

BEATTIE PADOVANO, LLC

Daniel L. Steinhagen, Esq. (018622005)

DSteinhagen@beattielaw.com

200 Market Street, Suite 401

Montvale, New Jersey 07645-0244

(201) 799-2128

Attorneys for Sohail Khan

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

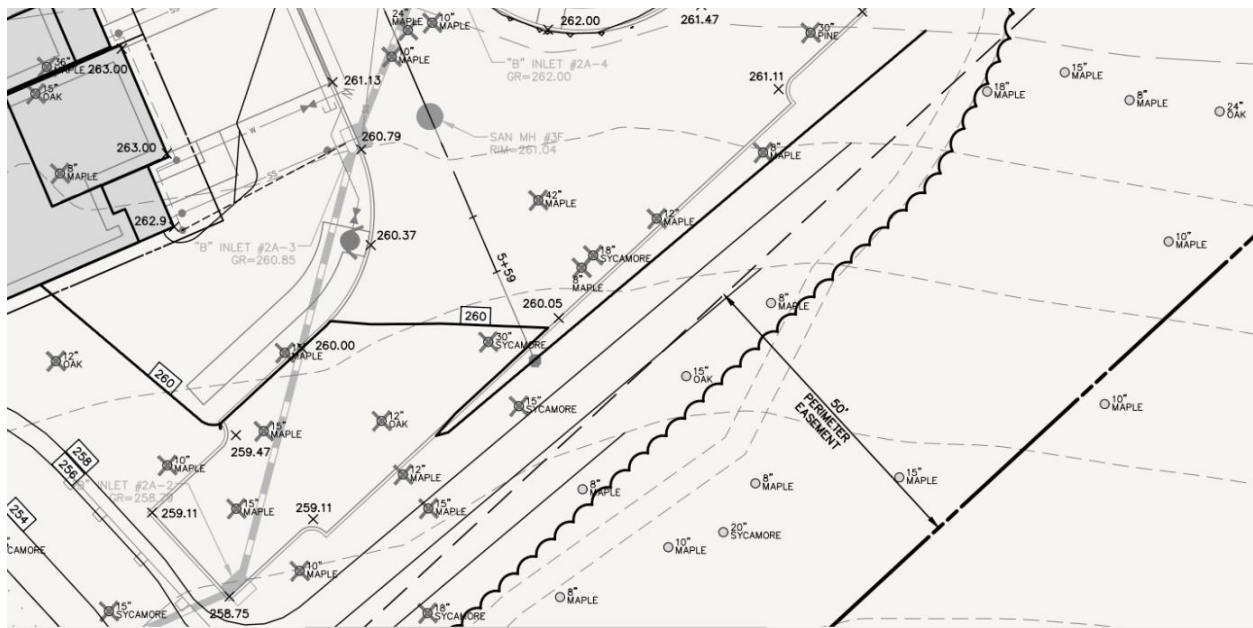
CERTIFICATION OF SOHAIL KHAN

Sohail Khan, of full age, hereby certifies as follows:

1. I, along with my wife, am the owner of 3 Fox Hunt Court in Far Hills, New Jersey. My property is formally known and designated as Block 5, Lot 6.02 on the Borough of Far Hills Tax Assessment Maps.
2. I am fully familiar with the facts set forth in this Certification, which I make in support of my motion for limited intervention in the pending action for the purpose of asserting a third party complaint against the Borough of Far Hills and Pulte Homes, LP (“Pulte”).
3. The first thing I must want to put on the record and advise the Court, the Borough and Pulte is that I am not against affordable housing, and I support the Borough’s efforts to comply with its affordable housing obligations. My concerns, and the reason why I am seeking leave to intervene now, is because the manner in which Pulte has gone about making changes to the site plan approved by the Far Hills Planning Board and constructing its development have caused significant impacts to my property. My only goal is to minimize and mitigate, to the maximum extent practicable, those impacts. I do not wish to interfere with Pulte’s efforts to construct housing on its property.

4. My property abuts Pulte's property, and as shown on Page 1 of Pulte's Site Plan that I understand were presented to the Far Hills Planning Board, I am listed as an owner of property within 200 feet of the development site. The full plan sheet is attached as Page 1 of Exhibit "A" to the Certification of Ronald Kennedy.

5. My property is located west of the tongue that sticks out of the side of the Pulte lot. As shown on the applicable Grading Plan (Sheet 16) of Pulte's Site Plan dated March 19, 2021 (the "Hearing Plan"), there was no retaining wall shown in the area of the development site closest to my property. An excerpt of Sheet 16 of the Hearing Plan is depicted below, and the full plan sheet is attached, for organizational purposes, as Exhibit "A" to the Certification of my attorney, Daniel L. Steinhagen that is filed concurrent with this Certification.



The Hearing Plans reflect that the area beyond the "perimeter easement" (which abuts my property) would have an elevation of approximately 260 feet.

6. I was generally aware of the development plans for the lands adjacent to my home and followed the basic details of what was proposed. However, nothing stood out as a major

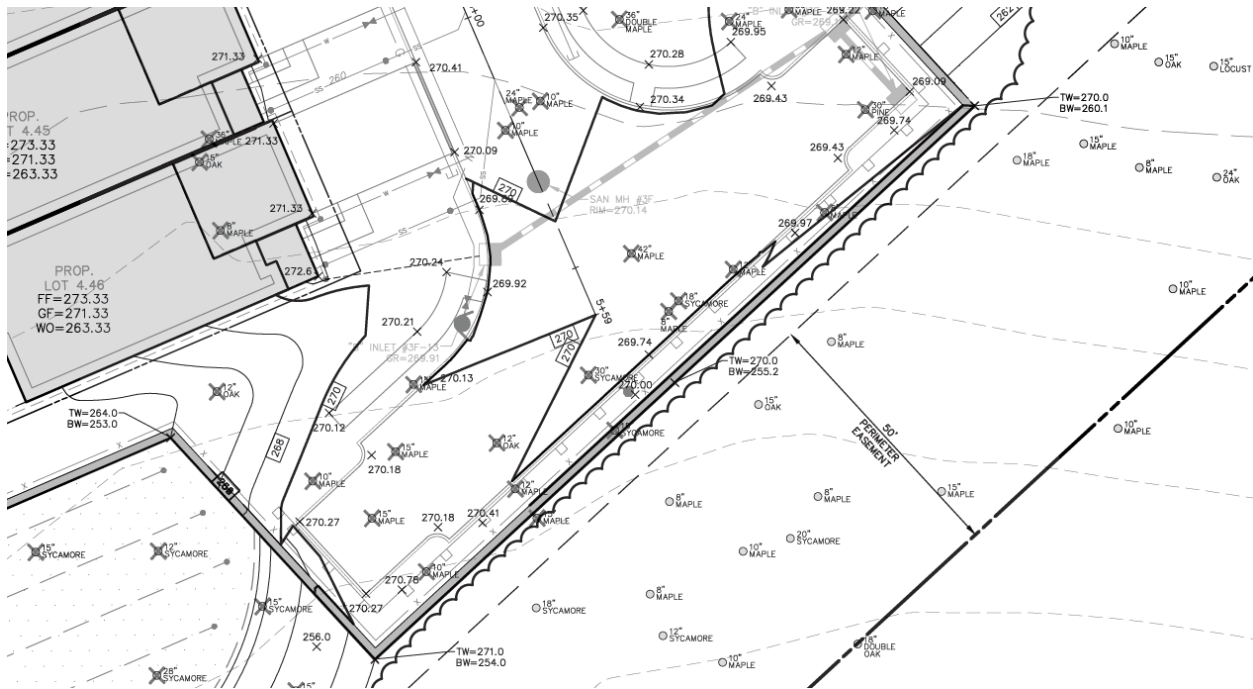
concern from my understanding of the overall development plan and the information I was aware of in 2021 and 2022.

7. Once construction began, I noticed some developments that very negatively impacted me. First, all of the trees were cut down on the property and it created significant storm drainage problems, and in mid-September of 2023, my wife raised those concerns in an email to Far Hills' Mayor, Kevin Welsh. Notably, that email was sent *before* Pulte commenced construction of any retaining walls near our property. My recollection is that construction of the wall started either in late September or early October.

8. Then, Pulte constructed a very large retaining wall near the property line in October of 2023. My wife and I wrote to the Borough's Mayor on October 15, 2023 by email. A copy of my email to Mayor Welsh is attached as Exhibit "A" as is his October 16, 2023 response to ensure that the Borough's engineering firm would be out to my property to do a site visit. After a month passed, I wrote to him again on November 15, 2023 and indicated, "There was never a concrete wall shown in the original plans and it got added later on. We should have been informed by the township of such an ugly structure [would] be erected in a residential area." That email is also part of the chain attached as Exhibit "A" as is Mayor Welsh's November 20, 2023 response, which claimed, "The Pulte site was approved as is, by the planning board."

9. The next day, on November 21, 2023, Paul Ferriero, P.E., who I understand is the Far Hills Planning Board Engineer, responded to my November 15, 2023 email to Mayor Welsh. In his email, which is attached as Exhibit "B", Ferriero told me, "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." I thanked him by email the next morning for the "details behind the approval process."

10. I now know that what Mayor Welsh and Mr. Ferriero told me in their emails was not true, and eventually, after investigating, I now know that it became clear that I was misled because the retaining wall near my property was clearly not on the plans presented to the Planning Board. I was able to confirm that the Hearing Plan Pulte presented to the Far Hills Planning Board in 2021 did not show the very large retaining wall that it built near the property line it shares with my property. Instead, I learned that it submitted “Resolution Compliance” drawings to the Borough Engineer that showed a 17-foot tall retaining wall that has no screening, no tiering and no buffering, and no additional landscaping in front of it to help shield the view from my property. An excerpt of Sheet 16 of the “Resolution Compliance” plan dated March 19, 2021 and last revised March 1, 2023 is depicted below, and the full sheet is attached as Page 5 to Exhibit “D” of the Certification of Ronald Kennedy:



The Resolution Compliance Plan 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 Planning Board approved. As a result, the highest top of the retaining wall that is now visible

from my backyard is at an elevation of 271 feet and the bottom is at elevation of 254 feet, meaning that at its highest point, the wall is 17 feet tall.

11. I understand that Pulte never obtained approval for this wall in this location from the Far Hills Planning Board, and that the Planning Board never reviewed its revised design and never was given the chance to impose conditions to mitigate the visual & privacy impacts Pulte decided to impose upon my property. Anyone standing at the top of the wall will have a direct view inside of my house – bedrooms as well as living area and kitchen. This can be confirmed by anyone visiting our house who can see the giant wall from every room in the home.

12. Although I have not measured the distance of the wall from my house, I estimate it to be approximately 200 feet. It is quite visible from my home and creates an eyesore that should, and I hope can, be remedied. Photographs that I took on March 24, 2024 that depicts the retaining wall as it currently exists from the rear yard of my property are attached as Exhibit “C” and are shown below:



13. As I indicated earlier, I do not have an issue with the use of the adjacent property for affordable housing; I have a legitimate concern with how Pulte constructed a retaining wall that violates the Far Hills Ordinance immediately adjacent to my property without providing me any notice of its intent to do so, without securing approval from the Far Hills Planning Board, without providing any mitigation, and impacting the value of my property by constructing an large, unsightly and unscreened retaining wall so close to my home which has compromised the sanctity of my family's home and resulted in the invasion of our privacy. In fact, Pulte's "Resolution Compliance" plans show that it was able to tier many of the internal retaining walls on its property that will be visible from the homes that are to be constructed, and those plans also show a significant amount of landscaping will be installed on those tiered retaining walls. It appears that the only large unscreened retaining walls are the large ones in the back of its property where no homes are located on the "down side" near the wastewater treatment building, and the one it constructed adjacent to my home). The landscaping sheet from Pulte's "Resolution Compliance" plan is attached as Exhibit "C" to Mr. Steinhagen's Certification.

14. While I appreciate Pulte's offer, as described in its motion brief and in one of the certifications it filed, to install landscaping in front of the retaining wall, unless we can come to an agreement, I believe that the determination of what mitigation – be it landscaping, tiering the retaining wall, or something else – should only be determined by the Far Hills Planning Board, not Pulte, since the Far Hills Planning Board has a duty to protect the public interest and the general welfare, while Pulte is a company that has its own motivations, whatever they may be.

15. Because the Borough's ordinances limit the height of retaining walls to 6 feet without relief from the Planning Board, I am seeking leave to intervene for the limited purpose of asserting a third party complaint against the Borough and Pulte pursuant to *N.J.S.A. 40:55D-*

18 to enforce the terms of the Borough's Land Management Ordinance and compel Pulte to return to the Planning Board for amended approvals where its revised plan can be appropriately considered by the Planning Board. A copy of my proposed Answer to the Borough's declaratory judgment complaint and Third Party Complaint is attached as Exhibit "D".

16. Furthermore, the development of the adjacent property has caused significant water-related problems to my property. The pitch of the stormwater pipe that discharges water from the bioretention basin at the north end of the retaining wall has been increased from 0.91% to 2.32%. While I do have an engineering degree, I am not a licensed professional engineer in the State of New Jersey. However, professional licensure is not required to understand that stormwater moves faster in a pipe that has a steeper slope than a shallower slope. My property has experienced significant erosion, and so has my neighbor, since the wall was built.

17. I also must advise the Court that I am now aware of the prior involvement of a citizens group formed last year regarding this development. I was not involved with that citizens group at any time or in any way. I learned of the group when I spoke to a neighbor who had been involved and he suggested that I contact my lawyer who had represented that citizens group, but other than knowing about the group, I know nothing about what it did.

18. 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 wilfully false, I am subject to punishment.

/s/ Sohail Khan
Sohail Khan

Dated: March 27, 2024

EXHIBIT “A”



Sohail Khan <sohail.nj99@gmail.com>

RE: FW: 3 Fox Hunt Ct & Errico Acres

1 message

Kevin Welsh <KWELSH@farhillsnj.org>
To: Sohail Khan <sohail.nj99@gmail.com>
Cc: ghazala khan <ghazalakhan1@gmail.com>

Mon, Nov 20, 2023 at 4:52 PM

Mr Khan,

Thank you for taking the time to reach out. My understanding is that Ferriero Engineering was on-site to look at your concerns. I believe you shared your new grading plan for your property with them. I also understand you are asking to remove more trees on your property as a result, this will increase the visibility of your concern area.

I would be happy to meet with you at your property if you feel that is still necessary. The Pulte site was approved as is, by the planning board, and the Borough doesn't own the property. We cannot unilaterally require additional landscaping at this point. But I would be happy to convey your concern on your behalf and your request for additional screening for your property and influence them as needed.

The Boroughs Engineering team will reach out to you shortly, if not already.

All the best,

Mayor Kevin P Welsh
Borough of Far Hills

6 Prospect Street
Far Hills, NJ 07931



From: Sohail Khan <sohail.nj99@gmail.com>
Sent: Wednesday, November 15, 2023 11:05 AM
To: Kevin Welsh <KWELSH@farhillsnj.org>
Cc: ghazala khan <ghazalakhan1@gmail.com>
Subject: Fwd: FW: 3 Fox Hunt Ct & Errico Acres

You don't often get email from sohail.nj99@gmail.com. [Learn why this is important](#)

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.

Dear Mr.Welsh:

Hope you are doing well and busy with township as well as your business. We are in mid November and cold weather is almost here. The problem of the solid wall is a big soar point as this is what we see from inslide and outside the house. There was never a concrete wall shown in the original plans and it got added later on. We should have been informed by the township of such an ugly structure will be erected in a residential area.

We have not been conatced by anyone to address this issue. The time for tree plantation is going to be over very soon. I need your help to address this item and would like to request a meeting with you. Please let me know your availibility and hope you will respond positively to my request. I have been a tax paying and good citizen of this township and should be treated like any other resident of this lovely town and its spirit to provide quite and private place.

Looking forward to your response and date/time for the meeting.

Regards,

Sohail Khan

Dear Mr.Welsh:

I am following up on my previous request. We have not heard back on the plan by Pulte to rectify this issue. The tree planting season is almost coming to end and we need help from your good office to get their response and plan to fix this issue.

Regards,

Sohail Khan

Cell: 908-720-9393

From: Kevin Welsh <KWELSH@farhillsnj.org>
Sent: Monday, October 16, 2023 11:03 AM
To: Sohail Khan <Sohail.Khan@Coherent.com>
Cc: David Karner <dkarner@farhillsnj.org>
Subject: [EXTERNAL]: RE: 3 Fox Hunt Ct & Errico Acres

Dear Khan Family,

I thank you for reaching out with the additional photos. I have reached out to our engineering firm and asked them to reach out to you directly and set up a site visit. We value your privacy and will advocate to Pulte to help address your concerns.

I have asked them to keep me in the loop on a going-forward basis.

All the Best,

Mayor Welsh

From: Sohail Khan <Sohail.Khan@Coherent.com>
Sent: Sunday, October 15, 2023 2:23 PM
To: Kevin Welsh <KWELSH@farhillsnj.org>
Cc: sohail.sak@gmail.com; ghazalakhan1@gmail.com
Subject: 3 Fox Hunt Ct & Errico Acres

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Dear Mr. Walsh:

Thanks for the follow up to my earlier letter to address the privacy issues with my property. Here is some additional information which I want to bring to your attention. The situation is quite disturbing as this huge concrete wall has been erected which faces the back of my property. Any one standing on the wall will have a direct view into my house – bedrooms and other areas.

I need your help in protecting individuals like us from the large developers from anchoring our privacy. I would like to request a site visit from you to have a firsthand view of the situation. We have made some suggestions to lesson the impact by adding a berm with tall trees - evergreens behind the wall and covering of the block wall with green material. I have included some pictures for your review which does not properly highlight the dilemma faced by us until you observe the site.

Please let us know when we can get some time from you for the site visit or the meeting at the Borough Office. I will be waiting to hear from you.

Best Regards,

Sohail & Ghazala Khan

[3 Fox Hunt Ct](#)

[Far Hills, NJ 07931](#)

Cell: 908-720-9393

EXHIBIT “B”



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

From: Sohail Khan <sohail.nj99@gmail.com>
Sent: Wednesday, November 15, 2023 11:04:39 AM
To: Kevin Welsh <KWELSH@farhillsnj.org>
Cc: ghazala khan <ghazalakhan1@gmail.com>
Subject: Fwd: FW: 3 Fox Hunt Ct & Errico Acres

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Looking forward to your response and date/time for the meeting.

Regards,

Sohail Khan

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Sohail Khan

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To: Sohail Khan <Sohail.Khan@Coherent.com>
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Mayor Welsh

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Sent: Sunday, October 15, 2023 2:23 PM
To: Kevin Welsh <KWELSH@farhillsnj.org>
Cc: sohail.sak@gmail.com; ghazalakhan1@gmail.com
Subject: 3 Fox Hunt Ct & Errico Acres

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Please let us know when we can get some time from you for the site visit or the meeting at the Borough Office. I will be waiting to hear from you.

Best Regards,

Sohail & Ghazala Khan

[3 Fox Hunt Ct](#)

[Far Hills, NJ 07931](#)

Cell: 908-720-9393

EXHIBIT “C”



EXHIBIT “D”

BEATTIE PADOVANO, LLC
Daniel L. Steinhagen, Esq. (018622005)
DSteinhagen@beattielaw.com
200 Market Street. Suite 401
Montvale, New Jersey 07645-0244
(201) 799-2128
Attorneys for Sohail Khan

<p>IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET COUNTY</p> <p>DOCKET NO. SOM-L-903-15</p>
<p>SOHAIL KHAN</p> <p style="text-align: center;">Third Party Plaintiff,</p> <p>Vs.</p> <p>BOROUGH OF FAR HILLS, a Municipal Corporation of the State of New Jersey, and PULTE HOMES OF NJ, LP</p> <p style="text-align: center;">Third Party Defendants.</p>	<p>[PROPOSED] ANSWER AND THIRD PARTY COMPLAINT FOR DECLARATORY RELIEF OF SOHAIL KHAN</p>

Defendant-Intervenor-Third Party Plaintiff Sohail Khan (“Khan”), having his principal place of residence at 3 Fox Hunt Court, Far Hills, New Jersey, by way of Answer to the Complaint filed by the Borough of Far Hills (“Borough) says:

1. Admitted.
2. Admitted.
3. Khan neither admits nor denies the allegations set forth in Paragraph 3 of the

Complaint and leaves the Borough to its proofs.

4. Admitted.

AS TO COUNT I

5. Admitted.

6. Denied.

7. Khan neither admits nor denies the allegations set forth in Paragraph 7 of the Complaint and leaves the Borough to its proofs.

8. Khan neither admits nor denies the allegations set forth in Paragraph 8 of the Complaint and leaves the Borough to its proofs.

9. Khan neither admits nor denies the allegations set forth in Paragraph 9 of the Complaint and leaves the Borough to its proofs.

10. Khan neither admits nor denies the allegations set forth in Paragraph 10 of the Complaint and leaves the Borough to its proofs.

11. Khan neither admits nor denies the allegations set forth in Paragraph 11 of the Complaint and leaves the Borough to its proofs.

12. Khan neither admits nor denies the allegations set forth in Paragraph 12 of the Complaint and leaves the Borough to its proofs.

13. Khan neither admits nor denies the allegations set forth in Paragraph 13 of the Complaint and leaves the Borough to its proofs.

14. Khan neither admits nor denies the allegations set forth in Paragraph 14 of the Complaint and leaves the Borough to its proofs.

15. Khan neither admits nor denies the allegations set forth in Paragraph 15 of the Complaint and leaves the Borough to its proofs.

16. Khan neither admits nor denies the allegations set forth in Paragraph 16 of the Complaint and leaves the Borough to its proofs.

17. Khan neither admits nor denies the allegations set forth in Paragraph 17 of the Complaint and leaves the Borough to its proofs.

18. Khan neither admits nor denies the allegations set forth in Paragraph 18 of the Complaint and leaves the Borough to its proofs.

19. Khan neither admits nor denies the allegations set forth in Paragraph 19 of the Complaint and leaves the Borough to its proofs.

20. Khan neither admits nor denies the allegations set forth in Paragraph 20 of the Complaint and leaves the Borough to its proofs.

21. Khan neither admits nor denies the allegations set forth in Paragraph 21 of the Complaint and leaves the Borough to its proofs.

22. Khan neither admits nor denies the allegations set forth in Paragraph 22 of the Complaint and leaves the Borough to its proofs.

23. Khan neither admits nor denies the allegations set forth in Paragraph 23 of the Complaint and leaves the Borough to its proofs.

24. Khan neither admits nor denies the allegations set forth in Paragraph 24 of the Complaint and leaves the Borough to its proofs.

25. Khan neither admits nor denies the allegations set forth in Paragraph 25 of the Complaint and leaves the Borough to its proofs.

26. Khan neither admits nor denies the allegations set forth in Paragraph 26 of the Complaint and leaves the Borough to its proofs.

27. Khan neither admits nor denies the allegations set forth in Paragraph 27 of the Complaint and leaves the Borough to its proofs.

28. Khan neither admits nor denies the allegations set forth in Paragraph 28 of the Complaint and leaves the Borough to its proofs.

29. Khan neither admits nor denies the allegations set forth in Paragraph 29 of the Complaint and leaves the Borough to its proofs.

30. Khan neither admits nor denies the allegations set forth in Paragraph 30 of the Complaint and leaves the Borough to its proofs.

31. Khan neither admits nor denies the allegations set forth in Paragraph 31 of the Complaint and leaves the Borough to its proofs.

32. Khan neither admits nor denies the allegations set forth in Paragraph 32 of the Complaint and leaves the Borough to its proofs.

33. Khan neither admits nor denies the allegations set forth in Paragraph 33 of the Complaint and leaves the Borough to its proofs.

34. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 34 of the Complaint and leaves the Borough to its proofs.

35. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 35 of the Complaint and leaves the Borough to its proofs.

36. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 36 of the Complaint and leaves the Borough to its proofs.

37. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 37 of the Complaint and leaves the Borough to its proofs.

38. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 38 of the Complaint and leaves the Borough to its proofs.

39. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 39 of the Complaint and leaves the Borough to its proofs.

40. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 40 of the Complaint and leaves the Borough to its proofs.

41. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 41 of the Complaint and leaves the Borough to its proofs.

42. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 42 of the Complaint and leaves the Borough to its proofs.

43. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 43 of the Complaint and leaves the Borough to its proofs.

44. Khan neither admits nor denies the allegations set forth in Paragraph 44 of the Complaint and leaves the Borough to its proofs.

45. Khan neither admits nor denies the allegations set forth in Paragraph 45 of the Complaint and leaves the Borough to its proofs.

46. Khan neither admits nor denies the allegations set forth in Paragraph 46 of the Complaint and leaves the Borough to its proofs.

47. Khan neither admits nor denies the allegations set forth in Paragraph 47 of the Complaint and leaves the Borough to its proofs.

48. Khan neither admits nor denies the allegations set forth in Paragraph 48 of the Complaint and leaves the Borough to its proofs.

49. Khan neither admits nor denies the allegations set forth in Paragraph 49 of the Complaint and leaves the Borough to its proofs.

50. Khan neither admits nor denies the allegations set forth in Paragraph 50 of the Complaint and leaves the Borough to its proofs.

51. Khan neither admits nor denies the allegations set forth in Paragraph 51 of the Complaint and leaves the Borough to its proofs.

52. Khan neither admits nor denies the allegations set forth in Paragraph 52 of the Complaint and leaves the Borough to its proofs.

53. Khan neither admits nor denies the allegations set forth in Paragraph 53 of the Complaint and leaves the Borough to its proofs.

54. Khan neither admits nor denies the allegations set forth in Paragraph 54 of the Complaint and leaves the Borough to its proofs.

55. Khan neither admits nor denies the allegations set forth in Paragraph 55 of the Complaint and leaves the Borough to its proofs.

56. Khan neither admits nor denies the allegations set forth in Paragraph 56 of the Complaint and leaves the Borough to its proofs.

57. Khan neither admits nor denies the allegations set forth in Paragraph 57 of the Complaint and leaves the Borough to its proofs.

58. Khan neither admits nor denies the allegations set forth in Paragraph 58 of the Complaint and leaves the Borough to its proofs.

59. Khan neither admits nor denies the allegations set forth in Paragraph 59 of the Complaint and leaves the Borough to its proofs.

60. Khan neither admits nor denies the allegations set forth in Paragraph 60 of the Complaint and leaves the Borough to its proofs.

61. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 61 of the Complaint and leaves the Borough to its proofs.

62. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 62 of the Complaint and leaves the Borough to its proofs.

63. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 63 of the Complaint and leaves the Borough to its proofs.

64. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 64 of the Complaint and leaves the Borough to its proofs.

65. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 65 of the Complaint and leaves the Borough to its proofs.

66. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 66 of the Complaint and leaves the Borough to its proofs.

67. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 67 of the Complaint and leaves the Borough to its proofs.

68. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 68 of the Complaint and leaves the Borough to its proofs.

69. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 69 of the Complaint and leaves the Borough to its proofs.

70. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 70 of the Complaint and leaves the Borough to its proofs.

71. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 71 of the Complaint and leaves the Borough to its proofs.

72. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 72 of the Complaint and leaves the Borough to its proofs.

73. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 73 of the Complaint and leaves the Borough to its proofs.

74. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 74 of the Complaint and leaves the Borough to its proofs.

75. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 75 of the Complaint and leaves the Borough to its proofs.

76. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 76 of the Complaint and leaves the Borough to its proofs.

77. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 77 of the Complaint and leaves the Borough to its proofs.

78. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 78 of the Complaint and leaves the Borough to its proofs.

79. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 79 of the Complaint and leaves the Borough to its proofs.

80. Admitted.

81. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 81 of the Complaint and leaves the Borough to its proofs.

82. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 82 of the Complaint and leaves the Borough to its proofs.

83. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 83 of the Complaint and leaves the Borough to its proofs.

84. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 84 of the Complaint and leaves the Borough to its proofs.

85. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 85 of the Complaint and leaves the Borough to its proofs.

86. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 86 of the Complaint and leaves the Borough to its proofs.

87. Khan neither admits nor denies the allegations set forth in Paragraph 87 of the Complaint and leaves the Borough to its proofs.

88. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 88 of the Complaint and leaves the Borough to its proofs.

89. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 89 of the Complaint and leaves the Borough to its proofs.

90. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 90 of the Complaint and leaves the Borough to its proofs.

91. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 91 of the Complaint and leaves the Borough to its proofs.

92. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 92 of the Complaint and leaves the Borough to its proofs.

93. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 93 of the Complaint and leaves the Borough to its proofs.

94. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 94 of the Complaint and leaves the Borough to its proofs.

95. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 95 of the Complaint and leaves the Borough to its proofs.

96. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 96 of the Complaint and leaves the Borough to its proofs.

97. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 97 of the Complaint and leaves the Borough to its proofs.

98. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 98 of the Complaint and leaves the Borough to its proofs.

99. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 99 of the Complaint and leaves the Borough to its proofs.

100. Admitted.

101. Khan neither admits nor denies the allegations set forth in Paragraph 101 of the Complaint and leaves the Borough to its proofs.

102. Khan neither admits nor denies the allegations set forth in Paragraph 102 of the Complaint and leaves the Borough to its proofs.

103. Khan neither admits nor denies the allegations set forth in Paragraph 103 of the Complaint and leaves the Borough to its proofs.

104. Khan neither admits nor denies the allegations set forth in Paragraph 104 of the Complaint and leaves the Borough to its proofs.

105. Khan neither admits nor denies the allegations set forth in Paragraph 105 of the Complaint and leaves the Borough to its proofs.

106. Khan neither admits nor denies the allegations set forth in Paragraph 106 of the Complaint and leaves the Borough to its proofs.

107. Khan neither admits nor denies the allegations set forth in Paragraph 107 of the Complaint and leaves the Borough to its proofs.

108. Khan neither admits nor denies the allegations set forth in Paragraph 108 of the Complaint and leaves the Borough to its proofs.

109. Khan neither admits nor denies the allegations set forth in Paragraph 109 of the Complaint and leaves the Borough to its proofs.

110. Khan neither admits nor denies the allegations set forth in Paragraph 110 of the Complaint and leaves the Borough to its proofs.

111. Khan neither admits nor denies the allegations set forth in Paragraph 111 of the Complaint and leaves the Borough to its proofs.

112. Khan neither admits nor denies the allegations set forth in Paragraph 112 of the Complaint and leaves the Borough to its proofs.

113. Khan neither admits nor denies the allegations set forth in Paragraph 113 of the Complaint and leaves the Borough to its proofs.

114. Khan neither admits nor denies the allegations set forth in Paragraph 114 of the Complaint and leaves the Borough to its proofs.

115. Khan neither admits nor denies the allegations set forth in Paragraph 115 of the Complaint and leaves the Borough to its proofs.

116. Khan neither admits nor denies the allegations set forth in Paragraph 116 of the Complaint and leaves the Borough to its proofs.

117. Admitted.

118. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 118 of the Complaint and leaves the Borough to its proofs.

119. Khan neither admits nor denies the allegations set forth in Paragraph 119 of the Complaint and leaves the Borough to its proofs.

120. Khan neither admits nor denies the allegations set forth in Paragraph 120 of the Complaint and leaves the Borough to its proofs.

121. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraph 121 of the Complaint and leaves the Borough to its proofs.

WHEREFORE, Intervenor Defendant, Sohail Khan, demands judgment as follows:

1. Continued immunity to the Borough.
2. Such other relief as the Court deems equitable and just.

AS TO COUNT II

122. Khan repeats and restates his responses to the allegations set forth in Paragraphs 1-121 as if fully set forth at length here.

123. Khan neither admits nor denies the allegations set forth in Paragraphs 1-122 of the Complaint and leaves the Borough to its proofs.

124. Khan neither admits nor denies the allegations set forth in Paragraphs 1-123 of the Complaint and leaves the Borough to its proofs.

125. Khan neither admits nor denies the allegations set forth in Paragraphs 1-124 of the Complaint and leaves the Borough to its proofs.

126. Khan neither admits nor denies the allegations set forth in Paragraphs 1-125 of the Complaint and leaves the Borough to its proofs.

127. Khan neither admits nor denies the allegations set forth in Paragraphs 1-126 of the Complaint and leaves the Borough to its proofs.

128. Khan neither admits nor denies the allegations set forth in Paragraphs 1-127 of the Complaint and leaves the Borough to its proofs.

129. Khan neither admits nor denies the allegations set forth in Paragraphs 1-128 of the Complaint and leaves the Borough to its proofs.

130. Khan neither admits nor denies the allegations set forth in Paragraphs 1-129 of the Complaint and leaves the Borough to its proofs.

131. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraphs 1-130 of the Complaint and leaves the Borough to its proofs.

132. Khan neither admits nor denies the allegations set forth in Paragraphs 1-131 of the Complaint and leaves the Borough to its proofs.

133. Khan neither admits nor denies the allegations set forth in Paragraphs 1-132 of the Complaint and leaves the Borough to its proofs.

134. Khan neither admits nor denies the allegations set forth in Paragraphs 1-133 of the Complaint and leaves the Borough to its proofs.

135. Khan lacks sufficient knowledge to form a basis to admit or deny the allegations in Paragraphs 1-134 of the Complaint and leaves the Borough to its proofs.

WHEREFORE, Intervenor Defendant, Sohail Khan, demands judgment as follows:

1. Continued immunity to the Borough.
2. Such other relief as the Court deems equitable and just.

BEATTIE PADOVANO, LLC
Attorneys for Intervenor-Defendant,
Sohail Khan

By: /s/
Daniel L. Steinhagen, Esq.

Dated:

THIRD PARTY COMPLAINT FOR DECLARATORY RELIEF

PREAMBLE

A. Nature of the Action

1. This is an action filed pursuant to *N.J.S.A.* 40:55D-18 and the Declaratory Judgment Act, *N.J.S.A.* 2A:16-51 *et seq.* seeking to compel the Borough to enforce the terms of its Land Management Ordinance (“LMO”) and abate the unlawful construction of structures by Pulte Homes of NJ, LP (“Pulte”) in violation thereof.

2. In particular, Third Party Plaintiff Khan seeks entry of an Order that requires Pulte to return to the Borough of Far Hills Planning Board (“Planning Board”) for amended land use approvals pursuant to the New Jersey Municipal Land Use Law (“MLUL”) and the LMO.

B. Parties

3. Khan is the owner of property formally known and designated as Block 5, Lot 6.02 on the Tax Assessment Maps of the Borough of Far Hills (the “Khan Property”). The Khan Property is commonly known as 3 Fox Hunt Court, and is improved with a single family dwelling.

4. The Borough is a municipal corporation of the State of New Jersey.

5. Pulte is the developer of property formally known and designated as Block 5, Lot 4 (the “Pulte Property”). Commonly known as Errico Acres, the Pulte Property was rezoned by the Borough several years ago for an inclusionary housing development as part of the Borough’s affordable housing compliance plan. The Pulte Property abuts the Khan Property.

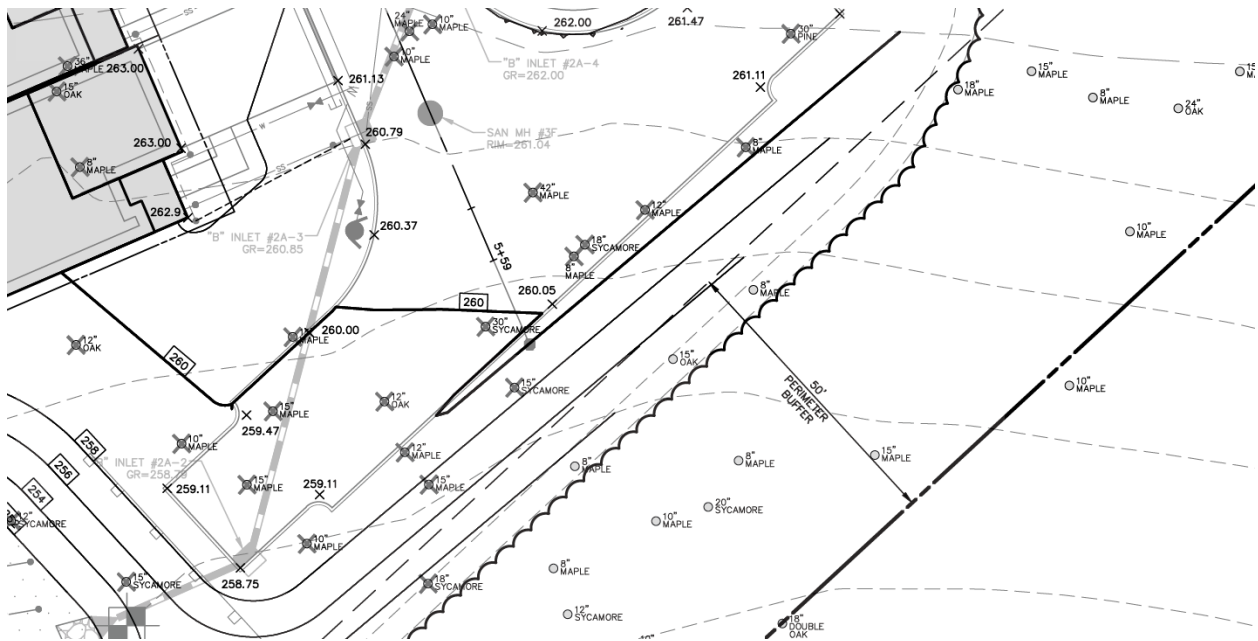
C. Background

6. Upon information and belief, Pulte filed an application for development to the Planning Board in the spring of 2021 for 105 age-restricted townhomes and a 29-unit multifamily apartment building.

7. The Planning Board scheduled an initial public hearing on July 5, 2021, before which Pulte provided public notice to owners of property within 200 feet of the Pulte Property, which upon information and belief, was sent to Khan, since the Khan Property shares a lot line with the Pulte Property.

8. Pulte submitted a site plan prepared by Gladstone Design, Inc., dated March 19, 2021 with its application for development to the Planning Board that did not depict any retaining walls near the common property line with the Khan Property.

9. A depiction of the area adjacent to the Khan Property line from Sheet 16 of the March 19, 2021 site plan, which is the relevant sheet of the March 19, 2021 Grading Plan of Pulte's site plan is reproduced below:



10. During the hearings on Pulte's application for development, Pulte's engineers revised its site plan and submitted a plan revision bearing a revision date of October 1, 2021 to the Planning Board. That plan did not modify the grades or add a retaining wall near the common property line with the Khan Property.

11. Minimal additional landscaping was proposed for the area depicted above in Paragraph 9, as Pulte was not planning significant grading work and no retaining walls were proposed.

12. Elsewhere on its site where retaining walls were proposed, Pulte proposed to tier retaining walls and proposed to place landscaping on the tiers to shield, screen or mitigate the visual impact of the retaining walls for residents within the development. Landscaping was also proposed in front of retaining walls to further screen the unsightly visage of large retaining walls within the Pulte Property.

13. Other large retaining walls are shown on the site plan, but they are generally in areas where no houses are proposed, or homes are located on the high side of the retaining wall and there are no homes at the bottom of large retaining walls shown on the site plans that were presented to the Planning Board.

14. However, as presented to the Planning Board, there were no significant courses (i.e., more than 15 feet in length) of large (i.e., more than 6 feet tall) retaining walls near any exterior boundary of the Pulte Property, and none near any lot developed with a single family dwelling.

15. On February 7, 2022, the Planning Board voted to approve Pulte's application and adopted a resolution setting forth conditions of approval.

16. The Planning Board required Pulte to comply, pursuant to Condition 1 of the Resolution, with the Planning Board Engineer's review letters, which included the Planning Board Engineer's November 5, 2021 review letter.

17. The November 5, 2021 review letter recommended specific changes to Pulte's Grading Plans, but critically, made no mention of any changes to Sheet 16, which is the area of the Pulte Property closest to the Khan Property.

18. A separate Condition, Condition 38, provided 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 structure on the Property from those shown on the revised and approved plans and exhibits approved for this application . . . Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case."

19. The Planning Board published a notice of decision on February 10, 2022 that advertised that it had adopted the Resolution. Pulte published a notice of decision the following day, on February 11, 2022.

20. Upon information and belief, no plans were on file at that time with the Planning Board other than those that depicted the lack of a retaining wall near the Khan Property.

21. Pulte did not develop the Pulte Property in accordance with the plans submitted and approved by the Planning Board pursuant to the February 7, 2022 Resolution.

22. Almost immediately after the ink was dry on the Planning Board's Resolution, Pulte went about the process of making material changes to the plans to Khan's detriment, though it never disclosed that fact to Khan, the public or the members of the Planning Board.

23. The most visible change to the plans was the addition of a 17-foot tall retaining wall that was not shown on the plans presented to or approved by the Planning Board near the common property line with the Khan Property, which was submitted to the Planning Board Engineer approximately 5 weeks after the Planning Board voted to approve the application.

24. But unlike the internal retaining walls on the Pulte Property, Pulte did not propose tier this new retaining wall or add any new landscaping.

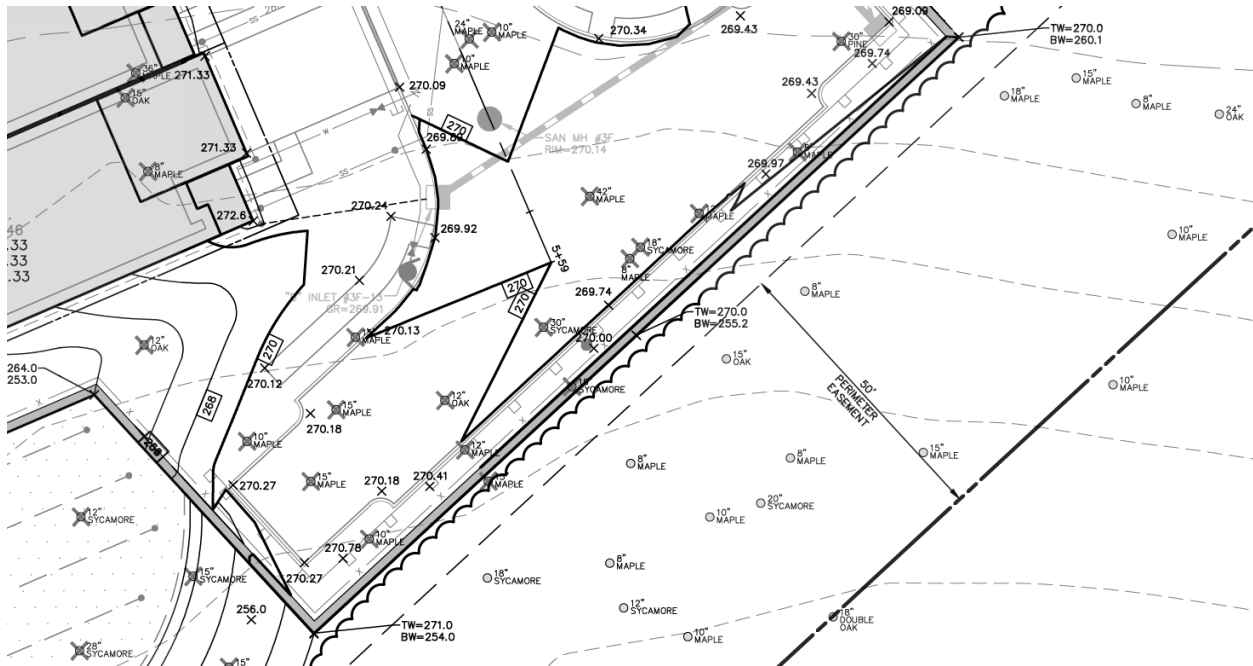
25. Pulte also did not seek to return to the Planning Board, despite the requirement to do so pursuant to Condition 38 of the Resolution.

26. Instead, it sought to have the Planning Board's Engineer approve the change administratively without the need for amended approval.

27. However, the Planning Board Engineer had no authority to approve a 17-foot tall retaining wall that was not approved by the Planning Board in connection with an application for development because the Borough's LMO provides, pursuant to § 905(A)(5) as follows, "In all zoning districts, fences and walls shall be installed no higher than six feet (6')."

28. The retaining wall is a structure that constitutes a development under the LMO that is not exempt from site plan review.

29. Despite the clear height limit in the LMO and the need to obtain amended site plan approval for same, the Planning Board Engineer authorized the revision in derogation of the LMO and the Borough issued a construction permit to Pulte for the following design, which Pulte commenced construction upon in the fall of 2023:



30. The issuance of the construction permit validated NJAC 5:23-2.15(f)(4)(ii)(i) because Pulte did not have a valid “prior approval” from the Planning Board.

31. Another change not reviewed by the Planning Board, but which the Planning Board Engineer authorized administratively, was the steepening of the discharge pipe from the bioretention near the common property line with the Khan Property. The plans approved by the Planning Board indicated that the pipe was to have a slope of a slope of 0.91%, but because of the grading changes associated with the 17-foot tall retaining wall, the new design called for a slope of 2.33%.

32. Pulte commenced construction of the 17-foot tall retaining wall near the common property line with the Khan Property in the fall of 2023.

33. After Pulte commenced construction of the 17-foot tall retaining wall near the property line with the Khan Property, Khan contacted the Borough’s Mayor, Kevin Welsh, to complain about the status of construction.

34. The Borough's Mayor, in an email dated November 20, 2023, advised that the Pulte site was approved "as is by the planning board", thereby concealing the fact from Khan that the Planning Board had not, in fact, approved the 17-foot tall retaining wall near the common property line.

35. Similarly, the Planning Board Engineer, in an email sent to Khan on the following day, November 21, 2023, wrote, "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."

36. The statements in the Planning Board Engineer's November 21, 2023 email were, to put it bluntly, false. However, Khan relied upon these false statements because he had no reason to believe that the Planning Board Engineer, whose duty was to protect the interests of the Borough, would misrepresent the facts of what happened at the Planning Board hearings two years prior to him.

37. Khan only learned that the retaining wall had not been approved by the Planning Board weeks later when the Borough began its enforcement actions because the retaining wall was not, in fact, on the plans that the Planning Board had approved, in contrast to what the Mayor and Planning Board Engineer told him.

38. Because the Borough was seeking to enforce the LMO, there was no need for Khan to do so himself at that time.

39. The retaining wall is visible from the Khan Property and the dwelling on the Khan Property.

40. The retaining wall, as constructed, impacts Khan's ability use and enjoy the Khan Property.

41. Khan never received notice that Pulte intended to construct a 17-foot tall retaining wall immediately adjacent to the Khan Property, and the plans that were on file with the Planning Board during the pendency of Pulte's application to the Planning Board did not reveal Pulte's plans to do so either.

42. Khan had no way to know, or protect his interests, during the proceedings before the Planning Board, regarding Pulte's eventual development plans and how they might impact the Khan Property.

43. Khan was deprived of the opportunity to appear in front of the Planning Board and ask for mitigation from the visual impact of the retaining wall because Pulte omitted it from its plans, until, apparently, only a few weeks after the Planning Board voted to approve the application.

44. The Khan Property has experienced erosion and hydraulic impacts since Pulte constructed the retaining wall as a result of this modified design that the Planning Board never approved.

45. Upon information and belief, the aforementioned erosion is the result of increased velocity of stormwater discharge onto the Khan Property than was anticipated during the hearings before the Planning Board.

COUNT ONE

(Action for Declaratory Relief to Enforce Provisions of Far Hills Land Management Ordinance Pursuant to *N.J.S.A. 40:55D-18*)

46. Third Party Plaintiff repeats and realleges each and every allegation set forth in the Preamble to the Third Party Complaint as if set forth at length here.

47. Khan's right to use and enjoy the Khan Property has been affected by Pulte's unlawful construction of the 17-foot tall retaining wall.

48. Khan is an “interested party” and a “party immediately concerned” as defined by the MLUL because he owns property within 200 feet of the Pulte Property that has been impacted physically and visually by the unlawful construction of a retaining wall and stormwater infrastructure that was not considered or approved by the Planning Board at a meeting open to the public and which is causing detrimental impacts to the Khan Property.

49. The 17-foot tall retaining wall violates the LMO, because it exceeds the 6-foot limitation on walls imposed in all zoning districts.

50. Upon information and belief, the 17-foot tall retaining wall required a variance from the provisions of the LMO because it applies to all zoning districts (including single family residential zoning districts where site plan approval is not required or permissible pursuant to the MLUL), or in the alternative, a site plan design exception.

51. The Far Hills Planning Board Engineer does not have the authorization to approve a variance or a site plan design exception from the terms of the LMO during resolution compliance.

52. Only the Planning Board has the power to grant variances or site plan design exceptions from the terms of the LMO.

53. The Planning Board may only authorize a deviation from the provisions of the LMO in an application seeking major site plan and subdivision approval with other variances during a hearing conducted on notice to the public pursuant to the applicable provisions of the MLUL.

54. Pulte never secured approval from the Planning Board for the retaining wall constructed along the common property line with the Khan Property.

55. Without approval from the Planning Board, the authorizations, approvals, and permits issued to Pulte for the 17-foot tall retaining wall shown on the Resolution Compliance Plans last revised March 1, 2023 were utterly void because they lack any semblance of compliance with the LMO.

56. Khan has a right to have all deviations from the terms of the LMO considered and adjudicated by the Borough of Far Hills Planning Board at a hearing conducted on notice to the public in accordance with the MLUL were violated.

57. Khan's rights afforded by the MLUL were violated.

WHEREFORE, Third Party Plaintiff Sohail Khan demands judgment against the Borough of Far Hills and Pulte Homes of New Jersey, LP as follows:

- A. Finding that the issuance of a construction permit to Pulte Homes of New Jersey, LP that authorized the construction of a 17-foot tall retaining wall that was not approved by the Far Hills Planning Board and that violates the Far Hills Land Management Ordinance was ultra vires;
- B. Declaring that the issuance of permits for the 17-foot tall retaining wall without review and approval by the Far Hills Planning Board at a public hearing violated the MLUL and the LMO, and therefore violated Khan's rights;
- C. Ordering Pulte Homes of New Jersey, LP to seek amended site plan approval from the Borough of Far Hills Planning Board;
- D. Costs of suit, attorneys fees and such other relief as this court deems equitable and just

BEATTIE PADOVANO, LLC
Attorneys for Third Party Plaintiff,
Sohail Khan

By: /s/
Daniel L. Steinhagen, Esq.

Dated:

CERTIFICATIONS

Pursuant to Rule 4:5-1, I hereby certify that the subject matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no such other action or arbitration proceeding is contemplated.

I hereby further certify that there is no other party that should be joined in this action pursuant to Rule 4:28 or that is subject to joinder pursuant to Rule 4:29-1(b).

I hereby further certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

BEATTIE PADOVANO, LLC
Attorneys for Third Party Plaintiff,
Sohail Khan

By: /s/ _____
Daniel L. Steinhagen, Esq.

Dated:

BEATTIE PADOVANO, LLC

Daniel L. Steinhagen, Esq. (018622005)
DSteinhagen@beattielaw.com
200 Market Street, Suite 401
Montvale, New Jersey 07645-0244
(201) 799-2128
Attorneys for Sohail Khan

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

**NOTICE OF MOTION OF SOHAIL
KHAN FOR LIMITED INTERVENTION**

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

Ashley J. Lee, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Counsel for Intervenor-Defendant Fair Share
Housing Center

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

Thomas P. Scrivo, Esq.
Lawrence S. Cutalo, Esq.
O'Toole Scrivo, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009
(973) 239-5700
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

Craig M. Gianetti, Esq.
Day Pitney, LLP
One Jefferson Road
Parsippany, New Jersey 07054
Attorneys for Pulte Homes of NJ, LP

PLEASE TAKE NOTICE that, on April 12, 2024 at 9:00 a.m., or as soon thereafter as the matter may be heard, the undersigned attorneys for Movant Party Sohail Khan, will move before the Honorable Kevin M. Shanahan, A.J.S.C., at the Somerset County Superior Courthouse, 20 North Bridge Street, Somerville, New Jersey, for an Order permitting him to intervene in this matter pursuant to R. 4:33 as a limited intervenor for the purposes of asserting a Third-Party Complaint for Declaratory Relief against the Borough of Far Hills and Pulte Homes of NJ, LP pursuant to *N.J.S.A. 40:55D-18* and the Declaratory Judgement Act, *N.J.S.A. 2A:16-51 et seq.*

PLEASE TAKE FURTHER NOTICE that in support of the within motion, Pulte shall rely upon the Legal Brief, Certification of Sohail Khan (with exhibits annexed thereto, including a proposed answer and third-party complaint), and Certification of Daniel L. Steinhagen (with exhibits thereto);

PLEASE TAKE FURTHER NOTICE that Khan requests oral argument if this Motion is opposed; and

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

BEATTIE PADOVANO, LLC
Attorneys for Sohail Khan

By: /s/ Daniel L. Steinhagen
Daniel L. Steinhagen

Dated: March 27, 2024

BEATTIE PADOVANO, LLC

Daniel L. Steinhagen, Esq. (018622005)
DSteinhagen@beattielaw.com
200 Market Street, Suite 401
Montvale, New Jersey 07645-0244
(201) 799-2128
Attorneys for Sohail Khan

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

**CERTIFICATION OF DANIEL L.
STEINHAGEN**

Daniel L. Steinhagen, 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 firm of Beattie Padovano, LLC, which is counsel to Sohail Khan. I am fully familiar with the facts set forth in this certification, which I make in support of Mr. Khan's motion for limited intervention so that he may file a third-party complaint against the Borough of Far Hills and Pulte Homes of New Jersey, LP pursuant to *N.J.S.A.40:55D-18* for enforcement of the Borough of Far Hills Land Management Ordinance.

2. Attached hereto as Exhibit "A" is Sheet 16 of the Gladstone Design, Inc. Site Plan, dated March 19, 2021, which is the Grading Plan from the Site Plan submitted to the Far Hills Planning Board when Pulte filed its application for development.

3. Attached hereto as Exhibit "B" is the letter of Paul Ferriero, P.E., dated November 5, 2021.

4. Attached hereto as Exhibit "C" are Sheet 28 of the Gladstone Design, Inc. Site Plan, dated March 19, 2021 and Sheet 29 of the March 1, 2023 revision to the Site Plan, which

are the relevant sheets of Pulte’s Landscaping Plan in the area of the retaining wall that was constructed adjacent to the Khan property.

5. Attached hereto as Exhibit “D” are Sheet 22 of the March 19, 2021 Site Plan and March 1, 2023 revision to the Site Plan, which are the relevant sheets for the Utility Plan in the area of the retaining wall that was constructed adjacent to the Khan Property.

6. Attached hereto as Exhibit “E” are excerpts from the Borough of Far Hills Land Management Ordinance, including: excerpts from § 201 (definitions); § 401 (Application Review Procedures); § 901 (Accessory Buildings and Structures); § 920 (Principal Use); Ordinance No. 2019-08; and Ordinance 2021-01 (Stormwater Management).

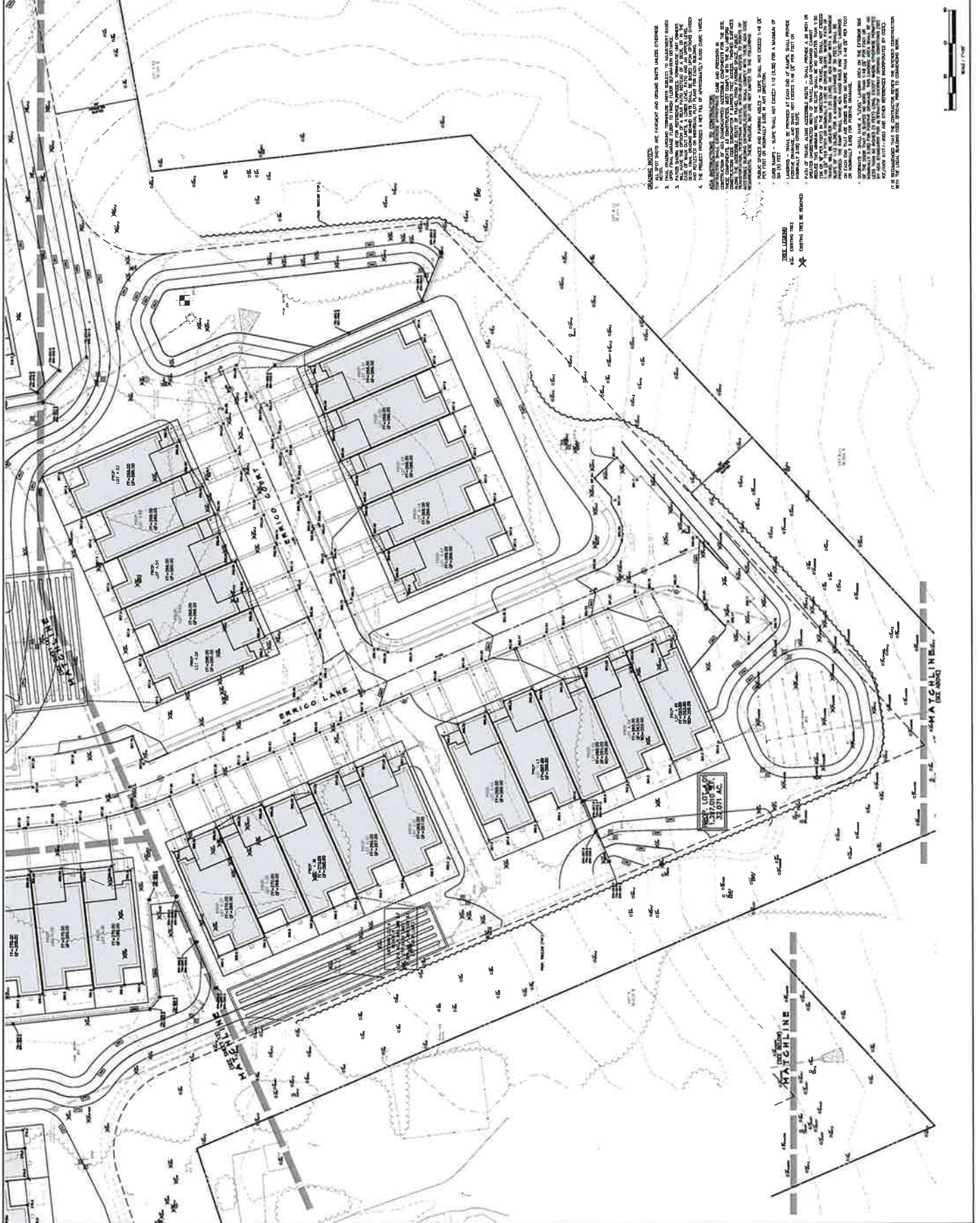
7. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Daniel L. Steinhagen
Daniel L. Steinhagen

Dated: March 27, 2024

EXHIBIT “A”

 		  	GLADSTONE DESIGN, Inc. 301 Main Street, P.O. Box 409 Gladstone, NJ 07033 (908) 512-6000 Fax: (908) 512-6001 www.gladstone-design.com	PAUL A. KENNEDY P.E. ENGINEER 1000 Main Street, Suite 100 Gladstone, NJ 07033 (908) 512-6000 Fax: (908) 512-6001 www.pakennedy.com	RESIDENCES AT OVERLEIGH BLOCK 3 LOT 4 BOROUGH OF FAR HILLS SHERBROOK NEW JERSEY	DATE: MARCH 14, 2024 SHEET NO.: 033-17 SCALE: AS SHOWN PROJECT: RESIDENCES AT OVERLEIGH SUBDIVISION PLANS	DATE: MARCH 14, 2024 SHEET NO.: 033-17 SCALE: AS SHOWN PROJECT: RESIDENCES AT OVERLEIGH SUBDIVISION PLANS
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GRADING NOTES:

- EXISTING SPOTS AND FINISH AND FINISH SPOTS SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
- SPOTS SHALL BE MAINTAINED TO THE NEAREST TENTH OF AN INCH.
- SPOTS SHALL BE MAINTAINED TO THE NEAREST TENTH OF AN INCH UNLESS OTHERWISE NOTED.
- SPOTS SHALL BE MAINTAINED TO THE NEAREST TENTH OF AN INCH UNLESS OTHERWISE NOTED.

CONSTRUCTION NOTES:

- CONSTRUCTION SHALL BE ACCORDING TO THE LATEST EDITION OF THE INTERNATIONAL BUILDING CODE.
- CONSTRUCTION SHALL BE ACCORDING TO THE LATEST EDITION OF THE INTERNATIONAL PLUMBING CODE.
- CONSTRUCTION SHALL BE ACCORDING TO THE LATEST EDITION OF THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODE.
- CONSTRUCTION SHALL BE ACCORDING TO THE LATEST EDITION OF THE INTERNATIONAL FIRE AND SAFETY CODE.



EXHIBIT “B”



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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- 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 Schwartz, 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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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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Block 5, Lot 4
US Hwy Route 202
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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.

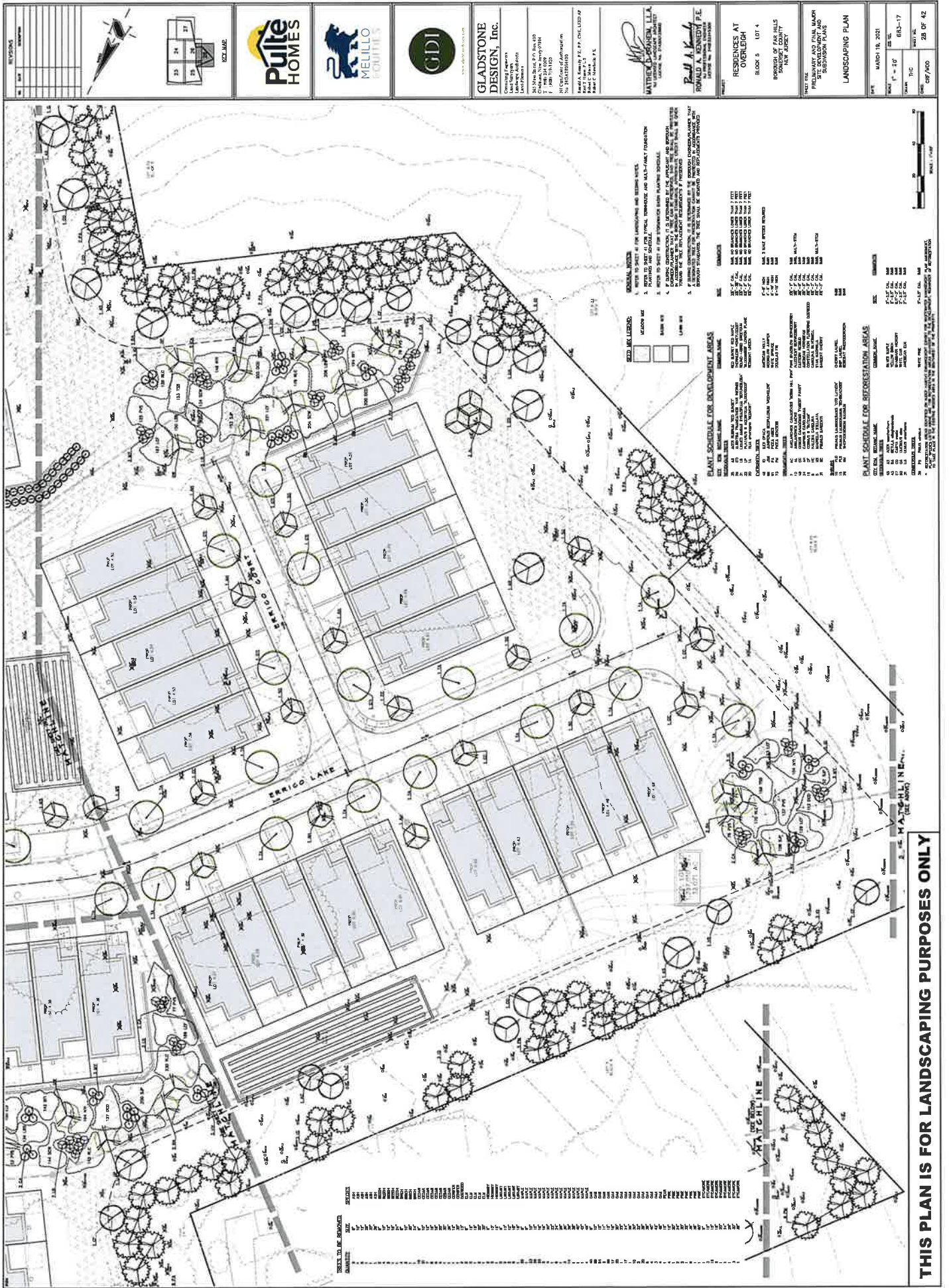
Very truly yours,

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

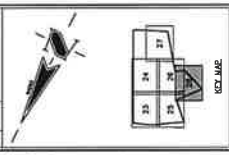
cc: Board Members
Peter Henry, Esq.
David Banisch, PP
Kimberly Coward, Zoning Officer
Steven Mahoney, Construction Official
Ronald A. Kennedy, PE
Craig M. Gianetti, Esq.
Mark Kataryniak, PE

EXHIBIT “C”



REVISIONS

NO.	DATE	DESCRIPTION



GLADSTONE DESIGN, Inc.
 CONSULTING DESIGNER
 265 North Main St., 5th Fl., New York, NY 10039
 T 212 333 3333
 F 212 333 3333
 www.gladstone-design.com

MATTHEW S. BROWN, L.L.A.
 ARCHITECT
 1000 Broadway, New York, NY 10018
 T 212 692 1234
 F 212 692 1234
 www.matthewsbrown.com

RESIDENCES AT OVERLEIGH
 BLOCK 5 LOT 4
 PROPERTY OF GDI LLC
 1000 BROADWAY
 NEW YORK, NY 10018

LANDSCAPING PLAN
 DATE: MARCH 15, 2023
 SHEET NO: 26 OF 42
 SCALE: 1" = 10'
 DRAWN BY: JIC
 CHECKED BY: JIC
 CPT/ADD: 26 OF 42

GENERAL NOTES:

- REFER TO SHEET OF THE LANDSCAPING AND SITEWORK SET.
- PLANTING AND MAINTENANCE SCHEDULE AND MULTI-PHASE FOUNDATION.
- REFER TO SHEET OF THE SITEWORK AND UTILITIES SET FOR DETAILS.
- CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF NEW YORK AND STATE OF NEW YORK REGULATIONS AND REQUIREMENTS.
- ALL PLANTING SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE CITY OF NEW YORK AND STATE OF NEW YORK REGULATIONS AND REQUIREMENTS.
- ALL PLANTING SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE CITY OF NEW YORK AND STATE OF NEW YORK REGULATIONS AND REQUIREMENTS.

PLANT SCHEDULE FOR DEVELOPMENT AREAS:

NO.	PLANT SPECIES	QUANTITY
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PLANT SCHEDULE FOR REFORESTATION AREAS:

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LEGEND:

- Tree symbols (various sizes and shapes)
- Shrub symbols (various shapes)
- Planting notes (e.g., 12" DBH, 10' H)

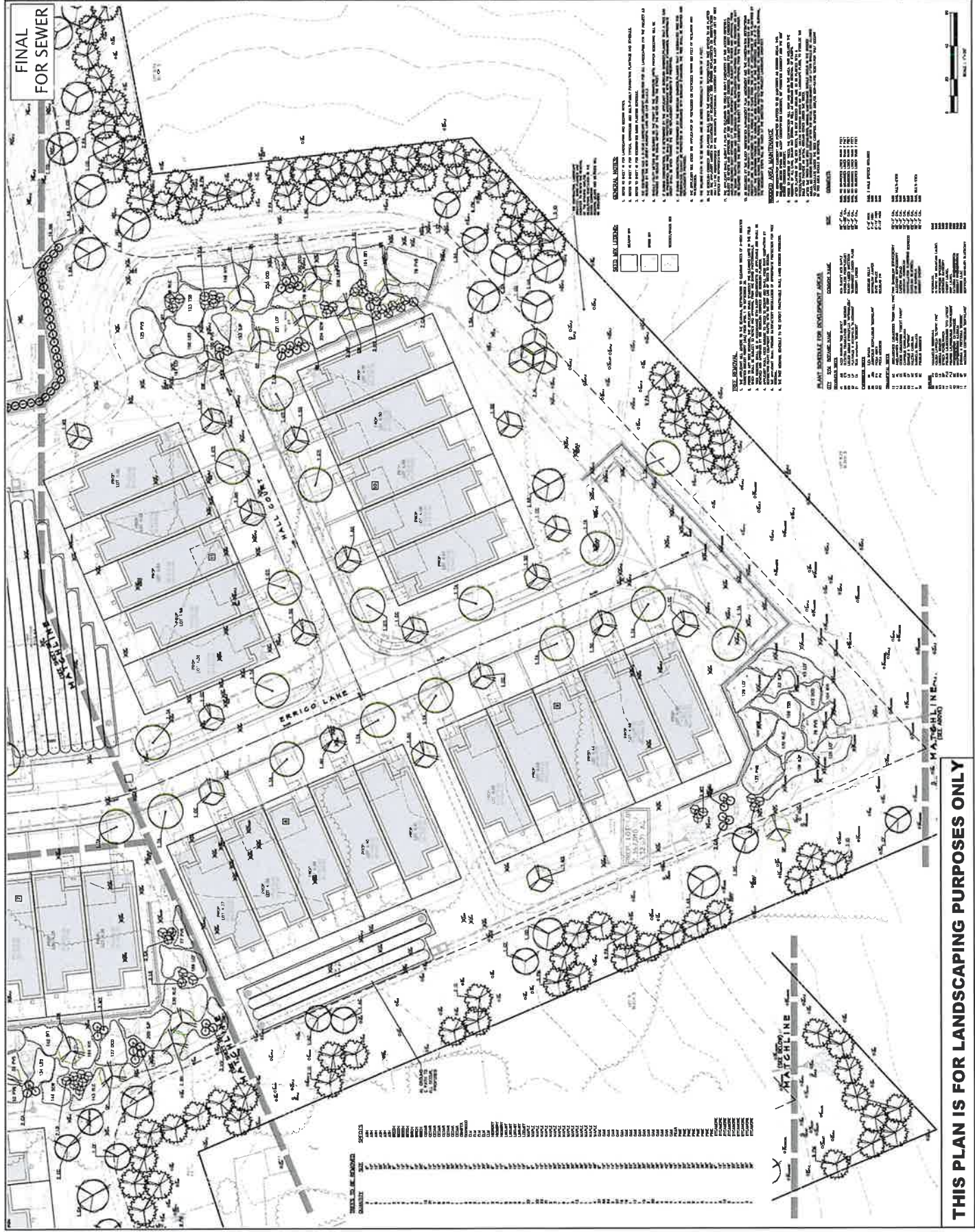
SCALE: 1" = 10'

DATE: MARCH 15, 2023

PROJECT: RESIDENCES AT OVERLEIGH, BLOCK 5, LOT 4

THIS PLAN IS FOR LANDSCAPING PURPOSES ONLY

						<p>GLADSTONE DESIGN, Inc. Consulting Engineers Landscaping 200 South Street, 2nd Floor Philadelphia, PA 19103 Phone: (215) 922-1111 Fax: (215) 922-1112 Website: www.gladstone.com</p>	<p>MATTHEW D. DRANEH, L.L.A. Landscape Architect 1000 Locust Street, Suite 1000 Philadelphia, PA 19106 Phone: (215) 625-1000 Fax: (215) 625-1001 Website: www.mdraneh.com</p>	<p>RONALD A. WARDENY, P.E. Professional Engineer 1000 Locust Street, Suite 1000 Philadelphia, PA 19106 Phone: (215) 625-1000 Fax: (215) 625-1001 Website: www.rwardeny.com</p>	<p>PULTE HOMES - FAR HILLS BLOCK 5 LOT 4 PHOENIX HILLS BURLINGTON COUNTY NEW JERSEY</p>	<p>LANDSCAPE PLAN</p> <p>DATE: MARCH 18, 2024 SHEET NO.: 27 OF 42</p>
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PLANT SCHEDULE FOR INSTANTANEOUS PLANTING

QTY	SYM	DESCRIPTION	REMARKS
10	L1	1.00' x 1.00' x 1.00'	...
20	L2	2.00' x 2.00' x 2.00'	...
30	L3	3.00' x 3.00' x 3.00'	...
40	L4	4.00' x 4.00' x 4.00'	...
50	L5	5.00' x 5.00' x 5.00'	...
60	L6	6.00' x 6.00' x 6.00'	...
70	L7	7.00' x 7.00' x 7.00'	...
80	L8	8.00' x 8.00' x 8.00'	...
90	L9	9.00' x 9.00' x 9.00'	...
100	L10	10.00' x 10.00' x 10.00'	...

GENERAL NOTES

1. REFER TO ALL OTHER DRAWINGS AND SPECIFICATIONS FOR THE PROJECT.
2. ALL PLANTING SHALL BE INSTANTANEOUS UNLESS OTHERWISE NOTED.
3. ALL PLANTING SHALL BE INSTALLED IN ACCORDANCE WITH THE LANDSCAPE PLAN AND THE SPECIFICATIONS FOR THE PROJECT.
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GENERAL NOTES (Continued)

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GENERAL NOTES (Continued)

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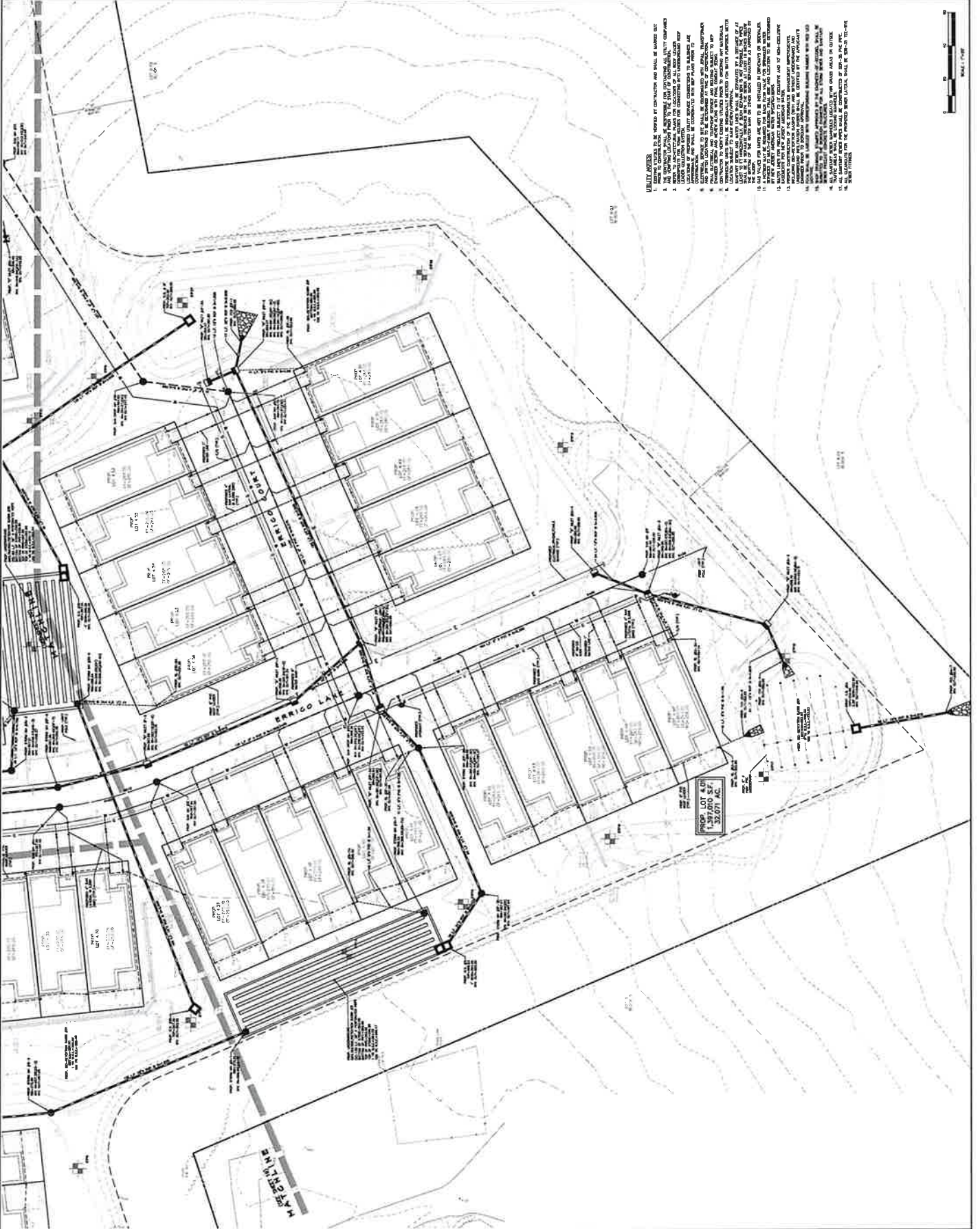
GENERAL NOTES (Continued)

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THIS PLAN IS FOR LANDSCAPING PURPOSES ONLY

EXHIBIT “D”

 	  	GLADSTONE DESIGN, Inc. Land Development 302 Main Street P.O. Box 100 Gladstone, NJ 07033 T 908.333.7800 F 908.333.7810 www.gladstoneinc.com		RESIDENCES AT OVERLEIGH BLOCK 5 LOT 4 BRIDGE OF FAR HILLS SUBDIVISION NEW JERSEY	UTILITY PLAN SHEET NO. 803-17 DATE: MARCH 18, 2021 TYPICAL OF/AND: 22 OF 42



- UTILITY NOTES:**
1. REFER TO SHEETS 803-15 THROUGH 803-17 FOR THE LOCATION AND DEPTH OF ALL UTILITIES.
 2. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARM CODE (NFPA).
 3. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL PLUMBING CODE (NPC) AND THE NATIONAL GAS CODE (NGC).
 4. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL SANITARY ENGINEERING CODE (NSF).
 5. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARM CODE (NFPA).
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 13. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL SANITARY ENGINEERING CODE (NSF).
 14. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARM CODE (NFPA).
 15. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL PLUMBING CODE (NPC) AND THE NATIONAL GAS CODE (NGC).
 16. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL SANITARY ENGINEERING CODE (NSF).



EXHIBIT “E”

Cartway - The hard or paved surface portion of a street customarily used by vehicles in the irregular course of travel. Where there are curbs, the "cartway" includes only that portion between the curbs. Where there are no curbs, the "cartway" is that portion between the edges of the paved width.

Cellar - A story having more than one-half (1/2) of its height below ground.

Child-care/day-care center - A facility for the care, development and supervision of children up to the age of eighteen (18) years, who attend the facility for less than twenty-four (24) hours a day. For facilities accommodating six (6) or more children, the facility shall be licensed by the State Department of Human Services, Division of Youth and Family Services.

Complete application - Submission of an application form and checklist, completed by the applicant, together with all accompanying documents required by this ordinance for review by the approving authority.

Conditional use - A use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this ordinance, and upon the issuance of an authorization therefor by the Planning Board.

Conservation easement - Grant(s) to the municipality sufficient to permit the municipality to fulfill the intent and purpose of the easement as provided in this ordinance.

Construction official - The Construction official of the Borough of Far Hills, or such other individual designated by the Borough Council.

Density - The permitted number of dwelling units per gross acre of land developed.

Density, design - A number expressing the number of units per acre on that portion of a tract devoted to a specific housing type, including streets, parking areas, driveways and yards, but excluding other areas to be set aside for common property and/or public areas.

Development - The division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation

or landfill, and any use or change in use of any building or other structure or land or extension of use of land, for which permission may be required.

Dwelling unit - A room or series of connected rooms designed for permanent residency containing living, cooking, sleeping and sanitary facilities for one housekeeping unit. The dwelling shall be self-contained and shall not require the use of outside stairs, passing through another dwelling unit or indirect route(s) to get to any portion of the dwelling unit, nor shall there be shared facilities with another housekeeping unit.

Detached, single family - A building (including an attached garage, if any) physically detached from other buildings or portions of buildings which is occupied or intended to be occupied for residence purposes by one housekeeping unit which has its own sleeping, sanitary and general living facilities.

Patio house - A single family dwelling on an individual lot which may be attached to a second single family dwelling on an adjacent lot.

Townhouse - One building containing at least three (3), but no more than eight (8), connected dwelling units, where each dwelling unit is compatibly designed in relation to all other units, but is distinct by such design features as width, setback, roof design, color, exterior materials, and other features, singularly or in combination. Each dwelling unit may be a maximum of two and one-half (2 1/2) stories and thirty-five (35) feet in height, but nothing in the definition shall be construed to allow one (1) dwelling unit over another.

Attached - One dwelling unit abutting another dwelling unit along a common wall.

Multiple - A building containing more than two (2) dwelling units.

Plex - A two-, three- or four-unit dwelling in which the units are attached at the sides and/or rears in various combinations so the design incorporates a private balcony or patio or other limited outdoor, but private space. The structure is usually designed to have the look of a large single-family home.

Twin house or duplex - A dwelling unit sharing a common vertical or horizontal separation with only one other dwelling unit.

Sight triangle - A triangular area outside the street right-of-way abutting two (2) intersecting streets. The "sight triangle" is formed by the intersecting street lines and a line connecting a point on each street line a set distance from the point of intersection.

Sight triangle easements at intersection - A triangular area established in accordance with the requirements of this ordinance in which no grading, planting or structures shall be erected or maintained more than twelve (12) inches above the street centerline except for street signs, fire hydrants and light standards.

Sign - Any announcement, declaration, demonstration, display, illustration, or insignia used to identify, promote or advertise the interests of any person, group of persons, company, corporation, service or product when the same is painted or printed directly on the building or is placed on, erected on or attached to the building or erected on a lot where it may be viewed from off-site.

Site plan - A development plan of one (1) or more lots on which is shown: (1) the existing and proposed conditions of the lot, including but not limited to topography, vegetation, drainage, flood plains, marshes and waterways; (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices; and (3) any other information that may be reasonably required in order to make an informed determination concerning the adequacy of the plan in accordance with the requirements of this ordinance.

Site plan, exempt - A site plan shall not be required for single-family dwellings unless such dwellings involve a home occupation or other conditional use.

Site plan, major - All site plans for new developments and those site plans not defined as minor or exempt.

Site plan, minor - A development plan of one (1) or more lots which does not involve the erection of a new building, structure or use or the addition of more than five hundred (500) square feet of floor area or more than four (4) parking spaces, provided that no variances are required; does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to N.J.S.A. 40:55D-42.

Article IV - Development Review Procedures
and Plat/Plan Details

Section 401. Application of Review Procedures

- A. Subdivision review. All subdivisions, as defined under Article II, Section 201.B., are subject to the review procedures contained herein. Divisions of land not considered a subdivision as defined in this ordinance shall be exempt from compliance with the requirements of this ordinance as provided in N.J.S.A. 40:55D-1 et seq.. Until exempted from the subdivision regulations by the approving authority, no person can transfer, sell or agree to transfer or sell, as owner or agent, any land which forms a part of the subdivision for which approval is required.
- B. Site plan review. Site plan review and approval is required for all developments which do not meet the definition of "site plan, exempt" in Section 201.C.

Section 402. Complete Applications

- A. An application for development shall be complete for purposes of commencing the applicable time period for action when the application is certified complete by the Planning Board. In the event that the application is not certified to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five day period for purposes of commencing the applicable time period, unless:
 - 1. The application lacks information indicated on a checklist adopted by ordinance and provided to the applicant; and
 - 2. The approving authority, acting through its designee, has notified the applicant, in writing, of the deficiencies in the application within forty-five (45) days of submission of the application.
- B. The applicant may request that one (1) or more of the submission requirements be waived, in which event, the approving authority shall grant or deny the request within forty-five (45) days. The applicant shall provide specific reasons, acceptable to the Planning Board, as to why the waiver is justified and appropriate.
- C. Nothing herein shall be construed as diminishing the applicant's obligation to provide in the application process that he is entitled to approval of the application.

Article IX - Design and Improvement Standards

Section 901. Accessory Buildings and Structures

A. Accessory buildings as part of principal buildings

Any accessory building that is attached to a principal building shall be considered part of the principal building and the total structure shall adhere to the yard requirements for the principal building, regardless of the technique of connecting the principal and accessory buildings.

B. Construction of accessory buildings and structures

No construction permit shall be issued for the construction of an accessory building or structure, other than construction trailers or storage sheds, prior to the issuance of a construction permit for the construction of the main building upon the same premises. If construction of the main building does not precede or coincide with the construction of the accessory building or structure, the Construction Official shall revoke the construction permit for the accessory building or structure until the construction of the main building has proceeded substantially toward completion.

C. Location

An accessory building shall comply with the minimum setback requirements applicable to the zoning district in which it is located.

Section 902. Bikeways, Paths and Bridle Trails

A. Bikeways, paths or bridle trails may be required at the approving authority's discretion, depending on the development's location in relation to schools, recreation areas, shopping facilities and existing or proposed paths and bridle trails, or its location with respect to any overall bike route or trail plan adopted by the Planning Board. Bicycle traffic shall be separated from motor vehicle and pedestrian traffic as much as possible.

B. Bikeways shall generally not exceed a grade of three percent (3%), except for short distances, and shall be a minimum of six (6') feet wide. Bikeways shall have a minimum four inch base of crushed stone and two inch FABC-2 surface course. Where bike paths, located outside street rights-of-way, intersect a street, the curbing shall be ramped for bicycle access to the street grade.

Section 920. Principal Use

Unless otherwise specified for a particular zoning district in Article VII, no more than one (1) principal building or use shall be permitted on one (1) lot except for townhouse developments receiving site plan approval in accordance with the provisions of this ordinance, and farms, which may consist of a principal dwelling and permitted agricultural uses on the same lot.

Section 921. Recycling

- A. All recycling activities shall be conducted in accordance with the provisions of the Far Hills Recycling Ordinance, No. 88-9, and any amendments thereto.
- B. Any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing, and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land, shall include provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance.

EXPLANATION: This Ordinance establishes an affordable housing overlay zone to be known as the TH-6-IAR Affordable Housing Overlay (AHO) Zone for the property identified as Block 5, Lot 4, commonly referred to as Errico Acres located at 220 Route 202, for the purpose inclusionary affordable housing development, which shall permit the development of a total of 134 new housing units, consisting of 105 age-restricted townhouses, and 29 affordable rental apartments, including at least 25 affordable non age-restricted family rental apartments and up to 4 age-restricted affordable rental apartments.

Revised 06-18-21 – Typographical corrections to Sections 1 & 2 replacing Article VI for Article VII; Section 3 replacing Article VII for Article VIII and Section 703.2 for 7.08

BOROUGH OF FAR HILLS ORDINANCE NO. 2019-08

AN ORDINANCE AMENDING AND SUPPLEMENTING THE LAND MANAGEMENT ORDINANCE OF THE BOROUGH OF FAR HILLS TO ESTABLISH AN TH-6-IAR AFFORDABLE HOUSING OVERLAY ZONE DISTRICT FOR THE PROPERTY IDENTIFIED AS BLOCK 5, LOT 4 IN THE BOROUGH OF FAR HILLS AND TO ESTABLISH USE, BULK AND DEVELOPMENT STANDARDS FOR MARKET-RATE AGE-RESTRICTED TOWNHOUSE AND AFFORDABLE RENTAL APARTMENT DEVELOPMENT ADDRESSING A PORTION OF FAR HILLS BOROUGH'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS.

WHEREAS, 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 of Far Hills (“Borough”) filed an action 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 a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the “Compliance Action”); and

WHEREAS, at a duly noticed public hearing on July 1, 2019, the Planning Board of the Borough of Far Hills (“Planning Board”) adopted a Housing Element and Fair Share Plan (hereinafter “Affordable Housing Plan”), which was endorsed by the Mayor and Borough Council at its July 8, 2019 public meeting, which is subject to the Court’s review and approval; and

WHEREAS, Melillo approached the Borough with a proposal for the development of inclusionary, residential rental and for sale development on the property identified as Block 5, Lot 4,

located at 220 Route 202, consisting of approximately 42.3± acres (hereinafter referred to as “Errico Acres Site”) and the development of a mixed-use project on property identified as Block 15, Lot 3 (located at 39 Dumont Road), Block 15, Lot 4 (located at 43 Dumont Road), Block 15, Lot 5 (located at 45 Route 202) and Block 15, Lot 1.01 (located at 49 Route 202), consisting of approximately 2.1 acres (“Far Hills Proper Site” together with the Errico Acres Site, the “Properties”); and

WHEREAS, at the October 9, 2018 Borough Council meeting, Melillo made a public presentation of the proposed development of the Errico Acres Site and Far Hills Proper Site, with opportunity for the public input and question; and

WHEREAS, the Borough and Melillo entered into a Memorandum of Understanding, dated October 9, 2018, setting for the general terms for the inclusionary, residential development at the Errico Acres site and mixed-use development (residential / commercial) on the Far Hills Proper Site (“MOU”); and

WHEREAS, the proposed residential development of the Errico Acres site agreed to be developed with a permitted density of up to one hundred thirty four (134) total units, including not less than twenty five (25) non-age restricted, family rental affordable housing units and up to four (4) age-restricted rental units (for a total of 29 affordable rental units); and

WHEREAS, the Borough of Far Hills has entered into a settlement agreement on October 15, 2018 with the Fair Share Housing Center and Melillo Equities that addresses Far Hills Borough’s affordable housing obligations and resolves the Borough of Far Hill’s Third Round Mt. Laurel litigation; and

WHEREAS, the Superior Court of New Jersey issued a Fairness Order on February 26, 2019 that found the Borough of Far Hills Housing Plan Element and Fair Share Plan to be fully responsive to the Borough’s affordable housing obligations and fair to low- and moderate-income persons; and

WHEREAS, pursuant to subsequent negotiations, Melillo agreed to age-restrict the for sale, market units at the Errico Acres site, which consisted up to one hundred and five (105) units, and as the market rate units are subsidizing the construction of the affordable units, the Borough agreed to make an affordable housing contribution towards the project to address the loss in value converting from an family project to an age-restricted project; and

WHEREAS, the Mayor and Borough Council of the Borough of Far Hills has determined that Block 5, Lot 4, commonly known as Errico Acres, located at 220 Route 202 in Far Hills Borough, shall accommodate a substantial portion of the Borough's Third Round affordable housing obligation through the development of a total of 134 residential dwelling units consisting of 105 market-rate, age-restricted townhouse units and 29 affordable rental apartments including not less than 25 affordable non age-restricted family rental apartments available to the general public and up to 4 age-restricted affordable apartments; and

WHEREAS, the Mayor and Borough Council of the Borough of Far Hills has conducted public outreach including proposed development presentations to the public for review and comment as part of the municipal response to addressing the Borough's Round Three affordable housing obligations, including public presentations of proposed inclusionary zoning development plans for Block 5, Lot 4, that have identified the proposed general development plan for the site having concluded the most recent presentation of the proposed development on November 25, 2019;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Far Hills, in the County of Somerset and State of New Jersey as follows:

Section 1. Section 601 entitled "Zoning Districts" of Article VI~~E~~ entitled "Zoning Districts and Zoning Map" is hereby supplemented and amended to read as follows: [New language in **bold and underlined**, deleted language in ~~double struckthrough~~.]

Section 601. Zoning Districts

For the purpose of this Ordinance the Borough of Far Hills is hereby divided into districts as follows:

<u>Symbol</u>	<u>Name</u>
R-10	Low density residential
R-10A	
R-10 AHO	Affordable Housing Overlay
R-6	Moderate density residential
R-3	Intermediate residential
R-9	Suburban residential
R-5	Village residential
TH-6.5	Townhouse residential
<u>TH-6-IAR</u>	<u>Townhouse Inclusionary Age-restricted Residential</u>
VC	Village Commercial
NO	Neighborhood office

Section 2. Section 602 entitled “Zoning Map” of Article VI~~II~~ entitled “Zoning Districts and Zoning Map” is hereby supplemented and amended to amend the Borough Zoning Map to include the property identified as Block 5, Lot 4 in the TH-6-IAR Townhouse Inclusionary Age-restricted Residential Zone District.

Section 3. Article VII~~II~~ entitled “District Regulations” of The Land Management Ordinance of the Borough of Far Hills, Somerset County is hereby supplemented and amended to establish a new Section ~~7.08.2~~ **703.2** to be entitled “TH-6-IAR Townhouse Inclusionary Age-Restricted Residential” to read as follows: [New language in **bold and underlined**, deleted language in ~~double strikethrough.~~]

Section 703.2. TH-6-IAR Townhouse Inclusionary Age-Restricted Residential.

- A. Purpose. The purpose of the TH-6-IAR Townhouse Inclusionary Age-restricted Residential Zone is to establish zoning that creates a realistic opportunity for the development of affordable housing in accordance with Far Hills Borough’s Third Round Mt. Laurel affordable housing obligations and Court-approved Third Round Housing Plan Element and Fair Share Plan. This zoning ordinance amendment establishes development standards for market-rate age-restricted townhouse and affordable rental apartment development on Block 5, Lot 4 as called for in the Court-approved Affordable Housing Agreement between the Borough of Far Hills and Melillo Equities, LLC, dated December 9, 2019.

B. Principal permitted uses. Subject to Site Plan approval, the following uses are principal permitted uses in the TH-6-IAR Zone:

1. One-hundred five (105) Townhouses in buildings containing not more than five (5) townhouse units per building.
2. Twenty-nine (29) Affordable apartments in one or more buildings including not less than twenty-five (25) affordable apartments available to the general public and up to four (4) age-restricted affordable apartments.
3. The development plan for Block 5, Lot 4 is anticipated to generally conform to the concept development plan presented to the Borough of Far Hills by Melillo Equities and incorporated herein at Exhibit A, however, the overall layout and configuration of development is subject to Planning Board approval and therefore may not strictly conform to Exhibit A.

C. Permitted accessory uses. Subject to site plan approval, the following uses are permitted accessory uses in the TH-6-IAR Zone:

1. Off street parking.
2. Storage buildings necessary and incidental to accommodate storage needs of the affordable rental apartments.
3. Outdoor seating and gathering areas for the benefit of the residents, including benches, gazebos, formal gardens, community gardens.
4. A building, structure or use that is customarily incidental and subordinate to the principal uses of the lot, not including exterior storage sheds or other buildings accessory to individual townhouse units, including, but not limited to:
 - i. Tennis courts or any form of outdoor recreation court, or play field.
 - ii. Tot lots and playground equipment.
 - iii. Walking paths.
 - iv. Any essential utility structure.
5. Signs, in accordance with Article IX.

D. Permitted conditional uses.

1. None.

E. Permitted residential development (maximum):

- | | |
|--|-----------------------------------|
| 1. Age-restricted, market-rate townhouses: | 105 units (max. 5-units/building) |
| 2. Affordable rental apartments: | 29 apartments. |
| i. Affordable non age-restricted family rental apartments: | At least 25 apartments. |
| ii. Affordable age-restricted rental apartments: | Up to 4 apartments. |

F. Building height (maximum):

1. Age-restricted, market-rate townhouses:
 - i. 2-1/2 stories; and
 - ii. 36'.
2. Affordable rental apartment buildings:
 - i. 3-stories with an exterior architectural appearance of a 2-1/2 story building; and
 - ii. 42'.

G. Area, yard, and setback requirements.

1. Tract area (minimum): 40 acres (before any right-of-way, easement or similar land dedications)
2. Maximum Building Coverage.
 - i. The total ground floor area of all buildings shall not exceed thirty (30%) percent of the lot area.
3. Maximum Impervious Coverage.
 - i. The total area of all impervious surfaces shall not exceed sixty (60%) percent of the lot area.
4. Yard requirements:
 - i. Front yard: 300'
 - ii. Side yard: 100'
 - iii. Side yard tree buffer: 50'
 - iv. Rear yard: 50' (from railroad right-of-way)
5. Building setbacks:
 - i. Townhouses building setbacks:
 1. From tract boundary line: 100'
 2. From internal street curblines/parking space: 28'¹
 3. Between buildings:
 - a. Front wall to any other wall: 60'
 - b. Rear wall to rear wall: 60'
 - c. Rear deck/patio to rear deck/patio: 30'
 - d. End/side wall to end/side wall: 25'
 - e. End/side wall to street curblines/parking space: 30'
 - ii. Affordable rental apartment building(s) setbacks:
 1. From tract boundary line: 100'
 2. From internal street curblines/parking space: 15'
 3. Between buildings: 50'
 - iii. Apartment accessory storage building setbacks:
 1. From tract boundary line: 100'
 2. From internal street curblines/parking space: 15'
 3. Between apartment and storage buildings: 25'
 4. Accessory storage buildings may be located in the front, side or rear yard area and shall conform to all yard requirements in G.5 above. Landscaping shall be used to screen the view of accessory storage buildings from townhouse units.
 5. Design. Architectural design and materials used in the construction of accessory buildings shall conform to and complement the architectural style of the affordable rental apartment building(s).

H. Off-street Parking.

1. Parking shall be provided on site in accordance with the NJDCA Residential Site Improvements Standards (RSIS).
 - i. All off-street parking areas and internal roadways shall be paved, bounded by permanent Belgian block curbing and constructed in accordance with Borough of Far Hills road

¹ 24' if sidewalks are not provided between townhouse and curblines/parking space.

specifications; provided, however, that, upon recommendation of the Planning Board and Borough Engineer, the requirement of curbing may be waived or modified when found not to be needed for control of storm water, protection of pavement and similar functional purposes.

- ii. Parking areas shall be located at least fifteen feet (15') from an affordable rental apartment building and fifty (50) feet from a tract boundary.
 - iii. Except as otherwise provided in the New Jersey Residential Site Improvement Standards, internal roadways shall be at least twenty-four (24) feet in width for two (2)-way traffic and twelve (12) feet in width for one (1)-way traffic and shall not enter the public right-of-way street within one hundred (100) feet of an existing intersection, subject to NJDOT approval. Drives leading from internal roadways to parking areas shall be at least twenty (20) feet in width.
 - iv. The arrangement and location of garages, parking areas and internal roadways shall be subject to approval by the Planning Board and shall be designed to ensure maximum safety, proper circulation and maximum convenience for residents and their guests.
 - v. Sidewalks shall be provided along at least one side of any internal road serving the developments (townhouses and affordable rental apartments) and shall provide a pedestrian connection to walking path(s) that shall be provided for the use and enjoyment of the residents.
 - vi. Parking for townhouses shall include two-car garages and driveway parking with a minimum driveway length of 20' between garage doors and the edge of a sidewalk.
 - vii. Parking for affordable rental apartments shall be provided in close proximity and adjacent to the apartments for convenient resident access.
2. Parking areas shall be appropriately landscaped to minimize off site headlight glare impacts to adjoining residential uses and to soften lighting impacts and the view of parked vehicles from adjoining residential uses within the tract.

I. Landscaping, buffering and lighting.

1. Landscaping shall be provided that is appropriate to the residential neighborhood within which the townhouse and affordable housing developments are constructed, including a generous supply of foundation plantings and ornamental trees for each dwelling within the townhouse development and for the apartment building(s) containing the affordable rental apartments.
 - i. A landscaping plan prepared by a licensed landscape architect shall be submitted for Board review, which shall identify all proposed landscaping for the tract, including individual planting plans for the townhouses and apartment buildings. The landscaping plan shall identify supplemental, replacement and required buffer plantings in accordance with the requirements set forth below.
 - ii. Driveways, internal roads and parking areas shall be suitably landscaped as may be necessary to prevent headlight glare impacts to residences within the development tract.
2. Buffers.
 - i. Perimeter Buffer. A minimum 50' wide landscaped buffer shall be maintained along all side and rear tract boundaries, which shall not be occupied by any site improvements, including buildings, driveways, parking, etc., however a pedestrian walking path circulating around the perimeter of the site shall be permitted within the 50' landscaped buffer, and stormwater management grading shall be permitted within the 50' landscaped buffer to the extent necessary, subject to Board approval.
 - ii. Frontage Buffer. A minimum 200' landscaped buffer shall be maintained along Route 202 in accordance with Article VIII, General Provisions and Management Programs,

Section 803.F., Scenic, which shall be designated with a scenic corridor easement. Driveway and essential utility access to the tract shall be permitted through the Scenic Corridor Easement, subject to Planning Board approval.

1. In addition to the 200' Scenic easement across the Route 202 frontage of the tract, there shall be provided a 100' wide "Common Area/Open Lands" easement provided parallel and in addition to the Scenic easement.
 - a. The form of easement shall be provided at the time site plan application is made for the development.
 - b. There shall be no road, parking or building improvements within the "Common Area/Open Lands" easement with the exception of features such as outdoor seating areas, gardens, landscaping, etc., for the use and enjoyment of residents.
 - c. Driveway and essential utility access to the tract shall be permitted through the Common Area/Open Lands, subject to Planning Board approval.
 - d. If an on-site wastewater management facility and subsurface wastewater disposal system is to be constructed on site, these features may be constructed within the 100' wide Common Area/Open Lands" easement area, subject to approval by the Planning Board.
- iii. Hedgerows and tree lines. Efforts shall be made to maintain existing significant stands of trees and common hedgerows along property lines and the public right-of-way. The objective is to minimally impact the Route 202 scenic corridor as perceived by travel along the roadway by maintaining existing vegetation to the extent achievable and practicable and to limit alteration of the scenic corridor to those changes necessary to accommodate access to the tract for permitted development.
 1. Where removal of vegetation within existing hedgerows and tree lines is necessary for driveway and pedestrian access improvements, replacement landscaping shall be provided to reestablish such hedgerows and tree lines to the extent practicable utilizing native species of a mix of evergreen, deciduous, and ornamental trees and shrubs and understory plantings.
 2. Existing hedgerows and tree lines to remain undisturbed shall be supplemented with additional vegetation, consisting of native tree and shrub species where supplemental landscaping will enhance the screening effectiveness of the 200' scenic corridor easement.
 3. Removal of undesirable invasive exotic vegetation shall be permitted within the 200' scenic corridor easement but only in conjunction with a comprehensive landscaping replacement plan, subject to Board approval.
 4. Existing roadside forested areas and hedgerows shall be maintained to the extent practicable.
- iv. Supplemental buffering and landscaping. When found necessary and desirable by the Planning Board, supplemental buffering and landscaping may be required to enhance visual screening of various elements of the development when viewed from off-tract.
3. Lighting. Adequate artificial lighting shall be provided in parking areas and along sidewalks, walkways and internal roadways.
 - i. The source of lighting shall be directed downward, away from buildings and adjoining streets and property lines.
 - ii. Lighting fixtures shall be so arranged that the direct source of light is not visible from any adjacent property.

- iii. Lighting fixture specifications shall indicate that lighting used throughout the tract shall emit light in the range of 2800°K – 3500°K.
- iv. Lighting fixtures used throughout the tract shall be thematically coordinated with similar styles and lighting sources.
- v. All lighting shall be subject to an in-service lighting inspection by the Borough Engineer. Where deemed necessary and appropriate by the Borough Engineer to minimize the view of light sources from off site or from adjacent residential uses within the development, lighting fixtures shall be adjusted or fitted with house-side shields to reduce glare and brightness.

J. Stormwater management shall be provided consistent with applicable local, county and State regulations.

K. Sanitary sewer/wastewater management.

1. Wastewater management may be provided by extending the public sewer line to the tract, or through the construction of an on-site treatment facility and groundwater discharge system.
 - i. Public sewer line extension. If wastewater treatment is to be provided through an extension of the public sewer system, the developer at his sole cost and expense, shall be responsible for the design of the sewer line extension, which shall be designed as a force main or other similar design that shall preclude connection to the sewer line by any of the existing properties along U.S Highway Route 202, or any properties within Far Hills Borough located between and adjacent to Enrico Acres and the existing terminus of the sewer line in Route 202 at Far Hills village.
 - ii. On-site treatment plant and wastewater disposal facilities. If wastewater treatment is to be provided by an on-site treatment plant and groundwater disposal system, the systems shall be owned, operated and maintained exclusively by the development which it serves (townhouses and rental apartment buildings). Maintenance agreements between the townhouse development homeowner's association and the owner of the affordable rental apartments shall be subject to review and approval by the Borough Attorney.
 1. To the extent permitted by law, the Borough may require a bond or other form of maintenance guarantee to ensure long-term operation and maintenance of an on-site wastewater management treatment plant and the groundwater discharge system that serves the developments.

L. Public water supply. At the developer's sole cost and expense, public water shall be provided to adequately serve the developments.

1. The cost of water service extension design and all outside agency approvals for water line improvements necessary to serve the development shall be solely bore by the developer.

M. Architectural design. The Borough's Court-approved settlement agreement authorizing the development of Block 5, Lot 4 includes architectural design provisions enabling Borough review and approval of the townhouse development and rental apartment building(s) exterior design.

1. Preliminary architectural designs of proposed development shall be further refined by the developer and subject to final review and approval by the Planning Board.
2. Architectural design of the townhouses and rental apartment building(s) shall incorporate a sufficient degree of architectural design and exterior building material variation so as to exude a high-quality exterior appearance.
 - i. The townhouses shall be designed utilizing exterior features such as traditional stone or brick water tables, clapboard siding and other residential design elements commonly

found in the village. Roof pitch, door and window style and placement, exterior trim and ornamentation, etc., should emulate and expand upon the traditional early 1900's architecture of Far Hills village.

- ii. Townhouse and affordable rental apartment building exterior architectural design and materials should be coordinated, substantially consistent and harmonized among the buildings.

N. Age-restriction

1. Townhouses: All one-hundred five (105) market rate, for-sale residential townhouse units shall be age-restricted. Said age-restriction shall be set forth in all deeds, by-laws and resolutions of the homeowners association, and registered with the State of New Jersey. The age-restriction deeds, by-laws and resolutions of the homeowners association shall be subject to review and approval by the Borough Attorney prior to registration with the State of New Jersey. The age-restriction and all controlling documents such as deeds and policies shall conform to applicable State law, the federal Fair Housing Act and the federal Housing for Older Persons Act of 1995.
2. Affordable rental apartments: Up to four (4) affordable rental apartments shall be age-restricted. Said age-restriction shall be set forth in all deeds, by-laws and resolutions of the homeowners association. Said age-restriction shall be enumerated in an affordable deed restriction prepared on forms that conform to the Uniform Housing Affordability Controls, N.J.A.C 5:80-26.1, et seq. ("UHAC"), subject to approval by the Borough Attorney.

O. Except to the extent modified herein, existing provisions of the Far Hills Borough Land Management Ordinance shall apply to 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).

P. Affordable housing requirements. All twenty-nine (29) affordable units shall comply with N.J.A.C. 5:93-1 et seq. (COAH's Chapter 93, Substantive Rules) and N.J.A.C. 5:80-26.1 et seq., the NJ Uniform Housing Affordability Controls (U.H.A.C.) as may be amended, supplemented or replaced by regulation or law, with respect to construction, marketing, administration, income qualification, bedroom mix, occupancy and affordability controls.

1. Deed restrictions memorializing 30-year affordability controls continuing thereafter until the Borough in its sole discretion may choose to release the controls shall be prepared on forms authorized in U.H.A.C. and submitted to the Borough Attorney for review and approval. Deed restrictions shall be recorded by the applicant as a condition of site plan approval. No certificate of occupancy shall be issued until affordability controls have been recorded.
2. Phasing: Affordable housing construction and delivery shall conform to N.J.A.C. 5:93-5.6 (d), which requires that low- and moderate-income housing units be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit

50	50
75	75
100	90
100	100

3. Administration. The developer shall contract with a qualified and experienced administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period. A draft contract with the administrative agent shall be submitted by the developer with the site plan application, which shall be subject to review and approval by the Planning Board and Borough Attorney and executed as a condition of any approval granted by the Board.
4. The developer and its Administrative Agent shall work with the Borough and the Borough's Administrative Agent regarding the affordable units and any affordable housing monitoring requirements imposed by COAH or the Court.
5. Income mix requirements for the affordable units. At least 50 percent of the units (15-units) within each bedroom distribution shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households. At least four (4) of the units shall be available to very low-income households (defined as units affordable to households earning 30 percent or less of the regional median income by household size) including at least three (3) of the family units (one one bedroom, one two bedroom, and one three bedroom).

Q. Subdivision. The subdivision of land within the TH-6-IAR Zone for the purpose of financing, property management, conveyance or creation of fee simple lots for townhouse units or for the separation of the apartment units from the townhouse units shall be permitted by the Board, notwithstanding that after subdivision the individual lots and improvements thereon may not comply with all requirements of this chapter, provided that the pre-subdivision lot remains in compliance with the site plan approved by the Board. Any subdivision shall be subject to the Board conditioning final subdivision approval upon submission by the applicant and approval by the Borough Attorney, of a declaration of covenants and restrictions or other suitable instrument setting forth the mechanisms by which and providing adequate assurances dealing with items, including but not limited to access, security, outside cleaning and other routine external maintenance, external repainting, maintenance of the common open space, garbage collection, snow removal and other appropriate items that are to be provided for the development.

Section 4. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 5. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Far Hills, the provisions hereof shall be determined to govern, and the inconsistencies of the prior ordinance are hereby repealed. All other parts, portions and provisions of the Ordinances of the Borough of Far Hills are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 6. The Borough Clerk is directed to give notice at least ten days prior to a hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).


Section 7. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Far Hills for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 8. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with (a) the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

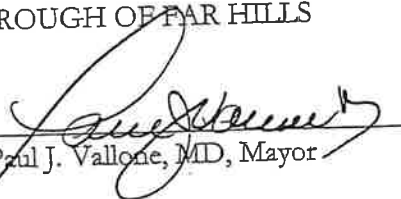
Section 9. This Ordinance shall take effect immediately upon final passage and publication according to law.

Introduced: December 9, 2019
Published: December 12, 2019
Adopted: December 23, 2019
Published: December 27, 2019

ATTEST:


Dorothy S. Hicks, Borough Clerk

BOROUGH OF FAR HILLS

By: 
Paul J. Vallone, MD, Mayor

EXPLANATION: This Ordinance updates and revises Section 916 entitled "Stormwater Management" of the Borough's Land Management Ordinance (repealing and replacing Ordinance No. 2006-06) to update the Borough's regulations governing stormwater control and management pursuant to the NJDEP's amendments to its stormwater management regulations within the Borough of Far Hills.

**BOROUGH OF FAR HILLS
ORDINANCE NO. 2021-01**

AN ORDINANCE UPDATING AND AMENDING SECTION 916 ENTITLED "STORMWATER MANAGEMENT" OF THE BOROUGH'S LAND MANAGEMENT ORDINANCE (REPEALING AND REPLACING ORDINANCE NO. 2006-06) PURSUANT TO THE NJDEP'S AMENDED STORMWATER MANAGEMENT REGULATIONS.

WHEREAS, in 2020, the New Jersey Department of Environmental Protection ("NJDEP") adopted amendments to N.J.A.C. 7:8, Stormwater Management Regulations, which changed the definition of "major development", as well as incorporated green infrastructure standards, among other updates; and

WHEREAS, the NJDEP requires that municipalities adopt and/or update its local stormwater control and management regulations to comply with its recent updates to the Stormwater Management Regulations; and

WHEREAS, the Mayor and Borough Council, upon the advice of the Borough Engineer, desires to revise and update the Borough's stormwater control and management regulations to comply with the NJDEP Regulations.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Far Hills, in the County of Somerset and State of New Jersey, as follows:

Section 1. Section 916 entitled "Stormwater Management" of Article IX of the Land Management Ordinance of the Borough of Far Hills is hereby repealed in its entirety and replaced as follows (repealing and replacing Ordinance No 2006-06):

Chapter 916 Stormwater Management

§ 916-1 Definitions

All terms in this section shall be defined in the NJDEP Stormwater Rule (N.J.A.C. 7:8, et seq.). The following additional terms are defined for this chapter only.

- A. EXEMPT DEVELOPMENT – Shall mean any development that creates an increase of less than 1,000 square feet of impervious area and disturbs less than 2,500 square feet of land. Further, an exempt development shall not meet the definition of "minor development."
- B. MINOR DEVELOPMENT – Shall mean any development that results in the creation of an increase of 1,000 square feet or more of impervious area or one that disturbs more than 2,500 square feet of land area. Further, a minor development shall not meet the definition of "major development".
- C. MAJOR DEVELOPMENT – Shall mean any individual "development," as well as multiple developments that individually or collectively result in:
 - 1. The disturbance of one or more acres of land since February 2, 2004;
 - 2. The creation of one-quarter acre or more of "regulated impervious surface" since February 2, 2004;
 - 3. The creation of one-quarter acre or more of "regulated motor vehicle surface" since March 2, 2021; or
 - 4. A combination of 2 and 3 above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one quarter acre or more.

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of conditions 1, 2, 3, or 4 above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development".

§ 916-2 Design Standards.

- A. Exempt Developments. Any project meeting the definition of "exempt development" shall be exempt from the provisions of this section.
- B. Minor Developments. Minor developments shall be designed to include the following stormwater management measures:

1. Water Quality. Soil erosion and sediment control measures shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.

2. Rate/Volume Control. Seepage pits or other infiltration measures shall be provided with a capacity of three (3") inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be two and one-half (2 1/2") inches clean stone and design void ratio of 33% shall be used. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices.

- C. Major Developments. All major developments shall have their stormwater management designed in accordance with the Residential Site Improvement Standards (RSIS, N.J.A.C. 5:21) and the NJDEP Stormwater Rule (N.J.A.C. 7:8). These standards shall apply to all projects, residential and nonresidential as well as projects by the Borough, Board of Education and other agencies subject to review by the Borough.

§ 916-3 Waivers and Exceptions.

- A. Standards for Relief. Waivers from strict compliance with the major development design standards shall only be granted upon showing that meeting the standards would result in an exceptional hardship on the applicant or that the benefits to the public good of the deviation from the standards would outweigh ANY detriments of the deviation. A hardship will not be considered to exist if reasonable reductions in the scope of the project would eliminate the noncompliance.
- B. Mitigation. If the reviewing agency for the project determines that a waiver is appropriate, the applicant must execute a mitigation plan. The scope of the mitigation plan shall be commensurate with the size of the project and the magnitude of the relief required. The mitigation project may be taken from the list of projects in the Municipal Stormwater Management Plan. All mitigation projects are subject to the approval of the Borough Engineer.
- C. Reviewing Agency. All applications subject to the review of the Land Use Board shall be reviewed by the Board concurrently with subdivision or site plan review. Applications not subject to Land Use Board review shall be reviewed by the Borough Engineer.

- D. Appeals. The appeal of the determination of the Borough Engineer shall be made in accordance with N.J.S.A. 40:55D-70a.

§ 916-4 Application and Review Fees.

There shall be no additional fees for stormwater review for applications to the Land Use Board. Minor Development applications to the Borough Engineer shall be accompanied by a review fee in the amount of \$500. Major Development applications shall be accompanied by a review fee in the amount of \$1,000. If a project is approved, an inspection escrow deposit shall be made in an amount to be determined by the Borough Engineer.

§ 916-5 Maintenance and repair.

- A. Projects subject to review as in § 916-1 of this chapter shall comply with the requirements of § 916-5B and C.

- B. General maintenance.

1. The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.

2. The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

3. Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.

4. If the person responsible for maintenance identified under § 916-5B(2) above is not a public agency, the maintenance plan and any future revisions based on § 916-5B(7) below shall be

recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

5. Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

6. The person responsible for maintenance identified under § 916-5B(2) above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

7. The person responsible for maintenance identified under § 916-5B(2) above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.

8. The person responsible for maintenance identified under § 916-5B(2) above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by § 916-5B(6) and B(7) above.

9. The requirements of § 916-5B(3) and B(4) do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

10. In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person.

C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

§ 916-6 Violations and penalties.

Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this chapter shall be subject to one or more of the following penalties: Imprisonment for a term not exceeding 90 days; a fine not exceeding \$2,000; and a period of community service not to exceed 90 days.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Far Hills, the provisions hereof shall be determined to govern, and the inconsistencies of the prior ordinance are hereby repealed. All other parts, portions and provisions of the Ordinances of the Borough of Far Hills are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 5. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Far Hills for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 6. Within five (5) days after its adoption by the Council, this Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40A:60-5(d). If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

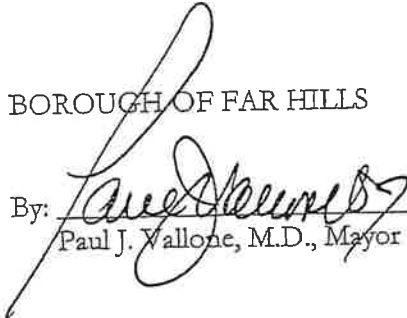
Section 7. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40A:60-5(d); (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

Introduced: January 25, 2021
Published: January 28, 2021
Adopted: February 8, 2021
Published: February 11, 2021

ATTEST:


Dorothy S. Hicks, Borough Clerk

BOROUGH OF FAR HILLS

By: 
Paul J. Wallone, M.D., Mayor

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March 27, 2024

Via eCourts and Regular Mail

Hon. Kevin Shanahan, A.J.S.C.
Superior Court of New Jersey, Somerset County
20 North Bridge Street
Somerville, NJ 08876-1262

**Re: In the Matter of the Borough of Far Hills
SOM-L-903-15
Notice of Motion for Limited Intervention of Sohail Khan**

Dear Judge Shanahan:

This firm is counsel to Sohail Khan, the owner of 3 Fox Hunt Court, Far Hills, New Jersey, whom the moving papers filed by Pulte Homes of NJ, LP in the Borough's declaratory judgment action refer to as the "Neighbor". Please accept this letter brief in support of Mr. Khan's motion for limited intervention in the Borough's declaratory judgment action to assert a third-party complaint for declaratory relief that seeks enforcement of the Borough's Land Management Ordinance ("LMO") pursuant to *N.J.S.A. 40:55D-18*.

Background

Because Pulte has amply briefed the way its property was rezoned and approved, Khan focuses solely on the events related to his property and from his perspective. While he was aware of the project having received notices for various applications and permitting activities in

Fifty-Four Years of Service

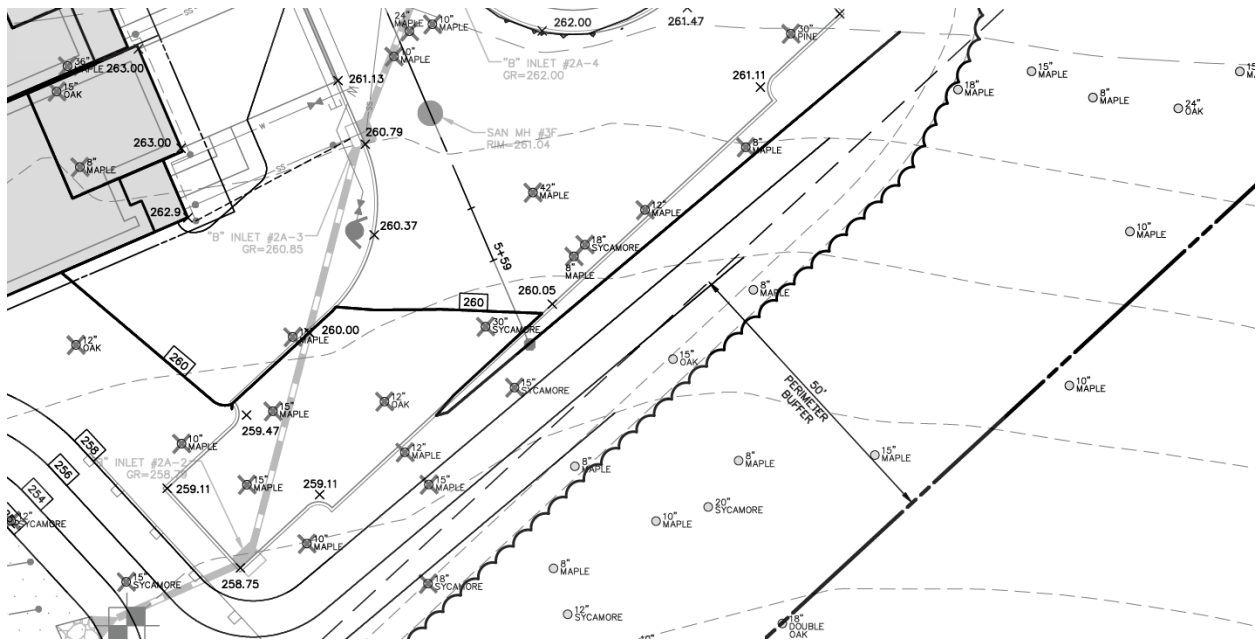
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years past, the construction activities that commenced in 2023 caused him concern. On October 15, 2023 Khan wrote to Far Hills' mayor, Kevin Welsh, to complain about the construction and the loss of privacy from his home. [Khan Cert., Ex. "A" at p. 3]. Welsh responded on October 16, 2023 offering to have the Borough's engineers "set up a site visit" and indicated that the Borough would "advocate to Pulte to help address your concerns." [Khan Cert. "A" at p. 2-3].

One month later and without any action, Khan again wrote to Welsh on November 15, 2023 to advise him he believed that "There was never a concrete wall shown in the original plans and it got added later on." [Khan Cert. "A" at p. 2]. Welsh responded on November 20, 2023 that "The Pulte site was approved as is, by the planning board . . ." [Khan Cert. "A" at p. 1] and on the following day, the Far Hills Planning Board Engineer, Paul Ferriero, P.E., wrote a follow-up email to Khan that stated emphatically, "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." [Khan Cert. "B" at p. 1-2]. The statements made to Khan by the Borough's Mayor and the Planning Board Engineer were not true, but he was misled by what they told him, as he noted in an email to Ferriero on November 22, 2023. [Khan Cert. "B" at p. 1].

The retaining wall in question was not on the plans that Pulte presented to the Far Hills Planning Board in 2021 and was not on the plans when the Far Hills Planning Board voted to approve Pulte's application on February 7, 2022. An excerpt of Sheet 16 of the Site Plan, last revised on October 1, 2021 is below and it shows that there was no retaining wall in the area adjacent to Khan's property:

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[Steinhagen Cert. "A"].

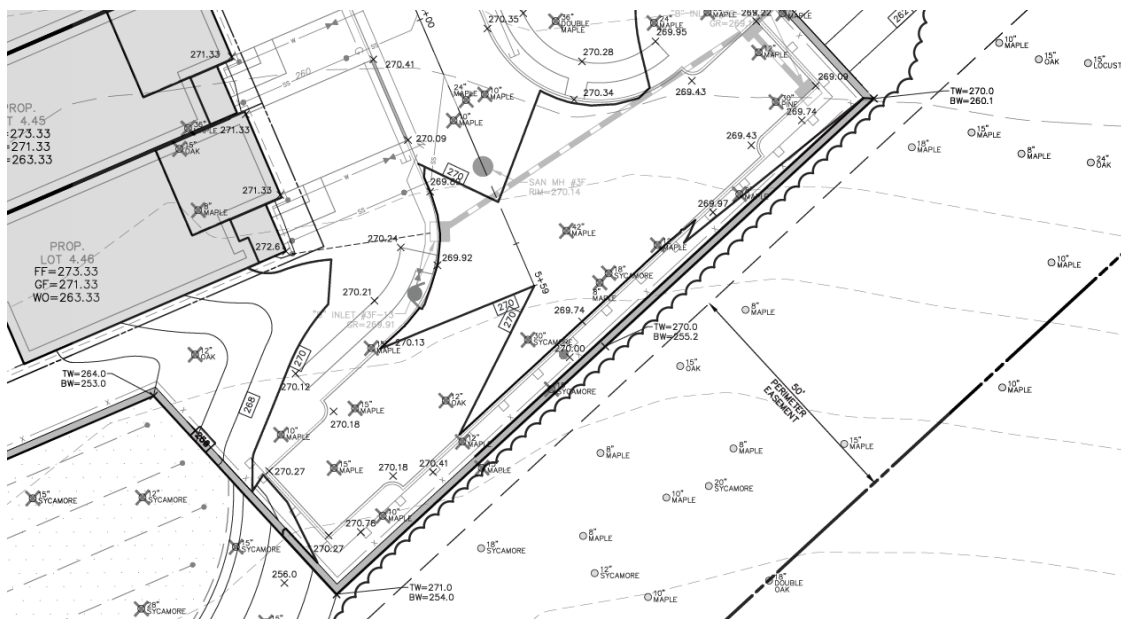
In particular, the elevations immediately to the east of the perimeter buffer (which is where the retaining wall has now been constructed) were intended to be approximately 260 feet above sea level. That was what the Planning Board reviewed, and that was what the Planning Board approved, and that is what Condition 38 of the Planning Board's Resolution required Pulte to construct, unless it returned to the Board for amended approval. [Gianetti Cert., Ex. "I" at p. 20 ("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 . . . Applicant shall submit such material changes to this Board for review, approval and/or determination as may be the case")].

Instead of going back to the Board, Pulte decided to get approval for a 17-foot tall retaining wall from the Planning Board Engineer, a mere 5 weeks after the Planning Board voted

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to approve the application. [Gladstone Cert. at ¶ 11].¹ It claims that revisions were made based upon the Planning Board Engineer's requirements, but nothing in the Resolution authorized any changes to Sheet 16 of the Grading Plan. In particular, while Condition 1 of the Resolution [Gianetti Cert., Ex. "I" at p. 16] required compliance with the Board Engineer's various review letters, including the November 5, 2021 Review Letter [Steinhagen Cert., Ex. "B"], the Board Engineer did not even reference Sheet 16 of the Grading Plan in his review letter at all!

According to the motion papers Pulte filed on March 12, 2024, it raised the grades significantly near Khan's property to effectuate proper stormwater management. This resulted in the construction of a 17-foot tall retaining wall in close proximity to Khan's property as shown on the plans that the Board Engineer took it upon himself to approve:



[Kennedy Cert., Ex. "D" at p. 6]

¹ It is noted that Paragraph 11 of the Gladstone Certification references plans that were submitted on March 15, 2022 that it claims showed the retaining walls at that time. However, Paragraph 11 of the Gladstone Certification refers to Grading Sheets of the Site Plans that were last revised on March 1, 2023. Khan has never seen the March 15, 2022 plan set.

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The problem, as the Borough noted in its Notice of Violation issued to Pulte, is that § 905(A)(5) of the Borough’s Comprehensive Land Management Ordinance (“LMO”) provides as follows: “In all zoning districts, fences and walls shall be installed no higher than six feet (6’)” and the Planning Board Engineer does not have the authority to approve a 17-foot tall retaining wall in the resolution compliance phase.

This is what the retaining wall looks like from the rear property line of Khan’s property and from inside his home:



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[Khan Cert. “C”].

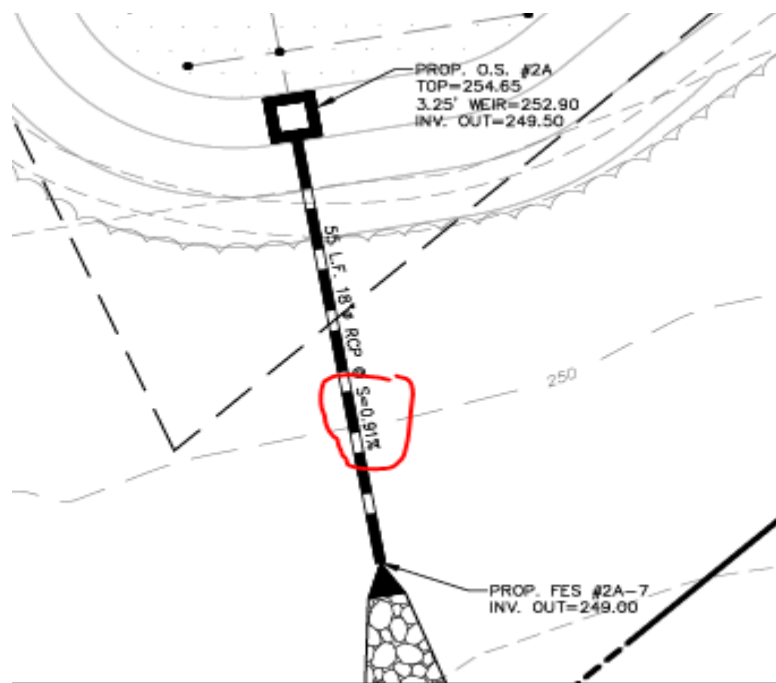
As Khan explains in his certification, the retaining wall is visible from every room in his home, has interrupted his quiet enjoyment of his property and invaded his privacy. [Khan Cert. at ¶ 11-13].

The March 1, 2023 plans that Pulte submitted to the Borough for construction permits proposes hardly any landscaping in front of this retaining wall, and no more than what it proposed when no wall was intended in this location. [Steinhagen Cert., Ex. “C”]. This is in stark contrast to the retaining walls that are internal to its property, some of which are tiered, and many of which are heavily landscaped, to afford the residents in its own development the sense of privacy that Khan was seeking to secure when he first contacted Mayor Welsh about his issue in October of 2023. [Khan Cert. “A”].

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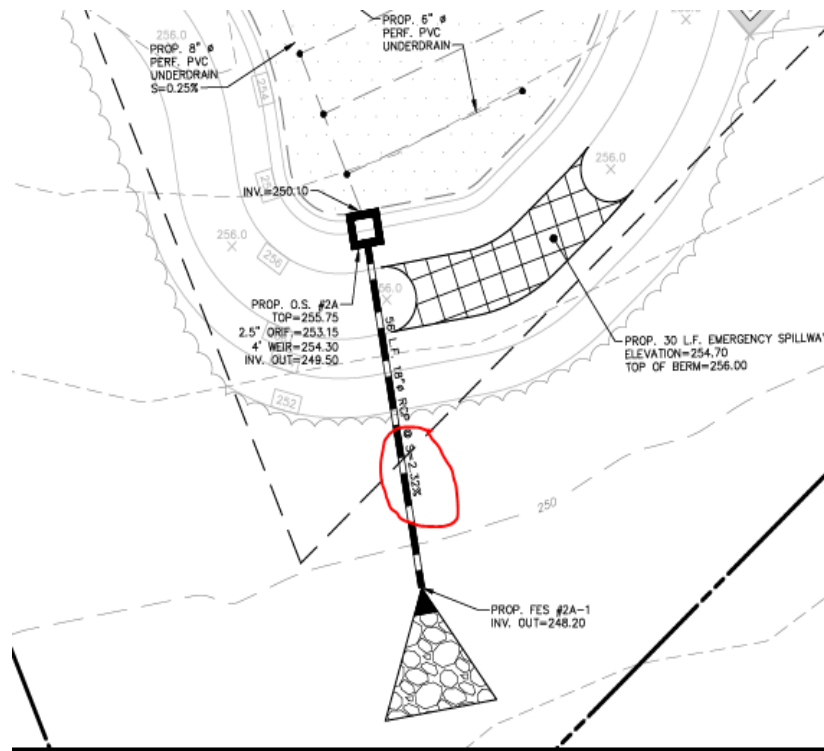
The retaining wall creates another significant problem for Khan beyond the eyesore. The addition of more than 10 feet of fill near his property line means that stormwater on the Pulte site starts at a higher elevation but must reach the same final destination at the property line. Pulte did not significantly redesign the outfall from bioretention basin near this new retaining wall, but because it raised the grades on its property, it had to steepen the pitch of the pipes. When the Planning Board approved Pulte's application, its site plan showed a 56-foot long, 18-inch pipe that had a slope of 0.91%. [Khan Cert. at ¶ 16; Steinhagen Cert., Ex. "D" at p. 1]. The revised plan that the Planning Board Engineer authorized shows the same length and diameter pipe, but instead of a slope of 0.91%, the pitch was increased to 2.32%. [Khan Cert. at ¶ 16; Steinhagen Cert., Ex. "D" at p. 2]. A side-by-side comparison of the affected area from these plan sheets is below and shows the change:

2021:



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2023:



This change results in stormwater being discharged onto the Khan property with much greater velocity than was anticipated by the Planning Board. Khan's property has suffering erosion and other water related damage since Pulte commenced construction. [Khan Cert. at ¶ 16].

Pulte's response to the Borough's Notice of Violation contends that the Borough is estopped from enforcing its ordinances. If the Borough cannot enforce its ordinance, Khan may lose his opportunity to do so as well. Accordingly, he moves for limited intervention and to consolidate this action with his action that seeks enforcement of the LMO, and which alleges a nuisance for the above-referenced water-related damages caused by Pulte.

ARGUMENT

To be clear, Khan's sole purpose in intervening is to protect his property rights, not to interfere with Pulte's efforts to produce affordable housing on its property. For this reason, he

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has not sought, nor will he seek, entry of an Order enjoining construction should his claims be successful. Instead, he merely seeks to have the Planning Board conduct a further review of the retaining wall and drainage and impose appropriate mitigation. In this regard, while Pulte has expressed its willingness to do so, the Planning Board is the only entity that can impose same, absent an agreement by all stakeholders.

I. The Court Should Grant Khan’s Motion for Limited Intervention Pursuant to R. 4:33-1 if it Finds that the Borough of Far Hills is Estopped from Enforcing the Terms of the LMO Against Pulte

R. 4:33-1 provides as follows:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical manner impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Khan satisfies all of the requirements to intervene as of right – for the limited purpose of asserting his third-party complaint for declaratory relief – in this action.

A. Khan’s application is timely.

First, Khan’s application is timely. Pulte filed its motion to enforce on March 12, 2024 asserting, for the first time that the Borough was estopped from enforcing the terms of its ordinance. *See Warner v. Sutton*, 270 N.J. Super. 658, 664-665 (App. Div. 1994)(environmental groups should have been granted leave to intervene after judgment; their motion was timely because “It was only then that the interests of the movants and the Township defendants truly diverged”). If the Court finds that the Borough is estopped from enforcing the LMO against Pulte, Khan’s application would be timely, because until such an order is entered, his interest has not diverged.

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B. Khan has an interest in the subject matter of what remains of this action.

Second, Khan has an interest in the subject matter of the action, or what remains of it. The Court entered final judgment in the Borough's declaratory judgment action on March 16, 2022. [Gianetti Cert., Ex. "H"]. The only matter pending is Pulte's post-judgment motion to intervene where it seeks to enforce a settlement agreement between the Borough and its predecessor [Gianetti Cert., Ex. "E"] against the Borough's efforts from trying to compel Pulte to comply with the ordinance adopted pursuant to that agreement. In particular, Far Hills' TH-6-IAR Zoning Ordinance, adopted on December 23, 2019, in §703.2(O) of the LMO provides as follows: "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)." [Steinhagen Cert., Ex. "E" at p. 16]. One of those other "existing provisions" of the LMO is § 905(A)(5), which provides, "In all zoning districts, fences and walls shall be installed no higher than six feet (6')." [Gianetti Cert., Ex. "M" at p. 10]. Pulte did not comply with that provision, did not secure relief from that provision, but nevertheless constructed an unscreened and unbuffered retaining wall nearly 3 times higher than allowed in close proximity to Khan's property that has detrimentally impacted him to the extent that Pulte even references him, albeit not by name, in its moving papers.

In addition to the Pulte's violation of the LMO to Khan's detriment, Khan is also saddled with excessive stormwater runoff from the Pulte property. While that would normally be dealt with in a separate action under a nuisance theory, Pulte's stormwater designs are significantly

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different in a material way as result of the significant grade changes near Khan's property. Specifically, due to Pulte's decision to increase site grading by up to 10 feet in certain places, the pitch of pipes has changed, most notably, the pipe that discharges stormwater directly onto Khan's property. When the Planning Board approved Pulte's application, the 18-inch pipe discharging from Bioretention Basin 2A was supposed to have a slope of 0.91%; the plans for which the Borough gave Pulte a construction permit show a slope of 2.32%. That increase – more than two-and-a-half times – has yielded stormwater that is flowing much faster than was anticipated during the Planning Board hearings. Was this adequately reviewed? Khan can have no assurances, given that the Planning Board Engineer misled him about what was on Pulte's plans during the hearings. And the Borough's Stormwater Management Ordinance, adopted mere weeks before Pulte submitted its application for development confirms that the Planning Board, not its Engineer, must review and approve stormwater management designs. § 916-3(C) of the LMO. [Steinhagen Cert., Ex. "E" at p. 22].

While the Board's Resolution delegated oversight over certain stormwater revision to the Planning Board Engineer, the Planning Board did not contemplate, nor could it have, that such revisions would have triggered such a massive change. As discussed in the immediately following section, the 17-foot tall retaining wall violates the LMO, and Khan submits that it requires a variance. It certainly violates Condition 38 of the Planning Board's Resolution. [Gianetti Cert., Ex. "I" at p. 20]. As the Supreme Court noted in *In re Freshwater Wetlands Permits*, 185 N.J. 452 (2006), "Clearly . . . the municipal planning board has jurisdiction [a] storm water drainage plan." Khan should have the opportunity to test this new drainage design at a hearing, and, if appropriate, have the Planning Board require modification of the design. But

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the way it was constructed means that the pipe is steeper now, and rather than bend the pipe to slow the flow of stormwater, Pulte and the Board Engineer decided that the consequences of the steeper pitch - accelerating the water onto Khan's property – were worth it. [Steinhagen Cert., Ex. "D" at p. 1-2]. Khan has been harmed by these backroom decisions that were hidden from him by the Planning Board Engineer.

C. Khan's interest is not adequately represented by the Borough

While the Borough has a general interest in ensuring that the development of land follows appropriate pathways as required by the MLUL and its own ordinances, Khan's interest is different. He is concerned not with procedure, but rather, the actual impacts upon his property associated with the visual impact of the retaining wall and the modified drainage plan that was never considered by the Far Hills Planning Board. While these plan revisions, which deviate from the plans approved by the Planning Board and violate the Planning Board's conditions of approval, should require Pulte to return to the Planning Board for amended approval, have actual, real world impacts on Khan. As detailed in his Certification, he and his family are the ones that have to look at the retaining wall. They are the ones that have to deal with erosion the plan revisions have caused. Although the Borough does share some interests with Khan (as referenced above regarding the timeliness of this application), the fact that Khan seeks to file a complaint seeking declaratory relief against the Borough confirms that the Borough cannot represent his interest. [Khan Cert., Ex. "D" at p. 14-23].

In this regard, Khan must point out that the Planning Board Engineer has no authority to issue a variance, which is the relief that Pulte needed, as more fully discussed below. As future Justice Weintraub wrote in *Jantausch v. Verona*, 41 N.J. Super. 89 (Law Div. 1956), *aff'd* 24

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N.J. 326 (1957)², “where there is no semblance of compliance with or authorization in the ordinance, the deficiency is deemed jurisdictional and reliance will not bar even a collateral attack after the expiration of time limitation applicable to direct review.” *Id.* at 94. Unlike in that case, where it was debatable whether the proposed use was allowable in the zoning district, it is not arguable that (1) the 17-foot tall retaining wall shown on the March 1, 2023 Plan violates the 6-foot tall limit imposed upon walls in the LMO; (2) that the Site Plan approved by the Planning Board did not contain any wall in this location; and (3) that the MLUL does not confer the power upon the Planning Board Engineer, under the guise of resolution compliance review, to authorize deviations from the terms of the LMO. On this latter point, the law is clear - Because the planning and zoning power stems from legislative allowance, it must be exercised in strict conformity with the delegating enactment—the MLUL. *See Nuckel v. Little Ferry Planning Bd.*, 208 *N.J.* 95, 101 (2011). Only the Planning Board can a grant variance or a site plan design exception, as the case may be, and could only do so at a “hearing.” *See N.J.S.A.* 40:55D-10 (“the municipal agency shall hold a hearing on each application or development”); *N.J.S.A.* 40:55D-25(a)(6) (“The planning board shall . . . exercise its power in regard to power in regard to: . . . variances and certain building permits in conjunction with subdivision, site plana and conditional use approval . . .”); *N.J.S.A.* 40:55D-51(b) (“the planning board when acting upon applications for preliminary site plan approval shall have the power to grant such

² While the *Jantausch* decision forms the basis for cases such as *Hill v. Bd. of Adj.*, 122 *N.J. Super.* 156 (App. Div. 1972), and *Jesse A. Howland & Sons, Inc. v. Bo. of Freehold*, 143 *N.J. Super.* 484 (App. Div. 1976), it does so in the context of applying the doctrine of equitable estoppel against a municipality seeking to revoke a permit issued to a developer. Pulte argues that the Borough is estopped from enforcing the LMO on the grounds of its reasonable reliance, and while Khan disagrees with that position, it is obvious that these estoppel arguments have no impact upon Khan’s ability to enforce the provisions of the LMO pursuant to *N.J.S.A.* 40:55D-18, which specifically authorizes him to commence an action to “prevent [the] unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct or business or use in or about such premises.” *Id.*

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exceptions from the requirements for site plan approval as may be reasonable . . .”). Although municipal engineering professionals have certain statutory roles delegated to them under the MLUL, authorizing deviations from the terms of development regulations are not among them.

Pulte contends that § 905(A)(5) of the LMO is a site plan design standard, noting that § 905 is found within Article IX of the LMO, which is entitled “Design and Improvement Standards.” The Township apparently agrees, given that its Notice of Violation [Mullen Cert, Ex. “F”] charges Pulte with failing to seek a “waiver” of the height limitation imposed upon retaining walls. This difference of opinion on the nature of the relief required is a further reason the Borough does not represent Khan’s interest. In identifying the nature of the relief required, Khan points out the obvious: § 905(A)(5) applies to all zoning districts, underscoring that this section of the LMO, regardless of where it was codified in the LMO, is not a site plan design standard adopted pursuant to Article 6 of the MLUL, but rather, a zoning ordinance adopted pursuant to Article 8. Indeed, it applies to all zoning districts, including the Borough’s single family districts where the MLUL prohibits municipalities from requiring homeowners from being forced to secure site plan approval. *See N.J.S.A. 40:55D-37(a)* (“ . . .except that subdivision or individual lot applications for detached one or two dwelling-unit buildings shall be exempt from such site plan review and approval;”); *see also*, § 201(C) of the LMO (definition of “Site plan, exempt”). [Steinhagen Cert., Ex. “E” at p. 3].

Further evidence that Article IX of the LMO must not automatically be classified as a traditional site plan and subdivision ordinance adopted pursuant to Article 6 of the MLUL is found in § 920 of the LMO, which restricts the number of principal uses on a lot to a maximum of one; non-compliance with that section of the LMO does not require a design waiver, it

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requires a (d)(1) use variance. [Steinhagen Cert., Ex. “E” at p. 6]. *Nuckel, supra*. Similarly, § 901 regulates the use and location of accessory buildings and structures, irrespective of zoning district. [Steinhagen Cert., Ex. “E” at p. 5]. These ordinances were plainly adopted pursuant to *N.J.S.A. 40:55D-62*, which authorizes the adoption of zoning ordinances governing “the nature and extent of the uses of land and pf the building and structures thereon.” The height limitation imposed on walls is but another example of a zoning ordinance adopted pursuant to these powers irrespective of where in the LMO it was categorized³, and highlights that the relief needed from these sections is cognizable under *N.J.S.A. 40:55D-70(c)*, not as a design waiver. This means that Khan was statutorily entitled to notice and an opportunity to be heard. *See N.J.S.A. 40:55D-12*. This is an interest the Borough obviously does not share, and while it is not the subject of this action, it highlights how Khan’s interest here is quite distinct from that of the Borough.

Going further, while the title of Article IX is evidence of intent, the title of the Article cannot control the actual interpretation of any ordinance contained therein. *See, e.g., , Atlantic Cont. v. Eagleswood Bd.*, 312 *N.J. Super.* 213, 218 (Law Div. 1997), *rev'd on other grds sub nom. Atlantic Container v. Planning Bd.*, 321 *N.J. Super.* 261 (App. Div. 1999). This is particularly true for one adopted years later, like Ordinance 2006-08, which adopted § 905(A)(5) and contains a partial “repealer clause” to the extent of any inconsistency with a pre-existing ordinance. Plainly, any interpretation of that causes the title of Article IX of the LMO to override the language “in all zoning districts” must be rejected, or else be deemed repealed for this ordinance.

³ Indeed, as Pulte notes, the Borough’s backwards classification methodology stands virtually alone in the State.

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Given the legislative language, Khan submits that Pulte required a variance to construct the 17-foot tall retaining wall. Even though the Borough may have long interpreted this ordinance as requiring a design exception, the interpretation of an ordinance is a question of law that the Court need not defer to municipality on because questions of construction of an ordinance are questions of law. *See, e.g., Reich v. Fort Lee Bd. of Adj.*, 414 N.J. Super. 483, 499 (App. Div. 2010), *quoting Jantausch, supra*, 41 N.J. Super. at 96. The Borough plainly does not agree with this position, given how its Zoning Officer has interpreted § 905(A)(5) to only require a design exception.

The acts that were “utterly void” was the Planning Board Engineer’s July 31, 2023 and August 8, 2023 determinations that building permits could be issued for Pulte’s Far Hills Retaining Wall Packages 1 and 2. [Mullen Cert., Ex. “A”; “B”]. The Planning Board Engineer, based on the above, has no authority to authorize deviations from the terms of the LMO. Furthermore, the plain language of the LMO requires site plan approval for these retaining walls. In particular, pursuant to § 401(B) of the LMO, “Site 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 p. 4]. A “development” under the LMO includes the “. . . construction of any structure . . .”, such as the 17-foot tall 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.” [Steinhagen Cert., Ex. “E” at p. 3]. Thus, in addition to requiring relief from the Planning Board, the retaining wall required site plan approval. The Planning Board Engineer did not have the authority to simply review the new retaining wall design to ensure its structural stability; they had to be directed to the Planning

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Board for an application for development. The building permits [Mullen Cert., Ex. “D”, “E”] that are predicated on the Planning Board Engineer’s determination of resolution compliance are therefore utterly void because the “prior approvals” required by *N.J.A.C. 5:23-2.15(f)(4)(ii)(1)* were not present (“No [construction] permit shall be issued until all required State, county and local approvals are in place”).

Pulte also asserts that the Borough should not be permitted to require it to seek relief for the new retaining wall that it added to its plans after approval because its Planning Board did not require relief for the retaining walls that were on the plans that were submitted to and approved by the Planning Board. This is not the law. In *Cortesini v. Hamilton Planning Bd.*, 417 *N.J. Super.* 210 (App. Div. 2010), *certif. denied*, 207 *N.J.* 35 (2011), the Appellate Division noted that although the developer initially sought “certain bulk variances in connection with its application for subdivision approval, it failed to apply for a variance from a provision of the zoning ordinance that requires parking spaces to be set back fifty feet from lot lines. The Board failed to note this omission and granted the developer's application.” *Id.* at 213. In a later application, the developer sought to renovate the building on the property, but not modify the parking area, and an objector challenged the approval arguing the failure to grant the parking variance in the first application undermined the entire approval. On appeal, the Appellate Division concluded that “it seems clear that if the land use approval applications submitted in either 2001 or 2009⁴ had included an application for a variance from the parking area setback requirement, the Board would have granted that application.” *Id.* at 217. But while that might have occurred here too, Pulte did not put the retaining wall on its plans when it sought and

⁴ The 2009 application in the *Cortesini* case had no impact upon the parking lot layout, design or arrangement. The parking lot was proposed and approved in the 2001 application, and was constructed shortly thereafter.

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obtained approval from the Planning Board several years ago. Had it done so, Khan could have advocated for mitigation, rather than the sparse landscaping in that area of the property that Pulte proposed when no retaining wall was proposed. What might have happened is meaningless, because the facts confirm that Pulte knew that it needed to have a retaining wall close to Khan's property – why else add it to the plans less than five weeks after the Board voted to approve the application? This was hidden from Khan to his detriment.

Khan's interest is protecting his property, which is demonstrably different than the Borough's parochial interest in protecting its zoning and planning prerogatives. While those goals may have some overlap, Khan's overriding concern relates to the impacts that Pulte's unlawfully constructed retaining wall imposes on *his* property. His focus only pertains to this small and discrete area of Pulte's development and how it impacts him.

D. Khan will not be able to protect his interest, particularly if the Court finds that the Borough is equitably estopped from enforcing the LMO against Pulte

Khan's application for intervention is conditional. If the Court finds that the Borough is estopped from enforcing the terms of the LMO because it gave Pulte a construction permit, Khan would lose his ability to have the terms of the LMO enforced, despite what *N.J.S.A. 40:55D-18* says. An analogous situation arose in *Chesterbrooke Limited Partnership v. Planning of Chester*, 237 *N.J. Super.* 118 (App. Div. 1989). There, an application for a subdivision had been denied without prejudice when the applicant refused to grant the Board an extension. *Id.* at 122. The applicant appealed and the trial court granted an automatic approval pursuant to *N.J.S.A. 40:55D-61*. Thereafter, the Board chose not to appeal. At that juncture, two objectors sought to appeal the trial court ruling. The trial court denied their request, but the Appellate Division reversed, reasoning that the board no longer represented their

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interest and that its decision not to appeal “left them so situated that ‘disposition of the action’ would impair their ability to protect their interest . . . [because] there was no one available to protect their interest through an appeal.” *Id.* at 124-125.

It is much the same with Khan. Khan is the “Neighbor” referenced in Pulte’s brief on whose behalf the Borough may be acting, at least in part. It is Khan that is impacted by Pulte’s unlawful construction of the retaining wall. It is Khan’s rights that were violated by the failure to receive proper notice of what was to be constructed so close to his house. It is Khan that bears the brunt of this unreasonable interference with his quiet enjoyment of his property, both visually and from a stormwater design that was never approved by the Planning Board.

But if the Borough cannot enforce the provisions of the LMO and Khan is not allowed to intervene, what recourse does he have other than to look at a 17-foot tall, unscreened, untiered retaining wall on the edge of his property until he sells it? And at what cost will that exact? The failure to secure approval from the Planning Board, including consideration of the negative criteria (i.e., whether the retaining wall causes a substantial detriment on adjacent properties pursuant to *N.J.S.A.* 40:55D-70) and whether any mitigating conditions were appropriate, works considerable harm on Khan.

In this regard, Khan is sure that Pulte will cite to his failure to timely prosecute an action against Pulte, and note that he sat on his hands and allowed Pulte to expend significant sums of money. However, not only did Khan have no awareness of the Planning Board Engineer’s July 31, 2023 [Mullen Cert, Ex. “A”] and August 8, 2023 [Mullen Cert., Ex “B”] resolution compliance letters, they were not appealable to the

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Planning Board pursuant to *N.J.S.A.* 40:55D-72 because the Planning Board Engineer is not an “administrative officer”; the Borough Clerk is Far Hills’ Administrative Officer because the LMO does not designate a specific individual as the administrative officer. *N.J.S.A.* 40:55D-3. The same analysis holds for the July 28, 2023 and August 21, 2023 Construction Permits issued for the retaining walls (where the first one was issued prior to the Planning Board Engineer’s determination that it “complied” with the Resolution). [Mullen Cert., Ex. “D”, “E”]. *N.J.S.A.* 40:55D-72 only authorizes “any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map” to file an appeal to the board “within 20 days by filing a notice of appeal with the officer from whom the appeal is taken . . .” Inasmuch as there was no *decision* of an administrative officer, the forum provided by *N.J.S.A.* 40:55D-72 is inapplicable.

It should be remembered that when Khan approached the Borough’s Mayor about the unsightly construction, he was advised on November 20, 2023 as follows, “The Pulte site was approved as is, by the planning board . . .” [Khan Cert. “A” at p. 1], and on the following day, the Planning Board Engineer, wrote to him: “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.” [Khan Cert. “B” at p. 1-2]. Khan’s efforts to diligently inquire about the status of permits were met with obstruction and falsehoods by the very officials who were charged with protecting the public interest. In this respect, Khan’s efforts are quite comparable to those of the plaintiff in *Mullen v. Ippolito*, 428 *N.J. Super.* 85 (App. Div. 2012), though he did not wait quite so long to

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seek relief, and the municipal response there was apparently more laissez faire than the black-and-white evasion presented here. But even there, the Appellate Division recognized “plaintiffs’ cause of action is grounded on the municipal defendants’ failure to respond or act upon their numerous complaints of alleged zoning violations by Driftwood. If true, these allegations describe an amorphous history of municipal inaction, rendering plaintiffs without a realistic alternative forum of administrative relief.” *Id.* at 105.

Mullen also supports the notion that an enlargement of time pursuant to *R. 4:69-6(c)* is warranted based upon the Borough’s officials obstructions of Khan’s efforts to discover what Pulte had been approved for and whether it had deviated from the approved plans. *Cf., Cohen v. Thoft*, 368 *N.J. Super.* 338 (App. Div. 2004); *Hopewell Valley Citizens Group v. Berwin Prop. Group Dev. Co.*, 204 *N.J.* 569 (2011). In each of those cases, litigants filed for relief out of time but their complaints were allowed because, under far less ignominious circumstances, they were misled by municipal officials who provided incorrect information. The notion that where a planning board secretary mistakenly provided a resident the wrong date about when a notice of decision was published was sufficient to enlarge time to challenge a land use board approval being any way comparable to what the Planning Board Engineer did here is laughable. The Planning Board Engineer knew full well that the 17-foot tall retaining wall was not shown on the plans, knew full well that Khan had complained to the Borough’s Mayor, and was, in all likelihood, trying to cover his tracks.

There are many words one can use to describe the content of Planning Board Engineer’s November 21, 2023 email to Mr. Khan. Truthful is not one of them, and this

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would certainly warrant and justify an enlargement of time pursuant to *R. 4:69-6(c)* to allow Khan to pursue a claim, if Pulte were to argue that his enforcement action were untimely. Indeed, by the time the true facts were revealed to Khan, the Borough had issued the Notice of Violation and there was no need for him to seek enforcement of the LMO on his own. It was only when Pulte sought to expunge the Notice of Violation and abrogate the Borough's ability to enforce its ordinances that Khan realized his interests might diverge from the Borough, having learned of the March 12, 2024 filing less than two weeks ago. He has moved expeditiously to intervene on the next available return date, and his motion should not be denied simply due to the passage of time between the commencement of construction and the date of filing, given the circumstances.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court grant Sohail Khan limited intervention for the purposes of allowing him to file a third-party complaint pursuant to *N.J.S.A. 40:55D-18* and the Declaratory Judgment Act. Pulte Homes of NJ, LP must be required to return to the Borough of Far Hills Planning Board for amended approval to allow the Borough of Far Hills Planning Board to require mitigation, such as upgraded landscaping, for the unlawful construction of the 17-foot tall retaining wall, as well as conduct such additional reviews of Pulte's stormwater management design as are reasonable and appropriate to ensure that the design complies with all applicable standards and that there are no substantial detriments to adjacent properties caused by the changed grading due to stormwater runoff.

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Khan takes no exception to Pulte's continued construction of any housing units during the review process that he seeks. He merely wishes to protect his property and avoid adverse impacts on account of what his neighbor is constructing.

Respectfully submitted,

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Attorneys for Sohail Khan

By: /s/ Daniel L. Steinhagen
Daniel L. Steinhagen, Esq.

Encs.

Cc: All Counsel of Record (via ecourts and email)
James Kyle, P.P. (Special Master)(via email)
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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

ORDER

THIS MATTER having been opened to the Court upon the motion of Beattie Padovano, LLC (Daniel L. Steinhagen, Esq., appearing), attorneys for proposed Intervenor/Third-Party Plaintiff Sohail Khan, on notice to Surenian, Edwards Buzak & Nolan, LLC (Nancy L. Holm, Esq., appearing), DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC (Albert Cruz, Esq., appearing), and O’Toole Scrivo, LLC (Thomas P. Scrivo, Esq. and Lawrence S. Cutalo, Esq., appearing), collectively attorneys for the Borough of Far Hills, and the Fair Share Housing Center (Ashley J. Lee, Esq., appearing), and in the presence of Day Pitney, LLP (Craig M. Gianetti, Esq., appearing), counsel to Pulte Homes of NJ, LP, which has concurrently moved for leave to intervene, and James Kyle, P.P, the Special Master, for an Order granting limited intervention for the purpose of seeking leave to file a Third-Party Complaint for Declaratory Relief against the Borough of Far Hills and Pulte Homes of NJ, LP, and the Court having considered the papers submitted by the parties in support of and in opposition to the application; and having heard the arguments of counsel, if any; and good cause having been shown therefor;

IT IS on this _____ day of _____, 2024,

ORDERED as follows:

1. The motion of proposed Intervenor/Third-Party Plaintiff Sohail Khan is granted. Khan shall file his Answer and Third Party Complaint within 14 days of this Order.
2. A copy of this Order shall be served upon all counsel of record within seven (7) days of receipt of same by counsel for Pulte as entered by the Court. For these purposes service by e-filing shall suffice.

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Opposed _____

Unopposed _____