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NEW JERSEY HIGHLANDS COALITION

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November 2, 2015

The Honorable Peter A. Buchsbaum

Hunterdon County Justice Center

65 Park Avenue

Flemington NJ 08822

RE: Factual Summary of Site Suitability of Jacob Haberman v. Hampton Borough, et al. Fairness Hearings Docket L-6527-81, L-588-11

The Honorable Peter A Buchsbaum:

The New Jersey Highlands Coalition, representing the common interest of its eighty-five member organizations in the protection of the natural and historical resources of the New Jersey Highlands region, thanks the Court for allowing us to participate in the Fairness Hearing and to submit our concluding comments to inform the final judgement of the Court on the suitability of the subject property to provide a realistic opportunity for affordable housing as a stipulation of Mr. Haberman's proposal to construct 333 residential units that would include market rate units and a total of 45 units for low and moderate income households.

We will establish from the facts as stated by the expert witness testimony over the course of the hearings that the degree of uncertainty of the plaintiff, Mr. Haberman, to acquire the necessary regulatory approvals, including permits normally required by the Department of Environmental Protection for a major development as proposed by Mr. Haberman, and the additional provisions as stipulated in the amended Litigation Settlement Agreement, that the Court should either withhold its approval until the Plaintiff can demonstrate through pre-application conferences with the NJDEP and with the Highlands Council to determine the kinds of conditions that would be imposed in order for the project to meet permit conditions, or to withhold its approval until the Plaintiff has acquired all necessary state permits and has executed the additional provisions as set forth in the draft Settlement Agreement. As your Honor has commented on several occasions, when experts were questioned about the project's regulatory challenges, that the Court is not the Commissioner of Environmental Protection and that your Honor would leave such matters to the Department. We wonder then what message the Court would be sending to the Department if the Court

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were to approve the Settlement Agreement based on the many doubts that have emerged from the examination of the expert testimony that question the capability of the project to meet all regulatory requirements. We are concerned that approving the Settlement Agreement the Court would unfairly mislead the Plaintiff, providing encouragement for a project with permitting challenges that might be unsurmountable. For the Court to approve the Settlement Agreement under these circumstances will not help bring Hampton Borough any closer towards providing a realistic opportunities for affordable housing.

In Mount Laurel II, the deference the Court gave towards maintaining environmental values when ruling on locations suitable for affordable housing was clear, *“Ordinarily a builder’s remedy will be granted, provided that the proposed project includes an appropriate portion of low and moderate income housing, and provided further that it is located and designed in accordance with sound zoning and planning concepts, including its environmental impact,”* [456 A.2d 390 (N.J. 1983), Summary of Rulings (8)] and, *“We reassure all concerned that Mount Laurel is not designed to sweep away all land use restrictions or leave our open spaces and natural resources prey to speculators. Municipalities consisting largely of conservation, agricultural, or environmentally sensitive areas will not be required to grow because of Mount Laurel.”* [Summary of Rulings (9)]

The Court acknowledges the dramatic change in land use that the Haberman project would bring to its location when it required as part of the Amended Settlement Agreement that Hampton Borough file an amended conformance petition with the Highlands Council for a Center Designation and a map adjustment to Existing Community Zone (ECZ) [Amended Litigation Settlement Agreement, sect. 1(B)]. Haberman is mapped currently by the Highlands Council as Conservation Zone and partially within the Environmentally Constrained Subzone [Rahenkamp Cross Examination, June 10, 2015, 225], which on the face appears to contradict the Court’s assurance in Mt. Laurel II, that *“Municipalities consisting largely of conservation, agricultural, or environmentally sensitive areas will not be required to grow because of Mount Laurel.”* Mr. Rahenkamp, appearing as a professional planner with an expertise in affordable housing development, also stated under cross examination that there has been no application to the Highlands Council at this early stage [Rahenkamp Cross Examination, June 10, 2015, 229].

Your Honor recognized the imperative of perfecting the Highlands Council map adjustment, *“If the remapping isn’t successful, then nothing happens anyway...(y)ou get the mapping, you can deal with that, if you don’t get the mapping, everything goes kerflooey.”* [Rahenkamp Cross, June 10, 2015, 233]. Mr. Rahenkamp acknowledged the Highlands Council requirement for a map adjustment to ECZ, that no net loss of Highlands Resources must be demonstrated, typically by creating an equal area of Conservation or Protection Zone where it is currently mapped an ECZ in another location within the municipality. Mr. Rahenkamp also acknowledged the high bar the Highlands Council requires in granting a map adjustment from the Conservation Zone Environmentally Constrained Subzone to the ECZ, which is even more difficult as the subject property is located within a HUC-14

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subwatershed the Highlands Council has identified as having a net water deficit, *“I am aware of the issue. I am not an engineer to tell you whether -- what the calculations are for our HUC 14. But I am aware that that is one of the issues they will have to weigh.”* [Rahenkamp Cross, June 10, 2015, 231]. Mr. Rahenkamp acknowledged an even further policy constraint applicable to the subject site triggered by the water deficit, Executive Order 114 of Governor Corzine, that stipulates that NJDEP will not issue a water allocation permits for greater than 100,000GPD in the Planning Area (50,000GPD in the Preservation Area) unless a municipal-wide, Highlands Council-specified, water use and conservation plan is in full operation [Rahenkamp Cross, June 10, 2015, 233].

In his direct examination, Mr. Rahenkamp discussed issues of feasibility, both in the *“significant approval process”* that will *“require a very significant number of studies, the nature and detail of which will develop through that process”* and that *“there are very significant costs that are going to be involved that are unpredictable at this point.”*[Rahenkamp Direct Examination, June 10, 2015, 180].

Mr. Kuc, appearing as an expert in the field of wildlife biology testified that Exhibit P-6, a map generated by the NJDEP GeoWeb system, indicated the presence of a potential vernal pond on the subject property, which would require a 300m buffer, but that it had not been investigated to the extent that the presence of a vernal pond could be neither confirmed nor ruled out. [Kuc Cross Examination, May 29, 2015, 59].

Ms Greene, sworn as an expert in flood hazard area permitting identified on the subject site two potential regulated waters that were not identified in the Letter of Interpretation (LOI) that was the subject of Haberman’s wetland delineation expert; a water feature that is regulated under the NJDEP Flood Hazard Area Rules and a water feature regulated under the Special Resource Water Protection Area (SWRPA) of the NJDEP Stormwater Rules, applicable to a Major Development, which is defined as a disturbance of land of one acre or more, or a one quarter increase in impervious cover. [Greene Direct, May 29, 2015, 24]. According to Ms Greene’s testimony, these water features, if verified under their respective NJDEP regulatory programs, would each be considered upstream tributaries to the Musconetcong River, a Category-1 water, requiring 300’ buffers [Greene Direct, May 29, 2015, 28,34]. Each of these features, if verified, could reduce the developable area of the subject site, reducing both the market and affordable rate units that could be constructed.

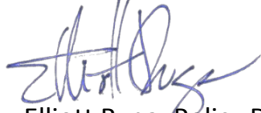
Four days of testimony by environmental and planning experts raised more questions than it answered as to the suitability of the subject site for the construction of the intended 45 units of affordable housing for low and moderate income households. Whether or not the required provision of the Amended Settlement Agreement, of Hampton Borough meeting the requirements to amend its conformance petition to include a Highlands Center Designation and map adjustment to ECZ, given the difficulty of meeting the Highlands Council’s capacity-based and environmentally rigorous

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standards, that a map adjustment can be approved. It is important to note that as imperative it is that Hampton Borough meet its affordable housing obligations, maintaining environmental values are equally imperative. As the Court reminded us in Mt. Laurel II, "*We emphasize here that our concern for protection of the environment is a strong one and that we intend nothing in this opinion to result in environmentally harmful consequences.*" [456 A.2d 390 (N.J. 1983) footnote 68].

Sincerely,

A handwritten signature in blue ink, appearing to read "Elliott Ruga". The signature is fluid and cursive, with a prominent initial "E".

Elliott Ruga, Policy Director

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