



WARREN TOWNSHIP'S PROPOSED MULTI-FAMILY DEVELOPMENTS BORDERING BERKELEY HEIGHTS

UPDATE: NOVEMBER 28, 2018

Background

On Thursday November 8th, our Administrator John Bussiculo and our attorney Matt Jessup met with their counterparts in Warren Township, along with Committeewoman Garafola, Warren Township Sewerage Authority Executive Director Spencer Pierini and the Sewerage Authority's General Counsel. The purpose of the meeting was three-fold:

- Discuss the status of the K. Hov and Premier Projects. Specifically, the agenda included the status of updated concept plans and changes to the plans, if any, previously released to the public by Berkeley Heights, the status of Warren Township's redevelopment/zoning approval process, and status of negotiations with developers on project agreements, if any.
- Express the concerns of the Berkeley Heights residents and the actions Berkeley Heights plans to take to protect their residents. The objective is to determine where there are shared concerns among the two municipalities and where Berkeley Heights may be going it alone.
- Ask about any Warren Township requests of Berkeley Heights.

Summary of Meeting with Warren Township

On Tuesday November 20th, Matt Jessup gave the Township Council and public a summary of the meeting with Warren Township and the Warren Township Sewerage Authority held on November 8th.

1. Warren's "Fairness Hearing" in connection with the proposed Settlement Agreement with Fair Share Housing Center is on December 4, 2018. Any written objections to the proposed Settlement Agreement were due to the Superior Court by November 21, 2018.
2. Warren is re-zoning the project sites via traditional zoning process rather than through redevelopment area designation. Warren has not begun the re-zoning process. Township Committee and Planning Board actions will take place in early 2019.
3. Warren is seeking sewer capacity from Berkeley Heights for the K. Hov project, which consists of 192 units located on Emerson Lane and Hillcrest Road. Warren is not seeking Berkeley Heights sewer capacity for the Premier Project or the Lindberg Avenue project, each of which were the subject of Warren's 2017 sewer capacity request.

4. Berkeley Heights explained the public outreach and meetings held to date and shared concerns regarding site suitability of the K. Hov and Premier sites, particularly in the following areas:
 - Pedestrian and school-aged pedestrian safety
 - Traffic and traffic safety, including on Route 78
 - Infrastructure impacts, including roads and utilities
 - Storm water run off
 - Noise, sound and air pollution
 - Visual buffers and environmental concerns
5. While Warren may not have yet fully assessed the site suitability of the K. Hov and Premier projects, Warren did share Berkeley Heights' concerns, particularly with respect to pedestrian and traffic safety.
6. Berkeley Heights did not make any representations or agreements regarding the availability of sewer capacity.

Next Steps

On November 21, 2018, Matt Jessup, on behalf of Berkeley Heights, filed a letter brief in Superior Court objecting to a specific portion of Warren's proposed Settlement Agreement. The letter brief is attached. Representatives of Berkeley Heights, Warren, Warren Township Sewerage Authority, K. Hov and Premier are scheduled to meet and discuss Berkeley Heights' objections in advance of the Fairness Hearing. The December 4 Fairness Hearing will present Berkeley Heights with an opportunity to express its objections to the Superior Court, as set forth in the letter brief.

Berkeley Heights residents with concerns about Warren's proposed Settlement Agreement are allowed and encouraged to attend the December 4 Fairness Hearing to share their concerns with Warren officials.

November 21, 2018

Via HAND DELIVERY

Honorable Thomas C. Miller, P.J.Cv.
Superior Court of New Jersey
Somerset County Courthouse
20 North Bridge Street
Somerville, N.J. 08876-1262

Re: IMO the Township of Warren, Docket No. SOM-L-904-15

Your Honor:

Our firm is special counsel to the Township of Berkeley Heights (the "Township"). The Township is a neighboring municipality to the Township of Warren ("Warren"). In accordance with the Notice of Fairness and Preliminary Compliance Hearing for Warren, which required any written objections to be submitted by November 21, 2018, the Township hereby objects to the terms of the proposed Settlement Agreement among Warren, Fair Share Housing Center ("FSHC") and certain intervenors and objectors (the "Settlement Agreement"). A Fairness Hearing in the above matter to approve the Settlement Agreement and to determine whether or not Warren Township is preliminarily compliant with its Mount Laurel affordable housing obligations is scheduled for December 4, 2018. Please accept this letter brief as the Township's written objection in opposition to the Court's approval of the Settlement Agreement, and any conditional entry of a preliminary judgment of compliance by the Court for Warren. Specifically, the Township objects to the development of two of the sites in the Settlement Agreement, the "K. Hovnanian site" (the "K. Hov Site") and the "Hillcrest Crossing/North Hill (Premier) site" (the "Premier Site"), as they are not "developable" or "suitable" as those terms are defined by Council on Affordable Housing ("COAH") Prior Round regulations, and therefore, do not create a realistic opportunity for the production of affordable housing as is required by Mount Laurel case law. The Township requests that the Court not approve the Settlement Agreement until the "suitability" of both sites are properly adjudicated.

The terms of the Settlement Agreement do not meet Warren's obligation to provide a realistic opportunity to satisfy its fair share of the regional need for affordable housing. "The Mount Laurel cases recognize that the power to zone carries a constitutional obligation to do so in a manner that creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families." In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 3-4 (2015)(“Mount Laurel IV”) (emphasis added). The Housing Element and Fair Share Plan that Warren will be required to draft, adopt and endorse as a result of the approval of the Settlement Agreement, must be prepared consistent with all statutory requirements of the Municipal Land Use Law (the "MLUL") and the Fair Housing Act (the "FHA"), and must also include an evaluation of the "suitability" of each site proposed for inclusionary residential development and/or zoning under COAH Prior Round regulations. When reviewing a Mount Laurel settlement at a "Fairness Hearing," the Court is required to preliminarily review the components of the settlement to ensure a realistic opportunity will be provided. Livingston Builders, Inc. v. Twp. Of Livingston, 309 N.J. Super. 370, 380 (App. Div. 1998).

COAH Prior Round regulations require that for any site in the plan to create a realistic opportunity for the construction of affordable housing, such a site must be "available", "approvable", "developable" and "suitable", which COAH Prior Round regulations defines as follows:

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules and regulations of all agencies with

jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing. N.J.A.C. 5:93-1.3.

“Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing. Ibid.

“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area-wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area-wide water quality management plan submitted to and under review by the DEP. Ibid.

“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

The K. Hov Site and the Premier Site, together consist of 276 market rate units and 92 affordable housing units, the latter of which is over ten percent (10%) of Warren’s total Third Round (1999-2025) affordable housing obligation of 890 affordable units pursuant to the Settlement Agreement. The K. Hov Site is located on land that borders the Township and the Premier Site is located across the street from the K. Hov Site, in very close proximity to the Township border. This identified project area does not contain the infrastructure necessary to support the construction of 368 total new residential units. As per the terms of the Settlement Agreement itself, “sufficient sewer capacity does not currently exist for the . . . Premier [project]” and any future capacity is subject to “matters that are outside the [Warren Township Sewerage Authority’s] authority or control[.]” The K. Hov Site requires either sewer capacity from the Township, or from the Stage I/II sewer area of the Warren Township Sewerage Authority (the “WTSA”). The Township does not currently have an agreement in place with the developer of the K. Hov Site or with the WTSA that governs the contemplated connections and flow required to accommodate the proposed 192 units. Further, sewer capacity to the K. Hov Site through the WTSA “would need to be obtained through Anticipated Capacity . . . and K. Hovnianian would be third in priority to the extent it received any Anticipated Capacity[.]” Thus, COAH’s definition of a “Developable site” has not been satisfied by the developers of both the K. Hov Site and the Premier Site. As such, neither project creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families.

Even if the Premier and K. Hov Sites are able to obtain the required sewer capacity, there exist additional critical facts that adversely impact on the realistic development opportunity of the K. Hov and Premier Sites. Indeed, neither site satisfies the COAH definition of a “suitable” site, as the sites do not have access to appropriate streets and are not compatible with surrounding land uses. Both sites are located just feet from Interstate 78 Interchange 40, which is already overutilized, unsafe and the source of significant delay. Moreover, neither site satisfies the COAH definition of an “Approvable site”, as Warren has not proven that the sites can be developed in a manner consistent with the rules and regulations of all agencies with jurisdiction over the sites. Indeed, Warren has an obligation to consult with State agencies “to determine whether construction of high density housing on the sites would conflict with the regulatory policies those agencies are charged with implementing.” In Re: Petition for Substantive Certification, Township of Southampton, County of Burlington, New Jersey, 338 N.J. Super. 103, 114 (App. Div. 2001). Yet, there is no indication that Warren has assessed the impact of an additional 2,650 average daily motor vehicle traffic trip generation¹ potentially accessing this interchange and whether the New Jersey Department of Transportation would permit construction of the additional 368 total new residential units necessary to provide for the 92 affordable housing units currently contemplated. In addition, Emerson Lane, one of only two access roads for the sites, is an overcrowded, narrow, dilapidated road that cannot absorb the additional usage. There are also insufficient utility lines in the area, significant concerns regarding pedestrian and, in particular school-aged pedestrian safety, traffic safety and other infrastructure concerns. Further, the K Hov. Site contains wetlands that need to be properly delineated

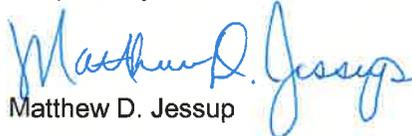
¹ Table 4.1 Average Daily Motor Vehicle Traffic Trip Generation Per Dwelling Unit, based on Low-Rise Apartment Peak Rate of 7.2 trips per day x 368 total units. Residential Site Improvement Standards.

before a buildable area can be determined and a number of residential units established. Warren has not conducted a thorough evaluation of the “suitability” and “approvability” of the K. Hov and Premier sites proposed for inclusionary development. Such an evaluation will show that the area cannot absorb the impacts resulting from the additional 368 residential units on the proposed sites. As a result, neither the K. Hov Site or the Premier Site are realistically capable of hosting the residential units being relied upon by Warren to satisfy its obligation to provide for affordable housing units per the terms of the Settlement Agreement.

Simply put, construction of 368 units on the K. Hov and Premier sites does not represent sound land use planning as contemplated by Mount Laurel case law and COAH Prior Round regulations. The Township appreciates and commends Warren’s efforts to provide a fair share of the regional present and prospective need for low- and moderate-income housing. However, while doing so, Warren must also consider that good planning requires Warren to ensure that there is not an excessively negative impact on the local area surrounding the sites, which includes the impact on the Township. The impacts of the proposed developments at the K. Hov and Premier sites will cripple the surrounding area. Warren is a township with 19.6 miles of land for only 15,000 residents. And yet, as shown on Exhibit A attached hereto, of the 1,048 total new units being proposed pursuant to the Settlement Agreement, Warren is proposing to construct well more than one-third of such units in the easternmost corner of Warren, on the Township border. While these sites may be appealing to and selected by the proposed developers, Warren cannot designate sites for affordable housing “based solely on property owner’s expressions of optimism concerning the developability of their lots for this purpose.” See Southampton, 338 N.J. Super. at 118. Further, there is no evidence that Warren has given adequate consideration to other possible sites for provision of affordable housing. See Southampton, 338 N.J. Super. at 120.

For all of the reasons set forth herein, the Township submits that the K. Hov. Site and Premier Site are not “approvable” or “suitable” for the developments proposed, and that therefore, Warren’s Settlement Agreement fails to create a realistic opportunity for the production of affordable housing on these two sites. Therefore, the Court should not approve the Settlement Agreement at the upcoming Fairness Hearing, nor should it preliminarily approve a Housing Element and Fair Share Plan that has not even been submitted to the Court for review and approval yet. The Township suggests instead, that Warren re-evaluates suitability of K. Hov. and Premier sites and the proposed density at each, after completion of a traffic report that adequately addresses the off-tract traffic and safety impacts and an infrastructure report that adequately addresses the scope of infrastructure improvements required to facilitate the contemplated projects at the K. Hov and Premier sites, prior to memorializing same in its Settlement Agreement and future Housing Element and Fair Share Plan.

Respectfully submitted,


Matthew D. Jessup

Enclosures

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