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November 20, 2020

**VIA EMAIL**

Ms. Donna Rendeiro, Executive Director  
State Planning Commission  
Office of Planning Advocacy  
Business Action Center  
Department of State  
33 West State Street, 4<sup>th</sup> Floor  
Trenton, NJ 08625

**Re: Proposed State Plan Policy Map Amendment from Walters Group  
Holmdel Township - Block 57, Lot 2  
Owner - Holmdel Township  
Purchaser/Petitioner - Walters Group**

Dear Ms. Rendeiro:

I am the Township Attorney for the Township of Hazlet. Please accept this letter, and the accompanying report from Hazlet's planner, McKinley Mertz, P.P., AICP, in opposition to the petition.

**BACKGROUND**

The subject site in Holmdel, Block 57, Lot 2, is 3.87 acres, with frontages on Middle Road and Laurel Avenue. It is encumbered by wetlands and buffers on the southeastern portion of the site. Beyond the wetlands, there is a typical strip shopping center. Its northwesterly property line is the municipal boundary with Hazlet. *[The site plan is later referenced as Exhibit D].*

The site is owned by Holmdel through a condemnation proceeding. The petitioner Walters Group ("Walters") is the contract purchaser. Walters Group proposes 50 affordable rental units on the site.

Most relevant for these proceedings, the site is entirely in the PA-2 Suburban planning area. It is also in a CAFRA zone, which permits a maximum coverage of 30%. Holmdel's zoning ordinance adopted that CAFRA standard. *[Ordinance later referenced as Exhibit C]*.

Paul Phillips, P.P., Holmdel Township's planner, in his submitted report of September 4, 2020 that, "The Petitioner cannot feasibly construct the proposed 50-unit affordable housing development in the Petition Area with an impervious coverage limitation of 30%."

Hazlet does not object to appropriate development of this site on its municipal boundary; Hazlet does not object to affordable housing on this site. However, Hazlet does object to the overdevelopment of this site, as it is currently zoned and regulated.

Quite simply, the site does not accommodate the proposed 50 affordable units, as Holmdel's planner now admits. If Holmdel needed additional affordable units to make up a deficiency in its third-round *Mt. Laurel* plan, all it had to do was to find another site or sites to make up that deficiency.

It failed to do so. Holmdel and Walters stubbornly went forward in bad faith with a plan that they knew was inadequate. Now, they want the SPC to bail them out, to reward them for their intransigence.

Accordingly, Hazlet respectfully asks that the petition be denied.

If, however, the SPC deems it appropriate to approve the amendment, Hazlet respectfully requests that the SPC go further than the recommendation in the PIC memo of November 18, 2020. Hazlet requests that the new PA-1 area include all areas north of the Garden State Parkway, and also Bell Labs on the other side of the Parkway, as set forth herein and in Ms. Mertz's report.

#### **UNCLEAN HANDS**

Holmdel and Walters have knowingly and recklessly carelessly painted themselves into a corner. They failed to do their due diligence. They are now asking the State Planning Commission to rescue them from their own bad behavior.

Holmdel and Walters failed to acknowledge the underlying planning restrictions, flowing from the State Plan Policy Map and resulting CAFRA coverage limitations. N.J.A.C. 5:85-8.1 explicitly states that the State Plan Policy Map is the "official map", and that, "Any other graphic representation. . . included in . . . any other document . . . is not to be considered the official

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map." The "official map" is found at the SPC website as a set of quad maps. This site is shown on Map 73. Map 73 clearly shows that the site is all within PA-2.

The site is also within CAFRA jurisdiction. CAFRA rules limit the impervious coverage to 30% in PA-2. So too does the Holmdel ordinance.

Holmdel and Walters unjustifiably relied upon imprecise, unofficial, incorrect DEP maps. They knowingly disregarded the official PA-2 designation and the 30% coverage limit. They have no excuse.

Because of the limitations of software, some DEP maps incorrectly show some of the PA-1 area in Hazlet bleeding over the municipal boundary into Holmdel. Holmdel, Walters and the DEP failed to acknowledge that the "crayon" used to create the map was thicker than the municipal boundary line. Any reasonable observer should have realized it was a coloring error.

When Hazlet took an interest, you graciously sent an email dated May 20, 2020, in the height of the COVID crisis, which I immediately forwarded to Holmdel Township. *Exhibit A*. That email should have corrected any prior misconception that Holmdel or the Walters Group might have had. If it wasn't clear to them before, it was now clear that the site was all in the PA-2 area.

On that same day, Rick Brown, from the DEP provided me with another email to same effect. That email was also forwarded to Holmdel. *Exhibit B.*

I asked Holmdel to correct their error. Holmdel refused to do so. Holmdel and Walters just wanted to push this through, the truth be damned.

Paul Phillips, P.P., Holmdel Township's planner, now belatedly admits in his letter of September 4, 2020 that, "The Petitioner cannot feasibly construct the proposed 50-unit affordable housing development in the Petition Area with an impervious coverage limitation of 30%."

It took five months, but Holmdel and Walters now finally admit their error. But in those five months Holmdel and Walters continued to act in bad faith, unjustifiably pushing things forward.

Holmdel should have corrected its error before it adopted the enabling ordinance, Ordinance No. 2020-06, on July 28, 2020. But it did not. That ordinance erroneously relied on a portion of the site being in PA-1. That ordinance required 50 units on the site, even though Holmdel knew then, and admits now, that the site "cannot feasibly" accommodate 50 units. The ordinance imposes a 30% lot coverage requirement in PA-2, by specifically incorporating the CAFRA coverage limits. *Ordinance at Exhibit C.*

Nonetheless, despite your email and that of Mr. Brown, despite the belated admission that 50 units cannot fit on the site, Holmdel capriciously adopted the ordinance without correction of its plain error on July 28, 2020. Understandably, Hazlet filed a complaint in lieu of prerogative writs to challenge that ordinance, now pending as MON-L-2424-20.

Holmdel and Walters did not stop there. Before the ink was dry on the defective ordinance, on August 3, 2020 Walters applied for site plan approval for the 50 units. The Holmdel Planning Board rushed ahead and held a virtual public hearing on August 18, 2020, approving the site plan application. From application to an approval in three weeks! That has to be a record. A copy of the approved site plan is attached as *Exhibit D*.

The Holmdel Planning Board was blissfully ignoring reality. It refused to subpoena you or Kara Turner of DEP, (with Rick Brown having retired). Additionally, the Planning Board refused to even admit your email and Mr. Brown's email into evidence.

The approved site plan erroneously shows a PA-1 area on the site. The buildings and parking are pushed up against the Hazlet border into the imaginary PA-1 area. Holmdel's Planning Board and Walters did not care a whit about the correct underlying restrictions. They just wanted to bully this through.

The approved site plan exceeded the maximum 30% coverage requirement contained in Holmdel's own ordinance. None of that

stopped Holmdel from rushing headlong to approve the deficient site plan. Naturally, Hazlet has filed a complaint to challenge that site plan approval, now pending as MON-L-3624-20.

Holmdel also forged ahead to obtain a compliance and repose from the Honorable Linda Grasso Jones, J.S.C. at a hearing on August 5, 2202 in its *Mt. Laurel* case, captioned as IMO Holmdel, MON-L-2523-15. Even though Holmdel knew that it could not fit 50 units on this site, it nonetheless made representations to the court. The court has not yet issued a final order of compliance and repose.

Although not a planning issue, the petition refers to Holmdel's lawsuit to condemn the site. For the sake of completeness, Holmdel filed a condemnation matter, Docket No. MON-L-3307-19, acquiring title to the property and depositing \$1,520,000 as the appraised value. Continuing with its pattern of errors, Holmdel failed to name Hazlet as a defendant even though Hazlet has a recorded drainage easement running through the site.<sup>1</sup> Again, Hazlet had to correct that error, and Hazlet has intervened in that condemnation matter, seeking just compensation.

With that background, we now come to Walters' current petition seeking to bail it and Holmdel out from all these acts of bad

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<sup>1</sup> The attorney for the petitioner incorrectly states on page 3 of his letter of October 14, 2020 that, "The Site was at one time in common ownership with the adjacent property in Hazlet. There was a common development plan."

faith, from their intransigence. And that pattern of bad faith continues in this petition.

Walters does not seek a comprehensive look at the State Planning Areas for Holmdel. No, it only seeks to have just one lot, the subject property, redesignated from PA-2 to PA-1.

Presumably, Holmdel and the Walters Group would take the requested plan amendment, if granted, and run back to the court and shout, "Look Judge, we fixed it!"

Such behavior should not be countenanced. Holmdel and Walters come to you with unclean hands. The essence of the doctrine of unclean hands is that a petitioner must come into the proceeding with clean hands. Our Supreme Court recognizes that relief should not be granted to one who has acted in bad faith. American Dream v Pl. Bd. Twp of Marlboro, 209 N.J. 161, 170-171 (2012).

They should have fixed their errors before adopting the ordinance or approving the site plan. They should have fixed their errors before misleading the court at a compliance hearing. The pending request is inequitable and should be denied.

Holmdel and Walters should have admitted and corrected their glaring errors before Hazlet was forced to object to the ordinance and the site plan, before Hazlet had to file lawsuits to protect its rights. This untimely request for an amendment has the potential to interject the State Planning Commission into those prerogative writs cases, at least for discovery purposes.



Such behavior cannot be condoned. State agencies should not be placed in the position of rescuing bad actors from their bad faith actions.

Holmdel reveals its hypocrisy, through Walters, by not asking that a larger, more meaningful section of Holmdel be reclassified as PA-1. No, Holmdel and Walters just want this one site to be so reclassified. If Holmdel was sincere in its desire to promote affordable housing, it would seek a much more comprehensive amendment.

Because Holmdel and Walters are acting in bad faith, with unclean hands, it would seem the proper course would be to deny the pending application. Let them go back and fix things. Maybe they have to reduce the number of units on the site. But it does not seem appropriate for the SPC to take sides now and bail them out.

**CHANGE THE ENTIRE AREA NORTH OF THE PARKWAY TO PA-1**

If the State Planning Commission is inclined to change the planning designation for northern Holmdel, Hazlet Township respectfully requests that the SPC take a more comprehensive look. If Holmdel is really concerned about providing affordable housing, please assist it by placing a much larger area into PA-1 so that there would be fewer impediments to the development of affordable housing in a much larger area of Holmdel.

The PCI memo of November 18, 2020 implicitly recognizes the hypocrisy of Holmdel and the Walters Group's request. The PIC memo recommends changing the area north of the NJ Transit railroad tracks to PA-1. Hazlet requests that the PA-1 area be extended to at least the Garden State Parkway.

Hazlet's planner, McKinley Mertz, PP, has submitted her accompanying report detailing the planning rationale for making the Parkway the boundary. That entire area north of the Parkway meets the delineation criteria for designation as PA-1 Metropolitan.

Please look at Map 5 in Ms. Mertz's report, which graphically shows that all of Holmdel's affordable housing sites are adjacent to Hazlet or in close proximity. Indeed, only site 13, the Holmdel Village senior apartments, is beyond a triangular area, north of Route 35. Over the years, Holmdel has crammed its affordable housing sites in this small area, while keeping the rest of Holmdel Township unburdened by higher density development.

The SPC's first Development Plan, adopted on March 1, 2001Quoting, lists its first policy as "Equity":

**I. EQUITY.** It is the position of the State Planning Commission that a basic policy in implementation of the State Plan is to achieve the public interest goals of the State Planning Act while protecting and maintaining the equity of all citizens. It is the intent of the State Planning Commission that the benefits and burdens of implementing the State Plan should be equitably distributed among all citizens of the state. Where implementation of the goals, policies and objectives of the State Plan affects the reasonable

development expectations of property owners or disproportionately affects the equity of other citizens, agencies at all appropriated levels of government should employ programs, including, for example, compensation, that mitigate such impacts to ensure that the benefits and burdens flowing from implementation of the State Plan are borne on an equitable basis.

This paramount equitable policy demands that the State Plan foster additional affordable housing in all areas of Holmdel north of the Parkway, not just those areas butting up against Hazlet, not just those north of the tracks. A demarcation at the railroad tracks would just have Holmdel filling in the area between the tracks and Route 35 with its next rounds of Mt. Laurel compliance. Please give Holmdel a bigger area to work with to meet its constitutional obligations.

The second policy expressed in the 2001 Development Plan is "Comprehensive Planning". As Ms. Mertz explains, that policy also requires that the PA-1 area extend to the Parkway.

Looking at the area north of the Parkway in Holmdel on Map 2 in Ms. Mertz's report, you see that Hazlet to the further north is all PA-1. So is most of Middletown to the east. Holmdel's PA-2 area north of the Parkway sticks out like a sore thumb. Consistent comprehensive planning demands that the areas north of the Parkway in all three towns (Holmdel, Hazlet and Middletown) should all be PA-1.

Map 3 shows that all of the areas north of the Parkway in all three towns (Holmdel, Hazlet and Middletown) are in a sewer service

area. Even though all three towns are in sewer service areas, only Holmdel is not in PA-1. That area of Holmdel, north of the Parkway in a sewer service area, is partially in PA-2, and partially and inexplicably in PA-5.

Mr. Phillips, Holmdel's planner appearing in support of Walters, recognizes that the Parkway is the rational dividing line for demarcation of the PA-1 area:

The Garden State Parkway traverses the Township from northwest to southeast and is generally coterminous with the boundaries of the sewer service established by the Bayshore Regional Sewerage Authority. Over the last two decades, the Township has generally sought to guide new development to the area north of the Garden State Parkway. . .

Mr. Phillips correctly states, "Planning Areas were not established to necessarily coincide with municipal or even county boundaries, but rather meant to reflect "geographic areas that are suitable for common application of public policy." That would seem to describe the area north of the Parkway in all three towns.

Walters' attorney similarly admits in his letter of October 14, 2020 that, "the geographic features of the Site and the general development patterns occurring near the Site in both Middletown and Hazlet are entirely consistent. The State Plan would be better served if similarly situated properties were treated the same."

If the SPC is so inclined to place some of Holmdel in PA-1, please do what the petitioner and the Township implicitly ask. Hazlet's planner asks for the same. Please designate everything

north of the Parkway in Holmdel as PA-1. That will make it easier for state agencies to comprehensively allow higher development in that similarly developed area spanning three towns, sharing the same infrastructure.

Let's look in greater detail at that area north of the Parkway in Holmdel within the sewer service area. Starting in the west, there is a 169-bed regional hospital, Bayshore Medical Center, along with numerous, supporting medical office buildings on Beers Street. Then, along Holmdel Road, there is a large school (Indian Hill School), a Mt. Laurel senior apartment building Site 13 on Map 5), and a municipal pool complex. Within the PA-2 area, there are many single family lots under an acre.

Moving easterly into the current PA-5 area north of the Parkway, you then find the Garden State Arts Center, an amphitheater with capacity and parking for 17,500 concert goers. How that was ever designated PA-5 is a mystery, well beyond the scope of the current matter.

Continuing to the east, you see more single-family subdivisions, and a 250 unit condo complex, Beau Ridge, on Laurel Avenue. All this area has sewer service and should be properly reclassified as PA-1 to match the similar development in neighboring towns.

For all these reasons, the Parkway is the appropriate dividing line if the SPC is so inclined to create a PA-1 area in Holmdel.

It is more rational. It would match the surrounding towns. It is more comprehensive. It has sewer service. It is already heavily developed with homes, a hospital, medical offices, a school, a municipal swim club, and a massive concert venue. It has access to two Parkway exits, Exits 114 and 117. It has existing heavily travelled collector roads. Most importantly, it would allow state action to further encourage affordable housing in a much greater portion of Holmdel.

#### **BELL LABS REDEVELOPMENT**

Holmdel wants everyone to ignore the elephant in the room--- the 473 acre Bell Labs Redevelopment site, just south of the Parkway, shown on Map 3. It was formerly Block 11, Lots 38 and 73. It is in Holmdel's sewer service area. It is the only area with public sewers in Holmdel south of the Parkway, except for some municipal and school buildings.

Bell Labs is massive. It contains two million square feet of office, commercial, retail and community space, including the Holmdel public library.

As part of the Bell Labs redevelopment, Holmdel approved 183 luxury, million-dollar townhomes on some of the outlying areas. And Holmdel approved 40 mega-mansions in the two-million-dollar range.

All with sewer.

All right near Parkway Exit 114.

Inexplicably, all in PA-5.

Without any on-site affordable housing.

Let's face it: Holmdel does not want affordable housing on the Bell Labs site. Heavens no, not in the middle of Holmdel!

But the July 16, 2003 Affordable Housing Agreement between Holmdel and the Bell Labs redeveloper does require that 15% of the units be affordable. That computes to 34 on-site units. Those units were to be delivered no later than July 16, 2020. *Exhibit E*. But none were provided.

The June 10, 2014 Redevelopment Agreement makes it clear at Section 2.02 (g) that, "Affordable Housing issues are addressed by separate agreement [referenced above] between the Parties entitled 'Affordable Housing Agreement', dated July 16, 2013. . ." *Redev. Agreement at Exhibit F (abridged)*.

Instead of requiring the redeveloper to provide on-site affordable housing units on the Bell Labs site, Holmdel disregarded the controlling 2013 Affordable Housing Agreement, and cooked up a different plan to have that developer pay Holmdel \$5,175,718 to fund affordable housing off-site.

And like magic, Holmdel decided to use \$2,500,000 of that money on the subject site, far away from the middle of Holmdel,

with no Holmdel neighbors, with wetlands, tucked in behind a strip center, jammed in next to a residential neighborhood in Hazlet.

Holmdel ripped up its plan to require 34 on-site units on a 473 acre Bell Labs site with sewers in the middle of Holmdel, and instead put 50 units on a constrained 3.87 site on Hazlet's boundary.

How is that fair? How is that equitable? How is that comprehensive planning? Seems more like a continued pattern of exclusionary zoning.

Lest anyone doubt that plot line, I attach Holmdel's spending plan as *Exhibit G*, which shows that the money from the Bell Labs redeveloper has funded the \$1,520,000 condemnation acquisition, with a commitment to fund another million on this site.

Holmdel's hypocrisy, insincerity, arrogance and bad faith are all in plain view.

If the SPC is so inclined to create a PA-1 area in Holmdel, the Bell Labs site fits perfectly into PA-1. It is its own little city, with sewers, access to the Parkway, jobs, entertainment, restaurants, commercial, retail, community space, luxury homes - all that is missing are the low and moderate income households.

It is the kind of place Chief Justice Wilentz had in mind in *Mount Laurel II*, 92 N.J. 158, 211 (1983), when he wrote: "But if sound planning of an area allows the rich and middle class to live



there, it must also realistically allow the poor. And if the area will accommodate factories, it must find space for the workers."

If the SPC is so inclined to add a PA-1 area in Holmdel, please include the Bell Labs redevelopment site to fix this gross oversight. With this request for a plan amendment, you have the opportunity before you under N.J.A.C. 5:85-8.6(a) to make this necessary change.

**SUMMATION**

Hazlet believes that the proper course of action here is to deny the improvident, hypocritical request of the petitioner.

If however, the SPC is inclined to create a PA-1 area in Holmdel, that area should include the area north of the Parkway and the Bell Labs site on the other side of the Parkway.

On behalf of Hazlet, Ms. Mertz and I look forward to appearing before the PIC next Tuesday.

Respectfully submitted,



JAMES H. GORMAN,  
Township Attorney,  
Township of Hazlet

JHG/cc

Attachments

cc: Client, *via email*

Michael Gross, Esq., *via email*