the soil logs that were provided appear to be based on the Unified Soil Classification System. Chapter 12 of the NJDEP BMP Manual requires the soil log information to include the soil texture (consistent with the textural class as shown on the USDA textural triangle), boundary descriptions, the dominant matrix or background and mottle colors using the Munsell system of classification for hue, value and chroma, depth to bedrock etc., (see pages 20 & 21 of Chapter 12 of the NJDEP BMP Manual for the requirements). The soil logs need to be presented consistent with the USDA nomenclature.

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Re: Residences at Overleigh
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4. The geo-technical section of the report should include a specific narrative on how each proposed BMP meets NJDEP requirements as it relates to separation to groundwater, bedrock (if applicable), and permeability (if applicable), and their suitability based on onsite soil conditions. – New – The stormwater BMP summary sheets are not consistent with respect to bedrock and groundwater levels as was provided in the summary of Phase I and Phase II Test Pit information provided in the Hydrogeologic Evaluation section of the report. They should be consistent.
5. The outlet pipes were not modeled in the Bioretention Basin, Infiltration Basin, and Extended Detention Basin routing analysis. The outlet pipes should be modeled under inlet and outlet control conditions, as they may control runoff through the control structures at higher elevations in the basins. Also, interconnected basins need to be analyzed under tailwater conditions (instead of assuming free flow conditions). It appears from the routings provided that Basin 3D is inundated by Basin 3E, the outlet pipe from Basin 3H may be inundated by Basin 3G, and Basin 3I is inundated by Basin 3F. While a hydraulic grade line analysis has been provided in the report, the backwater impact on the outlet structures for the interconnected basins needs to be quantified. It is not clear how the effect of tailwater has been factored into the analysis. It is recommended that the routing analysis model the outlet pipes for the interconnected basins all the way through the outlet point where Basin 3E discharges to grade. It is further noted that the hydraulic grade lines for Basins 3F, 3G and 3I are above the floor of the basins (which would impact the capacity of the outlet structures and reduce the available storage volume in the basins).
6. Additional information needs to be provided to address whether it is technically impracticable to meet the green infrastructure standards. As currently designed, Bio-retention basin 3F does not meet GI for water quality and groundwater recharge, while Extended Detention Basins 3C, 3E, 3M do not meet GI for stormwater quantity. Additional information is required prior to confirming whether the other basins will meet the GI requirements. The Engineer shall provide a breakdown in the report for any variances being sought from the GI standards. Correspondence from the design engineer indicates the project will comply with the green infrastructure requirements. This will need to be verified.
7. Pretreatment is required for the runoff (roof area) that is tributary to underground infiltration basin 3I. Note 20 has been provided on Utility Plan 22 indicating that gutter guards will be provided on all roof gutters. Details for the gutter guards need to be provided on the plans.
8. Pretreatment is required for the direct runoff (80% TSS removal) that is tributary to underground infiltration basin 3G. Runoff from Bioretention Basin 3H that is tributary to Basin 3G will also need to be pretreated to 80% TSS removal if Basin 3H

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- does not meet the GI requirements. Correspondence indicates overland areas that are directed to Basin 3G will be pretreated by a bio-swale. The design of the bioswale and details for the bio-swale (both in accordance with the NJDEP BMP requirements) need to be provided.
9. Based on the grading plan, it appears PDA#3A should be expanded to include the portion of Baldwin Avenue and any area tributary to Baldwin Avenue up to inlet 3B-8.
 10. It is not clear where the swale area at the cul-de-sac shoulder above Basin 3A will drain to. The swale will direct runoff towards the front of townhouse unit (lot) 4.107. A flat inlet should be provided in the swale where it crosses the outlet pipe from Basin 3B or additional spot grades and grading provided to direct runoff away from the townhouse. Erosion of the adjacent slope embankment is also a concern.
 11. Additional information should be provided demonstrating how the area behind proposed lots 4.91 to 4.94 will drain. The entire area behind the units appears to be a low point. The plans indicate two bottom of wall elevations for the lower wall. The drainage area map indicates this area is split between being tributary to PDA3B and PDA3C. The area behind proposed lots 4.93 and 4.94 are too low/flat and do not appear to drain. The top of the upper wall between proposed lots 4.87 to 4.90 and lots 4.91 to 4.94 is low based on the grading. Additional spot grades need to be provided between the wall and lots 4.87 to 4.90 to confirm drainage boundaries.
 12. Based on the grading, it appears a large portion of PDA3C will be tributary to Baldwin Court which is tributary to PDA3B. Clarification is required. It appears the inlet grates for inlets 3C-12 and 3C-13 are too high.
 13. Additional spot elevations should be provided behind the sewerage treatment plant to confirm drainage patterns. Based on the spot grades provided, a low spot is being created at the southerly corner of the building. The grades along the back and side of the building are relatively flat and are pitched towards the building. The grades should be revised.
 14. Based on the grading, it appears the majority of the intersection of Errico Lane and Baldwin Avenue would be tributary to PDA3D and not PDA3F. Also, based on the proposed grading along Baldwin Avenue in the area of proposed lot 4.82, it appears a portion of the backyard area and the lawn area up to Schley Lane would be tributary to Basin 3D and not Basin 3E. Based on the grading, it appears a portion of the drainage area west of Schley Court extending up to the berm of proposed Basin 3F included within Basin 3C would be tributary to Basin 3D. Additional spot grades and grading need to be provided to confirm drainage boundaries are consistent with the analysis. Proposed E inlet 3F-7 located within the intersection of Errico Lane and Baldwin Avenue should be shifted to the curb line. Runoff will likely bypass the inlet

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- in its current location which means a larger area of runoff would be tributary to Basin 3D and less runoff to Basin 3F.
15. Additional spot grades need to be provided to confirm drainage patterns between proposed lots 4.70 and 4.71. The drainage boundary as depicted on the drainage map does not follow the proposed spot grades between lots 4.70 and 4.71. Revise accordingly.
 16. Additional spot elevations are needed along proposed lot 4.57 to confirm positive drainage away from the building and drainage boundaries.
 17. Additional spot elevations should be provided to confirm the area between lots 4.52 and 4.86 will drain towards Basin 3E.
 18. The intersection of Ayers Street and Baldwin Avenue appears to be tributary to Basin 3F and not Basin 3H based on the grades provided. Revise as necessary.
 19. The grading between lots 4.22 to 4.26 and lots 4.07 to 4.11 need to be clarified. It appears there are two proposed 276 contours and it is not clear how this area will drain towards Basin 3H.
 20. Based on the grading and the topography, it appears a portion of the area tributary to Basin 3C is tributary to Basin 3B just downstream of Basin 3F. Revise as necessary. – Same. The area west of lots 4.87 and 4.94 appears to be tributary to Basin 3B.
 21. A portion of the entrance drive circle at the intersection with Ayers Street is tributary to Basin 3H and not Basin 3L. Also spot elevations are needed to confirm the drainage boundary to inlet 3L-18.
 22. Roof drainage calculations (gutters/downspouts/laterals) need to be sized for the 100-year storm event since if they were to overflow, the overflow may be tributary to different stormwater basins than what was used in the quantity analysis. Correspondence indicates the roof drainage system, including the gutters, downspouts, and laterals, will be sized in accordance with the National Standard Plumbing Code utilizing the 100 year storm event. This should be a condition of any favorable resolution.
 23. The capacity of the inlet grates should be provided and checked against the 100 year-storm event to confirm they will not overflow/bypass to different drainage areas. The 100 year peak flowrates to the inlets have been provided and was shown to be less than the maximum capacity of a curb inlet with a capacity of 6 cfs (as specified by RSIS 5:21-7.4(d)). The actual capacity of the inlets (both B and E type) should be also be provided (and compared to the tributary flowrate) based on the proposed castings for the inlets.
 24. The Engineer should confirm whether proposed Inlet 3C-4 (located within tributary drainage area 3D) should be changed to a manhole since the quantity analysis does not include surface runoff to the inlet (the inlet is tributary to Basin 3C). The drainage

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- boundaries have been revised. It is noted that a portion of the drainage boundary depicted as tributary to Basin 3C appears to be tributary to Basin 3D based on the grading. Clarification is required.
25. The proposed land cover map (Figure 5 in the report) depicts meadow land cover between and adjacent to some of the townhouse buildings. These areas need to be deed restricted against their removal since they are part of the stormwater management system for the site. The maintenance of these areas will need to be included in an Operations and Maintenance Manual (which should be submitted once the stormwater management system has been approved). Quarterly street sweeping is included in the preventative source controls in the LID checklist. The street sweeping will need to be included in the O&M Manual once it is submitted for review and approval. In addition, the meadow and lawn areas have been revised as per discussion with the Borough Engineer and Planner and are reflected on the Proposed Land Cover Map on Figure 5 in the stormwater report. The meadow and wooded areas that are proposed will need to be deed restricted/easement and included in the Operations and Maintenance manual.
 26. The engineer should confirm the land cover being used for the walking path. The plans indicates an accessible gravel walking path is provided towards the front of the property in the area of the groundwater recharge field for wastewater. The remainder of the walking path will be natural ground cover. Details should be provided for the natural walking path if there will be any grading etc. anticipated.
 27. Review and approval of the soil erosion and sediment control calculations are deferred to the Somerset-Union Soil Conservation District. Certification from the Somerset-Union Soil Conservation District should be a condition of any favorable resolution.
 28. Additional comments relative to the hydrology calculations, proposed quantity and water quality routings, drain time calculations, groundwater recharge calculations, emergency spillway calculations, and stormwater plan and details are deferred until additional information addressing the above comments are provided as the design of the stormwater management system may change.
 29. Correspondence indicates the appropriate revisions will be made for any additional comments. The applicant also indicates NJDEP review and approval of the stormwater management is required. See below for additional comments.
 30. Additional information on how the parameters used in the computations for channel flow were determined for the time of concentration calculations for EDA1 and PDA1 and EDA3 and PDA3 should be provided. Also provide the reference source for the roughness coefficient used in the analysis should be provided in the report.

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31. It is not clear how the computational increments (for example the computational increment varies between 3.3-3.4 minutes for EDA1 and PDA1, and 0.66 minutes (EDA1/PDA1 gravel and impervious)), affect the computations. Clarification should be provided on whether the computational increments should be the same for all the drainage areas. It is recommended that a smaller increment (1 minute for the pervious areas) be utilized, or conversely, provide the unit hydrograph summaries confirming that the effect of using a smaller computational increment provides a negligible result as compared to the computational increments provided.
32. A smaller (1 minute) output increment should be utilized for all of the drainage areas and routings versus a longer increment (for example a 3 minute output increment was used for all of the DA#1 area analysis (only areas checked) which should be reduced to 1 minute).
33. The calculations utilize a composite Tc of 0.083 hours (5 minutes) for many of the drainage areas. The calculated Tc should be utilized for all of the drainage areas since the use of a minimum Tc using NRCS methodology is no longer consistent with NJDEP requirements in calculating storm water runoff.
34. The existing and proposed hydrographs (tabular form is preferable, but superimposed is also acceptable) for comparison needs to be provided in order to confirm there is no increase at any point in time for the analysis to POS A.
35. It is not clear how the infiltration rate is being determined based on the results of the constant head single ring infiltration test (and double ring infiltration test). Additional information should be provided on how the internal volume is being converted to the final infiltration rate (for example what is the area, or the depth of water being used in the testing?). The engineer should also confirm whether the single ring and double ring infiltration tests are suitable for permeability testing if in proximity to bedrock.
36. The downstream side slope on Basin 2A needs to be flattened to 3:1 (fill slope). Revise accordingly.
37. A portion of PDA3E appears to be tributary to Basin 3G based on the grading and drainage proposed. Revise as necessary.
38. The stormwater rules specify "If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at N.J.A.C. 7:8-5.4, 5.5, and 5.6 shall be met in each drainage area, unless the runoff from the drainage areas converge onsite and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas." No

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- infiltration/groundwater recharge has been proposed within PDA#2 (POS B) or the southerly portion of DA#3 (POS C).
39. Any losses need to be included in the effective length of the weir and the effective area of the orifice used at the top of the box in the routing calculations for outlet control structures for the various basins.
 40. Routing information of the emergency spillway storm for Basin 2A, 3A, 3B, 3C, 3D, 3F, 3H, 3L and 3M needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized.
 41. Routing information of the emergency spillway storm for Basin 3G and 3I needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized. (Note that while these are sub-surface basins, they will drain to downstream surface basins). The routings also indicate the routed storm is at the top of these basins. It appears additional stage discharge may be required at the top of the basin to model any overflow.
 42. The routing of Basin 3H assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3G and needs to include any effect of tailwater on the routings.
 43. The routing of Basin 3F assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3E and needs to include any effect of tailwater on the routings.
 44. The groundwater mounding analysis for Basins 3H and 3I need to account for any hydraulic impact from each other since the basins are located within approximately 15 feet of each other at their closest points.
 45. The permeability testing for Basin 3F, 3G and 3I was undertaken at elevations above the basin bottom. The NJDEP BMP Manual requires permeability testing to be taken below the bottom of the basin, within the most hydraulically restrictive layer.
 46. The permeability testing within Basin 3H does not appear to have been taken in the most hydraulically restrictive soil horizon (within SB3H-2). The testing was done within the gravelly sand layer while the soil log indicates the layer above this consists of clayey, silty gravelly sand (more hydraulically restrictive). Additional permeability testing in the most hydraulically restrictive layer is required.
 47. The soil logs within Basin 3I, SB3I-1 and STP14 were excavated to elevation 258.0 which does not meet the minimum depth required (8' below or 2 x the maximum water depth in the basin, whichever is greater) for soil logs as required by Chapter 12 of the NJDEP BMP Manual. The soil logs need to be extended deeper.

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48. The soil logs within small scale bioretention basin 3F (SL 26, 27, SB3F-2) appear to be too shallow and need to be extended deeper. In addition, permeability testing was not taken within the sandstone (bedrock) layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where the testing was performed (within logs SB3F1 and SB3F2). Additionally, 1.5' separation to the bedrock layers are being provided. The Engineer should confirm whether 2' of separation is available or the bedrock needs to pass permeability testing (basin flood testing for example) to show that it is permeable.
49. The soil logs within basin 3G (STP20, S3G-1) are too shallow and need to be extended deeper. The ground elevation listed within the test soil log for STP20 (264.5) appears to be closer to approximately 267.3 based on interpolating the existing topography. In addition, permeability testing was not taken within the siltstone layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where the testing was performed (SB3G1 and SB3G2). Additional review of the soil information is deferred until additional information is provided.
50. The routing calculations of Basin 3F, 3G, 3H, and 3I utilize infiltration for the 2 year and greater storm events. According to the NJDEP BMP Manual, in order to utilize infiltration rates for higher than the water quality design storm, pre-treatment must be provided (Pretreatment is required for Basins 3G and 3I regardless of what storm event is being infiltrated).
51. Some of the soil log numbers on the soil location testing location plan are repeated (for example SB3F-2 in Basin 3F; SB3H-1 in Basin 3H). The numbers need to reflect the locations of the correct soil testing.
52. Bioretention basins with underdrains - Within the gravel layer, the network of pipes, excluding any manifolds and cleanouts, should be perforated. All remaining pipes should be non-perforated. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soil bed. (BMP Manual).
53. The NJDEP Manual for Small-scale Bioretention Systems with underdrains specifies "Unlike a larger bioretention basin, the soil bed of an underdrained small-scale bioretention system is not designed to drain quickly, but to retain some volume of stormwater below the surface in the soil bed; therefore, the soil mix should fall into the category of loam or silt loam in the USDA soil textural triangle, which will be most capable of retaining stormwater while still maintaining a sufficient infiltration rate. Refer to the post-construction testing requirements found on Page 13 which must confirm the constructed system functions as designed." The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins with

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- underdrains are consistent with this recommendation. Additionally, the BMP Manual requires the permeability rate of the sand layer must be at least twice the design permeability rate of the soil bed and the permeability rate of the gravel layer must be at least twice the design permeability rate of the sand layer. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soil bed. Calculations need to be provided for each basin that utilizes underdrains
54. The NJDEP BMP Manual at Chapter 9.7 specifies “The capacity of the underdrain must be sufficient to allow the system to drain within 72 hours, while still retaining moisture below the surface for uptake by vegetation. If the small-scale bioretention system with underdrain is installed in an area subject to pedestrian traffic, the drain time should be reduced to 24 hours.”
 55. The BMP Manual specifies “Like larger bioretention basin, the soil bed of a small-scale bioretention system designed to infiltrate into the subsoil is designed to drain quickly while still supporting plant life; therefore, the soil mix should fall into the category of loamy sand in the USDA soil textural triangle, which will be most capable of supporting plant life while still maintaining a high infiltration rate. The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins designed to infiltrate are consistent with this recommendation.
 56. The testing of all permeability rates must be consistent with Chapter 12: Soil Testing Criteria in this manual, including the required information to be included in the soil logs, which can be found in section 2.b Soil Logs. In accordance with Chapter 12, the slowest tested hydraulic conductivity must be used for design purposes. (BMP Manual).
 57. The outlet pipe invert is too high in relation to the bottom of the stone/sand/media for basins 2A, 3D, 3F.
 58. Additional information should be provided on the surface treatment for tree planted areas that are being treated a wooded condition in good condition within the proposed condition drainage analysis.
 59. The post developed drainage area analysis (for the quantity analysis) appears to utilize approximately 2.1 acres of additional HSG C soils under prost developed conditions than existing conditions. Clarification is required.
 60. It appears the dEXC value should be set to zero (0) in the ground recharge analysis of basins 3F and 3H. It also appears the value of dBMPu would have a negative value for Basin 3H.
 61. It appears the dBMP (BMP Effective Depth) value would be 21.6” based on using a void ratio with the bottom stone within basin 3G. Similarly, the effective depth appears to be 22.8 inches for Basin 3I. Also, the upper and lower levels of the surface

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- should be confirmed (appears there would be 54" of difference based on the detail for both basins).
62. Based on the above noted changes to the recharge analysis, it currently does not appear that ground water recharge is being met for the site.
 63. The emergency spillway calculations utilize a 12.3 inch 24 hour rainfall, while the 100 year storm event utilizes an 8.3 inch 24 hour rainfall. The 100 year plus 50% storm appears to be 8.3 inches plus 4.15 inches for a total of 12.45 inches.
 64. It is noted the pervious area used within the emergency spillway analysis for Basin 3L was 0.90 acres while the other routings used 1.00 acres. They should be consistent.
 65. It appears the basins 3A-3E, 3L and 3M meet the threshold to be classified as a dam pursuant to the NJDEP Dam Safety standards.
 66. Based on the proposed grades, including the proposed walls, Basin 3L and 3M have an effective height of greater than 15' and therefore do not meet the classification of a Class IV dam. Additionally, Basin 3D, which has an effective height greater than 5' (meeting the threshold for a Class IV dam), is located immediately above the building for the sewerage treatment. It is not clear whether the proximity of this basin to the building would result in a different classification than Class IV. The Engineer should confirm with NJDEP the classification of basins 3D, 3L and 3M.
 67. Emergency spillways need to be designed in accordance with the NJDEP Dam Safety regulations for all basins that meet the classification of a dam within the NJDEP Dam Safety standards.
 68. Basins that do not meet the dam classification need to be designed in accordance with the Residential Site Improvement Standards (5:21-7.8 Detention basin berms and embankment ponds), including the ability to ensure the passage of the 100-year flow when the spillways are impeded by debris (4ii.).
 69. Freeboard needs to be provided for each basin in accordance with the NJDEP Dam Safety Standards or RSIS as applicable.
 70. A 10' wide top of berm also needs to be provided for Basin 3F
 71. Based on the proposed and existing grades, Basin 3F appears to overtop. Additional grading and or spot grades need to be provided.
 72. A berm needs to be provided for Basin 3H.
 73. Clarify the berm elevation and width for basin 3D. Also correct the wall elevation at basin 3D.
 74. Clarification needs to be provided for the minimum groundwater separation for Basin 3E (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 234.0 which is not consistent with the basin data sheets provided.

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75. Clarification needs to be provided for the minimum groundwater separation for Basin 3C (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 204.0 which is not consistent with the basin data sheets provided.
76. Basin's 3D and 3M are being constructed in fill with proposed retaining walls located adjacent to both basins. The Engineer shall confirm whether there will be any hydrostatic impact to the proposed walls and whether there will be seepage through the proposed walls.
77. Clarification needs to be provided for the minimum bedrock separation for Basin 3G (underground infiltration basin). The geotechnical section of the report indicates bedrock at elevation 256.0 within soil test SB3G1 which does not meet the minimum separation to (2' required).
78. The soil mix for each type of bio-retention basin being proposed should include the corresponding soil mix (meeting loamy sand for basins designed to infiltrate, or loam or silt loam, for basins with an underdrain, in accordance with the USDA soil textural triangle) in accordance with the BMP Manual.
79. Time of concentration calculations need to be provided for PDA1 gravel, PDA3C Imp, PDA3E Imp, PDA3G Imp, PDA3I Imp.
80. It is not clear whether the outlet pipes for the various basins will have capacity for the runoff associated with the emergency spillway storm events (since emergency spillways have not been incorporated in most of the basins). Additionally, the composite rating curves appears to overstate the capacity of the control structures for some of the basins at the higher elevations (the proposed outlet pipes (outlet control) will control discharge through the control structures).
81. The hydraulic grade line calculations indicate the hydraulic grade lines are above the bottom of the media/underdrains in some of the basins. This will impact the ability for the underdrains to function during the higher storm events. Consideration to lowering the outlet pipes, if possible, to ensure no hydraulic impact should be given. Conversely, the outlet pipes could be modeled directly within the routings of the basins so that any potential impact is quantified within the routing results. This is generally for the basins that discharge directly to grade (other comments relative to interconnected basins are provided elsewhere). It is noted that basins 3L & 3M while interconnected do not appear impacted by the backwater impact of Basin 3E, but the hydraulic grade lines of the outlet pipe analysis indicate the hydraulic grade line is above the media/underdrains.
82. The basin area used in the mounding analysis for Basin 3F appears to be larger than the basin footprint (7,337 sf used verses +/- 5,720 sf). According to Chapter 13 of the NJDEP BMP Manual, when the BMP is of irregular shape, the shape should be converted to a rectangular shape that has the same depth of the runoff to be fitted and is best fitted to the original shape. The Hantush spreadsheet assumes the sides of the

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BMP are vertical. If a BMP is designed with sloped sides, use the dimensions of the bottom footprint as the length and width of the BMP and use the total volume of the runoff to be infiltrated divided by the area of the bottom footprint to calculate the duration of infiltration period (Page 7 of Chapter 13). Same comments for Basin 3H (7,579 sf used verses +/- 5,610 sf).

83. It is recommended the groundwater elevation within the groundwater mounding analysis for basins 3F, 3G and 3I be based on the shallowest soil log taken in the basins since not all of the soil logs were extended to the depth of where the groundwater elevation is being assumed.
84. If infiltration is being utilized for higher than the water quality storm event, then the volume being infiltrated for the higher storm events also needs to be analyzed to determine groundwater mounding impacts (Chapter 13).

III. Sales Trailer and Model Home Plan

- A. The plan shows a substantial number of signs and feather flags. The Board should evaluate the appropriateness and number of the signs.
- B. The applicant should provide an estimate of the length of time these materials will be in place.
- C. Based on the notes, it appears the model homes will not have water and sewer service. This should be confirmed. Special provisions may be required for a certificate of occupancy in these circumstances.

IV. Preliminary and Final Subdivision Plan

- A. Deeds, descriptions and lot closure calculations should be submitted and approved as a condition of any approval by the Board.
- B. All lot numbers are to be approved by the tax assessor.
- C. All signatures by the applicant, surveyor, etc. will need to be on the plan before it is submitted for signature.

V. Boundary and Topographic Survey – No comment

VI. Architectural Plans – No comments

VII. Environmental Impact Statement – No comments

VIII. New - Traffic Engineering Review

1. As a condition of any favorable resolution, the applicant shall comply with the traffic engineering report dated August 21, 2021 as prepared by Mark Kataryniak, PE, PTOE, to the satisfaction of Mark Kataryniak, PE.

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I trust the above comments are useful to the Board in its review of the application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul W. Ferriero", with a long horizontal flourish extending to the right.

Paul W. Ferriero, PE, CME
Borough Engineer

cc: Board Members
Peter Henry, Esq.
David Banisch, PP
Kimberly Coward, Zoning Officer
Steven Mahoney, Construction Official
Ronald A. Kennedy, PE
Craig M. Gianetti, Esq.
Mark Kataryniak, PE

Exhibit E

BOROUGH OF FAR HILLS PLANNING BOARD
 COUNTY OF SOMERSET - STATE OF NEW JERSEY

SPECIAL MEETING FOR:
 PULTE HOMES OF NEW JERSEY, LIMITED PARTNERSHIP/
 RESIDENCES AT OVERLEIGH
 BLOCK 5, LOT 4
 220 ROUTE 202

APPLICATION NO. PB2021-07

TUESDAY, NOVEMBER 23, 2021
 COMMENCING AT 7:00 P.M.
 TRANSCRIPT OF PROCEEDINGS
 CONTINUED PUBLIC HEARING - VIA ZOOM

BOARD MEMBERS PRESENT:

TOM ROCHAT, CHAIRMAN
 SUZANNE HUMBERT
 JACK KOURY
 MARILYN LAYTON
 ROBERT LEWIS
 RICHARD RINZLER, VICE-CHAIR
 SHEILA TWEEDE, COUNCILWOMAN

ALSO PRESENT:

PETER HENRY, ESQUIRE, BOARD ATTORNEY
 STEVEN BOLLO, P.E., Board Engineer
 DAVID BANISCH, P.P., Board Planner
 SHANA L. GOODCHILD, Board Secretary
 STENOGRAPHICALLY REPORTED BY:
 ANGELA BUONANTUONO, CCR, RPR, License No. 30XI00233100

HUDSON COURT REPORTING & VIDEO (732) 906-2078

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 --Counsel for the Objectors, Ken and Susan Voorhees
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1 I N D E X
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 3 WITNESSES PAGE
 4
 5 RON KENNEDY, P.E. 7
 Gladstone Design
 6
 7 PAUL PHILLIPS, AICP, P.P.
 Phillips Preiss Grygiel Leheny Hughes, LLC
 8 Direct by Attorney Gianetti 72
 9 Cross by Attorney Owens 93
 10 Redirect by Attorney Gianetti 99
 11 Recross by Attorney Owens 102
 12
 13
 14
 15
 16
 17
 18
 19 PUBLIC COMMENT:
 20
 21 NAME ADDRESS PAGE
 Skip Schwester *not provided 120
 22
 23
 24
 25

1 E X H I B I T S
 2
 3 EXHIBIT DESCRIPTION PAGE
 4
 5 None presented.
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1 (Time noted 7:30 p.m.)
 2 CHAIRMAN ROCHAT: Now, we'll go on to
 3 Application PB2021-07, Pulte Homes of New Jersey.
 4 ATTORNEY GIANETTI: Yes, good evening,
 5 Chairman, members of the board. Craig Gianetti of
 6 the law firm Day Pitney on behalf of Pulte Homes of
 7 New Jersey, LP.
 8 The board is aware this is a continued
 9 application for preliminary final major site plan
 10 and subdivision approval. The property located at
 11 220 Route 202, Block 5, Lot 4. The board is aware
 12 this is our, I believe our seventh hearing on the
 13 application. We do appreciate the board making the
 14 time and making themselves available for this
 15 special meeting tonight so it can continue moving
 16 forward with the application.
 17 The board is aware also this
 18 application involves 134-unit residential
 19 development consisting of 105 age-restricted
 20 townhomes and 29 affordable apartments of which 25
 21 of those affordable apartments would be family, not
 22 age-restricted. And this is in the Township TH6 IAR
 23 affordable housing zone and the property was rezoned
 24 pursuant to affordable housing agreement between
 25 Melillo Equities and the Borough, dated December

1 to Mr. Ferriero's office so that they can, you know,
 2 complete their review and confirm the adequacy of
 3 the stormwater management system.
 4 And then we also have Paul Phillips
 5 here tonight who will provide the planning testimony
 6 in support of the relief being sought as part of
 7 this application, which has been highlighted in
 8 prior testimony.
 9 So with that, I would like to first
 10 call Ron Kennedy up and have him sworn in -- or
 11 confirm he remains sworn in.
 12 CHAIRMAN ROCHAT: Do we have him?
 13 RON KENNEDY: I'm here.
 14 ATTORNEY HENRY: Ron, you understand
 15 you are still under oath having been previously
 16 sworn.
 17 RON KENNEDY: I am. Thank you.
 18
 19 R O N K E N N E D Y, P.E.,
 20 previously sworn, continues as follows:
 21
 22 THE WITNESS: Good evening to the
 23 board.
 24 I just want to spend a couple of
 25 minutes going over the review letters that we have,

1 9th, 2019.
 2 At the prior meetings we presented a
 3 series of expert witnesses and fact witnesses, who
 4 we completed. We presented Jim Mullen and Rob
 5 Holmes from Pulte Homes. We've presented the
 6 architect, Bruce Englebaugh, who testified, I
 7 believe, actually twice. We completed his
 8 testimony. Our traffic engineer, Gary Dean, we also
 9 completed his testimony. Adam Stern, from NSU, the
 10 sewer engineer, testified at the last meeting and
 11 completed his testimony.
 12 And so what is effectively left is
 13 having Mr. Kennedy, Ron Kennedy, come back before
 14 the board. He completed his direct testimony at the
 15 last meeting on the revised plans, so at that time
 16 we had not had the board engineer's review letter
 17 which we did receive after that meeting, and we will
 18 be addressing this evening, as well as the updated
 19 board planner review letter which we received a few
 20 hours ago.
 21 So Mr. Kennedy will come up and address
 22 some of those points. You know, a lot of these
 23 stormwater management comments that you will hear
 24 will be able to be addressed through some additional
 25 soil testing which we will agree to do and provide

1 one from Ferriero Engineering and the -- actually
 2 there is two letters from Ferriero Engineering and
 3 one from Banisch Associates.
 4 The Ferriero Engineering letter, we've
 5 received and spent some time with Mr. Ferriero and
 6 Mr. Bolio going over some of the details of the
 7 letter. There is quite a bit of details on
 8 stormwater management which we talked about to this
 9 board already on the new rules with stormwater
 10 management.
 11 And based on the comments that we have
 12 in our discussions with Mr. Ferriero and Mr. Bolio,
 13 we do have to go out and do a couple more tests on
 14 the site. We're scheduling that for the beginning
 15 of next week and provide that data to Mr. Bolio and
 16 Mr. Ferriero for their review. The items are
 17 technical in nature. We feel we can comply with
 18 those items. We need to show the details of those
 19 stormwater -- not stormwater -- strike that -- the
 20 soil testing results to Mr. Ferriero and Mr. Bolio
 21 which we will gladly provide upon our completion.
 22 There is some other comments that are
 23 in that letter that are -- I will call --
 24 housekeeping, in the sense that they are notes on
 25 the plan or there are other details that we

Exhibit F

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309
F: (908) 719-3320
www.gladstonedesign.com

Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanie, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

December 2, 2021
683-17

Mr Paul W. Ferriero, PE
Ferriero Engineering, Inc
180 Main Street
Chester, NJ 07930

Re: Pulte Homes – Far Hills
Preliminary and Final Major Site and Subdivision Plans
Block 5, Lot 4, US Highway Route 202
Borough of Far Hills, Somerset County, New Jersey
PB2021-07

Dear Mr. Ferriero,

Based upon the November 5, 2021, review letter from your office and our November 22, 2021, meeting with Gladstone Design, Inc and Ferriero Engineering, Inc, additional soil testing has been performed on the subject property on November 29 and 30, 2021. The focus of the additional soil testing is in response to the comments on soil testing for the proposed stormwater management systems. This letter provides a draft summary of the findings. A detailed response to the stormwater management comments will be provided at a later date.

1. Additional soil profile pits were excavated within each of the following “basins” to either comply with providing a second soil profile or excavating to a depth of 8 feet below the lowest elevation of the basin bottom or twice the maximum potential water depth generated by the largest design storm. Copies of those additional soil logs are included with this package.
 - a. Basin 3E
 - b. Basin 3F
 - c. Basin 3G
 - d. Basin 3H
 - e. Basin 3I
 - f. Basin 3L

2. Additional infiltration tests were performed at or below the bottom elevation of the proposed infiltration basins. A cross section has also been provided for each of the infiltration basins that shows the section of the basin along with each of the soil profile pits. The Stormwater Basin Summary Sheet for each basin has also been expanded for the additional soil profile pits and additional information such as depths of infiltration and

Far Hills Borough Engineer

December 2, 2021

Page 2 of 3

separation between bottom of basin and bottom of excavation.

3. The project is proposing a total of four infiltration basins and soil testing was performed in each of them. Subsurface Infiltration Basin 3G and small-scale Bio-Retention Basin 3F have a layer of siltstone that is hydraulically restricted below the level of infiltration. The soil evaluator, Tom Dwyer, performed an initial analysis of this siltstone to determine that no significant infiltration is possible in this horizon and is therefore the hydraulically restrictive horizon. A minimum of two feet between the siltstone layer and the bottom elevation of the basins can be achieved as shown on the cross sections. Basin 3F may need to be raised by 0.5 feet to accommodate the two-foot separation but that is achievable within the parameters of the design plans.
4. The soil profile pits will be re-written to the USDA format by Dwyer Geosciences, a copy of the updated report will be submitted at the time of the detailed stormwater management comment response.
5. In addition to the infiltration basins, a soil cross section has been prepared for each of the remaining proposed BMPs that show a section through each basin and the associated soil profile pits. The sections demonstrate the depth of the soil profiles a minimum of 8 feet below the bottom elevation of the basin.
6. Updated Stormwater Basin Summary Sheets have been prepared for each of the basins that include the additional soil profiles and elevations to show proper depth and separation.
7. Soil Profile SB3E1A & SB3E2A have been revised to clarify the observed seepage is actually the malfunctioning septic system adjoining the soil test area and is not indicative of a seasonal high ground water condition.
8. Soil Profile SB3C1 had slight seepage at 11 feet below the surface within proposed Basin 3C. The second soil profile SB3C2 had no observed seepage or groundwater to a depth of at least 11 ft. The two tests have an existing elevation difference over 10 feet. The bottom elevation of the basin in the area of soil profile SB3C2 is 203.5. Because of the grade change, the basin is tiered with the bottom elevation of the basin in relation to the observed seepage having a separation of over 4 feet.
9. Infiltration tests were performed using primarily double-ring tests and some single-ring tests. The tests were performed as constant-head tests following the 1981 EPA process design manual supplement on rapid infiltration and overland flow. The test is run at a constant head until the infiltration volume measured over selected test intervals (in this case five-to-ten-minute intervals) stabilizes. The volume measured with a graduated cylinder in milliliters is converted to cubic feet and divided by the area of the inner ring to determine the infiltration rate for the intervals. The rate is calculated as feet per day and converted to inches per hour. An average rate is determined based on the test intervals for the period of stabilization.

In support of the above comments, attached are the following documents organized by each basin for reference purposes:

1. Overall Summary Chart showing No. of Tests Required to determine Hydraulic Conductivity of the soil, dated December 2, 2021, prepared by Gladstone Design, Inc.
2. Updated Stormwater Basin Summary Sheets for all the proposed basins, dated

Far Hills Borough Engineer

December 2, 2021

Page 3 of 3

December 2, 2021, prepared by Gladstone Design, Inc.

3. Soil profile pits with various dates, prepared by Dwyer Geosciences, Inc.
4. Constant-Head Double Ring Infiltration Tests Summary Forms with various dates, prepared by Dwyer Geosciences, Inc.
5. Graphical Cross sections for each stormwater BMP, dated December 2, 2021, prepared by Gladstone Design, Inc.
6. Soil Testing Location Plan, dated October 1, 2021, revised through December 2, 2021, prepared by Gladstone Design, Inc.

Should you have any questions or require additional information, please do not hesitate to contact this office.

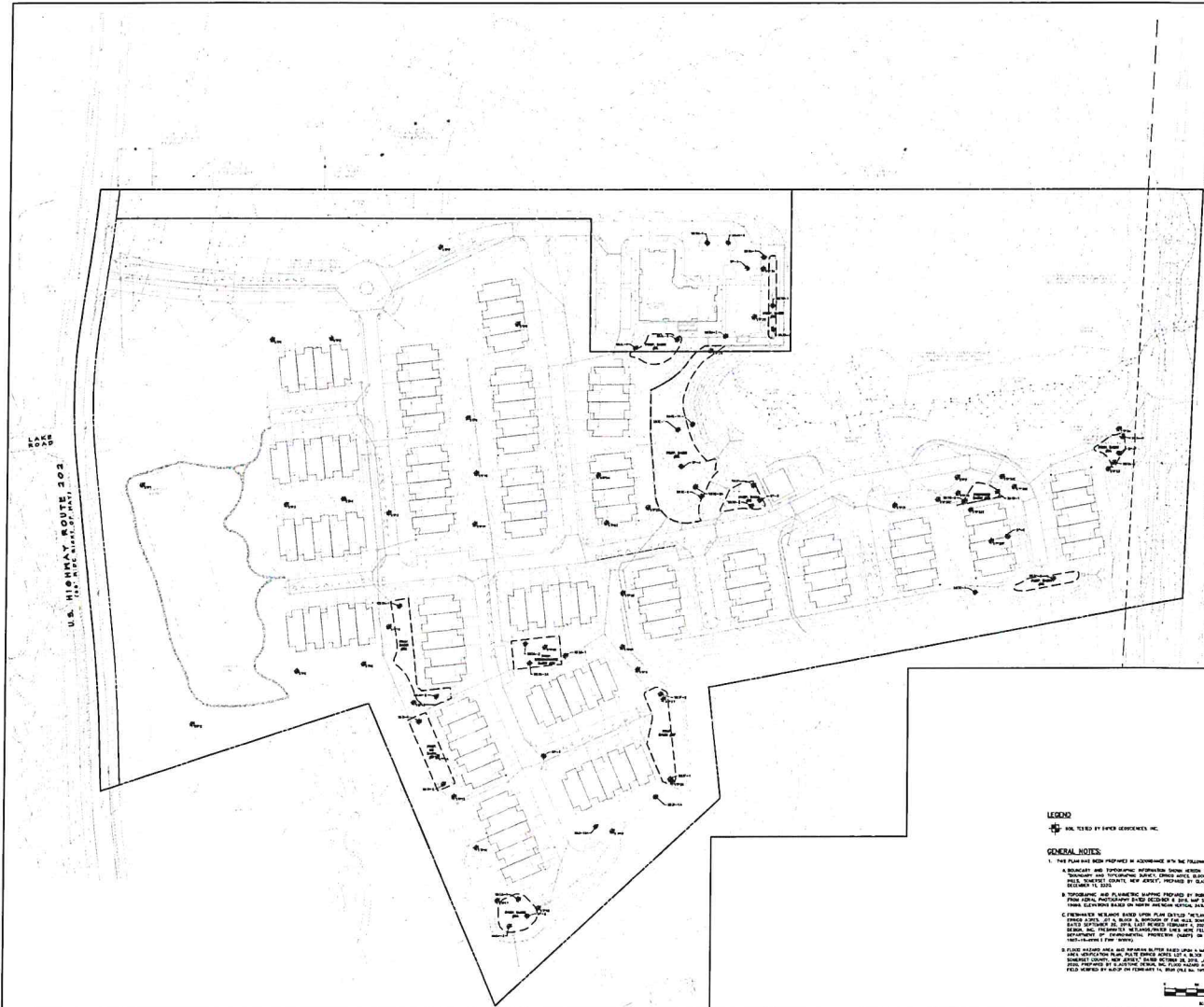
Sincerely,

GLADSTONE DESIGN, INC.


A handwritten signature in black ink, appearing to read 'Matt Draheim', enclosed in a large, loopy oval shape.




Matt Draheim, L.L.A.

Cc: Craig Giannetti, Esq., Project Attorney
Pulte Home of NJ, LLP., Applicant
Enclosures



REVISIONS	
No.	Description
1	ISSUED FOR PERMITS



GLADSTONE DESIGN, Inc.
 Consulting Engineer
 87 Main Street, 2nd Floor
 Gladstone, NJ 07033
 Tel: 908.426.1111
 Fax: 908.426.1112
 www.gladstone-design.com

RONALD A. KENNEDY, P.E.
 PROFESSIONAL ENGINEER
 LICENSE NO. 36282

PROJECT:
 PULTE HOMES - FAR HILLS
 BLOCK 5 LOT 4
 PORTION OF FAR HILLS
 BOROUGH OF FAR HILLS
 MERCER COUNTY
 NEW JERSEY

DATE: OCTOBER 1, 2021

SCALE: 1" = 60'

PROJECT NO.: 583-17

DATE: 09/20/21

1 OF 1

LEGEND
 [Symbol] EOL TIED BY OTHER CONVEYANCE, INC.

GENERAL NOTES:

- THE PLANNING AND DESIGN SERVICES PROVIDED BY THE ENGINEER ARE LIMITED TO THE PREPARED PLANS AND SPECIFICATIONS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AGENCIES. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.
- THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS FOUND NO OBVIOUS OBSTRUCTIONS TO THE PROPOSED DEVELOPMENT. HOWEVER, THE ENGINEER HAS NOT CONDUCTED A DETAILED SURVEY OF THE SITE AND DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.
- THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS FOUND NO OBVIOUS OBSTRUCTIONS TO THE PROPOSED DEVELOPMENT. HOWEVER, THE ENGINEER HAS NOT CONDUCTED A DETAILED SURVEY OF THE SITE AND DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.



Exhibit G

Lawrence Cutalo

From: Shana Goodchild <SGOODCHILD@farhillsnj.org>
Sent: Friday, December 3, 2021 5:50 PM
To: 'Steve Bolio'; 'David Banisch'
Subject: FW: Pulte Homes - Far Hills
Attachments: 683-17--Borough Submission_Soils Rev 2 (12-2-21).pdf; 11-01-21 Far Hills Planning Board - Pulte Homes of NJ - Condensed.PDF

FYI

From: Gianetti, Craig M. <cgianetti@daypitney.com>
Sent: Friday, December 3, 2021 3:51 PM
To: 'Owens, Arthur' <AOwens@lumlaw.com>
Cc: Keith Mckenna <keith.mckenna@mcklaw.net>; Shana Goodchild <SGOODCHILD@farhillsnj.org>; 'Peter E. Henry' <PHenry@mdmc-law.com>
Subject: RE: Pulte Homes - Far Hills

This message was sent from outside the Borough of Far Hills. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Arthur, per your request, attached is the results of the additional soil testing that Board Engineer requested that our civil engineer provide. It was provided to the Board Engineer yesterday evening. Also attached is the 11/1 transcript of the planning board hearing.

Craig M. Gianetti | Attorney at Law | [Attorney Bio](#)



One Jefferson Road | Parsippany NJ 07054-2891
t (973) 966 8053 | f (973) 206 6273 | m (862) 308 9349
cgianetti@daypitney.com | www.daypitney.com

BOSTON | CONNECTICUT | FLORIDA | NEW JERSEY | NEW YORK | PROVIDENCE | WASHINGTON, DC   

From: Owens, Arthur <AOwens@lumlaw.com>
Sent: Friday, December 3, 2021 1:08 PM
To: Gianetti, Craig M. <cgianetti@daypitney.com>
Cc: Keith Mckenna <keith.mckenna@mcklaw.net>
Subject: Pulte Homes - Far Hills

CAUTION - EXTERNAL EMAIL

DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Craig:

I am the attorney that made an appearance of behalf of objectors, Ken and Suzanne Voorhees, at the special meeting on 11/23. My co-counsel Keith McKenna is copied on this email. Can you send us copies of the

additional materials that you were going to be submitting to the board attorney prior to the next hearing on December 6? I believe the submission was going to include soil studies and the transcript from the prior hearing.

Thank you,

Arthur M. Owens | Lum Drasco & Positan, LLC
103 Eisenhower Parkway | Roseland, NJ 07068
Phone: 973.228.6745 | Fax: 973.403.9021 | Email: aowens@lumlaw.com

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Exhibit H

Lawrence Cutalo

From: Paul Ferriero <pferriero@boswellengineering.com>
Sent: Thursday, April 4, 2024 12:31 PM
To: Lawrence Cutalo
Subject: FW: Pulte Far Hills
Attachments: 683-17 SOIL TESTING LOCATION PLAN.pdf

[External Email: Use caution when clicking on links or opening attachments.]

From: Matt D. Draheim <mdraheim@gladstonedesign.com>
Sent: Wednesday, September 7, 2022 10:52 AM
To: Steve Bolio <steve.bolio@ferrieroengineering.com>
Subject: RE: Pulte Far Hills

Steve, see attached for the Soil Testing Location Plan referenced in the letter.

Let me know if you need anything further.

Best,

Matt Draheim, LLA
Project Manager/Licensed Landscape Architect

GLADSTONE DESIGN, Inc.

Consulting Engineers | Land Surveyors | Landscape Architects | Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309, ext. 22
M: (908) 399-5694
F: (908) 719-3320
www.gladstonedesign.com



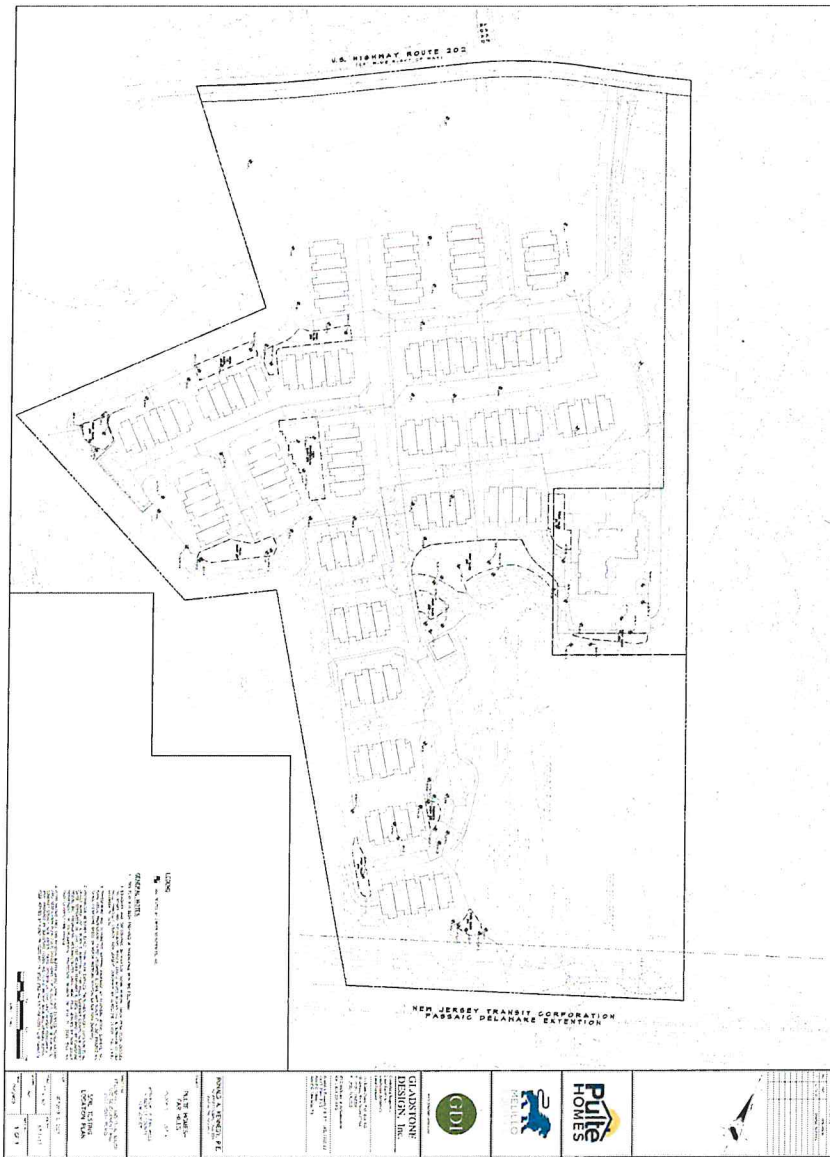
From: Steve Bolio <steve.bolio@ferrieroengineering.com>
Sent: Wednesday, September 7, 2022 9:47 AM
To: Matt D. Draheim <mdraheim@gladstonedesign.com>
Subject: Pulte Far Hills

Matt,

Can you email me a copy of the soil testing location plan you referenced in your December 2, 2021 letter? I do not have it in our files.

Thank you,

Steven Bolio, P.E., CME
Ferriero Engineering, Inc.
180 Main Street
P.O. Box 571
Chester, NJ 07930
(908) 879-6209 Fax (908) 879-6597



NOTES:

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY.
3. ALL EXISTING UTILITIES TO BE PROTECTED AND DEEPENED TO 48" BELOW FINISHED GRADE.
4. ALL NEW UTILITIES TO BE INSTALLED TO 48" BELOW FINISHED GRADE.
5. ALL CONCRETE SHALL BE 3000 PSI COMPRESSIVE STRENGTH.
6. ALL ASPHALT SHALL BE 1 1/2" MINIMUM THICKNESS.
7. ALL GRASS SHALL BE MAINTAINED AT ALL TIMES.
8. ALL TREES TO BE REMOVED SHALL BE REPLACED WITH 1" DBH TREES.
9. ALL SIGNAGE SHALL BE AS SHOWN ON THESE PLANS.
10. ALL LIGHTING SHALL BE AS SHOWN ON THESE PLANS.
11. ALL FENCES SHALL BE 4' HIGH AND 4" X 4" POSTS.
12. ALL DRIVEWAYS SHALL BE 12" MINIMUM THICKNESS CONCRETE.
13. ALL SIDEWALKS SHALL BE 4" MINIMUM THICKNESS CONCRETE.
14. ALL STAIRS SHALL BE 4" MINIMUM THICKNESS CONCRETE.
15. ALL ROOFS SHALL BE AS SHOWN ON THESE PLANS.
16. ALL FOUNDATIONS SHALL BE AS SHOWN ON THESE PLANS.
17. ALL STRUCTURES SHALL BE 10' MINIMUM CLEARANCE OVER ADJACENT ROADS.
18. ALL UTILITIES TO BE DEEPENED TO 48" BELOW FINISHED GRADE.
19. ALL NEW UTILITIES TO BE INSTALLED TO 48" BELOW FINISHED GRADE.
20. ALL CONCRETE SHALL BE 3000 PSI COMPRESSIVE STRENGTH.
21. ALL ASPHALT SHALL BE 1 1/2" MINIMUM THICKNESS.
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25. ALL LIGHTING SHALL BE AS SHOWN ON THESE PLANS.
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29. ALL STAIRS SHALL BE 4" MINIMUM THICKNESS CONCRETE.
30. ALL ROOFS SHALL BE AS SHOWN ON THESE PLANS.
31. ALL FOUNDATIONS SHALL BE AS SHOWN ON THESE PLANS.
32. ALL STRUCTURES SHALL BE 10' MINIMUM CLEARANCE OVER ADJACENT ROADS.

<p>PROJECT: NEW JERSEY TRANSIT CORPORATION PASSAIC DELAWARE EXTENSION</p> <p>DATE: 04/04/2024</p> <p>SCALE: 1/4" = 1'-0"</p> <p>DESIGNER: GILADSON/REISMAN, INC.</p> <p>CLIENT: Pulte Homes</p> <p>LOCATION: PASSAIC, NJ</p> <p>PROJECT NO.: 1501</p>	<p>CONTRACTOR: [Logo]</p> <p>ARCHITECT: [Logo]</p> <p>ENGINEER: [Logo]</p> <p>LANDSCAPE ARCHITECT: [Logo]</p> <p>PLANNING: [Logo]</p> <p>TRAVEL: [Logo]</p> <p>UTILITIES: [Logo]</p> <p>WATER: [Logo]</p> <p>SEWER: [Logo]</p> <p>STORMWATER: [Logo]</p> <p>TRAIL: [Logo]</p> <p>BIODIVERSITY: [Logo]</p> <p>ARCHITECTURE: [Logo]</p> <p>INTERIOR DESIGN: [Logo]</p> <p>MECHANICAL/ELECTRICAL/PLUMBING: [Logo]</p> <p>STRUCTURAL: [Logo]</p> <p>GEOTECHNICAL: [Logo]</p> <p>ENVIRONMENTAL: [Logo]</p> <p>TRAVEL: [Logo]</p> <p>UTILITIES: [Logo]</p> <p>WATER: [Logo]</p> <p>SEWER: [Logo]</p> <p>STORMWATER: [Logo]</p> <p>TRAIL: [Logo]</p> <p>BIODIVERSITY: [Logo]</p>
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Exhibit I

STATE OF NEW JERSEY
 COUNTY OF SOMERSET
 BOROUGH OF FAR HILLS

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APPLICATION/PUBLIC HEARING:
 Application No. PB2021-07
 Pulte Homes of NJ, Limited Partnership/
 Residences at Overleigh
 Block 5, Lot 4
 220 Route 202
 Prel./Final Subdivision and Site Plan Variance
 PLANNING BOARD MEETING Regular Meeting
 MONDAY JULY 5, 2021
 TIME: 7:00 P.M.

BOARD MEMBERS:
 Tom Rochat, Chair, Class IV
 Richard Rinzler, Vice Chair Class IV
 Robert Lewis, Class IV
 Marilyn Layton Class IV
 Sheila Tweedie, Secretary Class III
 Paul J. Vallone, M.D., Mayor Class I
 Jack Koury, Alternate #1
 Suzanne Humbert Alternate #2

Shana L. Goodchild: Board Secretary

Peter Henry, Board Attorney
 David Banisch, Board Professional
 Steven Bolio, Board Professional

1 T R A N S C R I P T of the above-entitled
 2 matter by and before GERALDINE ADINOLFI, a Certified
 3 Court Reporter of the State of New Jersey, License
 4 Number 30XI00228000.
 5
 6
 7
 8
 9

A P P E A R A N C E S:

10 DAY PITNEY, ESQS.
 11 BY: CRAIG GIANETTI, ESQ.
 12 1 Jefferson Road
 13 Parsippany, New Jersey 07054
 Attorneys for the Applicant

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I N D E X

1			
2			
3	WITNESS	TESTIMONY	
4	JAMES MULLEN		
5	BY: MR. GIANETTI	9	
6	BY: THE BOARD MEMBERS	14	
7	BY: THE PUBLIC	19	
8			
9	RONALD KENNEDY		
10	BY: MR. GIANETTI	37	
11	BY: THE BOARD MEMBERS	94	
12	BY: THE PUBLIC	125	
13			
14			
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20	A 5	Storm Water Management	59
21	A 6	Water Main Extension	68
22	A 7	Lighting Plan	73
23	A 8	Concept Plan	92
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25			

1 MR. ROCHAT: Okay. We have
 2 application, public hearing on PB2021-07, Pulte
 3 Homes of New Jersey. We have --
 4 MR. GIANETTI: Yes. Good evening
 5 members of the board, Craig Gianetti, of the law
 6 firm Day Pitney on behalf of the applicant, Pulte
 7 Homes of New Jersey LP.
 8 MR. ROCHAT: Okay.
 9 MR. GIANETTI: If there's nothing
 10 from any professionals, I can give a brief
 11 introduction before I call our witnesses. As noted
 12 the applicant is Pulte Homes of New Jersey LP and
 13 they are also the contract purchaser of the
 14 property.
 15 MR. HENRY: I hate to interrupt, but
 16 before we launch, I think it probably is something
 17 that everybody ought to be aware of from the start,
 18 that we determined the way to handle tonight's
 19 meeting is to let testimony go until 9 -- until 10
 20 o'clock, but to stop the testimony if you have a
 21 witness who is not likely to finish by 10, at about
 22 quarter of 10, to give members of the public who may
 23 have questions for that witness on the testimony
 24 heard tonight to ask those questions. And then to
 25 stop it at 10 o'clock, so that the board can handle

1 another application that has to be taken tonight and
 2 the miscellaneous board business at the end of the
 3 meeting.
 4 MR. GIANETTI: Sure, that's fine,
 5 Mr. Henry.
 6 And we have for the overall
 7 presentation a slew of witnesses. We anticipate to
 8 night Jim Mullen from Pulte Homes as well as Ron
 9 Kennedy from Gladstone Engineering doing the
 10 majority of the testimony this evening, so when we
 11 get to that point it, you know, it can be opened up
 12 to the public to ask questions.
 13 MR. HENRY: Thank you.
 14 MR. GIANETTI: Sure.
 15 So if I may, again, this is an
 16 application by Pulte Homes seeking a site plan,
 17 preliminary and final major site plan, along with
 18 subdivision approval to construct a multi family
 19 development, consisting of 105 age-restricted
 20 townhouse dwelling units and an apartment building,
 21 consisting of 29 affordable apartments, 25 of which
 22 would be family affordables and 4 age-restricted
 23 affordables, for a total of 134 residential units
 24 between the town homes and the apartments of which
 25 109 are age-restricted.

1 The property is approximately 41. 25
 2 acres in size and is primary wooded. It currently
 3 contains a few existing dwellings, as well as a barn
 4 and several sheds. And the property located
 5 recently created TH6 IAR zone townhouse,
 6 inclusionary, age-restricted zone. It is referenced
 7 in Mr. Banisch's review letter that this zone was
 8 created as part of the borough's fair share housing
 9 settlement agreement with the fair share housing
 10 center and an affordable housing settlement
 11 agreement with Melillo Equities LLC, dated
 12 December 9, 2019, which both agreements were
 13 approved by the court, and this project along with
 14 the zoning is part of the borough's affordable
 15 housing plan that has also been approved by the
 16 court. Now, as part of the Melillo affordable
 17 housing agreement, there is an exhibit or several
 18 exhibits included that were a part of that
 19 agreement. One of which, was concept plan for this
 20 proposed inclusionary development.
 21 You will hear testimony this evening,
 22 that was also confirmed by Mr. Banisch, that the
 23 site plan you will be seeing tonight is
 24 substantially consistent with that concept plan that
 25 was part of the affordable housing agreement. But

1 however, that is not uncommon with these affordable
 2 housing agreements and rezonings, the zoning is
 3 typically based upon concept plans, and after the
 4 project gets fully engineered and they get more into
 5 you know, the grading, the topography, the storm
 6 water management, as well as other outside agency
 7 approvals, like wetland delineations; sometimes
 8 there are minor adjustments that are made to the
 9 plans and those create potential variances, where
 10 applicant has to seek relief from it. However, the
 11 COA regulations accounts on affordable housing
 12 regulations recognize that with respect to
 13 inclusionary projects that are part of the town's
 14 affordable housing plan, that boards are supposed to
 15 reasonably consider any variances or waivers as part
 16 of those applications.
 17 You will hear tonight through the
 18 witnesses some of the variance relief we will be
 19 seeking. There is a height variance for
 20 approximately 34 of the townhouse units. 36 feet in
 21 height is permitted. However, due to topography and
 22 some grading issues, some of those townhouse units
 23 have exposed walkout basements. And so though
 24 visually, the roof line is the same for all the
 25 units, the way height is measured, some of those

1 units have a height of approximately 38. 08 feet.
 2 And therefore, we will be seeking variance relief
 3 with respect to that.
 4 There are also a few other variances
 5 related to the steep slope ordinance, where the
 6 disturbance of slope has been 15 percent to 25
 7 percent category are being disturbed, well as the 25
 8 percent to 35 percent category being disturbed. We
 9 are also seeking variance relief to permit the
 10 development within the 100 foot of the stream
 11 corridor buffer, where none is permitted. And
 12 we'll have testimony as to that. And then also the
 13 scenic corridor development subsurface groundwater
 14 recharge field within the scenic corridor.
 15 With respect to the overall
 16 presentation, we have several witnesses. We have
 17 Jim Mullen from Pulte Homes, director of
 18 entitlements. We have Ron Kennedy, a civil engineer
 19 from Gladstone Design, we have Bruce Englebaum from
 20 Minno and Wasko, the architect; Gary Dean of Dolan &
 21 Dean, the traffic engineer and last but not least,
 22 Paul Philips a professional planner that will be
 23 testifying as to the variance relief being sought as
 24 part of this application.
 25 So if there's no housekeeping matters

Exhibit J

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
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Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanic, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

March 15, 2022
683-17

Ms. Shana Goodchild
Far Hills Borough Planning Board Secretary
6 Prospect Street
Far Hills, New Jersey 07931

Re: Resolution Compliance
Pulte Homes – Far Hills
Preliminary and Final Major Site and Subdivision Plans
Block 5, Lot 4, US Highway Route 202
Borough of Far Hills, Somerset County, New Jersey
Resolution No.: 2022-10

Dear Ms. Goodchild,

On behalf of the applicant, Pulte Homes, please find attached the following plans and documentation in support of Resolution Compliance for the above referenced application:

1. Five (5) sets of plans entitled “Pulte Homes – Far Hills, Preliminary and Final Major Site Development and Subdivision Plans”, dated March 19, 2021, revised through March 15, 2022, prepared by Gladstone Design, Inc.
2. Five (5) sets of plats entitled “Pulte Homes – Far Hills, Preliminary and Final Major Subdivision Plat”, dated March 19, 2021, revised through March 15, 2022, prepared by Gladstone Design, Inc.
3. Five (5) sets of architectural drawings entitled “Pulte Homes – Far Hills”, dated March X, 2021, revised through March 15, 2022, prepared by Minno & Wasko Architects.
4. Five (5) sets of plans entitled “New Jersey American Water, Watermain Extension Plans” dated July 30, 2021, revised through December 15, 2021, prepared by Gladstone Design, Inc.
5. Five (5) copies of the Engineers Construction Cost Estimate for Inspection Fees dated March 15, 2022, prepared by Gladstone Design, Inc.
6. Five (5) copies of correspondence from addressed to the Borough Tax Assessor confirming the block and lot numbers.
7. Five (5) copies of deed descriptions, lot closure calculations and proposed easements for the project, prepared by Gladstone Design, Inc.

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8. Five (5) copies of correspondence to the Borough Fire Official requesting review of the fire hydrant locations.

Below is a compliance narrative as it relates to the Resolution of Approval, Memorialized on February 7, 2022.

1. Comment is a statement of fact; a narrative of compliance with the various Board Engineer review letters is outlined below.
2. Comment is a statement of fact; a narrative of compliance with the various Board Planner review letters is outlined below.
3. Comment is a statement of fact; a narrative of compliance with the various Board Traffic Engineer review letters is outlined below.
4. A note has been added to the cover sheet, Sheet 1 of 42, stating, "The Applicant shall provide "as built" plans from a licensed surveyor and furnish same to the Borough Engineer for review and approval. The as-built of the individual buildings shall be provided prior to the individual buildings receiving certificates of occupancy. The as-built of the infrastructure shall be provided by prior to 90% of the certificates of occupancy being issued for the project (90% of 134 total units equals 121 total units or 121 certificates of occupancy)."
5. Correspondence has been provided to the Borough Tax Assessor for confirmation of the block and lot numbers of the property, a copy of the letter has been provided as part of this application package. Should the Tax Assessor require revisions to the Lot and Block numbers, the plans will be updated accordingly.
6. Comment is a statement of fact; the Applicant will obtain approval by the governing body of the street names at the time of the Developer's Agreement.
7. Comment is a statement of fact. Copies of the easements outlined in the Resolution will be provided to the Borough Attorney and Borough Engineer and the Borough Planner for review and approval.
8. Comment is a statement of fact, the Applicant will obtain the required local, County, and State, including but not limited to, NJDEP Land Use Permits, NJDEP Treatment Works Approval, Somerset-Union Soil Conservation District Certification, Somerset County Planning Board and NJDOT Access Permits. Copies of the approvals will be provided to the Board for their records upon receipt.
9. Comment is a statement of fact, the Applicant will coordinate with the Borough Engineer to provided the requisite number of prints for the final subdivision plat signatures.
10. An engineering cost estimate is included with this package for inspection fee purposes for review and approval by the Borough Engineer and Borough Attorney.

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11. Comment is a statement of fact; the Applicant will enter into a Developer Agreement with the Borough. A draft copy of the Developer's Agreement will be provided under separate cover for review.
12. Comment is a statement of fact; the applicant will keep all taxes, municipal charges, escrows and other fees current in accordance with the MLUL.
13. Comment is a statement of fact. A note has been added to the architectural plans stating "The affordable housing apartment building materials will be the same as the townhouses with similar and compatible exterior architectural elements".
14. Comment is a statement of fact; a deed restriction will be placed over the meadow areas for maintenance purposes. The deed restriction will be included in the Homeowners Association declaration of covenants. The deed restriction will be provided under separate cover for review and approval by the Borough Engineer and Attorney.
15. A note has been added to the Site Removal Plan (Sheet 3 of 42) stating "Demolition and removal and/or disposal of any existing structures shall be in accordance with all laws and regulations".
16. Comment is a statement of fact; the Applicant will comply with the items outlined in the October 1, 2021 submission letter from Gladstone Design, Inc.
17. The Site Plans have been revised to show the required nine (9) electrical vehicle charging stations for the apartment building. Notes have been added to the Cover Sheet and Site Dimension Plan station the EV charging stations will comply with the state's recently adopted EV supply equipment statute to the extent it is applicable. A note has also been added stating "The EV parking spaces shall be limited for use by only the residents and their guests of the development".
18. Comment is a statement of fact; the Applicant will submit Homeowner's Association (HOA) documents subject to the review and approval of the Borough Attorney and the Borough Engineer prior to obtaining a building permit. Drafts of the Homeowner's Association documents will be provided under separate cover.
19. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for the maintenance of the common improvements, including the stormwater management system for the project."
20. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for the operation and maintenance of the sewer treatment facility and system and will demonstrate adequate security for the benefit (no bonding) of the Borough in the form of the Reserve Schedule set forth in the HOA Annual Budget regarding continuing operations, proper maintenance and protection against the results of catastrophic failures."
21. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for maintenance of any EV charging stations located in common areas and guest parking spaces. EV charging stations located on the affordable housing lot shall be maintained by the owner of that lot."

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22. A note has been added to the Grading Plan stating “Before the movement of any soil (export/import) the Applicant shall schedule the times, routes, volumes, tracking pads, street cleaning with the coordination of the Borough Police Department and the Borough Engineer as part of a pre-construction meeting. The Applicant shall test all imported soil and sourcing information.”
23. The Water Main Extension Plans are included with this package for review and approval by the Borough Engineer.
24. Comment is a statement of fact. A note has been added to the Cover Sheet stating “The Applicant shall obtain United States Postal Service and local postal office approval of the “ganged” mailboxes prior to issuance of the first certificate of occupancy.”
25. Notes have been added to the Landscape Plans stating, “Prior to any tree removal, the Applicant shall stakeout the clearing limits in the field which shall be subject to review and approval from the Board professionals.” “Tree removal shall be in accordance with NJDEP requirements as applicable and shall be reviewed and approved by the Borough Engineer and Borough Planner.” “Applicant shall avoid damage to trees to remain and shall avoid root compaction by restricting heavy equipment traffic within the dripline of trees to remain.”
26. A note has been added to the Landscape Plan and Soil Erosion Plan stating, “The Applicant shall provide satisfactory installation of appropriate protection for tree removal. The tree removal schedule to the extent practicable shall avoid erosion problems. During construction, the Borough Engineer may require the Applicant to install erosion control measures, such as double silt fencing, staked haybales, etc., where in the reasonable opinion of the Borough Engineer such measures are necessary to address possible erosion concerns and emergent weather conditions.”
27. A note has been added to the Cover Sheet stating, “The Applicant or the HOA shall test the emergency generator for wastewater treatment facility once per week, which shall be limited between the hours of 10:00 a.m. until 2:00 p.m. Tuesdays through Thursdays.”
28. The Landscape Plan has been revised to add notes regarding maintenance and retention of the general wooded area along the front portion of the property. A note has been added to the Landscape Plan stating, “The walking path is to be natural and not be mowed.”
29. A note has been added to the Landscape Plan stating, “The Borough Engineer and Planner shall review the proposed reforestation tree species to be planted and the Applicant agrees to accommodate any reasonable tree species replacements or substitutions that may be recommended by the Borough’s professionals consistent with the NJDEP-approved list of tree species for reforestation.”
30. Comment is a statement of fact. A note has been added to the architectural plans stating “The sewer treatment building will be constructed with the same materials and compatible designs and features as the townhouses and the affordable housing building.”
31. A note has been added to the Landscape Plan stating, “The Applicant shall submit a plan for clearing to create sight easements at the access driveway. The execution of same

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- shall be subject to review and approval of the Board's Traffic Engineer. Clearing for any sight easements and or required sight distance at the access driveway shall be subject to review and approval from the Board Traffic Engineer and Borough Planner. Supplemental plantings shall be provided as may be required outside the sight easements subject to review and approval from the Borough Planner."
32. The Landscape Plan has been revised to show the removal of invasive species from the wooded area to remain along Route 202 frontage and within the conservation easement and reforestation area. Notes have been added on the means and methods for removing the invasive species in accordance with NJDEP requirements.
 33. A note has been added to the Cover Sheet stating, "Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval."
 34. Comment is a statement of fact; the Applicant will comply with the COAH phasing schedule for producing the affordable units, except as may be modified by the Borough in the Developer's Agreement since the market-rate for-sale townhouses are provided in 23 four- and five-unit buildings and the affordable units are rental apartments contained wholly within one building.
 35. The Sales Trailer and Model Home Plot Plan has been revised to include a note regarding the hours for displaying and location of the feather flags shall be addressed as part of the Developer's Agreement. Sales trailer and model home plan improvements shall be removed no later than after marketing and sales are completed with best efforts to conclude within three (3) years of the commencement of building construction
 36. Comment is a statement of fact; the Applicant's satisfaction of all comments and agreements made during testimony before the Board except as may be modified herein.
 37. Comment is a statement of fact; all conditions contained in this Resolution and in the record of proceedings in this matter including any agreements made by the Applicant were essential to the Board's decision to grant the approvals set forth herein.
 38. A note has been added to the Cover Sheet stating, "The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case."
 39. A note has been added to the Cover Sheet stating, "The Borough reserves the right to request additional reasonable and customary site improvements should actual field conditions vary from what is depicted on the Approved Plans and/or is indicated by the design."

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40. A note has been added to the Cover Sheet stating, "Site work shall not commence prior to compliance with the terms and conditions set forth herein, except for those conditions that cannot be satisfied until after commencement of site work."
41. A note has been added to the Cover Sheet stating, "The granting of the site plan approval specified herein shall not be construed to include satisfaction of the Uniform Construction Code of the State of New Jersey."
42. Comment is a statement of fact; the Applicant will comply with all applicable affordable housing requirements as required by the Borough ordinances which have been adopted to implement UHAC regulations, including but not limited to income distribution, phasing in the affordable units (except as may be modified by the Borough), heating source, accessibility and adaptability, amenities, size of units and bedrooms.
43. Comment is a statement of fact; the Applicant will engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification. The Applicant will obtain approval of the Affordable Housing Professional Services Agreement by the Borough Attorney and/or the Borough Planner. Affirmative marketing, prospective tenant income verification and tenant qualification activities shall ensure that a qualified pool of Applicants is established for building occupancy at the time a certificate of occupancy is issued for the affordable housing apartment building.
44. Comment is a statement of fact; the Applicant will submit deed restrictions in accordance with UHAC regarding the affordability control period. At the end of the affordability control period, nothing shall preclude the Borough from electing to release the affordability controls in accordance with applicable law.
45. A Vehicle Turning Movement Plan for school buses has been prepared and is included with this package for the Board's Traffic Engineer to review and approve.
46. A note has been added to the Site Dimension Plan stating, "The emergency generator for the wastewater treatment plant shall be enclosed within a waterproof sound attenuating enclosure." A detail of the enclosure has also been added to the Construction Detail sheet.
47. Comment is a statement of fact. No hot box for water connection is required for the project. Should a water connection hot box be needed at some point in the future, design and installation will require amended site plan approval from the Board.
48. A note has been added to the Architectural Plans regarding backup power source for the affordable housing building. A detail for the backup power source has been added to the Architectural Plans
49. A note has been added to the Cover Sheet stating, "The Applicant shall maintain control of the construction site at all times to prevent unauthorized access to the site."
50. Comment is a statement of fact. This narrative contains a summary of each of the conditions of approval and how each is being satisfied. The additional documentation provided with this package is also in support of Resolution Compliance.

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51. Comment is a statement of fact; the Applicant will comply with all statutes, ordinances, rules and regulations of the United State of America, State of New Jersey, County of Somerset and Borough of Far Hills.
52. Comment is a statement of fact; this Memorializing Resolution will be recorded with the Somerset County Clerk's office. A copy of the recorded instrument will be filed with the Borough Attorney, Borough Clerk and Planning Board Secretary.
53. Comment is a statement of fact; it is acknowledged that the developer of the market-rate townhouses and the developer of the affordable rental building may be undertaken by separate entities. The conditions of this resolution are applicable to and binding upon all entities responsible for all aspects of the development.
54. A note has been added to the Cover Sheet stating, "The Applicant may appear before the Planning Board for a final determination to the extent there may be disagreement between the Applicant and the Borough's officials and professionals on satisfaction and/or implementation of any of the conditions of this approval."
55. Comment is a statement of fact; the Applicant will comply with the terms of the Affordable Housing Agreement with the Borough of Far Hills.

Below is a compliance narrative as it relates to the Ferriero Engineer review letter dated November 5, 2021:

I. *Site Plan*

A. *Sheet 1 – Project Data/Vicinity Plan*

1. *General Note 19 indicates proposed street names for the project. These need to be revisited and evaluated by the emergency services departments. There are a number of similar names within the project (Ayers St, Ayers Ln) that are duplicative, and Schley is a name currently used by another street within the Borough. This will lead to confusion with 911 response. All street names must be approved by the Borough Council after appropriate review. – New. A note has been provided on the plans indicating the street names are subject to approval from the Borough Council. The Site Plans have been revised to eliminate the similarly named streets within the project and duplicative street names with the Borough and surrounding areas. The street names are subject to review and approval by the Borough Council at the time of the Developer's Agreement.*
2. *Additional information needs to be provided regarding compliance with the recent DCA regulations on the provision of electric vehicle parking stalls. Testimony was provided to the satisfaction of the Board and the Site Plans have been revised should provisions for the electric vehicle charging stations for the affordable building.*
3. *A developer's agreement must be executed prior to construction. Comment is a statement of fact; the Applicant will enter into a Developer's Agreement with the Borough, a draft will be provided under separate cover for review by the Board Engineer and Planner.*

4. *Correspondence indicates the water main extension plans submitted to New Jersey American Water have been added to the Site Plans as supplemental plans. These plans are not listed on the cover sheet with the other supplemental plans. Also, the plans were not found for this review. The New Jersey American Water Main Extension plans are included with the Resolution Compliance package for review and approval.*
 5. *Hard copies of the truck turning movement plans were not found with the current submission. Review of the truck turning movements is deferred at this time. Vehicle Turning Movement Plans, including fire truck, garbage truck, and school bus turning movements, are include with the Resolution Compliance package for review and approval.*
- B. *Sheet 2 – Environmental Constraints Map – No comments*
- C. *Sheet 3 – Site Removals Plan – No comments*
- D. *Sheets 4 through 10 – Site Dimension Plans*
1. *Approval for the WMQP from NJDEP should be a condition of any favorable resolution. Comment is a statement of fact, the WMQP approval from NJDEP is pending, copies of the approval will be provided.*
 2. *Vehicle turning templates should be provided for delivery and emergency vehicles at the round about and all dead end areas. Vehicle Turning Movement Plans, including fire truck, garbage truck, and school bus turning movements, are include with the Resolution Compliance package for review and approval.*
- E. *Sheets 11through15 – Grading Plan*
1. *The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection needs to be examined. It appears there is a low point along the curb line that will not drain through the intersection. A drainage inlet may be required. There is a similar issue at two points along the southwest curb line of the intersection of Dillon Boulevard and Ayers Street. – New. The grades at the bulb of the nose are flat and may result in ponding along the northerly side of the driveway entrance center island. An inlet may be required. Consideration to steepening the curb line along the southerly side of the intersection of Dillon Boulevard and Ayers Street should be given. The inlet grates (3L-17 and 3L-18) should be lowered to help facilitate drainage. The 281.73 spot elevation at the accessible ramp appears to be too low on the northerly curb line (approximate 6% grade across the landing). The curb grades in the bulb of the round-about have been revised reduce the flat grades and potential for ponding. The inlet grates have been lowered to help facilitate drainage. The grades across the accessible ramp have also been revised to be compliant with ADA regulations.*
 2. *Site light poles are show penetrating into and very close to the underground stormwater system near the multifamily building. Details need to be provided as to how this will work with the pipe and stone stormwater system. The lighting plan has been revised to eliminate the site light poles penetrating into and/or very close to the underground stormwater systems.*

3. *There are a number of retaining walls throughout the site and many are in excess of 48" tall. These will all require site specific designs and construction permits.* Comment is a statement of fact. A note has been added to the Grading Plan and retaining wall construction detail stating that site specific designs and construction permits are required for all wall in excess of 48".
4. *The underground stormwater system and bioretention system at the rear of the multifamily building is in close proximity to a retaining wall with heights up to 17 feet. Testimony should be provided regarding any anticipated hydrostatic loads these stormwater facilities may place on the walls and how the loads and potentially saturated soil would impact the choice of wall material.* The underground stormwater system at the rear of the multi-family building has been eliminated. The retaining wall at the rear of the parking lot of the multi-family building has been reconfigured such that the bioretention basin is located below the wall to eliminate the potential negative impacts due to hydrostatic loading.
5. *The engineer should re-evaluate the detailed tree removal. For example, between unit 4.31 and the property corner, there are a number of mature hardwood trees that are shown to be removed with no apparent disturbance in the area. Further towards the large recharge bed, there are more trees that seem to be removed because of conflicts with the proposed path and water line – both of which could be relocated to avoid the conflict. Additionally, the location of the existing trees should be checked because the plan shows an 18" oak tree in a shed on the adjacent lot behind unit 4.37. – New. There are still some trees that appear to be removed in order to construct the path. Final approval for the tree removal should be coordinate with the Borough Planner and Borough Engineer prior to clearing. This should be a condition of any favorable resolution.* The detailed tree removal plan has been reevaluated and certain trees have been shown to no longer being removed. A note has also been added to the Landscaping Plan stating the Borough Planner and Engineer have final approval over the tree removal.
6. *Sheet 16 notes that there is a proposed net fill of 8,000 cubic yards. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site. – New. The plans indicate 3,000 cubic yards of fill are currently proposed. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site.* Testimony was provided to the satisfaction of the Board regarding the anticipated construction phasing. A note has been added to the Grading Plan stating the Applicant will coordinate with the Borough Police Department and Borough Engineer prior to any soil import or export.
7. *The stone driveway entrance pillar should not be constructed over the proposed storm sewer pipe. Revise accordingly.* The Site Plan has been revised to eliminate the storm sewer pipe from running beneath the stone driveway entrance pillar.
8. *Correct the spot grades between units 4.65 and 4.66.* The spot grades between units 4.65 and 4.66 have been revised.
9. *Spot grades should be provided along the side of unit 4.91 to confirm drainage will*

bedirected away from the building. Spot grades have been added along the side of unit 4.91 to confirm drainage being directed away from the building.

10. *Based on the spot grades behind units 4.93 and 4.94, the area does not appear to drain. Revise as necessary. In addition, additional spot grades should be provided along the side of unit 4.94 to ensure drainage is directed away from the building.* The grading plan has been revised to drain water behind units 4.93 and 4.94, additionally spot grades have been added along the side of unit 4.94 to ensure water is directed away from the building.

F. *Sheets 17 through 22 – Utility Plan*

1. *The plan shows the water main serving the site extending from Route 202 south. The location of the connection to the existing system should be discussed and plans prepared for the extension of the utility line.* Testimony was provided to the satisfaction of the Board regarding the connection of the water main to the existing water system. Copies of the Water Main Extension Plans are included with this package for review and approval by the Borough Engineer.
2. *Fire hydrant locations should be approved by the Fire Official.* The locations of the fire hydrants have been provided to the Borough Fire Official for review and approval. The fire hydrant locations will be revised based on input from the Borough Fire Official. Correspondence from the Borough Fire Official will be forwarded to the Board for their records.

G. *Sheets 22 through 18 – Landscape Plan*

1. *The plan shows extensive areas of meadow around the site. Some of these are in close proximity to some of the townhouse units. The mechanism for keeping these areas as meadow should be described. It is anticipated that some of the townhouse owners may expect maintained lawn around their homes and this would be inconsistent with the plan and stormwater design. Some of the meadow areas, such as the narrow one between units 4.03-4.06 and the boulevard may be difficult to maintain as meadow. Other areas, like the proposed tree area between the townhouses and Route 202 and through the perimeter landscape buffers, show lawn under the trees where meadow may be more appropriate. – As discussed between the Borough Planner, Borough Engineer and the applicant's engineer (via a meeting on July 21, 2021), the surface treatment over the sanitary disposal field will be kept as open (lawn) space for recreational purposes. Meadow areas have been revised and the locations depicted on Figure 5 "Proposed Land Cover Map" dated March 19, 2021, revised October 1, 2021. It is noted the meadow area is still depicted between units 4.03-4.06 and the boulevard, however correspondence from the applicant's engineer indicates responsibilities for maintaining the meadow areas will be the responsibility of the homeowner's association. As part of the maintenance responsibilities for the stormwater management system, an Operations and Maintenance Manual will be required for the project. The Manual will need to include the meadow and wooded areas as part of the stormwater management measures to be maintained. In addition, these areas will also need to be deed restricted/encumbered by an easement to prevent their removal. The meadow areas are included in the Stormwater Management Operations and Maintenance Manual and guidance is provided to the Homeowner's Association*

on the maintenance required to maintain these areas as meadow. A deed restriction will also be placed over the meadow areas to maintain them as meadows in perpetuity. The Operations & Maintenance Manual will be prepared and submitted after the Borough Engineer has reviewed and accepted the stormwater management system.

2. *Additional surface treatment is required for the areas that are being planted with trees and are being considered “wooded area in good condition” within the post developed drainage area analysis. The surface treatment should not consist of lawn areas that will be regularly mowed. Additional notes and detailing need to be provided for these areas. The Landscaping Plans have been revised to show additional surface treatment for the areas that are considered “woods in good condition” in the stormwater management plan.*

H. *Sheets 29 and 20 – Soil Erosion and Sediment Control Plan*

1. *This plan will need to be certified by the Somerset-Union Soil Conservation District.*
2. *Conduit outlet protection and stability calculations are subject to review and approval of the Somerset-Union Soil Conservation District.*

I. *Sheets 31 and 32 – Lighting Plan*

1. *In general, the lighting levels throughout the townhouse portion of the project are very low and do not provide enough illumination for the anticipated vehicular and pedestrian traffic through the site. It is expected that mail will be delivered to common boxes and pedestrians will be using the streets to access these boxes and for other reasons. For the most part, the streets have zero footcandles of illumination. Additional lighting is necessary. The amount of lighting will need to be balanced between the intrusion into the units and safe lighting levels on the ground surface. Based on the 14 foot height of the lighting source and the architectural plans, it appears the light sources will be below any bedroom windows at the front of the units and fully shielded so the glare should not be a major issue. – As discussed between the Borough Planner, Borough Engineer and the applicant’s professionals, and included in correspondence from the applicant’s engineer, building mounted lighting on either side of the garage for the townhouses will be included in a common circuit and controlled similarly to the site lighting. The building mounted lighting will be controlled by a photocell and not by the individual units. The building mounted lighting will account for additional site illumination in addition to the street lighting being proposed, which is consistent with the discussion that took place. The Lighting Plan has been revised to include the building mounted lights on either side of the townhouse garages. A note has also been added to the Lighting Plan stating the lights will be commonly controlled and will be used to add to the overall site illumination.*
2. *Details for the building mounted lighting need to be provided on the plans. The plans shall note that these lights will be on from dusk to dawn as previously discussed at the July 21, 2021 meeting. A detail of the building mounted lighting has been added to the Construction Details Sheet (Sheet 38). The detail also notes that the building mounted lights will be on from dusk to dawn.*

J. *Sheets 33 through 37 – Profiles*

1. *In accordance with NJAC 5:21-7.3(e), no pipe size in the storm drainage system shall be less than 15 inches in diameter. Design engineers may use a 12-inch diameter pipe as a cross-drain to a single inlet. The 12" diameter pipes depicted on the profiles (and utility plans) should be revised to 15" diameter (except for the cross drains if 12" has been proposed). This appears to be applicable to the profiles for Dillon Blvd., structures 3H-8 to 3H-7 on Ayers Street, and structures 3F7A to 3F7. The pipe sizing for the stormwater management system has been revised to reflect the minimum pipe size as allowed by NJ Residential Site Improvement Standards (RSIS).*
2. *Label the storm sewer information for the pipe run from structures 3B-11 to #A-22 on Baldwin Avenue. The profile has been revised to label the storm sewer information for the pipe runs on Baldwin Avenue.*

K. *Sheets 38 through 42 – Construction Details*

1. *The accessible curb ramp detail should clearly show that the curb through the ramp should be concrete to provide a smoother transition. The accessible curb ramp detail has been revised to show the curb through the ramp to be concrete to provide for a smoother transition.*
2. *As noted above, site specific wall designs will be required. A note has been added to the retaining wall detail stating that site specific wall designs and construction permits for walls in excess of 48" in height.*
3. *The detail for the cobblestone pavers should include the gravel thickness. The detail for the cobblestone pavers has been revised to include the gravel thickness.*
4. *Restoration details need to be provided for the proposed watermain extension. The restoration within local roads shall include the area from one edge of the watermain trench to the curb line, with final paving 2' beyond the trench to the curb line. The plans for the water main extension should be incorporated into the site plans. A pavement restoration detail for the restoration of Borough roads has been added to the Construction Detail sheet.*
5. *A final review for all details for the stormwater management systems will be performed for general consistency with NJDEP and or RSIS requirements once the stormwater management system has been approved. Comment is a statement of fact, should additional comments relative to the construction details be realized, the plans will be updated accordingly.*

II. *Stormwater Management Report*

- A. *The following comments below are made relative to the stormwater report and other documents submitted. Previous comments have either been satisfactorily addressed, or have been amended or superseded by the comments below. Additional comments based on the revised submission are also offered below.*

B. *Stormwater comments:*

1. *A groundwater mounding analysis is required for each individual basin that infiltrates. It is unknown whether the basins will be negatively impacted as currently designed without the mounding analysis being provided. – New. The mounding analysis for each of the basins needs to be expanding to analyze the hydraulic impact along both the x and y axis of the basin (two separate analysis) where only one axis has been analyzed. The groundwater mounding analysis for each of the infiltration basins has been expanded to analyze the hydraulic impact along both the “x” and the “y” axis of the basin. The additional analysis can be found in Appendix “C-4”.*
2. *The stormwater conveyance system has been designed for a 25-year storm event. The 100-year storm event needs to be checked to ensure the stormwater conveyance system has capacity without overtopping into other drainage areas. Hydraulic grade line calculations should be provided in the analysis. This is needed to ensure the design assumptions within the quantity (peak rate reduction) analysis is consistent with capacity of the stormwater conveyance system. – New. The conveyance system has been designed for a 100 year design storm. Correspondence indicates a hydraulic grade line calculation is not required since the pipes are in a free flow condition. Downstream tailwater effects need to be considered in the analysis. Pipe inverts also need to be provided within the analysis to confirm drainage characteristics. For example, it is noted that the pipe inverts from RL #3M-11 to FES #3M -10 appear to have been switched based on the grades/inverts provided. The downstream end of the roof drain will also under pressure as Basin 3M fills. The stormwater conveyance system has been revised to utilize the 100-year storm event for sizing of the conveyance pipes. Where no emergency spillway was provided and the conveyance system downstream of the basin has been sized using the 100-year +50% storm events so that the basin can properly drain in the event of failure. The pipe network was analyzed for the downstream tailwater effects, adjustments were made to pipe inverts to avoid backwater conditions in the discharge pipe. Pipe computation sheets and tailwater analysis sheets have been provided in Appendix “D”.*
3. *Only one soil test location was located within the infiltration area for Basin #3G (underground infiltration basin) and #3I (surface infiltration basin). The test pit logs (STP 14, STP 15 (outside basin 3I) and STP 20) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the BMP, or two times the maximum water depth in the basin, whichever results in a deeper depth. It is noted, according to Chapter 12, of the NJDEP BMP Manual, the depth is measured from any replacement soil that may be required below the bottom of the basin. This is the case for all types of stormwater basins. Additional soil testing should be provided to confirm groundwater elevations and separation to the estimated seasonal high ground water and bedrock elevations is being met for basins #3G and 3I in accordance with Chapter 12, Soil Testing criteria, of the NJDEP BMP Manual. – New - The descriptions used for the soil logs that were provided appear to be based on the Unified Soil Classification System. Chapter 12 of the NJDEP BMP Manual requires the soil log information to include the soil texture (consistent with the textural class as shown on the USDA textural triangle), boundary descriptions, the dominant matrix or background and mottle colors using the Munsell system of classification for hue, value and chroma, depth to bedrock etc., (see pages 20 & 21 of Chapter 12 of the NJDEP BMP Manual for the*

requirements). The soil logs need to be presented consistent with the USDA nomenclature. The soil log descriptions have been revised by “Dwyer Geosciences, Inc.” to be consistent with the USDA nomenclature in accordance with the NJDEP BMP Manual.

4. *The geo-technical section of the report should include a specific narrative on how each proposed BMP meets NJDEP requirements as it relates to separation to groundwater, bedrock (if applicable), and permeability (if applicable), and their suitability based on onsite soil conditions. – New – The stormwater BMP summary sheets are not consistent with respect to bedrock and groundwater levels as was provided in the summary of Phase I and Phase II Test Pit information provided in the Hydrogeologic Evaluation section of the report. They should be consistent. The stormwater BMP summary sheets have been revised to be consistent with the test pit information provided in the Hydrogeologic Evaluation section of the report.*
5. *The outlet pipes were not modeled in the Bioretention Basin, Infiltration Basin, and Extended Detention Basin routing analysis. The outlet pipes should be modeled under inlet and outlet control conditions, as they may control runoff through the control structures at higher elevations in the basins. Also, interconnected basins need to be analyzed under tailwater conditions (instead of assuming free flow conditions). It appears from the routings provided that Basin 3D is inundated by Basin 3E, the outlet pipe from Basin 3H may be inundated by Basin 3G, and Basin 3I is inundated by Basin 3F. While a hydraulic grade line analysis has been provided in the report, the backwater impact on the outlet structures for the interconnected basins needs to be quantified. It is not clear how the effect of tailwater has been factored into the analysis. It is recommended that the routing analysis model the outlet pipes for the interconnected basins all the way through the outlet point where Basin 3E discharges to grade. It is further noted that the hydraulic grade lines for Basins 3F, 3G and 3I are above the floor of the basins (which would impact the capacity of the outlet structures and reduce the available storage volume in the basins). Revised calculations for the normal depth of water in the outlet structure pipes, as well as hydraulic grade line profiles for the pipe runs have been provided in Appendix “D” of the Stormwater report. Additionally, inverts for outlet structure pipes have been set at specific depths below the controls of the outlet structure to eliminate any effect of tailwater from the discharge pipe.*
6. *Additional information needs to be provided to address whether it is technically impracticable to meet the green infrastructure standards. As currently designed, Bio- retention basin 3F does not meet GI for water quality and groundwater recharge, while Extended Detention Basins 3C, 3E, 3M do not meet GI for stormwater quantity. Additional information is required prior to confirming whether the other basins will meet the GI requirements. The Engineer shall provide a breakdown in the report for any variances being sought from the GI standards. Correspondence from the design engineer indicates the project will comply with the green infrastructure requirements. This will need to be verified. Comment is a statement of fact, the stormwater system has been revised to comply with the Green Infrastructure Standards of the NJDEP Stormwater Regulations.*
7. *Pretreatment is required for the runoff (roof area) that is tributary to underground infiltration basin 3I. Note 20 has been provided on Utility Plan 22 indicating that gutter guards will be provided on all roof gutters. Details for the gutter guards need*

to be provided on the plans. Pre-treatment is being provided for the roof runoff to the underground infiltration basins. A detail of the gutter guard has been add to the Construction Details.

8. *Pretreatment is required for the direct runoff (80% TSS removal) that is tributary to underground infiltration basin 3G. Runoff from Bioretention Basin 3H that is tributary to Basin 3G will also need to be pretreated to 80% TSS removal if Basin 3H does not meet the GI requirements. Correspondence indicates overland areas that are directed to Basin 3G will be pretreated by a bio-swale. The design of the bioswale and details for the bio-swale (both in accordance with the NJDEP BMP requirements) need to be provided. Basin #3G will only collect roof runoff and pretreatment for basin #3G will be provided by gutter guards. Basin #3H no longer discharges into basin #3G. This comment is no longer relevant as the stormwater system has been revised to redirect this runoff to a different stormwater basin. Pre-treatment is provided for the runoff directed to the underground infiltration basins.*
9. *Based on the grading plan, it appears PDA#3A should be expanded to include the portion of Baldwin Avenue and any area tributary to Baldwin Avenue up to inlet 3B-8. The grading plan has been revised to accurately reflect the drainage divide.*
10. *It is not clear where the swale area at the cul-de-sac shoulder above Basin 3A will drain to. The swale will direct runoff towards the front of townhouse unit (lot) 4.107. A flat inlet should be provided in the swale where it crosses the outlet pipe from Basin 3B or additional spot grades and grading provided to direct runoff away from the townhouse. Erosion of the adjacent slope embankment is also a concern. The swale at the cul-de-sac drains the water between the wall and curb and directs the runoff down the slope towards the wetlands area. The slope will be stabilized and there is no concern for erosion issues from the swale.*
11. *Additional information should be provided demonstrating how the area behind proposed lots 4.91 to 4.94 will drain. The entire area behind the units appears to be a low point. The plans indicate two bottom of wall elevations for the lower wall. The drainage area map indicates this area is split between being tributary to PDA3B and PDA3C. The area behind proposed lots 4.93 and 4.94 are too low/flat and do not appear to drain. The top of the upper wall between proposed lots 4.87 to 4.90 and lots 4.91 to 4.94 is low based on the grading. Additional spot grades need to be provided between the wall and lots 4.87 to 4.90 to confirm drainage boundaries. The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.*
12. *Based on the grading, it appears a large portion of PDA3C will be tributary to Baldwin Court which is tributary to PDA3B. Clarification is required. It appears the inlet grates for inlets 3C-12 and 3C-13 are too high. The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries. The inlets have been revised to create low points to concentrate .*
13. *Additional spot elevations should be provided behind the sewerage treatment plant to confirm drainage patterns. Based on the spot grades provided, a low spot is being created at the southerly corner of the building. The grades along the back and side of the building are relatively flat and are pitched towards the building. The*

grades should be revised. The Grading Plan has been revised to provide additional spot grades to confirm positive drainage.

14. *Based on the grading, it appears the majority of the intersection of Errico Lane and Baldwin Avenue would be tributary to PDA3D and not PDA3F. Also, based on the proposed grading along Baldwin Avenue in the area of proposed lot 4.82, it appears a portion of the backyard area and the lawn area up to Schley Lane would be tributary to Basin 3D and not Basin 3E. Based on the grading, it appears a portion of the drainage area west of Schley Court extending up to the berm of proposed Basin 3F included within Basin 3C would be tributary to Basin 3D. Additional spot grades and grading need to be provided to confirm drainage boundaries are consistent with the analysis. Proposed E inlet 3F-7 located within the intersection of Errico Lane and Baldwin Avenue should be shifted to the curb line. Runoff will likely bypass the inlet in its current location which means a larger area of runoff would be tributary to Basin 3D and less runoff to Basin 3F.* The intersection of Errico Lane and Baldwin Avenue has been revised to be consistent with the drainage analysis in the Stormwater Management Report. The grading and stormwater conveyance at this intersection have also been revised to collect the water in this intersection. The drainage area map has been revised accordingly.
15. *Additional spot grades need to be provided to confirm drainage patterns between proposed lots 4.70 and 4.71. The drainage boundary as depicted on the drainage map does not follow the proposed spot grades between lots 4.70 and 4.71. Revise accordingly.* The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.
16. *Additional spot elevations are needed along proposed lot 4.57 to confirm positive drainage away from the building and drainage boundaries.* The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.
17. *Additional spot elevations should be provided to confirm the area between lots 4.52 and 4.86 will drain towards Basin 3E.* The Grading Plan has been revised to provide additional spot grades to confirm positive drainage towards basin #3E.
18. *The intersection of Ayers Street and Baldwin Avenue appears to be tributary to Basin 3F and not Basin 3H based on the grades provided. Revise as necessary.* The grading plan has been revised so the intersection is tributary to Basin #3F.
19. *The grading between lots 4.22 to 4.26 and lots 4.07 to 4.11 need to be clarified. It appears there are two proposed 276 contours and it is not clear how this area will drain towards Basin 3H.* The Grading Plan has been revised to include a high point to clearly show a drainage boundary.
20. *Based on the grading and the topography, it appears a portion of the area tributary to Basin 3C is tributary to Basin 3B just downstream of Basin 3F. Revise as necessary. – Same. The area west of lots 4.87 and 4.94 appears to be tributary to Basin 3B.* The Proposed Drainage Area Map has been revised to follow proposed grading.

21. *A portion of the entrance drive circle at the intersection with Ayers Street is tributary to Basin 3H and not Basin 3L. Also spot elevations are needed to confirm the drainage boundary to inlet 3L-18. The drainage boundary has been revised to follow proposed grading. The area tributary to basin #3H has been accounted for.*
22. *Roof drainage calculations (gutters/downspouts/laterals) need to be sized for the 100- year storm event since if they were to overflow, the overflow may be tributary to different stormwater basins than what was used in the quantity analysis. Correspondence indicates the roof drainage system, including the gutters, downspouts, and laterals, will be sized in accordance with the National Standard Plumbing Code utilizing the 100 year storm event. This should be a condition of any favorable resolution. Comment is a statement of fact, the gutters for the townhouses and multi-family building will be sized to accommodate the 100-year storm event based on the National Standard Plumbing Code.*
23. *The capacity of the inlet grates should be provided and checked against the 100 year- storm event to confirm they will not overflow/bypass to different drainage areas. The 100 year peak flowrates to the inlets have been provided and was shown to be less than the maximum capacity of a curb inlet with a capacity of 6 cfs (as specified by RSIS 5:21-7.4(d)). The actual capacity of the inlets (both B and E type) should be also be provided (and compared to the tributary flowrate) based on the proposed castings for the inlets. In accordance with RSIS, both B and E inlets are placed at distances no greater than 400 ft apart. The pipe computation sheets provided in Appendix "D" of the stormwater report include a flow calculation that demonstrates that the flows directed to each respective inlet, for the 100-year storm event, do not exceed the maximum allowable of 6 cfs per RSIS. The inlet castings have a capacity of 5.9 cfs at 6-inches of head pressure.*
24. *The Engineer should confirm whether proposed Inlet 3C-4 (located within tributary drainage area 3D) should be changed to a manhole since the quantity analysis does not include surface runoff to the inlet (the inlet is tributary to Basin 3C). The drainage boundaries have been revised. It is noted that a portion of the drainage boundary depicted as tributary to Basin 3C appears to be tributary to Basin 3D based on the grading. Clarification is required. The proposed grading and drainage boundary have been revised to include surface runoff to the inlet.*
25. *The proposed land cover map (Figure 5 in the report) depicts meadow land cover between and adjacent to some of the townhouse buildings. These areas need to be deed restricted against their removal since they are part of the stormwater management system for the site. The maintenance of these areas will need to be included in an Operations and Maintenance Manual (which should be submitted once the stormwater management system has been approved). Quarterly street sweeping is included in the preventative source controls in the LID checklist. The street sweeping will need to be included in the O&M Manual once it is submitted for review and approval. In addition, the meadow and lawn areas have been revised as per discussion with the Borough Engineer and Planner and are reflected on the Proposed Land Cover Map on Figure 5 in the stormwater report. The meadow and wooded areas that are proposed will need to be deed restricted/easement and included in the Operations and Maintenance manual. An Operations and Maintenance Manual will be prepared upon the Borough Engineer accepting the stormwater management system. Street sweeping and maintenance*

procedures for the meadow and wooded areas will be included in the Operations and Maintenance Manual. The meadow and wooded areas will be deed noticed for maintenance and to prevent removal.

26. *The engineer should confirm the land cover being used for the walking path. The plans indicates an accessible gravel walking path is provided towards the front of the property in the area of the groundwater recharge field for wastewater. The remainder of the walking path will be natural ground cover. Details should be provided for the natural walking path if there will be any grading etc. anticipated.* The walking path, with the exception of the area around the passive recreation will be natural ground cover, there is no grading proposed for the natural walking path.
27. *Review and approval of the soil erosion and sediment control calculations are deferred to the Somerset-Union Soil Conservation District. Certification from the Somerset-Union Soil Conservation District should be a condition of any favorable resolution.* Comment is a statement of fact, an application is being made concurrently to Somerset-Union Soil Conservation District.
28. *Additional comments relative to the hydrology calculations, proposed quantity and water quality routings, drain time calculations, groundwater recharge calculations, emergency spillway calculations, and stormwater plan and details are deferred until additional information addressing the above comments are provided as the design of the stormwater management system may change.* Comment is a statement of fact, additional comments and responses are outlined below.
29. *Correspondence indicates the appropriate revisions will be made for any additional comments. The applicant also indicates NJDEP review and approval of the stormwater management is required. See below for additional comments.* Comment is a statement of fact, additional comments were received and the revisions were made to address those comments. Additionally, an application has been made to NJDEP for their review of the stormwater system.
30. *Additional information on how the parameters used in the computations for channel flow were determined for the time of concentration calculations for EDA1 and PDA1 and EDA3 and PDA3 should be provided. Also provide the reference source for the roughness coefficient used in the analysis should be provided in the report.* The parameters used in the computations for channel flow were based on the existing site topography and Bentley Flowmaster to produce the velocities and roughness coefficients shown on the time of concentration sheets.
31. *It is not clear how the computational increments (for example the computational increment varies between 3.3-3.4 minutes for EDA1 and PDA1, and 0.66 minutes (EDA1/PDA1 gravel and impervious)), affect the computations. Clarification should be provided on whether the computational increments should be the same for all the drainage areas. It is recommended that a smaller increment (1 minute for the pervious areas) be utilized, or conversely, provide the unit hydrograph summaries confirming that the effect of using a smaller computational increment provides a negligible result as compared to the computational increments provided.* The computational increments for gravel and impervious TC calculations have been revised. The gravel surface cover will differ from existing to proposed conditions as the existing gravel is only a small portion of near the existing roadway and the

proposed gravel is associated with the walking path. The numbers have been revised to match the impervious TC calculations.

32. *A smaller (1 minute) output increment should be utilized for all of the drainage areas and routings versus a longer increment (for example a 3 minute output increment was used for all of the DA#1 area analysis (only areas checked) which should be reduced to 1 minute).* The output increments have been revised to be reduced accordingly.
33. *The calculations utilize a composite Tc of 0.083 hours (5 minutes) for many of the drainage areas. The calculated Tc should be utilized for all of the drainage areas since the use of a minimum Tc using NRCS methodology is no longer consistent with NJDEP requirements in calculating storm water runoff.* The TCs have been revised to be less than 0.083 where applicable to be consistent with the NJDEP requirements.
34. *The existing and proposed hydrographs (tabular form is preferable, but superimposed is also acceptable) for comparison needs to be provided in order to confirm there is no increase at any point in time for the analysis to POS A.* A hydrograph has been provided in Appendix "B-3" to confirm that there is no increase of flow at any point in time for Point of Analysis "A".
35. *It is not clear how the infiltration rate is being determined based on the results of the constant head single ring infiltration test (and double ring infiltration test). Additional information should be provided on how the internal volume is being converted to the final infiltration rate (for example what is the area, or the depth of water being used in the testing?). The engineer should also confirm whether the single ring and double ring infiltration tests are suitable for permeability testing if in proximity to bedrock.* Infiltration tests were performed using primarily double-ring tests and some single-ring tests. The tests were performed as constant-head tests following the 1981 EPA process design manual supplement on rapid infiltration and overland flow. The test is run at a constant head until the infiltration volume measured over selected test intervals (in this case five-to-ten-minute intervals) stabilizes. The volume measured with a graduated cylinder in milliliters is converted to cubic feet and divided by the area of the inner ring to determine the infiltration rate for the intervals. The rate is calculated as feet per day and converted to inches per hour. An average rate is determined based on the test intervals for the period of stabilization.
36. *The downstream side slope on Basin 2A needs to be flattened to 3:1 (fill slope). Revise accordingly.* The downstream side slope of Basin #2A has been revised to a maximum of 3:1 slope.
37. *A portion of PDA3E appears to be tributary to Basin 3G based on the grading and drainage proposed. Revise as necessary.* The drainage boundary and the proposed grading have been revised reflect the drainage analysis in the Stormwater Report.
38. *The stormwater rules specify "If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at N.J.A.C. 7:8-5.4, 5.5, and 5.6 shall be met in each drainage area,*

unless the runoff from the drainage areas converge onsite and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas.” No infiltration/groundwater recharge has been proposed within PDA#2 (POS B) or the southerly portion of DA#3 (POS C). The various infiltration basins were initially analyzed to meet the recharge requirement for the entire site. The recharge analysis has been revised to provide recharge for each individual drainage area. Basin #3I provides recharge within the Point of Analysis “B” drainage area. Basins #3F, #3G & #3H provide recharge within the Point of Analysis “C” drainage area. No recharge is proposed in Point of Analysis “A” drainage area as flows from existing conditions to proposed conditions are matched.

39. *Any losses need to be included in the effective length of the weir and the effective area of the orifice used at the top of the box in the routing calculations for outlet control structures for the various basins. The losses in the effective length of the weir and the area of the orifice used in the routing calculations was review and there are minimal to no losses that occur that would materially affect the routings..*
40. *Routing information of the emergency spillway storm for Basin 2A, 3A, 3B, 3C, 3D, 3F, 3H, 3L and 3M needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized. Emergency Spillways have been provided in basins where applicable. The spillway routings have been calculated assuming that the outlet control structure is not functioning, and infiltration is not occurring.*
41. *Routing information of the emergency spillway storm for Basin 3G and 3I needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized. (Note that while these are sub-surface basins, they will drain to downstream surface basins). The routings also indicate the routed storm is at the top of these basins. It appears additional stage discharge may be required at the top of the basin to model any overflow. The underground infiltration basins (Basin #3G and #3I) have been revised include a 4 ft. weir above the 100-year stormwater elevation to allow flow from the 100-year + 50% storm event.*
42. *The routing of Basin 3H assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3G and needs to include any effect of tailwater on the routings. The stormwater conveyance system has been revised and Basin #3H no longer discharges into Basin #3G.*
43. *The routing of Basin 3F assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3E and needs to include any effect of tailwater on the routings. The stormwater has been revised to address the tailwater concerns. Tailwater will not affect Basin #3F as the outlet structure pipe inverts have been adjusted to be below the first control of the basin and Basin #3E is well below the elevation of Basin #3F. An analysis of the outlet structure pipes has been provided in Appendix “D” of the Stormwater Report.*

44. *The groundwater mounding analysis for Basins 3H and 3I need to account for any hydraulic impact from each other since the basins are located within approximately 15 feet of each other at their closest points.* The groundwater mounding analysis for been reviewed for the effects of Basin 3H and 3I on each other as they are in close proximity to each other. The analysis shows that there will be mounding to a depth of 8.63' which will negatively affect the basins. However, the BMP manual states that "the groundwater mounding resulting from two or more infiltration from two or can be conservatively estimated by simulating each separately and adding the mounding height at a given location for each BMP. There is a known error in using this method because of the non-linearity of the governing equations." A clay barrier between both basins is proposed to prevent horizontal movement of water between each basin.
45. *The permeability testing for Basin 3F, 3G and 3I was undertaken at elevations above the basin bottom. The NJDEP BMP Manual requires permeability testing to be taken below the bottom of the basin, within the most hydraulically restrictive layer.* Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual.
46. *The permeability testing within Basin 3H does not appear to have been taken in the most hydraulically restrictive soil horizon (within SB3H-2). The testing was done within the gravelly sand layer while the soil log indicates the layer above this consists of clayey, silty gravelly sand (more hydraulically restrictive). Additional permeability testing in the most hydraulically restrictive layer is required.* Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual..
47. *The soil logs within Basin 3I, SB3I-1 and STP14 were excavated to elevation 258.0 which does not meet the minimum depth required (8' below or 2 x the maximum water depth in the basin, whichever is greater) for soil logs as required by Chapter 12 of the NJDEP BMP Manual. The soil logs need to be extended deeper.* Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual.
48. *The soil logs within small scale bioretention basin 3F (SL 26, 27, SB3F-2) appear to be too shallow and need to be extended deeper. In addition, permeability testing wasnot taken within the sandstone (bedrock) layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where thetesting was performed (within logs SB3F1 and SB3F2). Additionally, 1.5' separationto the bedrock layers are being provided. The Engineer should confirm whether 2' ofseparation is available or the bedrock needs to pass permeability testing (basin flood testing for example) to show that it is permeable.* Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report.

The soil logs were excavated to the required depth in accordance with the BMP Manual. Based upon the findings of the additional soil testing .

49. *The soil logs within basin 3G (STP20, S3G-1) are too shallow and need to be extended deeper. The ground elevation listed within the test soil log for STP20 (264.5) appears to be closer to approximately 267.3 based on interpolating the existing topography. In addition, permeability testing was not taken within the siltstone layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where the testing was performed (SB3G1 and SB3G2). Additional review of the soil information is deferred until additional information is provided. New grading has been proposed for basin #3G and additional soil testing has been provided by Dwyer Geosciences, Inc. and can be found in Appendix "H" of the stormwater report.*
50. *The routing calculations of Basin 3F, 3G, 3H, and 3I utilize infiltration for the 2 year and greater storm events. According to the NJDEP BMP Manual, in order to utilize infiltration rates for higher than the water quality design storm, pre-treatment must be provided (Pretreatment is required for Basins 3G and 3I regardless of what storm event is being infiltrated). As outlined in the Stormwater Management Report, the infiltration basins only propose to infiltrate up to the water-quality design storm, pre-treatment is being provided for the infiltration basins.*
51. *Some of the soil log numbers on the soil location testing location plan are repeated (for example SB3F-2 in Basin 3F; SB3H-1 in Basin 3H). The numbers need to reflect the locations of the correct soil testing. The Soil Testing Location plan has been revised to accurately reflect the soil log numbers consistent with the soil testing data provided in the Stormwater Report.*
52. *Bioretention basins with underdrains - Within the gravel layer, the network of pipes, excluding any manifolds and cleanouts, should be perforated. All remaining pipes should be non-perforated. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soilbed. (BMP Manual). Comment is a statement of fact; the perforated pipes within the basins will have a conveyance rate of at least twice as fast as the design flow rate of the soil bed.*
53. *The NJDEP Manual for Small-scale Bioretention Systems with underdrains specifies "Unlike a larger bioretention basin, the soil bed of an underdrained small-scale bioretention system is not designed to drain quickly, but to retain some volume of stormwater below the surface in the soil bed; therefore, the soil mix should fall into the category of loam or silt loam in the USDA soil textural triangle, which will be most capable of retaining stormwater while still maintaining a sufficient infiltration rate. Refer to the post-construction testing requirements found on Page 13 which must confirm the constructed system functions as designed." The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins with underdrains are consistent with this recommendation. Additionally, the BMP Manual requires the permeability rate of the sand layer must be at least twice the design permeability rate of the soil bed and the permeability rate of the gravel layer must be at least twice the design permeability rate of the sand layer. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soil bed.*

Calculations need to be provided for each basin that utilizes underdrains. The stormwater calculations have been revised to be consistent with the NJDEP BMP Manual. Revised flow rate calculations through the basin soil beds with underdrains have been provided in Appendix "C-2" of the stormwater report.

54. *The NJDEP BMP Manual at Chapter 9.7 specifies "The capacity of the underdrain must be sufficient to allow the system to drain within 72 hours, while still retaining moisture below the surface for uptake by vegetation. If the small-scale bioretention system with underdrain is installed in an area subject to pedestrian traffic, the drain time should be reduced to 24 hours."* Based upon the basin draw down chart, the bio-retention basins with underdrains installed near areas subject to pedestrian traffic will drain within 24 hours.
55. *The BMP Manual specifies "Like larger bioretention basin, the soil bed of a small-scale bioretention system designed to infiltrate into the subsoil is designed to drain quickly while still supporting plant life; therefore, the soil mix should fall into the category of loamy sand in the USDA soil textural triangle, which will be most capable of supporting plant life while still maintaining a high infiltration rate. The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins designed to infiltrate are consistent with this recommendation. The proposed rating tables provided for the small scale bioretention basins are designed to be consistent with the BMP Manual.*
56. *The testing of all permeability rates must be consistent with Chapter 12: Soil Testing Criteria in this manual, including the required information to be included in the soil logs, which can be found in section 2.b Soil Logs. In accordance with Chapter 12, the slowest tested hydraulic conductivity must be used for design purposes. (BMP Manual).* Comment is a statement of fact, the slowest tested hydraulic conductivity has been utilized in the routings with an applied factor of safety of 2.
57. *The outlet pipe invert is too high in relation to the bottom of the stone/sand/media for basins 2A, 3D, 3F. The stormwater conveyance system has been revised to provide outlet pipe inverts within the correct elevations in relation to the bottom of the stone/sand/media for the bio-retention basins.*
58. *Additional information should be provided on the surface treatment for tree planted areas that are being treated a wooded condition in good condition within the proposed condition drainage analysis. Seed mixtures and tree maintenance notes have been provided on the landscape plans to clarify the surface treatment for tree planted areas. These areas will need time to establish, over that time a groundcover will be planted to stabilize the ground, after the areas have been stabilized, no maintenance will occur in these areas and leaf litter will be allowed to accumulate creating the woods in good condition land cover the drainage analysis is predicated on.*
59. *The post developed drainage area analysis (for the quantity analysis) appears to utilize approximately 2.1 acres of additional HSG C soils under post developed conditions than existing conditions. Clarification is required. Based upon a review it was found that, the additional 2.1 acres was incorrectly identified as HSG C soil under post development conditions, this has been revised to HSG D soil.*

60. *It appears the dEXC value should be set to zero (0) in the ground recharge analysis of basins 3F and 3H. It also appears the value of dBMPu would have a negative value for Basin 3H. The dEXC value has been set to zero (0) and the dBMPu value for basin #3H has been adjusted to be negative.*
61. *It appears the dBMP (BMP Effective Depth) value would be 21.6" based on using a void ratio with the bottom stone within basin 3G. Similarly, the effective depth appears to be 22.8 inches for Basin 3I. Also, the upper and lower levels of the surface should be confirmed (appears there would be 54" of difference based on the detail for both basins). The dBMP for both underground basins have been calculated by dividing the BMP's total storage volume by its surface area. The depths have been revised accordingly.*
62. *Based on the above noted changes to the recharge analysis, it currently does not appear that ground water recharge is being met for the site. Based on the changes outlined in Item 60 and 61 above, the groundwater recharge calculations have been revised and are provided in Appendix "C-3" of the Stormwater Report.*
63. *The emergency spillway calculations utilize a 12.3 inch 24 hour rainfall, while the 100 year storm event utilizes an 8.3 inch 24 hour rainfall. The 100 year plus 50% storm appears to be 8.3 inches plus 4.15 inches for a total of 12.45 inches. The spillway routings have been revised to utilize a 12.45 inch 24 hour rainfall.*
64. *It is noted the pervious area used within the emergency spillway analysis for Basin 3L was 0.90 acres while the other routings used 1.00 acres. They should be consistent. The pervious area for basin #3L has been revised to be consistent with the other routings.*
65. *It appears the basins 3A-3E, 3L and 3M meet the threshold to be classified as a dam pursuant to the NJDEP Dam Safety standards. The basins referenced above have been designed to include an emergency spillway as they are classified as a dams pursuant to the NJDEP Dam Safety Standards.*
66. *Based on the proposed grades, including the proposed walls, Basin 3L and 3M have an effective height of greater than 15' and therefore do not meet the classification of a Class IV dam. Additionally, Basin 3D, which has an effective height greater than 5' (meeting the threshold for a Class IV dam), is located immediately above the building for the sewerage treatment. It is not clear whether the proximity of this basin to the building would result in a different classification than Class IV. The Engineer should confirm with NJDEP the classification of basins 3D, 3L and 3M. Basins #3L and #3M have been revised to reduce the effective heights of the basins, additionally Basin 3D has been revised to only provide water-quality, therefore reducing the effective height. The basins now have an effective height less than 5' and emergency spillways have been designed for each of the basins.*
67. *Emergency spillways need to be designed in accordance with the NJDEP Dam Safety regulations for all basins that meet the classification of a dam within the NJDEP Dam Safety standards. The stormwater basins have been revised to*

provide emergency spillways in accordance with the NJDEP Dam Safety Standards.

68. *Basins that do not meet the dam classification need to be designed in accordance with the Residential Site Improvement Standards (5:21-7.8 Detention basin berms and embankment ponds), including the ability to ensure the passage of the 100-year flow when the spillways are impeded by debris (4ii.).* The stormwater basins that do not have emergency spillways have been revised so the outlet structure and downstream conveyance system can pass the 100-year +50% storm event through the outlet structure.
69. *Freeboard needs to be provided for each basin in accordance with the NJDEP Dam Safety Standards or RSIS as applicable.* The stormwater basins have been revised to provide a minimum of 1-foot of freeboard in accordance with the NJDEP Dam Safety Standards.
70. *A 10' wide top of berm also needs to be provided for Basin 3F.* The Grading Plan has been revised to provide a 10 ft. wide berm for basin #3F.
71. *Based on the proposed and existing grades, Basin 3F appears to overtop. Additional grading and or spot grades need to be provided.* Basin #3F has been revised to provide for a minimum of one foot of freeboard, based on the calculations the entirety of the 100-year storm event contained within the basin footprint.
72. *A berm needs to be provided for Basin 3H.* Based on the layout of Basin 3H and surrounding grading, a berm would not be required as it is built into the grade. The outlet structure and downstream conveyance system has been designed to pass the 100-year +50% storm event.
73. *Clarify the berm elevation and width for basin 3D. Also correct the wall elevation at basin 3D.* Basin #3D has been revised to only accommodate the water quality design storm, Basin #3D will essentially function as a forebay to Basin #3E, where the larger storm events will flow over a grass spillway into the Basin #3D. Basin #3E has also been relocated slightly to provide a for a berm. The wall elevations at basin #3D has been revised.
74. *Clarification needs to be provided for the minimum groundwater separation for Basin 3E (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 234.0 which is not consistent with the basin data sheets provided.* Additional soil testing performed in November 2021 within basin #3E confirmed that there was no groundwater or mottling below existing grade. New soil test logs can be found in Appendix "H" of the stormwater report. During construction of basin #3E, an additional two (2) feet of soil will need to be excavated from the stone bottom of the basin to comply with the minimum separation requirements to groundwater/bedrock.
75. *Clarification needs to be provided for the minimum groundwater separation for Basin 3C (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 204.0 which is not consistent with the basin data sheets provided.* The seepage encountered within the test pit performed

in Basin #3C is not considered to be groundwater and therefore is not accounted for in the calculations. During construction of basin #3C, an additional two (2) feet of soil will need to be excavated from the stone bottom of the basin to comply with the minimum separation requirements to groundwater/bedrock.

76. *Basin's 3D and 3M are being constructed in fill with proposed retaining walls located adjacent to both basins. The Engineer shall confirm whether there will be any hydrostatic impact to the proposed walls and whether there will be seepage through the proposed walls. Basin #3M and the adjacent retaining wall have been revised so that the basin is below the wall, rather than in fill on top of the wall, thus eliminating potential hydrostatic impact. Basin #3D has been revised to only accommodate the water-quality design storm. As the walls are greater than 48" in height, a structural engineer will provide site specific design for the walls and any hydrostatic impact will be factored into the proposed design.*
77. *Clarification needs to be provided for the minimum bedrock separation for Basin 3G (underground infiltration basin). The geotechnical section of the report indicates bedrock at elevation 256.0 within soil test SB3G1 which does not meet the minimum separation to (2' required). Proposed grading within the location of basin #3G has been revised to provide a minimum 2' of separation to bedrock.*
78. *The soil mix for each type of bio-retention basin being proposed should include the corresponding soil mix (meeting loamy sand for basins designed to infiltrate, or loam or silt loam, for basins with an underdrain, in accordance with the USDA soil textural triangle) in accordance with the BMP Manual. The construction detail for the bio-retention basins has been revised to be consistent with the soil mixture outlined in the BMP Manual.*
79. *Time of concentration calculations need to be provided for PDA1 gravel, PDA3C Imp, PDA3E Imp, PDA3G Imp, PDA3I Imp. The time of concentration calculations have been provided within Appendices "A-1 and A-2" of the Stormwater Report.*
80. *It is not clear whether the outlet pipes for the various basins will have capacity for the runoff associated with the emergency spillway storm events (since emergency spillways have not been incorporated in most of the basins). Additionally, the composite rating curves appears to overstate the capacity of the control structures for some of the basins at the higher elevations (the proposed outlet pipes (outlet control) will control discharge through the control structures). Outlet pipes for the various basins have been designed to pass the 100-year storm event, and in some cases the emergency spillway storm event. The outlet pipe inverts have also been adjusted so that the flow entering the pipe will not impact the outlet controls and create a tailwater condition.*
81. *The hydraulic grade line calculations indicate the hydraulic grade lines are above the bottom of the media/underdrains in some of the basins. This will impact the ability for the underdrains to function during the higher storm events. Consideration to lowering the outlet pipes, if possible, to ensure no hydraulic impact should be given. Conversely, the outlet pipes could be modeled directly within the routings of the basins so that any potential impact is quantified within the routing results. This is generally for the basins that discharge directly to grade (other comments relative to interconnected basins are provided elsewhere). It is noted that basins 3L & 3M*

while interconnected do not appear impacted by the backwater impact of Basin 3E, but the hydraulic grade lines of the outlet pipe analysis indicate the hydraulic grade line is above the media/underdrains. The outlet pipes have been lowered so as to not impact the ability of the underdrains to function. Outlet pipe calculations and hydraulic grade line calculations can be found in Appendix "D" of the Stormwater Report.

82. *The basin area used in the mounding analysis for Basin 3F appears to be larger than the basin footprint (7,337 sf used verses +/- 5,720 sf). According to Chapter 13 of the NJDEP BMP Manual, when the BMP is of irregular shape, the shape should be converted to a rectangular shape that has the same depth of the runoff to be fitted and is best fitted to the original shape. The Hantush spreadsheet assumes the sides of the BMP are vertical. If a BMP is designed with sloped sides, use the dimensions of the bottom footprint as the length and width of the BMP and use the total volume of the runoff to be infiltrated divided by the area of the bottom footprint to calculate the duration of infiltration period (Page 7 of Chapter 13). Same comments for Basin 3H (7,579 sf used verses +/- 5,610 sf). The mounding analysis has been revised to utilize the area of the bottom footprint of basins #3F & #3H.*
83. *It is recommended the groundwater elevation within the groundwater mounding analysis for basins 3F, 3G and 3I be based on the shallowest soil log taken in the basins since not all of the soil logs were extended to the depth of where the groundwater elevation is being assumed. The groundwater elevation within the groundwater mounding analysis for Basins #3F, #3G, and #3I are based on the deepest soil log excavated in the corresponding basin. Groundwater was not encountered in any test pits performed within the basins and hydrogeologic data from the site found no shallow groundwater.*
84. *If infiltration is being utilized for higher than the water quality storm event, then the volume being infiltrated for the higher storm events also needs to be analyzed to determine groundwater mounding impacts (Chapter 13). Infiltration is only being utilized for the water quality design storm.*

III. Sales Trailer and Model Home Plan

- A. *The plan shows a substantial number of signs and feather flags. The Board should evaluate the appropriateness and number of the signs.* Testimony was provided to the satisfaction of the Board as to the appropriateness and number of the signs and feather flags shown on the Sales Trailer and Model Home Plan. The location of the feather flags and duration of the flags will be approved as part of the Developer's Agreement.
- B. *The applicant should provide an estimate of the length of time these materials will be in place.* Testimony was provided to the satisfaction of the Board as to the estimated length of time these material will be in place. A note has been added to the plan regarding the duration of the materials being in place, they are also subject to review and approval by the Borough Council.
- C. *Based on the notes, it appears the model homes will not have water and sewer service. This should be confirmed. Special provisions may be required for a certificate of occupancy in these circumstances.* Comment is a statement of fact; the Applicant will

implement appropriate provisions as may be required to obtain a certificate of occupancy for the model homes.

IV. *Preliminary and Final Subdivision Plan*

- A. *Deeds, descriptions and lot closure calculations should be submitted and approved as a condition of any approval by the Board.* Deed descriptions and lot closure calculations are being provided with the Resolution Compliance package for review and approval by the Borough Engineer.
- B. *All lot numbers are to be approved by the tax assessor.* Correspondence has been provided to the Borough Tax Assessor for confirmation of the block and lot numbers of the property, a copy of the letter has been provided as part of this application package. Should the Tax Assessor require revisions to the Lot and Block numbers, the plans will be updated accordingly
- C. *All signatures by the applicant, surveyor, etc. will need to be on the plan before it is submitted for signature.* Comment is a statement of fact, all required signatures will be obtained prior to submission to the Borough for final sign-off.

V. *Boundary and Topographic Survey – No comment*

VI. *Architectural Plans – No comments*

VII. *Environmental Impact Statement – No comments*

VIII. *New - Traffic Engineering Review*

1. *As a condition of any favorable resolution, the applicant shall comply with the traffic engineering report dated August 21, 2021 as prepared by Mark Kataryniak, PE, PTOE, to the satisfaction of Mark Kataryniak, PE.* A detailed response narrative to the Borough Traffic Engineer's August 27, 2021 review letter and subsequent November 19, 2021 review letter is below.

Below is a compliance narrative as it relates to the Ferriero Engineer, Borough Traffic Engineer review letter dated November 19, 2021:

1. Based on the recommendation of the Borough Traffic Engineer, a sight easement is being proposed for the area south of the driveway. The area measures approximately 280 feet in length and is 15 feet wide at its widest. The sight easement description has been provided for review.
2. A note has been added to the Landscape Plan in the area of the sight easement stating that "Vegetation in excess of 30-inches in height vertically should be removed to a height of 14-feet to provide visibility for vehicles exiting the site driveway."

3. A note has been added to the Landscape Plan stating that the contractor, landscape architect, Borough Planner and Engineer, should review the vegetation clearing prior to clearing occurring.
4. Comment is a statement of fact; extensive supplemental planting is proposed along the Borough's scenic corridor area which will mitigate any vegetation loss due to the clearing of the sight lines.

Below is a compliance narrative as it relates to the Banisch Associates review letter dated January 3, 2022:

1. *These comments supplement our review memorandum to the Board on this application dated November 23, 2021. Comment is a statement of fact; no response required.*
2. *The applicant addressed the comments in our November 23, 2021 review memorandum at the Board's December hearing on this application, with the exception of Comments #1, name of the neighborhood, #4.b., clarification of proposed construction delivery days and times of day for construction deliveries, and #18 procedures regarding deer protection, maintenance and survival of reforestation trees and landscaping. Each of these may be addressed by the applicant providing supplemental testimony. Comment is a statement of fact; testimony was provided to the satisfaction of the Board regarding the three (3) outstanding items from the November 23, 2021 review letter.*
3. *A revised "Sales Trailer and Model Home Plot Plan" dated March 19, 2021, last revised 12-22-2021 has been submitted following discussion on site signs in December that identifies all proposed temporary signs, a temporary construction driveway (opposite Lake Road), the proposed permanent boulevard entrance and traffic circle at which the proposed temporary sales trailer and 4 parking spaces will be located, two model townhouses with 6 parking spaces, a construction trailer with 6 parking spaces, and signs, as follows:*
 - a. *One (1) 24 sq. ft. "Community ID Sign" – that appears to be 7' in height with a 4' high x 6' sign installed between two 7' high posts;*
 - b. *Six (6) Feather Flags, 12' in height, each with a flag that is 2'-2" wide x approximately 8' in height. One row of three (3) flags will be installed on the outside lanes of the boulevard entrance and exit driveway. The first one in each row will be set back 240' from the edge of pavement vs. the 40' setback from edge of pavement initially proposed by the applicant – thereby increasing the proposed distance of these signs from Route 202 by 200' toward the interior of the site;*
 - c. *Two (2) 12 sq. ft. (3' wide x 4' high) "Sales ID" signs mounted between posts at a height of approximately 7' – one reads "Thanks for Visiting" and the other "Welcome Home."*
 - i. *The location of these two proposed signs do not appear to be identified on the plans. Testimony on the location of these signs should be provided and the location should be added to the plans.*
 - d. *Two (2) approximately 12" x 12" x 7' high "Future Homeowner Parking" at the Sales Trailer 4-space parking lot; and*
 - e. *Two (2) undimensioned "The Model" signs to be erected adjacent to the front of each of the two model townhouses.*

Comments are statement of fact; no response required. The Applicant provided additional testimony to the satisfaction of the Board related to the temporary signage, the signage will be subject to approval by the Borough Council in the Developer's Agreement.

Ms. Shana Goodchild
March 15, 2022
Page 30 of 30

4. *The applicant should provide testimony explaining the length of time that the applicant wishes to maintain the proposed sales signs and the conditions under which the sales and construction trailer will be removed. Any approval of the applicants proposal should be made a condition of any approval that may be granted.* Testimony was provided to the satisfaction of the Board regarding the estimated length of time that the Applicant will utilize the Sales and Construction Trailers.
5. *We are aware that the applicant will be requesting a decision from the Board on the application. This application has involved a good deal of testimony over the course of several meetings that have included an extensive series of conditions of approval. Comment is a statement of fact; no response required.*
6. *At this juncture in the hearing process, assuming the hearing advances to an appropriate decision point on the application, we recommend the Board consider the following course(s) of action:*
 - a. *If the Board is inclined toward granting an approval, we recommend that the Board authorize the Board Attorney to prepare a draft resolution of approval including all of the variances requested and conditions of approval agreed to by the applicant during the course of the hearing. This action would be authorized by a motion and a second by Board members with only a voice vote rather than a roll-call vote.*
 - b. *This motion would not end the public hearing. The motion authorizing the Board Attorney to prepare a draft resolution of approval would involve holding the hearing open until the Board next meets to review and discuss the draft resolution and to decide and formally vote on the application, at which time the Board's vote would formally grant approval of the application.*
 - c. *The hearing should also be held open until the draft resolution is prepared so that issues or questions that may arise in the draft resolution can be resolved by the Board prior to voting on the application.*

Comment is a statement of fact; no response required.

We trust the above information is satisfactory for Resolution Compliance review. Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

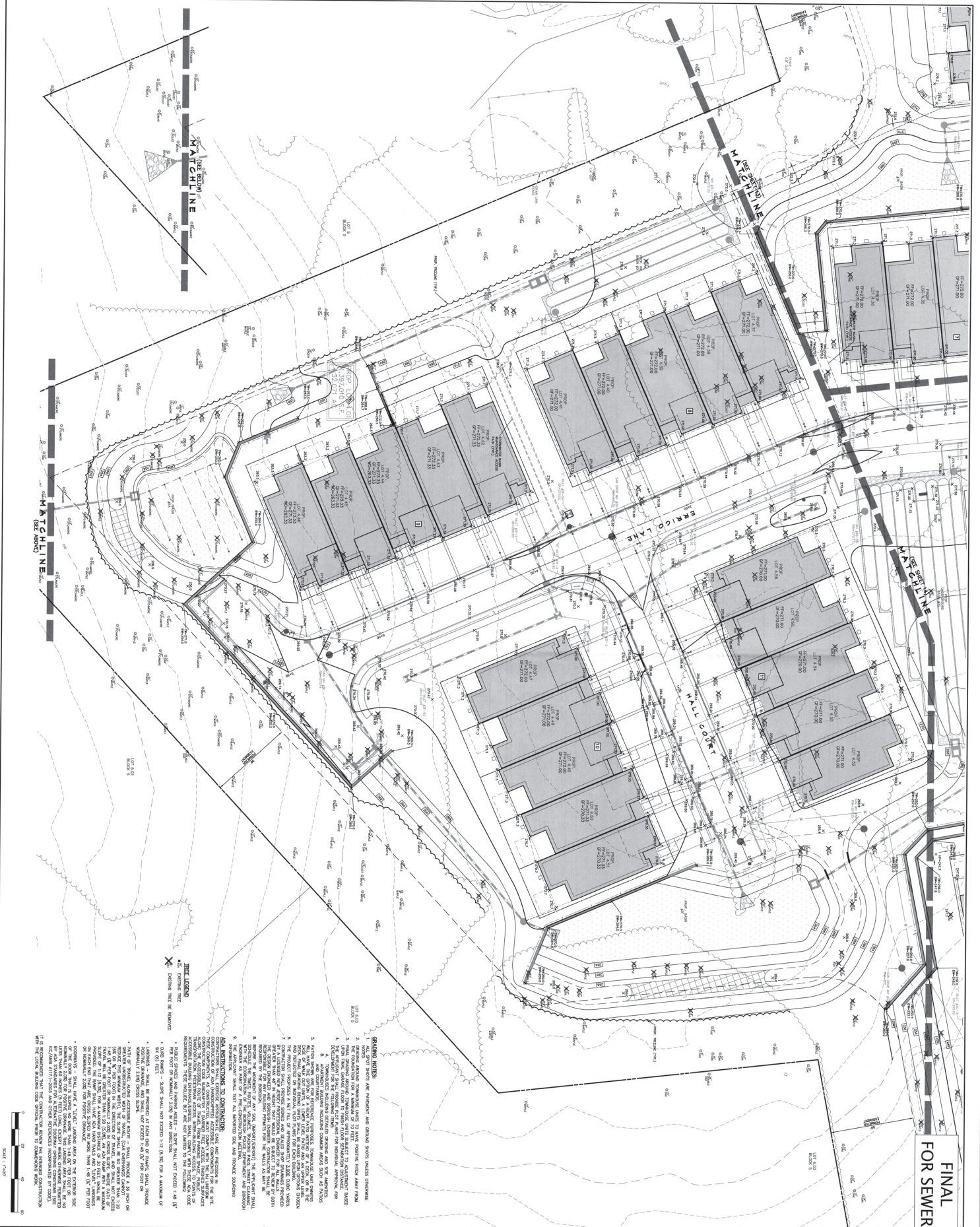
GLADSTONE DESIGN, INC.



Matt Draheim, L.L.A.

Cc: Craig Gianetti, Esq., Project Attorney
Pulte Homes of NJ, LLP., Applicant
Melillo Equities, Applicant
Paul Ferriero, P.E., Ferriero Engineering, Board Engineer
David Banisch, P.P., Banisch Associates, Board Planner
Frank Linnus, Esq., Board Attorney

Enclosures



FINAL FOR SEWER

NO.	DATE	DESCRIPTION
1	11-20-23	REV. PER BOARD COMMENTS
2	11-20-23	REVISION COMMENTS
3	11-20-23	REV. PER BOARD COMMENTS
4	11-20-23	REV. PER BOARD COMMENTS
5	11-20-23	REV. PER BOARD COMMENTS
6	11-20-23	REV. PER BOARD COMMENTS
7	11-20-23	REV. PER BOARD COMMENTS
8	11-20-23	REV. PER BOARD COMMENTS
9	11-20-23	REV. PER BOARD COMMENTS
10	11-20-23	REV. PER BOARD COMMENTS
11	11-20-23	REV. PER BOARD COMMENTS
12	11-20-23	REV. PER BOARD COMMENTS
13	11-20-23	REV. PER BOARD COMMENTS
14	11-20-23	REV. PER BOARD COMMENTS
15	11-20-23	REV. PER BOARD COMMENTS

REVISIONS

Pulte HOMES

MELLO EQUITIES

GDI

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 Landscape Architects
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 www.roundkkennedy.com

PARC

PUTTE HOMES - FAR HILLS
 BLOCK 5 LOT 4
 BOROUGHS OF FAR HILLS
 SOUTHERN COUNTY
 TARRANT COUNTY
 TEXAS

GRADING PLAN

PRELIMINARY AND FINAL GRADE
 SURVEILLANCE PLANS
 SHERIDAN COUNTY

DATE: MARCH 19, 2023
 SCALE: 1" = 20'
 SHEET NO.: 16 OF 42
 DRAWN: THC
 CHECK: JMD
 DATE: 03-17-23

Exhibit K



Sohail Khan <sohail.nj99@gmail.com>

RE: 3 Fox Hunt Ct & Errico Acres

1 message

Paul Ferriero <paul.ferriero@ferrieroengineering.com>
To: Sohail Khan <sohail.nj99@gmail.com>
Cc: "ghazalakhan1@gmail.com" <ghazalakhan1@gmail.com>

Wed, Nov 22, 2023 at 9:34 AM

I will give you a call this afternoon when I get back to Chester.

Paul Ferriero, PE, PP, CME, CFM, LEED AP

Ferriero Engineering, Inc.

180 Main Street

PO Box 571

Chester, NJ 07930

908-879-6209

From: Sohail Khan <sohail.nj99@gmail.com>
Sent: Wednesday, November 22, 2023 9:30 AM
To: Paul Ferriero <paul.ferriero@ferrieroengineering.com>
Cc: ghazalakhan1@gmail.com
Subject: Re: 3 Fox Hunt Ct & Errico Acres

Paul:

Thanks for your note and the details behind the approval process. I have few items which I would like to discuss with you. Please let me know your availability for a call.

Regards Sohail

Cell: 908-720-9393

On Nov 21, 2023, at 4:18 PM, Paul Ferriero <paul.ferriero@ferrieroengineering.com> wrote:

Mr. and Mrs. Khan,

I apologize for not returning your call earlier. I have been on the road most of the last two weeks. I wanted to give you an update on the project adjoining your site.

Please note that the retaining wall in question has always been part of the site plan. It has been on the plans reviewed and approved by the Planning Board since it was presented at the public hearings in front of the Board. The wall was not "added" once the construction started.

The public hearing process for projects like this is designed to allow adjoining property owners to provide input to the Board as it reviews applications for development. I don't know if you were at any of the hearings or provided any input. The way the process works is that once the Board approves the plan, that is what is to be developed. While there may be some minor field changes along the way, something like the retaining wall in question is not one of those items. Likewise, the landscaping approved as part of the project is the landscaping that the developer is obligated to install. The Borough cannot unilaterally require additional landscaping after the project is approved and the developer has the right to rely on the approved plans.

The plan shows some landscaping below the wall adjacent to your property. I agree that it is less than that provided on the adjoining lot, but I don't know why the designer proposed it that way. As I said when we met in the field, I will work with the developer when it comes time to do the plantings to see if I can get them to supplement the approved plantings, but as I said above, I cannot require them to do so. I have had success with the developer in the past accommodating reasonable requests.

The tree buffer on your property is primarily deciduous and, as you note, the leaves are down this time of the year. This increases the visibility to your property. As the development plan for your lot has increased the disturbance at the rear of your home by grading further into the hill and relocating the shed closer to the property line, the amount of trees on your property has been reduced.

The new plantings on the adjoining property are proposed to be evergreen species that typically grow at a rate of about one foot per year. This is a pretty rapid growth rate, however it will still take some years to shield the entire wall. Just as we cannot add plantings, we cannot increase the size of the trees shown on the plans. The plans call for 8-10 foot high trees at planting, which is significantly greater than the standard of 5-6 feet. Again, I will do what I can to work with the developer to improve the buffer when it gets installed.

It is too late in the season to plant these trees and the amount of disturbance in the area make it somewhat impractical to have done it earlier this year. The planting will most likely occur in the spring planting season to get these trees growing as soon as possible.

Paul Ferriero, PE, PP, CME, CFM, LEED AP

Ferriero Engineering, Inc.

180 Main Street

PO Box 571

Chester, NJ 07930

908-879-6209

***DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.***
 15 Mountain Boulevard
 Warren, N J 07059
 (908) 757-7800
Attorney ID# 032962004
 Attorneys for the Borough of Far Hills

<p>In the Matter of the Application of the Borough of Far Hills.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CIVIL PART SOMERSET COUNTY</p> <p>DOCKET NO. SOM-L-000903-15</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF JOSEPH V. SORDILLO, ESQ., IN OPPOSITION TO THE MOTIONS TO INTERVENE AND ENFORCE LITIGANT’S RIGHTS</p>
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I, Joseph V. Sordillo, Esq., of full age, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C. I was the Borough Attorney for the Borough of Far Hills (the “Borough” or “Far Hills”) until October 10, 2023, when Albert Cruz, Esq., from my firm, took over the role as Borough Attorney.

2. I make this Certification in Support of the Borough’s opposition to the Motion to Intervene and Motion to Enforce Litigant’s Rights filed on behalf of Pulte Homes of NJ, Limited Partnership (“Pulte”) in the above-captioned matter.

3. In compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), on or about July 2, 2015, the Borough filed the above-captioned matter with the Superior

Court of New Jersey, entitled In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15, seeking, among other things, a Judgment of Compliance and Repose consisting of a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine, in addition to related reliefs (the “Mount Laurel litigation”).

4. The Borough and FSHC entered into a Settlement Agreement dated October 15, 2018, setting forth the agreed upon resolution of the Mount Laurel litigation (the “Settlement Agreement”).

5. The Settlement Agreement was approved by the Court at a duly-noticed Fairness Hearing held on December 20, 2018.

6. In compliance with the Settlement Agreement, the Far Hills Borough Planning Board (the “Board”) adopted an amended Fair Share Plan on August 5, 2019, which was endorsed by the Borough Council on July 8, 2019.

7. On November 17, 2020, the Court approved the Borough’s amended Fair Share Plan at a duly-noticed Compliance Hearing.

8. The Court entered a Conditional Judgment of Compliance and Repose on December 16, 2020 (the “Conditional JOR”).

9. On March 16, 2022, the court entered an Amended Judgment of Compliance and Repose (the “Amended JOR”), acknowledging compliance with the conditions of the December 16, 2020 Conditional JOR.

10. The Settlement Agreement and the approved Borough’s Fair Share Plan included the development of an inclusionary, residential rental and for sale development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable

apartments (25 family affordable units and 4 age-restricted affordable units) on the that certain tract of land lying and being in the Borough of Far Hills, County of Somerset and State of New Jersey, identified as Block 5, Lot 4, located at 220 Route 202, and consisting of approximately 42.3± acres (the “Kimbolton Site”) (the “Kimbolton Project”).

11. The Kimbolton Project was previously referred to in the Borough’s proceedings before the Court in its Mount Laurel litigation as the “Errico Acres Site.”

12. Arroyo, LLC, is the current fee simple owner of the Kimbolton Site.

13. The Borough and Melillo Equities, LLC (“Melillo”), Pulte’s predecessor, entered into a Memorandum of Understanding dated October 9, 2018, which memorialized the general terms of the Kimbolton Project (the “MOU”).

14. The Borough and Melillo entered into an Affordable Housing Agreement dated December 9, 2019, setting forth the agreed upon terms for the Kimbolton Project (the “AHA”).

15. Based on the terms of the AHA with Melillo, the Borough entered into a First Amendment to the Settlement Agreement with FSHC, dated July 6, 2020 (the “Amended Settlement Agreement”).

16. In compliance with the AHA and the Settlement Agreement, on December 23, 2019, the Borough adopted Ordinance 2019-08 establishing the TH-6-IAR Affordable Housing Overlay (AHO) Zone for the Kimbolton Site to provide for the development of the Kimbolton Project.

17. Since the Borough’s filing of its Mount Laurel litigation in 2015, and throughout its negotiations of the Settlement Agreement, AHA, and Amended Settlement Agreement, the fee simple owner of the Kimbolton Site was Errico Acres, LLC, who was not a party to any of the agreements, nor participated in the Mount Laurel litigation.

18. On or about April 9, 2021, Pulte Homes of NJ, Limited Partnership (“Pulte”), with the consent of the owner Errico Acres, LLC, filed an application with the Far Hills Borough Planning Board (the “Board”) seeking preliminary and final major site plan and subdivision approval, with variance relief and design waivers for the development of the Errico Acres Project.

19. Melillo was not identified as an applicant in the land use application before the Board.

20. After public hearings held on July 5, 2021, August 2, 2021, August 14, 2021, September 22, 2021, October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, and January 3, 2022, on January 3, 2022, the Board granted preliminary and final major subdivision approval and preliminary and final major site plan approval with conditions (the “Approval”), which Approval was memorializing in a Resolution of Approval adopted by the Board on February 7, 2022 (the “Resolution”).

21. Pursuant to the terms and conditions of the Approval, Pulte is required to grant the Borough a Perimeter Buffer Easement, Stream Corridor Easement, Scenic Corridor Easement, Stormwater Drainage Management Easement, 100 Foot Common Area/Open Land Easement, Nature Path Easement and Sight Triangle Easement on a portion of the Errico Acres Site (the “Easements”).

22. The Approval also required that Pulte enter into a Developer’s Agreement with the Borough.

23. The Approval also required Pulte to submit the proposed homeowners’ association formation documents (“HOA Documents”) to the Borough for its approval subject to the compliance with the Approval and the terms of the AHA.

24. Under cover letter dated March 15, 2022, received by the Borough on March 22, 2022, Pulte submitted its initial compliance package to the Borough. Attached hereto as **Exhibit A** is a true and correct copy of the March 15, 2022 letter from Gladstone Design, Inc.

25. The March 15, 2022 submission did not include the Developer's Agreement, the Easements, or the HOA Documents, providing that same would be provided under separate cover.

26. By e-mail dated March 21, 2022 from myself on behalf of the Borough to James Mullen, Esq., of Pulte, the Borough provided Pulte with an initial draft Developer's Agreement between the Borough and Pulte pursuant to the Approval.

27. On May 3, 2022, via e-mail Pulte sent proposed revisions to the Developer's Agreement. The May 3, 2022 e-mail provided that a copy of the revised Developer's Agreement was being provided to Anthony Melillo and Craig Gianetti, Esq., for their review and comment as well. There were still a number of "blanks" included in the revised Developer's Agreement provided May 3, 2022, including the required bonding amounts and phasing of the development.

28. Through an e-mail exchanges on June 14, 2022 and June 15, 2022 between Mr. Mullen and myself, the status of the Developer's Agreement was discussed, including the potential need for a separate, second Developer's Agreement between the Borough and Melillo.

29. To be compliant with the Conditional JOR and Amended JOR it was discussed between the Borough, Pulte and Melillo whether a second Developer's Agreement with Melillo was required. Additionally, it was represented to the Borough and the Board that Melillo or related entity would be the owner and operator of the affordable housing units, and at the time the Borough was under the impression that the affordable housing units were going to be constructed by Melillo, not Pulte, thus, the Borough was of the opinion that a separate Developer's Agreement with Melillo may be required.

30. During these discussions, Melillo and Pulte were taking the position that a second Developer's Agreement with Melillo was not required.

31. By e-mail sent on June 30, 2022, from me to Craig Gianetti, Esq., attorney who represents Melillo, and represented Pulte in connection with the land use application before the Board, I advised that I was working on preparing the second Developer's Agreement with Melillo.

32. Also, raised in my June 30th e-mail was the proposed phasing schedule for the affordable housing project, which needed to be included in the Developer's Agreement pursuant to the terms of the Approval and the Condition JOR and Amended JOR.

33. After discussing the draft Developer's Agreements with the Borough professionals, on July 1, 2022, I was advised that FSHC may require sign-off on Pulte's proposed phasing schedule in the Developer's Agreement.

34. By email dated July 15, 2022, on behalf of the Borough I sent a revised Developer's Agreement with Pulte to Mr. Mullen and Mr. Gianetti. In this e-mail, I raised the difficulties with preparing a second Developer's Agreement with Melillo and raised the potential of adding Melillo as a party to the Developer's Agreement with Pulte.

On July 21, 2022, Mr. Mullen, Mr. Gianetti and I held a conference call to discuss the Developer's Agreement, including the option of having a second Developer's Agreement with Melillo or adding Melillo to the Developer's Agreement with Pulte.

35. It is important to note that on June 27, 2022, Mayor Paul Vallone, the Mayor of Far Hills Borough who was in office throughout the Mount Laurel Litigation and the Borough's negotiation of the Settlement Agreement and affordable housing agreements, announced his resignation from his position as Mayor, effective July 15, 2022.

36. Mayor Vallone's resignation was a major disruption in the Borough, specifically with regard to the affordable housing developments, as he was directly involved in all aspects of these developments.

37. At the July 25, 2022 Council meeting, the Council appointed David Karner as the interim Mayor to fill the vacancy for the end of Mayor Vallone's term on December 31, 2022.

38. At the November 2022 general election, Kevin Welsh was elected as the new Mayor of Far Hills, taking office commencing in January 2023.

39. During this period, the Borough, under its new leadership in the position of Mayor, took time to get up to speed on the various affordable housing developments, along with the terms of the corresponding agreements. In connection with same, the Borough sought requests for proposals for a financial impact study of the Errico Acres Project. The Borough contracted with The Otteau Group to perform the financial impact study.

40. In the meantime, throughout July 2022, the Borough was working with Pulte's engineers on the finalization of its Treatment Works Approval ("TWA") application with the New Jersey Department of Environmental Protection.

41. On August 8, 2022, the Borough adopted Resolution No. 22-109, which authorizing the Borough Engineer to sign Pulte's TWA.

42. Throughout August 2022, the Borough worked with Pulte and Melillo regarding the preparation and finalization of the Developer's Agreement.

43. Representatives of the Borough and Melillo met on August 4, 2022 to discuss the status of the Errico Acres Project, including the Borough's financial impact study. During this meeting, the parties discussed the possibility of including any revisions to the affordable housing payment schedules in the AHA in the Developer's Agreement.

44. On August 10, 2022 and August 17, 2022, I participated in telephone and virtual conferences with representatives of Pulte and FSCH relating to the phasing of the development of the affordable housing units.

45. After exchange of numerous emails and conversations, by e-mail dated September 21, 2022, the Borough advised that FSCH accepted the proposed phasing language to be included in the Developer's Agreement.

46. Through an e-mail exchange on September 29, 2022 and September 30, 2022, the Borough, Pulte and Melillo discussed the potential revisions to the payment schedules and the finalization of the Developer's Agreement, which may include such revised schedules therein.

47. On October 5, 2022, Pulte, Melillo and the Borough held a conference call during which the parties discussed the status of the financial impact study, the Developer's Agreement, along with the revisions to the payment schedules being included in the Developer's Agreement or an amendment to the AHA.

48. On October 14, 2022, I received a copy of the latest revised HOA documents from Pulte.

49. On October 26, 2022, the Borough Engineer issued a compliance review letter for the Errico Acres Project and Approval.

50. During an e-mail exchange on November 7, 2022 and November 8, 2022, the Borough and Melillo discussed the preparation of the required Deed Restriction for the affordable housing units. During this exchange, the Borough was advised that the entity to own the affordable housing units was to be "222 Route 202 FH, LLC."

51. At the request of Pulte, on November 14, 2022, the Borough adopted Resolution No. 22-150, accepting and approving the proposed names of the private right-of-ways in the Errico Acres Project.

52. On November 17, 2022, I received an e-mail from Mr. Mullen questioning whether the Developer's Agreement was ready for execution, now that the parties agreed that any revision to the affordable housing payment schedules would be handled in a separate agreement.

53. In late November, it came to the Borough's attention that the escrow account for this development was in arrears, and that pursuant to Borough Ordinances and the MLUL, this account needed to be refunded in order for the Borough to proceed with its compliance review. The escrow account was refunded on November 30, 2022.

54. By e-mail exchange on December 1, 2022, FSHC questioned the status of the finalization of the Developer's Agreement and was advised that it was not yet finalized.

55. On December 5, 2022, I received a further revised Developer's Agreement from Pulte. On December 7, 2022, I received additional comments to this revised version of the Developer's Agreement on behalf of Melillo.

56. On December 12, 2022, I received from Melillo drafts of the HOA Documents, the revised Developer's Agreement, Scenic Corridor Easement, Sight Triangle Easement, Stream Corridor Easement, and Perimeter Buffer Easement. At this time I was advised that the Affordable Housing Deed Restriction would be in the name of "1 Dillon FH, LLC," an entity I had not previously been made aware was involved in this project.

57. By letter dated December 20, 2022, Pulte's engineer submitted an updated compliance review packet with the Borough and Board.

58. On December 21, 2022, I provided detailed comments and questions in response to my review of the Easements, the Developer's Agreement, the Affordable Housing Deed Restriction, and the HOA Documents.

59. On December 22, 2022, I received responses to a number of my comments and questions from Pulte.

60. After returning from being away for the holidays, on January 4, 2022, I confirmed with Pulte and Melillo that the Developer's Agreement would be required to be authorized by Resolution of the Borough Council, while the Easements would be required to be accepted by Ordinance pursuant to the Public Lands and Buildings Law.

61. Upon receipt from Pulte that the list of street names previously approved was missing one of the roadways, on January 23, 2023, the Borough adopted Resolution No. 23-044, amending and replacing Resolution No. 22-150, accepting and approving the proposed names of the private right-of-ways in the Project.

62. On February 7, 2023, Pulte provided the Borough with a copy of the Cross Access Agreement between the owners of Lots 4.01 and 4.02 (the townhouse lot and the affordable housing lot) with regard to the sharing of access and services, required pursuant to the terms of the Approval. This was the first time I was provided a copy of this Cross Access Agreement.

63. Through an exchange of e-mails between myself and Mr. Mullen on February 9, 2022 through February 12, 2022, the Borough attempted to have all of the Easements being granted to the Borough completed in final form.

64. During this exchange, the Borough and Pulte realized that one of the required easements, the Stormwater Drainage Maintenance Easement was not yet prepared. Working together, the Borough and Pulte were able to prepare this Easement on February 10, 2023.

65. On February 13, 2022, representatives of the Borough, Melillo and Pulte conducted a conference call to go over all of the remaining compliance requirements for the Errico Acres Project.

66. During this February 13th call, it was determined that an additional easement required to be granted to the Borough was not yet prepared, being the Nature Path Easement. Once again, working together, the Borough and Pulte were able prepare this Easement on February 13, 2023.

67. During this February 13th call was the first time that either Pulte or Melillo raised any timing pressure on the completion of the compliance review process. Until this time the Borough was unaware of Pulte's need to complete the clearing of the trees prior to April 1, 2023. Additionally, during this call was the first time the Borough was made aware of a March 7, 2023 deadline, which the Borough still does not know how same is applicable to the Borough's compliance review process.

68. At the February 13, 2023 Council meeting, an Ordinance authorizing the Borough's acceptance of the Easements was on the agenda. After an extreme public outcry and objection, the Borough tabled the Ordinance for introduction at the February 27, 2023 Council meeting.

69. On February 16, 2023, by e-mail to Mr. Mullen, I advised of additional comments/revisions to the Easements to be granted to the Borough that were raised by the Borough Council during its executive session discussion on February 13th.

70. In this e-mail, I further advised Pulte that the Borough intended to have all its professionals in attendance at the February 27th Council meeting to make a presentation of the Easements being granted to the Borough and to address questions/concerns of the public. At the request of the Borough, Pulte provided exhibits of the Easements to be presented to the public at the February 27th meeting.

71. On Wednesday, February 22, 2023, the same date that Melillo's Motions were filed, I received an e-mail from Pulte enclosing a revised Developer's Agreement, which filled in the blanks on the required amounts for the buffer landscape bond.

72. Through e-mail exchanges between myself and Mr. Mullen on February 23, 2023 and February 24, 2023, the Easements were further revised and finalized for acceptance by the Borough.

73. At the February 27, 2023 Council meeting, the Borough conducted its presentation to the public and introduced Ordinance No. 2023-02, accepting the Easements.

74. On March 3, 2023, I provided a further revised version of the Developer's Agreement, inclusive of comments and concerns from the governing body, as well as the inclusion of additional terms that were required to be included in the Developer's Agreement pursuant to the Approval. Such additional terms, inclusive of the agreed upon timing for the placement of the feather flags for the sales and model home, was not included in any of the prior versions of the Developer's Agreement, having been previously missed by all parties.

75. On March 15, 2023, after Compliance Review, the Site Plans were signed by the Board Chair, Board Secretary and Board Engineer.

76. On March 17, 2023, the Borough signed the Developer's Agreement which had been signed by Pulte the prior day. Thereafter, Pulte commenced to obtain zoning and construction permits.

77. During my time as Borough Attorney, the Borough has at all times been working with Pulte and Melillo on completing the Kimbolton Project.

78. There have been documents, terms and conditions of approval missed by all parties, that have been caught and corrected throughout the process.

79. Furthermore, given the size and impact of the Kimbolton Project on the Borough, inclusive of the increase in population, impact on Borough services, and the concerns over the maintenance of the on-site sanitary sewer treatment plant, the Borough taking its time to make sure all the documents are correct was not unreasonable.

80. Based on the foregoing, during my tenure as the Borough Attorney for the Borough of Far Hills, the Borough has been actively engaging and working with Pulte to meet its compliance.

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



Joseph V. Sordillo, Esq.

Dated: April 3, 2024

EXHIBIT A

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

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Ronald A. Kennedy, P.E., P.P.; CME; LEED AP
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Robert C. Morris
Robert C. Muschello, P.E.

Received by:
Planning Board Secretary

MAR 22 2022

Borough of Far Hills

March 15, 2022
683-17

Ms. Shana Goodchild
Far Hills Borough Planning Board Secretary
6 Prospect Street
Far Hills, New Jersey 07931

Re: Resolution Compliance
Pulte Homes – Far Hills
Preliminary and Final Major Site and Subdivision Plans
Block 5, Lot 4, US Highway Route 202
Borough of Far Hills, Somerset County, New Jersey
Resolution No.: 2022-10

Dear Ms. Goodchild,

On behalf of the applicant, Pulte Homes, please find attached the following plans and documentation in support of Resolution Compliance for the above referenced application:

1. Five (5) sets of plans entitled "Pulte Homes – Far Hills, Preliminary and Final Major Site Development and Subdivision Plans", dated March 19, 2021, revised through March 15, 2022, prepared by Gladstone Design, Inc.
2. Five (5) sets of plans entitled "Pulte Homes – Far Hills, Preliminary and Final Major Subdivision Plat", dated March 19, 2021, revised through March 15, 2022, prepared by Gladstone Design, Inc.
3. Five (5) sets of architectural drawings entitled "Pulte Homes – Far Hills", dated March X, 2021, revised through March 15, 2022, prepared by Minno & Wasko Architects.
4. Five (5) sets of plans entitled "New Jersey American Water, Watermain Extension Plans" dated July 30, 2021, revised through December 15, 2021, prepared by Gladstone Design, Inc.
5. Five (5) copies of the Engineers Construction Cost Estimate for Inspection Fees dated March 15, 2022, prepared by Gladstone Design, Inc.
6. Five (5) copies of correspondence from addressed to the Borough Tax Assessor confirming the block and lot numbers.
7. Five (5) copies of deed descriptions, lot closure calculations and proposed easements for the project, prepared by Gladstone Design, Inc.

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8. Five (5) copies of correspondence to the Borough Fire Official requesting review of the fire hydrant locations.

Below is a compliance narrative as it relates to the Resolution of Approval, Memorialized on February 7, 2022.

1. Comment is a statement of fact; a narrative of compliance with the various Board Engineer review letters is outlined below.
2. Comment is a statement of fact; a narrative of compliance with the various Board Planner review letters is outlined below.
3. Comment is a statement of fact; a narrative of compliance with the various Board Traffic Engineer review letters is outlined below.
4. A note has been added to the cover sheet, Sheet 1 of 42, stating, "The Applicant shall provide "as built" plans from a licensed surveyor and furnish same to the Borough Engineer for review and approval. The as-built of the individual buildings shall be provided prior to the individual buildings receiving certificates of occupancy. The as-built of the infrastructure shall be provided by prior to 90% of the certificates of occupancy being issued for the project (90% of 134 total units equals 121 total units or 121 certificates of occupancy)."
5. Correspondence has been provided to the Borough Tax Assessor for confirmation of the block and lot numbers of the property, a copy of the letter has been provided as part of this application package. Should the Tax Assessor require revisions to the Lot and Block numbers, the plans will be updated accordingly.
6. Comment is a statement of fact; the Applicant will obtain approval by the governing body of the street names at the time of the Developer's Agreement.
7. Comment is a statement of fact. Copies of the easements outlined in the Resolution will be provided to the Borough Attorney and Borough Engineer and the Borough Planner for review and approval.
8. Comment is a statement of fact, the Applicant will obtain the required local, County, and State, including but not limited to, NJDEP Land Use Permits, NJDEP Treatment Works Approval, Somerset-Union Soil Conservation District Certification, Somerset County Planning Board and NJDOT Access Permits. Copies of the approvals will be provided to the Board for their records upon receipt.
9. Comment is a statement of fact, the Applicant will coordinate with the Borough Engineer to provided the requisite number of prints for the final subdivision plat signatures.
10. An engineering cost estimate is included with this package for inspection fee purposes for review and approval by the Borough Engineer and Borough Attorney.

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11. Comment is a statement of fact; the Applicant will enter into a Developer Agreement with the Borough. A draft copy of the Developer's Agreement will be provided under separate cover for review.
12. Comment is a statement of fact; the applicant will keep all taxes, municipal charges, escrows and other fees current in accordance with the MLUL.
13. Comment is a statement of fact. A note has been added to the architectural plans stating "The affordable housing apartment building materials will be the same as the townhouses with similar and compatible exterior architectural elements".
14. Comment is a statement of fact; a deed restriction will be placed over the meadow areas for maintenance purposes. The deed restriction will be included in the Homeowners Association declaration of covenants. The deed restriction will be provided under separate cover for review and approval by the Borough Engineer and Attorney.
15. A note has been added to the Site Removal Plan (Sheet 3 of 42) stating "Demolition and removal and/or disposal of any existing structures shall be in accordance with all laws and regulations".
16. Comment is a statement of fact; the Applicant will comply with the items outlined in the October 1, 2021 submission letter from Gladstone Design, Inc.
17. The Site Plans have been revised to show the required nine (9) electrical vehicle charging stations for the apartment building. Notes have been added to the Cover Sheet and Site Dimension Plan station the EV charging stations will comply with the state's recently adopted EV supply equipment statute to the extent it is applicable. A note has also been added stating "The EV parking spaces shall be limited for use by only the residents and their guests of the development".
18. Comment is a statement of fact; the Applicant will submit Homeowner's Association (HOA) documents subject to the review and approval of the Borough Attorney and the Borough Engineer prior to obtaining a building permit. Drafts of the Homeowner's Association documents will be provided under separate cover.
19. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for the maintenance of the common improvements, including the stormwater management system for the project."
20. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for the operation and maintenance of the sewer treatment facility and system and will demonstrate adequate security for the benefit (no bonding) of the Borough in the form of the Reserve Schedule set forth in the HOA Annual Budget regarding continuing operations, proper maintenance and protection against the results of catastrophic failures."
21. A note has been added to the Cover Sheet stating, "The HOA shall be responsible for maintenance of any EV charging stations located in common areas and guest parking spaces. EV charging stations located on the affordable housing lot shall be maintained by the owner of that lot."

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22. A note has been added to the Grading Plan stating "Before the movement of any soil (export/import) the Applicant shall schedule the times, routes, volumes, tracking pads, street cleaning with the coordination of the Borough Police Department and the Borough Engineer as part of a pre-construction meeting. The Applicant shall test all imported soil and sourcing information."
23. The Water Main Extension Plans are included with this package for review and approval by the Borough Engineer.
24. Comment is a statement of fact. A note has been added to the Cover Sheet stating "The Applicant shall obtain United States Postal Service and local postal office approval of the "ganged" mailboxes prior to issuance of the first certificate of occupancy."
25. Notes have been added to the Landscape Plans stating, "Prior to any tree removal, the Applicant shall stakeout the clearing limits in the field which shall be subject to review and approval from the Board professionals." "Tree removal shall be in accordance with NJDEP requirements as applicable and shall be reviewed and approved by the Borough Engineer and Borough Planner." "Applicant shall avoid damage to trees to remain and shall avoid root compaction by restricting heavy equipment traffic within the dripline of trees to remain."
26. A note has been added to the Landscape Plan and Soil Erosion Plan stating, "The Applicant shall provide satisfactory installation of appropriate protection for tree removal. The tree removal schedule to the extent practicable shall avoid erosion problems. During construction, the Borough Engineer may require the Applicant to install erosion control measures, such as double silt fencing, staked haybales, etc., where in the reasonable opinion of the Borough Engineer such measures are necessary to address possible erosion concerns and emergent weather conditions."
27. A note has been added to the Cover Sheet stating, "The Applicant or the HOA shall test the emergency generator for wastewater treatment facility once per week, which shall be limited between the hours of 10:00 a.m. until 2:00 p.m. Tuesdays through Thursdays."
28. The Landscape Plan has been revised to add notes regarding maintenance and retention of the general wooded area along the front portion of the property. A note has been added to the Landscape Plan stating, "The walking path is to be natural and not be mowed."
29. A note has been added to the Landscape Plan stating, "The Borough Engineer and Planner shall review the proposed reforestation tree species to be planted and the Applicant agrees to accommodate any reasonable tree species replacements or substitutions that may be recommended by the Borough's professionals consistent with the NJDEP-approved list of tree species for reforestation."
30. Comment is a statement of fact. A note has been added to the architectural plans stating "The sewer treatment building will be constructed with the same materials and compatible designs and features as the townhouses and the affordable housing building."
31. A note has been added to the Landscape Plan stating, "The Applicant shall submit a plan for clearing to create sight easements at the access driveway. The execution of same

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- shall be subject to review and approval of the Board's Traffic Engineer. Clearing for any sight easements and or required sight distance at the access driveway shall be subject to review and approval from the Board Traffic Engineer and Borough Planner. Supplemental plantings shall be provided as may be required outside the sight easements subject to review and approval from the Borough Planner."
32. The Landscape Plan has been revised to show the removal of invasive species from the wooded area to remain along Route 202 frontage and within the conservation easement and reforestation area. Notes have been added on the means and methods for removing the invasive species in accordance with NJDEP requirements.
 33. A note has been added to the Cover Sheet stating, "Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval."
 34. Comment is a statement of fact; the Applicant will comply with the COAH phasing schedule for producing the affordable units, except as may be modified by the Borough in the Developer's Agreement since the market-rate for-sale townhouses are provided in 23 four- and five-unit buildings and the affordable units are rental apartments contained wholly within one building.
 35. The Sales Trailer and Model Home Plot Plan has been revised to include a note regarding the hours for displaying and location of the feather flags shall be addressed as part of the Developer's Agreement. Sales trailer and model home plan improvements shall be removed no later than after marketing and sales are completed with best efforts to conclude within three (3) years of the commencement of building construction
 36. Comment is a statement of fact; the Applicant's satisfaction of all comments and agreements made during testimony before the Board except as may be modified herein.
 37. Comment is a statement of fact; all conditions contained in this Resolution and in the record of proceedings in this matter including any agreements made by the Applicant were essential to the Board's decision to grant the approvals set forth herein.
 38. A note has been added to the Cover Sheet stating, "The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case."
 39. A note has been added to the Cover Sheet stating, "The Borough reserves the right to request additional reasonable and customary site improvements should actual field conditions vary from what is depicted on the Approved Plans and/or is indicated by the design."

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40. A note has been added to the Cover Sheet stating, "Site work shall not commence prior to compliance with the terms and conditions set forth herein, except for those conditions that cannot be satisfied until after commencement of site work."
41. A note has been added to the Cover Sheet stating, "The granting of the site plan approval specified herein shall not be construed to include satisfaction of the Uniform Construction Code of the State of New Jersey."
42. Comment is a statement of fact; the Applicant will comply with all applicable affordable housing requirements as required by the Borough ordinances which have been adopted to implement UHAC regulations, including but not limited to income distribution, phasing in the affordable units (except as may be modified by the Borough), heating source, accessibility and adaptability, amenities, size of units and bedrooms.
43. Comment is a statement of fact; the Applicant will engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification. The Applicant will obtain approval of the Affordable Housing Professional Services Agreement by the Borough Attorney and/or the Borough Planner. Affirmative marketing, prospective tenant income verification and tenant qualification activities shall ensure that a qualified pool of Applicants is established for building occupancy at the time a certificate of occupancy is issued for the affordable housing apartment building.
44. Comment is a statement of fact; the Applicant will submit deed restrictions in accordance with UHAC regarding the affordability control period. At the end of the affordability control period, nothing shall preclude the Borough from electing to release the affordability controls in accordance with applicable law.
45. A Vehicle Turning Movement Plan for school buses has been prepared and is included with this package for the Board's Traffic Engineer to review and approve.
46. A note has been added to the Site Dimension Plan stating, "The emergency generator for the wastewater treatment plant shall be enclosed within a waterproof sound attenuating enclosure." A detail of the enclosure has also been added to the Construction Detail sheet.
47. Comment is a statement of fact. No hot box for water connection is required for the project. Should a water connection hot box be needed at some point in the future, design and installation will require amended site plan approval from the Board.
48. A note has been added to the Architectural Plans regarding backup power source for the affordable housing building. A detail for the backup power source has been added to the Architectural Plans
49. A note has been added to the Cover Sheet stating, "The Applicant shall maintain control of the construction site at all times to prevent unauthorized access to the site."
50. Comment is a statement of fact. This narrative contains a summary of each of the conditions of approval and how each is being satisfied. The additional documentation provided with this package is also in support of Resolution Compliance.

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51. Comment is a statement of fact; the Applicant will comply with all statutes, ordinances, rules and regulations of the United State of America, State of New Jersey, County of Somerset and Borough of Far Hills.
52. Comment is a statement of fact; this Memorializing Resolution will be recorded with the Somerset County Clerk's office. A copy of the recorded instrument will be filed with the Borough Attorney, Borough Clerk and Planning Board Secretary.
53. Comment is a statement of fact; it is acknowledged that the developer of the market-rate townhouses and the developer of the affordable rental building may be undertaken by separate entities. The conditions of this resolution are applicable to and binding upon all entities responsible for all aspects of the development.
54. A note has been added to the Cover Sheet stating, "The Applicant may appear before the Planning Board for a final determination to the extent there may be disagreement between the Applicant and the Borough's officials and professionals on satisfaction and/or implementation of any of the conditions of this approval."
55. Comment is a statement of fact; the Applicant will comply with the terms of the Affordable Housing Agreement with the Borough of Far Hills.

Below is a compliance narrative as it relates to the Ferriero Engineer review letter dated November 5, 2021:

I. *Site Plan*

A. *Sheet 1 – Project Data/Vicinity Plan*

1. *General Note 19 indicates proposed street names for the project. These need to be revisited and evaluated by the emergency services departments. There are a number of similar names within the project (Ayers St, Ayers Ln) that are duplicative, and Schley is a name currently used by another street within the Borough. This will lead to confusion with 911 response. All street names must be approved by the Borough Council after appropriate review. – New. A note has been provided on the plans indicating the street names are subject to approval from the Borough Council. The Site Plans have been revised to eliminate the similarly named streets within the project and duplicative street names with the Borough and surrounding areas. The street names are subject to review and approval by the Borough Council at the time of the Developer's Agreement.*
2. *Additional information needs to be provided regarding compliance with the recent DCA regulations on the provision of electric vehicle parking stalls. Testimony was provided to the satisfaction of the Board and the Site Plans have been revised should provisions for the electric vehicle charging stations for the affordable building.*
3. *A developer's agreement must be executed prior to construction. Comment is a statement of fact; the Applicant will enter into a Developer's Agreement with the Borough, a draft will be provided under separate cover for review by the Board Engineer and Planner.*

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4. *Correspondence indicates the water main extension plans submitted to New Jersey American Water have been added to the Site Plans as supplemental plans. These plans are not listed on the cover sheet with the other supplemental plans. Also, the plans were not found for this review. The New Jersey American Water Main Extension plans are included with the Resolution Compliance package for review and approval.*
 5. *Hard copies of the truck turning movement plans were not found with the current submission. Review of the truck turning movements is deferred at this time. Vehicle Turning Movement Plans, including fire truck, garbage truck, and school bus turning movements, are include with the Resolution Compliance package for review and approval.*
- B. *Sheet 2 – Environmental Constraints Map – No comments*
- C. *Sheet 3 – Site Removals Plan – No comments*
- D. *Sheets 4 through 10 – Site Dimension Plans*
1. *Approval for the WMQP from NJDEP should be a condition of any favorable resolution. Comment is a statement of fact, the WMQP approval from NJDEP is pending, copies of the approval will be provided.*
 2. *Vehicle turning templates should be provided for delivery and emergency vehicles at the round about and all dead end areas. Vehicle Turning Movement Plans, including fire truck, garbage truck, and school bus turning movements, are include with the Resolution Compliance package for review and approval.*
- E. *Sheets 11through15 – Grading Plan*
1. *The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection needs to be examined. It appears there is a low point along the curb line that will not drain through the intersection. A drainage inlet may be required. There is a similar issue at two points along the southwest curb line of the intersection of Dillon Boulevard and Ayers Street. – New. The grades at the bulb of the nose are flat and may result in ponding along the northerly side of the driveway entrance center island. An inlet may be required. Consideration to steepening the curb line along the southerly side of the intersection of Dillon Boulevard and Ayers Street should be given. The inlet grates (3L-17 and 3L-18) should be lowered to help facilitate drainage. The 281.73 spot elevation at the accessible ramp appears to be too low on the northerly curb line (approximate 6% grade across the landing). The curb grades in the bulb of the round-about have been revised reduce the flat grades and potential for ponding. The inlet grates have been lowered to help facilitate drainage. The grades across the accessible ramp have also been revised to be compliant with ADA regulations.*
 2. *Site light poles are show penetrating into and very close to the underground stormwater system near the multifamily building. Details need to be provided as to how this will work with the pipe and stone stormwater system. The lighting plan has been revised to eliminate the site light poles penetrating into and/or very close to the underground stormwater systems.*

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3. *There are a number of retaining walls throughout the site and many are in excess of 48" tall. These will all require site specific designs and construction permits.* Comment is a statement of fact. A note has been added to the Grading Plan and retaining wall construction detail stating that site specific designs and construction permits are required for all wall in excess of 48".
4. *The underground stormwater system and bioretention system at the rear of the multifamily building is in close proximity to a retaining wall with heights up to 17 feet. Testimony should be provided regarding any anticipated hydrostatic loads these stormwater facilities may place on the walls and how the loads and potentially saturated soil would impact the choice of wall material.* The underground stormwater system at the rear of the multi-family building has been eliminated. The retaining wall at the rear of the parking lot of the multi-family building has been reconfigured such that the bioretention basin is located below the wall to eliminate the potential negative impacts due to hydrostatic loading.
5. *The engineer should re-evaluate the detailed tree removal. For example, between unit 4.31 and the property corner, there are a number of mature hardwood trees that are shown to be removed with no apparent disturbance in the area. Further towards the large recharge bed, there are more trees that seem to be removed because of conflicts with the proposed path and water line – both of which could be relocated to avoid the conflict. Additionally, the location of the existing trees should be checked because the plan shows an 18" oak tree in a shed on the adjacent lot behind unit 4.37. – New. There are still some trees that appear to be removed in order to construct the path. Final approval for the tree removal should be coordinate with the Borough Planner and Borough Engineer prior to clearing. This should be a condition of any favorable resolution.* The detailed tree removal plan has been reevaluated and certain trees have been shown to no longer being removed. A note has also been added to the Landscaping Plan stating the Borough Planner and Engineer have final approval over the tree removal.
6. *Sheet 16 notes that there is a proposed net fill of 8,000 cubic yards. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site. – New. The plans indicate 3,000 cubic yards of fill are currently proposed. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site.* Testimony was provided to the satisfaction of the Board regarding the anticipated construction phasing. A note has been added to the Grading Plan stating the Applicant will coordinate with the Borough Police Department and Borough Engineer prior to any soil import or export.
7. *The stone driveway entrance pillar should not be constructed over the proposed storm sewer pipe. Revise accordingly.* The Site Plan has been revised to eliminate the storm sewer pipe from running beneath the stone driveway entrance pillar.
8. *Correct the spot grades between units 4.65 and 4.66.* The spot grades between units 4.65 and 4.66 have been revised.
9. *Spot grades should be provided along the side of unit 4.91 to confirm drainage will*

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bedirected away from the building. Spot grades have been added along the side of unit 4.91 to confirm drainage being directed away from the building.

10. *Based on the spot grades behind units 4.93 and 4.94, the area does not appear to drain. Revise as necessary. In addition, additional spot grades should be provided along the side of unit 4.94 to ensure drainage is directed away from the building. The grading plan has been revised to drain water behind units 4.93 and 4.94, additionally spot grades have been added along the side of unit 4.94 to ensure water is directed away from the building.*

F. *Sheets 17 through 22 – Utility Plan*

1. *The plan shows the water main serving the site extending from Route 202 south. The location of the connection to the existing system should be discussed and plans prepared for the extension of the utility line. Testimony was provided to the satisfaction of the Board regarding the connection of the water main to the existing water system. Copies of the Water Main Extension Plans are included with this package for review and approval by the Borough Engineer.*
2. *Fire hydrant locations should be approved by the Fire Official. The locations of the fire hydrants have been provided to the Borough Fire Official for review and approval. The fire hydrant locations will be revised based on input from the Borough Fire Official. Correspondence from the Borough Fire Official will be forwarded to the Board for their records.*

G. *Sheets 22 through 18 – Landscape Plan*

1. *The plan shows extensive areas of meadow around the site. Some of these are in close proximity to some of the townhouse units. The mechanism for keeping these areas as meadow should be described. It is anticipated that some of the townhouse owners may expect maintained lawn around their homes and this would be inconsistent with the plan and stormwater design. Some of the meadow areas, such as the narrow one between units 4.03-4.06 and the boulevard may be difficult to maintain as meadow. Other areas, like the proposed tree area between the townhouses and Route 202 and through the perimeter landscape buffers, show lawn under the trees where meadow may be more appropriate. – As discussed between the Borough Planner, Borough Engineer and the applicant's engineer (via a meeting on July 21, 2021), the surface treatment over the sanitary disposal field will be kept as open (lawn) space for recreational purposes. Meadow areas have been revised and the locations depicted on Figure 5 "Proposed Land Cover Map" dated March 19, 2021, revised October 1, 2021. It is noted the meadow area is still depicted between units 4.03-4.06 and the boulevard, however correspondence from the applicant's engineer indicates responsibilities for maintaining the meadow areas will be the responsibility of the homeowner's association. As part of the maintenance responsibilities for the stormwater management system, an Operations and Maintenance Manual will be required for the project. The Manual will need to include the meadow and wooded areas as part of the stormwater management measures to be maintained. In addition, these areas will also need to be deed restricted/encumbered by an easement to prevent their removal. The meadow areas are included in the Stormwater Management Operations and Maintenance Manual and guidance is provided to the Homeowner's Association*

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on the maintenance required to maintain these areas as meadow. A deed restriction will also be placed over the meadow areas to maintain them as meadows in perpetuity. The Operations & Maintenance Manual will be prepared and submitted after the Borough Engineer has reviewed and accepted the stormwater management system.

2. *Additional surface treatment is required for the areas that are being planted with trees and are being considered "wooded area in good condition" within the post developed drainage area analysis. The surface treatment should not consist of lawn areas that will be regularly mowed. Additional notes and detailing need to be provided for these areas. The Landscaping Plans have been revised to show additional surface treatment for the areas that are considered "woods in good condition" in the stormwater management plan.*

H. *Sheets 29 and 20 – Soil Erosion and Sediment Control Plan*

1. *This plan will need to be certified by the Somerset-Union Soil Conservation District.*
2. *Conduit outlet protection and stability calculations are subject to review and approval of the Somerset-Union Soil Conservation District.*

I. *Sheets 31 and 32 – Lighting Plan*

1. *In general, the lighting levels throughout the townhouse portion of the project are very low and do not provide enough illumination for the anticipated vehicular and pedestrian traffic through the site. It is expected that mail will be delivered to common boxes and pedestrians will be using the streets to access these boxes and for other reasons. For the most part, the streets have zero footcandles of illumination. Additional lighting is necessary. The amount of lighting will need to be balanced between the intrusion into the units and safe lighting levels on the ground surface. Based on the 14 foot height of the lighting source and the architectural plans, it appears the light sources will be below any bedroom windows at the front of the units and fully shielded so the glare should not be a major issue. – As discussed between the Borough Planner, Borough Engineer and the applicant's professionals, and included in correspondence from the applicant's engineer, building mounted lighting on either side of the garage for the townhouses will be included in a common circuit and controlled similarly to the site lighting. The building mounted lighting will be controlled by a photocell and not by the individual units. The building mounted lighting will account for additional site illumination in addition to the street lighting being proposed, which is consistent with the discussion that took place. The Lighting Plan has been revised to include the building mounted lights on either side of the townhouse garages. A note has also been added to the Lighting Plan stating the lights will be commonly controlled and will be used to add to the overall site illumination.*
2. *Details for the building mounted lighting need to be provided on the plans. The plans shall note that these lights will be on from dusk to dawn as previously discussed at the July 21, 2021 meeting. A detail of the building mounted lighting has been added to the Construction Details Sheet (Sheet 38). The detail also notes that the building mounted lights will be on from dusk to dawn.*

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J. *Sheets 33 through 37 – Profiles*

1. *In accordance with NJAC 5:21-7.3(e), no pipe size in the storm drainage system shall be less than 15 inches in diameter. Design engineers may use a 12-inch diameter pipe as a cross-drain to a single inlet. The 12" diameter pipes depicted on the profiles (and utility plans) should be revised to 15" diameter (except for the cross drains if 12" has been proposed). This appears to be applicable to the profiles for Dillon Blvd., structures 3H-8 to 3H-7 on Ayers Street, and structures 3F7A to 3F7. The pipe sizing for the stormwater management system has been revised to reflect the minimum pipe size as allowed by NJ Residential Site Improvement Standards (RSIS).*
2. *Label the storm sewer information for the pipe run from structures 3B-11 to #A-22 on Baldwin Avenue. The profile has been revised to label the storm sewer information for the pipe runs on Baldwin Avenue.*

K. *Sheets 38 through 42 – Construction Details*

1. *The accessible curb ramp detail should clearly show that the curb through the ramp should be concrete to provide a smoother transition. The accessible curb ramp detail has been revised to show the curb through the ramp to be concrete to provide for a smoother transition.*
2. *As noted above, site specific wall designs will be required. A note has been added to the retaining wall detail stating that site specific wall designs and construction permits for walls in excess of 48" in height.*
3. *The detail for the cobblestone pavers should include the gravel thickness. The detail for the cobblestone pavers has been revised to include the gravel thickness.*
4. *Restoration details need to be provided for the proposed watermain extension. The restoration within local roads shall include the area from one edge of the watermain trench to the curb line, with final paving 2' beyond the trench to the curb line. The plans for the water main extension should be incorporated into the site plans. A pavement restoration detail for the restoration of Borough roads has been added to the Construction Detail sheet.*
5. *A final review for all details for the stormwater management systems will be performed for general consistency with NJDEP and or RSIS requirements once the stormwater management system has been approved. Comment is a statement of fact, should additional comments relative to the construction details be realized, the plans will be updated accordingly.*

II. *Stormwater Management Report*

- A. *The following comments below are made relative to the stormwater report and other documents submitted. Previous comments have either been satisfactorily addressed, or have been amended or superseded by the comments below. Additional comments based on the revised submission are also offered below.*

B. *Stormwater comments:*

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1. *A groundwater mounding analysis is required for each individual basin that infiltrates. It is unknown whether the basins will be negatively impacted as currently designed without the mounding analysis being provided. – New. The mounding analysis for each of the basins needs to be expanding to analyze the hydraulic impact along both the x and y axis of the basin (two separate analysis) where only one axis has been analyzed. The groundwater mounding analysis for each of the infiltration basins has been expanded to analyze the hydraulic impact along both the "x" and the "y" axis of the basin. The additional analysis can be found in Appendix "C-4".*
2. *The stormwater conveyance system has been designed for a 25-year storm event. The 100-year storm event needs to be checked to ensure the stormwater conveyance system has capacity without overtopping into other drainage areas. Hydraulic grade line calculations should be provided in the analysis. This is needed to ensure the design assumptions within the quantity (peak rate reduction) analysis is consistent with capacity of the stormwater conveyance system. – New. The conveyance system has been designed for a 100 year design storm. Correspondence indicates a hydraulic grade line calculation is not required since the pipes are in a free flow condition. Downstream tailwater effects need to be considered in the analysis. Pipe inverts also need to be provided within the analysis to confirm drainage characteristics. For example, it is noted that the pipe inverts from RL #3M-11 to FES #3M -10 appear to have been switched based on the grades/inverts provided. The downstream end of the roof drain will also under pressure as Basin 3M fills. The stormwater conveyance system has been revised to utilize the 100-year storm event for sizing of the conveyance pipes. Where no emergency spillway was provided and the conveyance system downstream of the basin has been sized using the 100-year +50% storm events so that the basin can properly drain in the event of failure. The pipe network was analyzed for the downstream tailwater effects, adjustments were made to pipe inverts to avoid backwater conditions in the discharge pipe. Pipe computation sheets and tailwater analysis sheets have been provided in Appendix "D".*
3. *Only one soil test location was located within the infiltration area for Basin #3G (underground infiltration basin) and #3I (surface infiltration basin). The test pit logs (STP 14, STP 15 (outside basin 3I) and STP 20) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the BMP, or two times the maximum water depth in the basin, whichever results in a deeper depth. It is noted, according to Chapter 12, of the NJDEP BMP Manual, the depth is measured from any replacement soil that may be required below the bottom of the basin. This is the case for all types of stormwater basins. Additional soil testing should be provided to confirm groundwater elevations and separation to the estimated seasonal high ground water and bedrock elevations is being met for basins #3G and 3I in accordance with Chapter 12, Soil Testing criteria, of the NJDEP BMP Manual. – New - The descriptions used for the soil logs that were provided appear to be based on the Unified Soil Classification System. Chapter 12 of the NJDEP BMP Manual requires the soil log information to include the soil texture (consistent with the textural class as shown on the USDA textural triangle), boundary descriptions, the dominant matrix or background and mottle colors using the Munsell system of classification for hue, value and chroma, depth to bedrock etc., (see pages 20 & 21 of Chapter 12 of the NJDEP BMP Manual for the*

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requirements). The soil logs need to be presented consistent with the USDA nomenclature. The soil log descriptions have been revised by "Dwyer Geosciences, Inc." to be consistent with the USDA nomenclature in accordance with the NJDEP BMP Manual.

4. *The geo-technical section of the report should include a specific narrative on how each proposed BMP meets NJDEP requirements as it relates to separation to groundwater, bedrock (if applicable), and permeability (if applicable), and their suitability based on onsite soil conditions. – New – The stormwater BMP summary sheets are not consistent with respect to bedrock and groundwater levels as was provided in the summary of Phase I and Phase II Test Pit information provided in the Hydrogeologic Evaluation section of the report. They should be consistent. The stormwater BMP summary sheets have been revised to be consistent with the test pit information provided in the Hydrogeologic Evaluation section of the report.*
5. *The outlet pipes were not modeled in the Bioretention Basin, Infiltration Basin, and Extended Detention Basin routing analysis. The outlet pipes should be modeled under inlet and outlet control conditions, as they may control runoff through the control structures at higher elevations in the basins. Also, interconnected basins need to be analyzed under tailwater conditions (instead of assuming free flow conditions). It appears from the routings provided that Basin 3D is inundated by Basin 3E, the outlet pipe from Basin 3H may be inundated by Basin 3G, and Basin 3I is inundated by Basin 3F. While a hydraulic grade line analysis has been provided in the report, the backwater impact on the outlet structures for the interconnected basins needs to be quantified. It is not clear how the effect of tailwater has been factored into the analysis. It is recommended that the routing analysis model the outlet pipes for the interconnected basins all the way through the outlet point where Basin 3E discharges to grade. It is further noted that the hydraulic grade lines for Basins 3F, 3G and 3I are above the floor of the basins (which would impact the capacity of the outlet structures and reduce the available storage volume in the basins). Revised calculations for the normal depth of water in the outlet structure pipes, as well as hydraulic grade line profiles for the pipe runs have been provided in Appendix "D" of the Stormwater report. Additionally, inverts for outlet structure pipes have been set at specific depths below the controls of the outlet structure to eliminate any effect of tailwater from the discharge pipe.*
6. *Additional information needs to be provided to address whether it is technically impracticable to meet the green infrastructure standards. As currently designed, Bio- retention basin 3F does not meet GI for water quality and groundwater recharge, while Extended Detention Basins 3C, 3E, 3M do not meet GI for stormwater quantity. Additional information is required prior to confirming whether the other basins will meet the GI requirements. The Engineer shall provide a breakdown in the report for any variances being sought from the GI standards. Correspondence from the design engineer indicates the project will comply with the green infrastructure requirements. This will need to be verified. Comment is a statement of fact, the stormwater system has been revised to comply with the Green Infrastructure Standards of the NJDEP Stormwater Regulations.*
7. *Pretreatment is required for the runoff (roof area) that is tributary to underground infiltration basin 3I. Note 20 has been provided on Utility Plan 22 indicating that gutter guards will be provided on all roof gutters. Details for the gutter guards need*

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to be provided on the plans. Pre-treatment is being provided for the roof runoff to the underground infiltration basins. A detail of the gutter guard has been add to the Construction Details.

8. *Pretreatment is required for the direct runoff (80% TSS removal) that is tributary to underground infiltration basin 3G. Runoff from Bioretention Basin 3H that is tributary to Basin 3G will also need to be pretreated to 80% TSS removal if Basin 3H does not meet the GI requirements. Correspondence indicates overland areas that are directed to Basin 3G will be pretreated by a bio-swale. The design of the bioswale and details for the bio-swale (both in accordance with the NJDEP BMP requirements) need to be provided.* Basin #3G will only collect roof runoff and pretreatment for basin #3G will be provided by gutter guards. Basin #3H no longer discharges into basin #3G. This comment is no longer relevant as the stormwater system has been revised to redirect this runoff to a different stormwater basin. Pre-treatment is provided for the runoff directed to the underground infiltration basins.
9. *Based on the grading plan, it appears PDA#3A should be expanded to include the portion of Baldwin Avenue and any area tributary to Baldwin Avenue up to inlet 3B-8.* The grading plan has been revised to accurately reflect the drainage divide.
10. *It is not clear where the swale area at the cul-de-sac shoulder above Basin 3A will drain to. The swale will direct runoff towards the front of townhouse unit (lot) 4.107. A flat inlet should be provided in the swale where it crosses the outlet pipe from Basin 3B or additional spot grades and grading provided to direct runoff away from the townhouse. Erosion of the adjacent slope embankment is also a concern.* The swale at the cul-de-sac drains the water between the wall and curb and directs the runoff down the slope towards the wetlands area. The slope will be stabilized and there is no concern for erosion issues from the swale.
11. *Additional information should be provided demonstrating how the area behind proposed lots 4.91 to 4.94 will drain. The entire area behind the units appears to be a low point. The plans indicate two bottom of wall elevations for the lower wall. The drainage area map indicates this area is split between being tributary to PDA3B and PDA3C. The area behind proposed lots 4.93 and 4.94 are too low/flat and do not appear to drain. The top of the upper wall between proposed lots 4.87 to 4.90 and lots 4.91 to 4.94 is low based on the grading. Additional spot grades need to be provided between the wall and lots 4.87 to 4.90 to confirm drainage boundaries.* The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.
12. *Based on the grading, it appears a large portion of PDA3C will be tributary to Baldwin Court which is tributary to PDA3B. Clarification is required. It appears the inlet grates for inlets 3C-12 and 3C-13 are too high.* The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries. The inlets have been revised to create low points to concentrate .
13. *Additional spot elevations should be provided behind the sewerage treatment plant to confirm drainage patterns. Based on the spot grades provided, a low spot is being created at the southerly corner of the building. The grades along the back and side of the building are relatively flat and are pitched towards the building. The*

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grades should be revised. The Grading Plan has been revised to provide additional spot grades to confirm positive drainage.

14. *Based on the grading, it appears the majority of the intersection of Errico Lane and Baldwin Avenue would be tributary to PDA3D and not PDA3F. Also, based on the proposed grading along Baldwin Avenue in the area of proposed lot 4.82, it appears a portion of the backyard area and the lawn area up to Schley Lane would be tributary to Basin 3D and not Basin 3E. Based on the grading, it appears a portion of the drainage area west of Schley Court extending up to the berm of proposed Basin 3F included within Basin 3C would be tributary to Basin 3D. Additional spot grades and grading need to be provided to confirm drainage boundaries are consistent with the analysis. Proposed E inlet 3F-7 located within the intersection of Errico Lane and Baldwin Avenue should be shifted to the curb line. Runoff will likely bypass the inlet in its current location which means a larger area of runoff would be tributary to Basin 3D and less runoff to Basin 3F. The intersection of Errico Lane and Baldwin Avenue has been revised to be consistent with the drainage analysis in the Stormwater Management Report. The grading and stormwater conveyance at this intersection have also been revised to collect the water in this intersection. The drainage area map has been revised accordingly.*
15. *Additional spot grades need to be provided to confirm drainage patterns between proposed lots 4.70 and 4.71. The drainage boundary as depicted on the drainage map does not follow the proposed spot grades between lots 4.70 and 4.71. Revise accordingly. The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.*
16. *Additional spot elevations are needed along proposed lot 4.57 to confirm positive drainage away from the building and drainage boundaries. The Grading Plan has been revised to provide additional spot grades to confirm the drainage boundaries.*
17. *Additional spot elevations should be provided to confirm the area between lots 4.52 and 4.86 will drain towards Basin 3E. The Grading Plan has been revised to provide additional spot grades to confirm positive drainage towards basin #3E.*
18. *The intersection of Ayers Street and Baldwin Avenue appears to be tributary to Basin 3F and not Basin 3H based on the grades provided. Revise as necessary. The grading plan has been revised so the intersection is tributary to Basin #3F.*
19. *The grading between lots 4.22 to 4.26 and lots 4.07 to 4.11 need to be clarified. It appears there are two proposed 276 contours and it is not clear how this area will drain towards Basin 3H. The Grading Plan has been revised to include a high point to clearly show a drainage boundary.*
20. *Based on the grading and the topography, it appears a portion of the area tributary to Basin 3C is tributary to Basin 3B just downstream of Basin 3F. Revise as necessary. – Same. The area west of lots 4.87 and 4.94 appears to be tributary to Basin 3B. The Proposed Drainage Area Map has been revised to follow proposed grading.*

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21. *A portion of the entrance drive circle at the intersection with Ayers Street is tributary to Basin 3H and not Basin 3L. Also spot elevations are needed to confirm the drainage boundary to inlet 3L-18. The drainage boundary has been revised to follow proposed grading. The area tributary to basin #3H has been accounted for.*
22. *Roof drainage calculations (gutters/downspouts/laterals) need to be sized for the 100- year storm event since if they were to overflow, the overflow may be tributary to different stormwater basins than what was used in the quantity analysis. Correspondence indicates the roof drainage system, including the gutters, downspouts, and laterals, will be sized in accordance with the National Standard Plumbing Code utilizing the 100 year storm event. This should be a condition of any favorable resolution. Comment is a statement of fact, the gutters for the townhouses and multi-family building will be sized to accommodate the 100-year storm event based on the National Standard Plumbing Code.*
23. *The capacity of the inlet grates should be provided and checked against the 100 year- storm event to confirm they will not overflow/bypass to different drainage areas. The 100 year peak flowrates to the inlets have been provided and was shown to be less than the maximum capacity of a curb inlet with a capacity of 6 cfs (as specified by RSIS 5:21-7.4(d)). The actual capacity of the inlets (both B and E type) should be also be provided (and compared to the tributary flowrate) based on the proposed castings for the inlets. In accordance with RSIS, both B and E inlets are placed at distances no greater than 400 ft apart. The pipe computation sheets provided in Appendix "D" of the stormwater report include a flow calculation that demonstrates that the flows directed to each respective inlet, for the 100-year storm event, do not exceed the maximum allowable of 6 cfs per RSIS. The inlet castings have a capacity of 5.9 cfs at 6-inches of head pressure.*
24. *The Engineer should confirm whether proposed Inlet 3C-4 (located within tributary drainage area 3D) should be changed to a manhole since the quantity analysis does not include surface runoff to the inlet (the inlet is tributary to Basin 3C). The drainage boundaries have been revised. It is noted that a portion of the drainage boundary depicted as tributary to Basin 3C appears to be tributary to Basin 3D based on the grading. Clarification is required. The proposed grading and drainage boundary have been revised to include surface runoff to the inlet.*
25. *The proposed land cover map (Figure 5 in the report) depicts meadow land cover between and adjacent to some of the townhouse buildings. These areas need to be deed restricted against their removal since they are part of the stormwater management system for the site. The maintenance of these areas will need to be included in an Operations and Maintenance Manual (which should be submitted once the stormwater management system has been approved). Quarterly street sweeping is included in the preventative source controls in the LID checklist. The street sweeping will need to be included in the O&M Manual once it is submitted for review and approval. In addition, the meadow and lawn areas have been revised as per discussion with the Borough Engineer and Planner and are reflected on the Proposed Land Cover Map on Figure 5 in the stormwater report. The meadow and wooded areas that are proposed will need to be deed restricted/easement and included in the Operations and Maintenance manual. An Operations and Maintenance Manual will be prepared upon the Borough Engineer accepting the stormwater management system. Street sweeping and maintenance*

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procedures for the meadow and wooded areas will be included in the Operations and Maintenance Manual. The meadow and wooded areas will be deed noticed for maintenance and to prevent removal.

26. *The engineer should confirm the land cover being used for the walking path. The plans indicates an accessible gravel walking path is provided towards the front of the property in the area of the groundwater recharge field for wastewater. The remainder of the walking path will be natural ground cover. Details should be provided for the natural walking path if there will be any grading etc. anticipated. The walking path, with the exception of the area around the passive recreation will be natural ground cover, there is no grading proposed for the natural walking path.*
27. *Review and approval of the soil erosion and sediment control calculations are deferred to the Somerset-Union Soil Conservation District. Certification from the Somerset-Union Soil Conservation District should be a condition of any favorable resolution. Comment is a statement of fact, an application is being made concurrently to Somerset-Union Soil Conservation District.*
28. *Additional comments relative to the hydrology calculations, proposed quantity and water quality routings, drain time calculations, groundwater recharge calculations, emergency spillway calculations, and stormwater plan and details are deferred until additional information addressing the above comments are provided as the design of the stormwater management system may change. Comment is a statement of fact, additional comments and responses are outlined below.*
29. *Correspondence indicates the appropriate revisions will be made for any additional comments. The applicant also indicates NJDEP review and approval of the stormwater management is required. See below for additional comments. Comment is a statement of fact, additional comments were received and the revisions were made to address those comments. Additionally, an application has been made to NJDEP for their review of the stormwater system.*
30. *Additional information on how the parameters used in the computations for channel flow were determined for the time of concentration calculations for EDA1 and PDA1 and EDA3 and PDA3 should be provided. Also provide the reference source for the roughness coefficient used in the analysis should be provided in the report. The parameters used in the computations for channel flow were based on the existing site topography and Bentley Flowmaster to produce the velocities and roughness coefficients shown on the time of concentration sheets.*
31. *It is not clear how the computational increments (for example the computational increment varies between 3.3-3.4 minutes for EDA1 and PDA1, and 0.66 minutes (EDA1/PDA1 gravel and impervious)), affect the computations. Clarification should be provided on whether the computational increments should be the same for all the drainage areas. It is recommended that a smaller increment (1 minute for the pervious areas) be utilized, or conversely, provide the unit hydrograph summaries confirming that the effect of using a smaller computational increment provides a negligible result as compared to the computational increments provided. The computational increments for gravel and impervious TC calculations have been revised. The gravel surface cover will differ from existing to proposed conditions as the existing gravel is only a small portion of near the existing roadway and the*

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- proposed gravel is associated with the walking path. The numbers have been revised to match the impervious TC calculations.
32. *A smaller (1 minute) output increment should be utilized for all of the drainage areas and routings versus a longer increment (for example a 3 minute output increment was used for all of the DA#1 area analysis (only areas checked) which should be reduced to 1 minute).* The output increments have been revised to be reduced accordingly.
 33. *The calculations utilize a composite Tc of 0.083 hours (5 minutes) for many of the drainage areas. The calculated Tc should be utilized for all of the drainage areas since the use of a minimum Tc using NRCS methodology is no longer consistent with NJDEP requirements in calculating storm water runoff.* The TCs have been revised to be less than 0.083 where applicable to be consistent with the NJDEP requirements.
 34. *The existing and proposed hydrographs (tabular form is preferable, but superimposed is also acceptable) for comparison needs to be provided in order to confirm there is no increase at any point in time for the analysis to POS A. A hydrograph has been provided in Appendix "B-3" to confirm that there is no increase of flow at any point in time for Point of Analysis "A".*
 35. *It is not clear how the infiltration rate is being determined based on the results of the constant head single ring infiltration test (and double ring infiltration test). Additional information should be provided on how the internal volume is being converted to the final infiltration rate (for example what is the area, or the depth of water being used in the testing?). The engineer should also confirm whether the single ring and double ring infiltration tests are suitable for permeability testing if in proximity to bedrock.* Infiltration tests were performed using primarily double-ring tests and some single-ring tests. The tests were performed as constant-head tests following the 1981 EPA process design manual supplement on rapid infiltration and overland flow. The test is run at a constant head until the infiltration volume measured over selected test intervals (in this case five-to-ten-minute intervals) stabilizes. The volume measured with a graduated cylinder in milliliters is converted to cubic feet and divided by the area of the inner ring to determine the infiltration rate for the intervals. The rate is calculated as feet per day and converted to inches per hour. An average rate is determined based on the test intervals for the period of stabilization.
 36. *The downstream side slope on Basin 2A needs to be flattened to 3:1 (fill slope). Revise accordingly.* The downstream side slope of Basin #2A has been revised to a maximum of 3:1 slope.
 37. *A portion of PDA3E appears to be tributary to Basin 3G based on the grading and drainage proposed. Revise as necessary.* The drainage boundary and the proposed grading have been revised to reflect the drainage analysis in the Stormwater Report.
 38. *The stormwater rules specify "If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at N.J.A.C. 7:8-5.4, 5.5, and 5.6 shall be met in each drainage area,*

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unless the runoff from the drainage areas converge onsite and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas." No infiltration/groundwater recharge has been proposed within PDA#2 (POS B) or the southerly portion of DA#3 (POS C). The various infiltration basins were initially analyzed to meet the recharge requirement for the entire site. The recharge analysis has been revised to provide recharge for each individual drainage area. Basin #3I provides recharge within the Point of Analysis "B" drainage area. Basins #3F, #3G & #3H provide recharge within the Point of Analysis "C" drainage area. No recharge is proposed in Point of Analysis "A" drainage area as flows from existing conditions to proposed conditions are matched.

39. *Any losses need to be included in the effective length of the weir and the effective area of the orifice used at the top of the box in the routing calculations for outlet control structures for the various basins. The losses in the effective length of the weir and the area of the orifice used in the routing calculations was review and there are minimal to no losses that occur that would materially affect the routings..*
40. *Routing information of the emergency spillway storm for Basin 2A, 3A, 3B, 3C, 3D, 3F, 3H, 3L and 3M needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized. Emergency Spillways have been provided in basins where applicable. The spillway routings have be calculated assuming that the outlet control structure is not functioning, and infiltration is not occurring.*
41. *Routing information of the emergency spillway storm for Basin 3G and 3I needs to be provided. It is not clear what is being utilized as the emergency spillway. The routing needs to demonstrate the control structure is not functioning and infiltration is not being utilized. (Note that while these are sub-surface basins, they will drain to downstream surface basins). The routings also indicate the routed storm is at the top of these basins. It appears additional stage discharge may be required at the top of the basin to model any overflow. The underground infiltration basins (Basin #3G and #3I) have been revised include a 4 ft. weir above the 100-year stormwater elevation to allow flow from the 100-year + 50% storm event.*
42. *The routing of Basin 3H assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3G and needs to include any effect of tailwater on the routings. The stormwater conveyance system has been revised and Basin #3H no longer discharges into Basin #3G.*
43. *The routing of Basin 3F assumes free flow and no tailwater conditions. The basin discharge pipe drains to Basin 3E and needs to include any effect of tailwater on the routings. The stormwater has been revised to address the tailwater concerns. Tailwater will not affect Basin #3F as the outlet structure pipe inverts have been adjusted to be below the first control of the basin and Basin #3E is well below the elevation of Basin #3F. An analysis of the outlet structure pipes has been provided in Appendix "D" of the Stormwater Report.*

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44. *The groundwater mounding analysis for Basins 3H and 3I need to account for any hydraulic impact from each other since the basins are located within approximately 15 feet of each other at their closest points. The groundwater mounding analysis for been reviewed for the effects of Basin 3H and 3I on each other as they are in close proximity to each other. The analysis shows that there will be mounding to a depth of 8.63' which will negatively affect the basins. However, the BMP manual states that "the groundwater mounding resulting from two or more infiltration from two or can be conservatively estimated by simulating each separately and adding the mounding height at a given location for each BMP. There is a known error in using this method because of the non-linearity of the governing equations." A clay barrier between both basins is proposed to prevent horizontal movement of water between each basin.*
45. *The permeability testing for Basin 3F, 3G and 3I was undertaken at elevations above the basin bottom. The NJDEP BMP Manual requires permeability testing to be taken below the bottom of the basin, within the most hydraulically restrictive layer. Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual.*
46. *The permeability testing within Basin 3H does not appear to have been taken in the most hydraulically restrictive soil horizon (within SB3H-2). The testing was done within the gravelly sand layer while the soil log indicates the layer above this consists of clayey, silty gravelly sand (more hydraulically restrictive). Additional permeability testing in the most hydraulically restrictive layer is required. Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual.*
47. *The soil logs within Basin 3I, SB3I-1 and STP14 were excavated to elevation 258.0 which does not meet the minimum depth required (8' below or 2 x the maximum water depth in the basin, whichever is greater) for soil logs as required by Chapter 12 of the NJDEP BMP Manual. The soil logs need to be extended deeper. Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report. The soil logs were excavated to the required depth in accordance with the BMP Manual.*
48. *The soil logs within small scale bioretention basin 3F (SL 26, 27, SB3F-2) appear to be too shallow and need to be extended deeper. In addition, permeability testing was not taken within the sandstone (bedrock) layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where the testing was performed (within logs SB3F1 and SB3F2). Additionally, 1.5' separation to the bedrock layers are being provided. The Engineer should confirm whether 2' of separation is available or the bedrock needs to pass permeability testing (basin flood testing for example) to show that it is permeable. Additional soil investigation and permeability testing has been performed by Dwyer Geosciences, Inc. in December 2021 and can be found in Appendix "H" of the stormwater report.*

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The soil logs were excavated to the required depth in accordance with the BMP Manual. Based upon the findings of the additional soil testing .

49. *The soil logs within basin 3G (STP20, S3G-1) are too shallow and need to be extended deeper. The ground elevation listed within the test soil log for STP20 (264.5) appears to be closer to approximately 267.3 based on interpolating the existing topography. In addition, permeability testing was not taken within the siltstone layers below the bottom of the basin which may be more hydraulically restrictive than the gravelly sand layer above it where the testing was performed (SB3G1 and SB3G2). Additional review of the soil information is deferred until additional information is provided. New grading has been proposed for basin #3G and additional soil testing has been provided by Dwyer Geosciences, Inc. and can be found in Appendix "H" of the stormwater report.*
50. *The routing calculations of Basin 3F, 3G, 3H, and 3I utilize infiltration for the 2 year and greater storm events. According to the NJDEP BMP Manual, in order to utilize infiltration rates for higher than the water quality design storm, pre-treatment must be provided (Pretreatment is required for Basins 3G and 3I regardless of what storm event is being infiltrated). As outlined in the Stormwater Management Report, the infiltration basins only propose to infiltrate up to the water-quality design storm, pre-treatment is being provided for the infiltration basins.*
51. *Some of the soil log numbers on the soil location testing location plan are repeated (for example SB3F-2 in Basin 3F; SB3H-1 in Basin 3H). The numbers need to reflect the locations of the correct soil testing. The Soil Testing Location plan has been revised to accurately reflect the soil log numbers consistent with the soil testing data provided in the Stormwater Report.*
52. *Bioretention basins with underdrains - Within the gravel layer, the network of pipes, excluding any manifolds and cleanouts, should be perforated. All remaining pipes should be non-perforated. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soil bed. (BMP Manual). Comment is a statement of fact; the perforated pipes within the basins will have a conveyance rate of at least twice as fast as the design flow rate of the soil bed.*
53. *The NJDEP Manual for Small-scale Bioretention Systems with underdrains specifies "Unlike a larger bioretention basin, the soil bed of an underdrained small-scale bioretention system is not designed to drain quickly, but to retain some volume of stormwater below the surface in the soil bed; therefore, the soil mix should fall into the category of loam or silt loam in the USDA soil textural triangle, which will be most capable of retaining stormwater while still maintaining a sufficient infiltration rate. Refer to the post-construction testing requirements found on Page 13 which must confirm the constructed system functions as designed." The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins with underdrains are consistent with this recommendation. Additionally, the BMP Manual requires the permeability rate of the sand layer must be at least twice the design permeability rate of the soil bed and the permeability rate of the gravel layer must be at least twice the design permeability rate of the sand layer. To ensure proper system operation, the network of pipes should have a conveyance rate at least twice as fast as the design flow rate of the soil bed.*

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- Calculations need to be provided for each basin that utilizes underdrains. The stormwater calculations have been revised to be consistent with the NJDEP BMP Manual. Revised flow rate calculations through the basin soil beds with underdrains have been provided in Appendix "C-2" of the stormwater report.*
54. *The NJDEP BMP Manual at Chapter 9.7 specifies "The capacity of the underdrain must be sufficient to allow the system to drain within 72 hours, while still retaining moisture below the surface for uptake by vegetation. If the small-scale bioretention system with underdrain is installed in an area subject to pedestrian traffic, the drain time should be reduced to 24 hours." Based upon the basin draw down chart, the bio-retention basins with underdrains installed near areas subject to pedestrian traffic will drain within 24 hours.*
 55. *The BMP Manual specifies "Like larger bioretention basin, the soil bed of a small-scale bioretention system designed to infiltrate into the subsoil is designed to drain quickly while still supporting plant life; therefore, the soil mix should fall into the category of loamy sand in the USDA soil textural triangle, which will be most capable of supporting plant life while still maintaining a high infiltration rate. The Engineer should confirm whether the proposed rating tables in the small scale bioretention basins designed to infiltrate are consistent with this recommendation. The proposed rating tables provided for the small scale bioretention basins are designed to be consistent with the BMP Manual.*
 56. *The testing of all permeability rates must be consistent with Chapter 12: Soil Testing Criteria in this manual, including the required information to be included in the soil logs, which can be found in section 2.b Soil Logs. In accordance with Chapter 12, the slowest tested hydraulic conductivity must be used for design purposes. (BMP Manual). Comment is a statement of fact, the slowest tested hydraulic conductivity has been utilized in the routings with an applied factor of safety of 2.*
 57. *The outlet pipe invert is too high in relation to the bottom of the stone/sand/media for basins 2A, 3D, 3F. The stormwater conveyance system has been revised to provide outlet pipe inverts within the correct elevations in relation to the bottom of the stone/sand/media for the bio-retention basins.*
 58. *Additional information should be provided on the surface treatment for tree planted areas that are being treated a wooded condition in good condition within the proposed condition drainage analysis. Seed mixtures and tree maintenance notes have been provided on the landscape plans to clarify the surface treatment for tree planted areas. These areas will need time to establish, over that time a groundcover will be planted to stabilize the ground, after the areas have been stabilized, no maintenance will occur in these areas and leaf litter will be allowed to accumulate creating the woods in good condition land cover the drainage analysis is predicated on.*
 59. *The post developed drainage area analysis (for the quantity analysis) appears to utilize approximately 2.1 acres of additional HSG C soils under post developed conditions than existing conditions. Clarification is required. Based upon a review it was found that, the additional 2.1 acres was incorrectly identified as HSG C soil under post development conditions, this has been revised to HSG D soil.*

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60. *It appears the dEXC value should be set to zero (0) in the ground recharge analysis of basins 3F and 3H. It also appears the value of dBMPu would have a negative value for Basin 3H. The dEXC value has been set to zero (0) and the dBMPu value for basin #3H has been adjusted to be negative.*
61. *It appears the dBMP (BMP Effective Depth) value would be 21.6" based on using a void ratio with the bottom stone within basin 3G. Similarly, the effective depth appears to be 22.8 inches for Basin 3I. Also, the upper and lower levels of the surface should be confirmed (appears there would be 54" of difference based on the detail for both basins). The dBMP for both underground basins have been calculated by dividing the BMP's total storage volume by its surface area. The depths have been revised accordingly.*
62. *Based on the above noted changes to the recharge analysis, it currently does not appear that ground water recharge is being met for the site. Based on the changes outlined in Item 60 and 61 above, the groundwater recharge calculations have been revised and are provided in Appendix "C-3" of the Stormwater Report.*
63. *The emergency spillway calculations utilize a 12.3 inch 24 hour rainfall, while the 100 year storm event utilizes an 8.3 inch 24 hour rainfall. The 100 year plus 50% storm appears to be 8.3 inches plus 4.15 inches for a total of 12.45 inches. The spillway routings have been revised to utilize a 12.45 inch 24 hour rainfall.*
64. *It is noted the pervious area used within the emergency spillway analysis for Basin 3L was 0.90 acres while the other routings used 1.00 acres. They should be consistent. The pervious area for basin #3L has been revised to be consistent with the other routings.*
65. *It appears the basins 3A-3E, 3L and 3M meet the threshold to be classified as a dam pursuant to the NJDEP Dam Safety standards. The basins referenced above have been designed to include an emergency spillway as they are classified as a dams pursuant to the NJDEP Dam Safety Standards.*
66. *Based on the proposed grades, including the proposed walls, Basin 3L and 3M have an effective height of greater than 15' and therefore do not meet the classification of a Class IV dam. Additionally, Basin 3D, which has an effective height greater than 5' (meeting the threshold for a Class IV dam), is located immediately above the building for the sewerage treatment. It is not clear whether the proximity of this basin to the building would result in a different classification than Class IV. The Engineer should confirm with NJDEP the classification of basins 3D, 3L and 3M. Basins #3L and #3M have been revised to reduce the effective heights of the basins, additionally Basin 3D has been revised to only provide water-quality, therefore reducing the effective height. The basins now have an effective height less than 5' and emergency spillways have been designed for each of the basins.*
67. *Emergency spillways need to be designed in accordance with the NJDEP Dam Safety regulations for all basins that meet the classification of a dam within the NJDEP Dam Safety standards. The stormwater basins have been revised to*

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provide emergency spillways in accordance with the NJDEP Dam Safety Standards.

68. *Basins that do not meet the dam classification need to be designed in accordance with the Residential Site Improvement Standards (5:21-7.8 Detention basin berms and embankment ponds), including the ability to ensure the passage of the 100-year flow when the spillways are impeded by debris (4ii.).* The stormwater basins that do not have emergency spillways have been revised so the outlet structure and downstream conveyance system can pass the 100-year +50% storm event through the outlet structure.
69. *Freeboard needs to be provided for each basin in accordance with the NJDEP Dam Safety Standards or RSIS as applicable.* The stormwater basins have been revised to provide a minimum of 1-foot of freeboard in accordance with the NJDEP Dam Safety Standards.
70. *A 10' wide top of berm also needs to be provided for Basin 3F.* The Grading Plan has been revised to provide a 10 ft. wide berm for basin #3F.
71. *Based on the proposed and existing grades, Basin 3F appears to overtop. Additional grading and or spot grades need to be provided.* Basin #3F has been revised to provide for a minimum of one foot of freeboard, based on the calculations the entirety of the 100-year storm event contained within the basin footprint.
72. *A berm needs to be provided for Basin 3H.* Based on the layout of Basin 3H and surrounding grading, a berm would not be required as it is built into the grade. The outlet structure and downstream conveyance system has been designed to pass the 100-year +50% storm event.
73. *Clarify the berm elevation and width for basin 3D. Also correct the wall elevation at basin 3D.* Basin #3D has been revised to only accommodate the water quality design storm, Basin #3D will essentially function as a forebay to Basin #3E, where the larger storm events will flow over a grass spillway into the Basin #3D. Basin #3E has also been relocated slightly to provide a for a berm. The wall elevations at basin #3D has been revised.
74. *Clarification needs to be provided for the minimum groundwater separation for Basin 3E (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 234.0 which is not consistent with the basin data sheets provided.* Additional soil testing performed in November 2021 within basin #3E confirmed that there was no groundwater or mottling below existing grade. New soil test logs can be found in Appendix "H" of the stormwater report. During construction of basin #3E, an additional two (2) feet of soil will need to be excavated from the stone bottom of the basin to comply with the minimum separation requirements to groundwater/bedrock.
75. *Clarification needs to be provided for the minimum groundwater separation for Basin 3C (bio-retention basin with underdrains). The geotechnical section of the report indicates groundwater at elevation 204.0 which is not consistent with the basin data sheets provided.* The seepage encountered within the test pit performed

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in Basin #3C is not considered to be groundwater and therefore is not accounted for in the calculations. During construction of basin #3C, an additional two (2) feet of soil will need to be excavated from the stone bottom of the basin to comply with the minimum separation requirements to groundwater/bedrock.

76. *Basin's 3D and 3M are being constructed in fill with proposed retaining walls located adjacent to both basins. The Engineer shall confirm whether there will be any hydrostatic impact to the proposed walls and whether there will be seepage through the proposed walls. Basin #3M and the adjacent retaining wall have been revised so that the basin is below the wall, rather than in fill on top of the wall, thus eliminating potential hydrostatic impact. Basin #3D has been revised to only accommodate the water-quality design storm. As the walls are greater than 48" in height, a structural engineer will provide site specific design for the walls and any hydrostatic impact will be factored into the proposed design.*
77. *Clarification needs to be provided for the minimum bedrock separation for Basin 3G (underground infiltration basin). The geotechnical section of the report indicates bedrock at elevation 256.0 within soil test SB3G1 which does not meet the minimum separation to (2' required). Proposed grading within the location of basin #3G has been revised to provide a minimum 2' of separation to bedrock.*
78. *The soil mix for each type of bio-retention basin being proposed should include the corresponding soil mix (meeting loamy sand for basins designed to infiltrate, or loam or silt loam, for basins with an underdrain, in accordance with the USDA soil textural triangle) in accordance with the BMP Manual. The construction detail for the bio-retention basins has been revised to be consistent with the soil mixture outlined in the BMP Manual.*
79. *Time of concentration calculations need to be provided for PDA1 gravel, PDA3C Imp, PDA3E Imp, PDA3G Imp, PDA3I Imp. The time of concentration calculations have been provided within Appendices "A-1 and A-2" of the Stormwater Report.*
80. *It is not clear whether the outlet pipes for the various basins will have capacity for the runoff associated with the emergency spillway storm events (since emergency spillways have not been incorporated in most of the basins). Additionally, the composite rating curves appears to overstate the capacity of the control structures for some of the basins at the higher elevations (the proposed outlet pipes (outlet control) will control discharge through the control structures). Outlet pipes for the various basins have been designed to pass the 100-year storm event, and in some cases the emergency spillway storm event. The outlet pipe inverts have also been adjusted so that the flow entering the pipe will not impact the outlet controls and create a tailwater condition.*
81. *The hydraulic grade line calculations indicate the hydraulic grade lines are above the bottom of the media/underdrains in some of the basins. This will impact the ability for the underdrains to function during the higher storm events. Consideration to lowering the outlet pipes, if possible, to ensure no hydraulic impact should be given. Conversely, the outlet pipes could be modeled directly within the routings of the basins so that any potential impact is quantified within the routing results. This is generally for the basins that discharge directly to grade (other comments relative to interconnected basins are provided elsewhere). It is noted that basins 3L & 3M*

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while interconnected do not appear impacted by the backwater impact of Basin 3E, but the hydraulic grade lines of the outlet pipe analysis indicate the hydraulic grade line is above the media/underdrains. The outlet pipes have been lowered so as to not impact the ability of the underdrains to function. Outlet pipe calculations and hydraulic grade line calculations can be found in Appendix "D" of the Stormwater Report.

82. *The basin area used in the mounding analysis for Basin 3F appears to be larger than the basin footprint (7,337 sf used verses +/- 5,720 sf). According to Chapter 13 of the NJDEP BMP Manual, when the BMP is of irregular shape, the shape should be converted to a rectangular shape that has the same depth of the runoff to be fitted and is best fitted to the original shape. The Hantush spreadsheet assumes the sides of the BMP are vertical. If a BMP is designed with sloped sides, use the dimensions of the bottom footprint as the length and width of the BMP and use the total volume of the runoff to be infiltrated divided by the area of the bottom footprint to calculate the duration of infiltration period (Page 7 of Chapter 13). Same comments for Basin 3H (7,579 sf used verses +/- 5,610 sf). The mounding analysis has been revised to utilize the area of the bottom footprint of basins #3F & #3H.*
83. *It is recommended the groundwater elevation within the groundwater mounding analysis for basins 3F, 3G and 3I be based on the shallowest soil log taken in the basins since not all of the soil logs were extended to the depth of where the groundwater elevation is being assumed. The groundwater elevation within the groundwater mounding analysis for Basins #3F, #3G, and #3I are been based on the deepest soil log excavated in the corresponding basin. Groundwater was not encountered in any test pits performed within the basins and hydrogeologic data from the site found no shallow groundwater.*
84. *If infiltration is being utilized for higher than the water quality storm event, then the volume being infiltrated for the higher storm events also needs to be analyzed to determine groundwater mounding impacts (Chapter 13). Infiltration is only being utilized for the water quality design storm.*

III. *Sales Trailer and Model Home Plan*

- A. *The plan shows a substantial number of signs and feather flags. The Board should evaluate the appropriateness and number of the signs. Testimony was provided to the satisfaction of the Board as to the appropriateness and number of the signs and feather flags shown on the Sales Trailer and Model Home Plan. The location of the feather flags and duration of the flags will be approved as part of the Developer's Agreement.*
- B. *The applicant should provide an estimate of the length of time these materials will be in place. Testimony was provided to the satisfaction of the Board as to the estimated length of time these material will be in place. A note has been added to the plan regarding the duration of the materials being in place, they are also subject to review and approval by the Borough Council.*
- C. *Based on the notes, it appears the model homes will not have water and sewer service. This should be confirmed. Special provisions may be required for a certificate of occupancy in these circumstances. Comment is a statement of fact; the Applicant will*

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implement appropriate provisions as may be required to obtain a certificate of occupancy for the model homes.

IV. *Preliminary and Final Subdivision Plan*

- A. *Deeds, descriptions and lot closure calculations should be submitted and approved as a condition of any approval by the Board.* Deed descriptions and lot closure calculations are being provided with the Resolution Compliance package for review and approval by the Borough Engineer.
- B. *All lot numbers are to be approved by the tax assessor.* Correspondence has been provided to the Borough Tax Assessor for confirmation of the block and lot numbers of the property, a copy of the letter has been provided as part of this application package. Should the Tax Assessor require revisions to the Lot and Block numbers, the plans will be updated accordingly
- C. *All signatures by the applicant, surveyor, etc. will need to be on the plan before it is submitted for signature.* Comment is a statement of fact, all required signatures will be obtained prior to submission to the Borough for final sign-off.

V. *Boundary and Topographic Survey – No comment*

VI. *Architectural Plans – No comments*

VII. *Environmental Impact Statement – No comments*

VIII. *New - Traffic Engineering Review*

- 1. *As a condition of any favorable resolution, the applicant shall comply with the traffic engineering report dated August 21, 2021 as prepared by Mark Kataryniak, PE, PTOE, to the satisfaction of Mark Kataryniak, PE.* A detailed response narrative to the Borough Traffic Engineer's August 27, 2021 review letter and subsequent November 19, 2021 review letter is below.

Below is a compliance narrative as it relates to the Ferriero Engineer, Borough Traffic Engineer review letter dated November 19, 2021:

- 1. Based on the recommendation of the Borough Traffic Engineer, a sight easement is being proposed for the area south of the driveway. The area measures approximately 280 feet in length and is 15 feet wide at its widest. The sight easement description has been provided for review.
- 2. A note has been added to the Landscape Plan in the area of the sight easement stating that "Vegetation in excess of 30-inches in height vertically should be removed to a height of 14-feet to provide visibility for vehicles exiting the site driveway."

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3. A note has been added to the Landscape Plan stating that the contractor, landscape architect, Borough Planner and Engineer, should review the vegetation clearing prior to clearing occurring.
4. Comment is a statement of fact; extensive supplemental planting is proposed along the Borough's scenic corridor area which will mitigate any vegetation loss due to the clearing of the sight lines.

Below is a compliance narrative as it relates to the Banisch Associates review letter dated January 3, 2022:

1. *These comments supplement our review memorandum to the Board on this application dated November 23, 2021. Comment is a statement of fact; no response required.*
2. *The applicant addressed the comments in our November 23, 2021 review memorandum at the Board's December hearing on this application, with the exception of Comments #1, name of the neighborhood, #4.b., clarification of proposed construction delivery days and times of day for construction deliveries, and #18 procedures regarding deer protection, maintenance and survival of reforestation trees and landscaping. Each of these may be addressed by the applicant providing supplemental testimony. Comment is a statement of fact; testimony was provided to the satisfaction of the Board regarding the three (3) outstanding items from the November 23, 2021 review letter.*
3. *A revised "Sales Trailer and Model Home Plot Plan" dated March 19, 2021, last revised 12-22-2021 has been submitted following discussion on site signs in December that identifies all proposed temporary signs, a temporary construction driveway (opposite Lake Road), the proposed permanent boulevard entrance and traffic circle at which the proposed temporary sales trailer and 4 parking spaces will be located, two model townhouses with 6 parking spaces, a construction trailer with 6 parking spaces, and signs, as follows:*
 - a. *One (1) 24 sq. ft. "Community ID Sign" – that appears to be 7' in height with a 4' high x 6' sign installed between two 7' high posts;*
 - b. *Six (6) Feather Flags, 12' in height, each with a flag that is 2'-2" wide x approximately 8' in height. One row of three (3) flags will be installed on the outside lanes of the boulevard entrance and exit driveway. The first one in each row will be set back 240' from the edge of pavement vs. the 40' setback from edge of pavement initially proposed by the applicant – thereby increasing the proposed distance of these signs from Route 202 by 200' toward the interior of the site;*
 - c. *Two (2) 12 sq. ft. (3' wide x 4' high) "Sales ID" signs mounted between posts at a height of approximately 7' – one reads "Thanks for Visiting" and the other "Welcome Home."*
 - i. *The location of these two proposed signs do not appear to be identified on the plans. Testimony on the location of these signs should be provided and the location should be added to the plans.*
 - d. *Two (2) approximately 12" x 12" x 7' high "Future Homeowner Parking" at the Sales Trailer 4-space parking lot; and*
 - e. *Two (2) undimensioned "The Model" signs to be erected adjacent to the front of each of the two model townhouses.*

Comments are statement of fact; no response required. The Applicant provided additional testimony to the satisfaction of the Board related to the temporary signage, the signage will be subject to approval by the Borough Council in the Developer's Agreement.

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4. *The applicant should provide testimony explaining the length of time that the applicant wishes to maintain the proposed sales signs and the conditions under which the sales and construction trailer will be removed. Any approval of the applicants proposal should be made a condition of any approval that may be granted.* Testimony was provided to the satisfaction of the Board regarding the estimated length of time that the Applicant will utilize the Sales and Construction Trailers.
5. *We are aware that the applicant will be requesting a decision from the Board on the application. This application has involved a good deal of testimony over the course of several meetings that have included an extensive series of conditions of approval. Comment is a statement of fact; no response required.*
6. *At this juncture in the hearing process, assuming the hearing advances to an appropriate decision point on the application, we recommend the Board consider the following course(s) of action:*
 - a. *If the Board is inclined toward granting an approval, we recommend that the Board authorize the Board Attorney to prepare a draft resolution of approval including all of the variances requested and conditions of approval agreed to by the applicant during the course of the hearing. This action would be authorized by a motion and a second by Board members with only a voice vote rather than a roll-call vote.*
 - b. *This motion would not end the public hearing. The motion authorizing the Board Attorney to prepare a draft resolution of approval would involve holding the hearing open until the Board next meets to review and discuss the draft resolution and to decide and formally vote on the application, at which time the Board's vote would formally grant approval of the application.*
 - c. *The hearing should also be held open until the draft resolution is prepared so that issues or questions that may arise in the draft resolution can be resolved by the Board prior to voting on the application.*

Comment is a statement of fact; no response required.

We trust the above information is satisfactory for Resolution Compliance review. Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

GLADSTONE DESIGN, INC.



Matt Draheim, L.L.A.

Cc: Craig Gianetti, Esq., Project Attorney
Pulte Homes of NJ, LLP., Applicant
Melillo Equities, Applicant
Paul Ferriero, P.E., Ferriero Engineering, Board Engineer
David Banisch, P.P., Banisch Associates, Board Planner
Frank Linnus, Esq., Board Attorney

Enclosures

O'TOOLE SCRIVO, LLC

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(973) 239-5700
*Attorneys for Plaintiff,
Borough of Far Hills*

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
FAR HILLS, COUNTY OF SOMERSET

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO.: SOM-L-903-15

Civil Action - Mount Laurel

**CERTIFICATION OF
ALBERT E. CRUZ, ESQ.**

ALBERT E. CRUZ, ESQ., of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.

2. I was appointed as the Borough of Far Hills Municipal Attorney on October 10, 2023, succeeding Joseph V. Sordillo, Esq., also a member of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.

3. I make this Certification based upon my personal knowledge. I further make this Certification in Opposition to Pulte Homes of NJ, Limited Partnership's Motion to Intervene and Enforce Litigant's Rights filed on March 12, 2024 in the above-captioned matter.

4. On December 23, 2019, the Borough adopted an amended site-specific inclusionary development ordinance for the Kimbolton Development, Ordinance No. 2019-08. Section O of the Ordinance provides that, unless otherwise provided in the Site-Specific Ordinance, the Borough's Land Management Ordinance applied to the Kimbolton Development: "O. Except to the extent modified herein, existing provisions of the Far Hills Borough Land Management Ordinance shall apply to [the] development of Block 5, Lot 4, including but not limited to subdivision and site plan standards (Articles IV & V), General Provisions and Management Programs (Article VIII), and Design and Improvement Standards (Article IX)".

5. Attached as Exhibit A is a true copy of Ordinance No. 2019-08.

6. However, thirteen (13) years earlier, on June 12, 2006, the Borough adopted Ordinance No. 2006-08, an amendment to the Borough Land Management Ordinance amending Section 905 titled "Fences, Walls, and Sight Triangles" of Article IX to add a subsection A.5 as follows: "In all zoning districts, fences and walls shall be installed no higher than six (6') feet".

7. Attached as Exhibit B is a true copy of Ordinance No 2006-08.

Applications for Zoning and Construction Permits

8. Pulte first applied for a Zoning Permit from the Borough Zoning Officer on May 16, 2023. Since then, Pulte applied for Zoning Permits on June 12, 2023, July 11, 2023, September 29, 2023 and March 4, 2024. All Zoning Permits, except the March 4, 2024 application, were approved as demonstrated by the 2023 Zoning Cash Record.

9. Attached as Exhibit C is a true copy of the Zoning Cash Record.

10. A total of eleven (11) Zoning Permits were issued during this period.

11. Attached as Exhibit D is a true copy of each Zoning Permit.

12. Similarly, Pulte first applied for a Construction Permit on June 13, 2023. Since then, Pulte applied for Construction Permits on June 28, 2023, July 20, 2023, July 26, 2023, August 9, 2023, August 21, 2023, October 2, 2023, October 4, 2023, November 2, 2023, December 7, 2023, December 8, 2023, February 27, 2024, and February 28, 2024. All Construction Permits were issued, with the last Permit issued on March 11, 2024, as demonstrated by the Permit Fee Log Detail.

13. Attached as Exhibit E is a true copy of Permit Fee Log Detail.

14. A total of twenty-four (24) Construction Permits were issued during this period.

15. Attached as Exhibit F is a true copy of each Construction Permit.

16. Pulte has been steadily applying for Zoning Permits and Construction Permits since May 16, 2023, and receiving them, with the last Construction Permit issued March 11, 2024.

17. Pulte received the Construction Permits it requested for one (1) townhouse building, along with site improvements, "but has not applied for a certificate of occupancy as of the date of this Certification". (Mullen Cert. ¶18).

Borough Officials Become Aware Retaining Walls are Not as Presented to the Planning Board

18. On or about October 16, 2023, Borough officials became aware that there were retaining walls constructed at the Kimbolton Development more than the six (6") feet height limitation which were not presented to the Planning Board for review and approval.

19. On December 18, 2023, the Borough called for a meeting with Pulte representatives to discuss the retaining walls on December 19, 2023.

20. On December 19, 2023, the Borough met with Pulte representatives to discuss Pulte returning to the Board for necessary variance or design waiver relief, including a plan to mitigate the impact of the retaining wall on the adjoining

properties on Fox Hunt Court and potential modifications to the street and parking layout above the retaining wall. Additionally, the Borough requested an annotated site plan comparison showing the changes in the retaining walls and the grading at the Kimbolton Development since the Board approved Kimbolton on February 7, 2022.

21. Additionally, the Borough requested an annotated site plan comparison showing the changes in the retaining walls and the grading at the Kimbolton Development since the Board approved Kimbolton on February 7, 2022.

22. Because the Borough and Pulte representatives were unable to agree on whether Pulte would return to the Board, the Borough and Pulte agreed to meet again on January 11, 2024.

23. Pulte agreed to prepare the comparison site plan and distribute it to the Borough representatives prior to the January 11, 2024 follow-up meeting.

24. On January 2, 2024, the Borough Attorney sent Pulte a letter memorializing the discussions on December 19, 2023, and that the comparison site plan Pulte was to provide in anticipation of the January 11, 2024 meeting.

25. Attached as Exhibit G is a true copy of a letter from Albert E. Cruz, Esq. to James P. Mullen, Esq. dated January 2, 2024.

26. On January 2, 2024, the Borough Attorney also notified Pulte that until the disagreement regarding Pulte's return to the

Board was resolved, "all construction by Pulte at the Kimbolton Development [was] at Pulte's sole risk". See Exhibit G.

27. On January 11, 2024, representatives of the Borough and Pulte met a second time and reviewed the comparison site plan which showed the number and type of changes to the Site Plan from the Plan last reviewed by the Planning Board and the Site Plan after Compliance Review, but were unable to reach an agreement that Pulte would return to the Board for variance or a design waiver for the retaining walls and grading changes.

Notice of Violation

28. On January 18, 2024, the Borough Zoning Officer issued Pulte a Notice of Violation requiring Pulte to cure the retaining wall violations by obtaining amended site plan relief.

29. Attached as Exhibit H is a true copy of the January 18, 2024 Notice of Violation.

30. In accordance with the Notice of Violation, Pulte had the following land use options:

a. Appeal the Zoning Officer's determination to the Planning Board within twenty (20) days of the issuance of the Notice of Violation. N.J.S.A. 40:55D-72a.

b. Cure the Notice of Violation by applying to the Planning Board for amended site plan approval.

c. File an action in lieu of prerogative writs challenging the Zoning Officer's determination with the Superior Court of New Jersey within forty-five (45) days of the issuance of the Notice of Violation. R. 4:69-6(a).

31. On February 14, 2024, Pulte submitted a letter to the Zoning Officer demanding that the Notice of Violation be withdrawn.

32. Attached as Exhibit I is a true copy of a letter from Craig M. Gianetti, Esq. to the Zoning Officer, dated February 14, 2024.

33. On February 27, 2024, the Borough Attorney clarified that the Notice of Violation did "not apply to Zoning Permits for the affordable housing building to be constructed by Pulte . . . as part of the Kimbolton Development".

34. Attached as Exhibit J is a true copy of a letter from Albert E. Cruz, Esq. to Craig M. Gianetti, Esq., dated February 27, 2024.

35. Pulte allowed these periods to expire without appealing the Zoning Officer's determination, curing the Notice of Violation by filing an amended site plan application with the Board, or filing a prerogative writ action.

36. Instead, on March 12, 2024, fifty-three (53) days after the Notice of Violation was issued, Pulte filed the instant Motion to Intervene.

Notice of Default Under Developer's Agreement

37. On March 4, 2024, because Pulte breached the Developer's Agreement, the Borough Attorney sent Pulte a Notice of Default.

38. Pulte did not respond to the Notice of Default.

39. Attached as Exhibit K is a true copy of the Notice of Default.

Hours of Work at Kimbolton Development

40. On August 29, 2023, the Zoning Officer issued Pulte a Notice of Violation warning Pulte to comply with the hours of work at the Kimbolton Development.

41. Attached as Exhibit L is a true copy of the August 29, 2023 Notice of Violation.

42. Notwithstanding that Pulte agreed to a defined set of hours of work in the Developer's Agreement, because a water line was being constructed on Route 202 to service the Kimbolton Development, Pulte sought to use Kimbolton as a staging area for equipment, materials, parking and bathroom facilities for the water line construction, which construction was required by the New Jersey Department of Transportation Permit to occur during the nighttime hours of 8:00 p.m. to 5:00 a.m.

43. On January 3, 2024, Pulte was informed that these hours of work would require Borough Council approval and Pulte was invited to make a written request to the Clerk and provided with information of when the Council would next meet and the time within which to submit that request.

44. Attached as Exhibit M is a true copy of an email from Albert E. Cruz, Esq. to James P. Mullen, Esq. dated January 3, 2024.

45. On January 3, 2024, Pulte acknowledged the Borough Attorney's email. See Exhibit M.

46. Notwithstanding that Pulte never requested that the Council change the hours of work, the Borough agreed that the Kimbolton Development may be used at night to park the construction workers' vehicles and for bathroom facilities.

47. Notwithstanding Paragraph 19 of the Developer's Agreement, the August 29, 2023 Notice of Violation, the January 3, 2024 email from the Borough Attorney and the January 3, 2024 acknowledgment by Pulte, Pulte continued to violate the hours of work stated in the Developer's Agreement and, on March 5, 2024, the Zoning Officer, once again, requested that Pulte comply.

48. Attached as Exhibit N is a true copy of a letter from the Zoning Officer to James P. Mullen, Esq. dated March 5, 2024.

Construction Continues at the Kimbolton Development

49. Notwithstanding that Pulte failed to obtain amended site plan approval from the Board, failed to comply with the January 18, 2024 Notice of Violation; failed to timely appeal or cure the January 18, 2024 Notice of Violation and continued to violate the hours of work, construction by Pulte of the site improvements and one (1) townhome building at Kimbolton Development and the water line along Route 202 continues.

Pulte's Claim that the Borough's Actions are a Pretense to Prevent Affordable Housing from Being Built

50. Pulte argues that the Borough is engaged in a course of conduct to frustrate the construction of affordable housing at the Kimbolton Development and relies on a newspaper article discussing the events at the February 13, 2023 Council meeting.

51. However, that is not a complete representation of what occurred. The discussion on February 13, 2023 centered on the introduction of an Ordinance accepting easements for the Kimbolton Development and a financial analysis of Kimbolton.

52. The discussion had nothing to do with the Planning Board approval for the Kimbolton Development. The Planning Board approval had already occurred, and, in fact, the Developer's Agreement was signed by the Borough shortly after the February 13, 2023 Council meeting on March 17, 2023. Moreover, the Borough brought to Pulte's attention the violation of the Planning Board conditions well before the resident described in the newspaper article took a Council seat on January 1, 2024.

53. In fact, there had already been a meeting between the Borough and Pulte on December 19, 2023, seeking to address the violations.

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



Albert E. Cruz

Dated: April 4, 2024