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July 14, 2020

Via E-Courts

Hon. Gregg A. Padovano, J.S.C.
Bergen County Justice Center
10 Main Street, 3rd Floor
Hackensack, New Jersey 07601

**Re: In The Matter Of The Application Of The Borough
Of Edgewater; Docket No. BER-L-6364-15**

Dear Judge Padovano:

This firm is special counsel to the Borough of Edgewater (“Borough”) in the above-captioned Declaratory Judgment action. Please accept this letter, together with the Planning Memorandum of Kathryn Gregory (attached as Exhibit A to the Certification of Wendy Rubinstein “Rubinstein Cert.”) on behalf of the Borough in response to the July 8, 2020 submission by SJ 660, LLC (“SJ 660” of “Objector”) objecting generally to the of the proposed compliance plan set forth in the settlement agreement between the Borough of Edgewater and Fair Share Housing Center (“FSHC”) (hereinafter the “FSHC Settlement”) and objecting specifically to the inclusion in the proposed compliance plan of the proposed development of 615 River Road as set forth in the settlement agreement between the Borough and 615 River Road Partners, LLC (“RRP”) (hereinafter the “RRP Settlement”). Both the FSHC Settlement and the RRP Settlement will be presented to the court at the fairness hearing scheduled on July 23, 2020.

In its objection, SJ 660, primarily through the planning report of Peter Steck, P.P., purportedly raises both procedural issues and substantive issues with the underlying inclusionary development set forth in the RRP Settlement and in the FSHC Settlement. The court should deny SJ 660’s objection to the Borough’s proposed compliance plan, as SJ 660’s objections fail to show that the FSHC Settlement which includes the development as proposed in the RRP Settlement does not satisfy the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996). Moreover, the objections raised as to the realistic development potential of the 615 River Road site must also fail for the reasons set forth below.

1. Procedural Objections

The procedural objections raised in SJ 660’s July 8, 2020 correspondence reiterate the objections set forth in SJ 660’s May 27, 2020 objection to the RRP Settlement. Those same allegations were addressed by this firm, as well as by counsel for RRP, in separate correspondences



submitted on June 3, 2020. The only issue pending before this court is whether the FSHC Settlement which incorporates the development of the 615 River Road site as set forth in the RRP Settlement, is fair and reasonable to the region's low and moderate income households in accordance with the principles set forth in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

SJ 660's repeated objections based the inability to review all court filings from the last five (5) years since this above referenced declaratory judgement action was filed is nothing more than a red herring. The purpose of the fairness hearing is not to look back at the history of the declaratory judgment action, rather, it is to review the terms and mechanisms proposed in the potential settlement of same. All of the information needed to review the fairness of the proposal is incorporated in the FSHC Settlement and the RRP Settlement.

Similarly, SJ 660 insists it is objecting as to the fairness and reasonableness of the proposed development of the 615 River Road site with objections that are based on procedural land use arguments, that have no relevance in this proceeding. Such land use procedures, as further noted below, do not impact a proposed site's suitability or approvability. As noted in the Borough's June 3, 2020 response to SJ 660's original objection, land use and redevelopment law are not the focus of the fairness hearing. As a matter of law, the judge at the fairness hearing may approve a settlement

to the extent the judge is satisfied that the settlement adequately protects the interests of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built. That analysis involves a consideration of the number of affordable housing units being constructed, the methodology by which the number of affordable units has been derived, any other contribution being made by the developer to the municipality in lieu of affordable units, other components of the agreement which contribute to the municipality's satisfaction of its constitutional obligation, and any other factors which may be relevant to the "fairness" issue.

East/West Venture, 286 N.J. Super. at 328. "[T]he judge should not adjudicate the zoning and planning issues implicated by the agreement." Id. [emphasis added]; accord, Livingston Builders v. Township of Livingston, 309 N.J. Super. 370, 380 (App. Div. 1998).

How [the municipality] meets its affordable housing obligation, and once that obligation is met, how the municipality zones or rezones property with its boundaries is *not* a Mount Laurel issue. What is appropriate zoning for the [municipality] is a legislative determination to be decided by its council and planning board, subject to Municipal Land Use Law.

Livingston Builders v. Township of Livingston, 309 N.J. Super. 370, 381 (App. Div. 1998) [emphasis added]. "[Z]oning and planning measures that will be necessary to finalize the settlement" are "premature" and "not the proper subject of the fairness hearing." Id. at 382.

2. The Affordable Housing Requirements Are Consistent in Both Settlements

SJ 660, through the planning report of Mr. Steck, claims that the RRP Settlement is not consistent with the FSHC Settlement. In reaching this conclusion, SJ 660 claims the RRP Settlement provides that, of the total number of affordable housing units, no more than 45 % are allowed to be two-bedroom units and no more than 5% are allowed to be three-bedroom units. If this were in fact what the RRP Settlement provided, Objector would be correct that this is not in compliance with the terms set forth in the FSHC Settlement; and the requirement for future inclusionary projects to be kept to the same standard would mean the Borough would not be following the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. (“UHAC”). It is therefore quite a relief that Objector’s interpretation of the RRP Settlement is at best a misreading and at worst a gross attempt to misrepresent the terms of the RRP Settlement.

The RRP Settlement, in Exhibit E, does propose that a maximum of 5% of the total number of units constructed (i.e., 5% of 1200 units = 60 units) be three-bedroom and a maximum of 45% of the total number of units constructed (i.e., 45% of 1200 = 540 units) be two-bedroom units. RRP will still be required to conform to UHAC standards which require a minimum of 20% of the affordable units be three-bedroom units (i.e., 20% of 180 = 36 units). As such, the caps placed on the total number of three-bedroom and two-bedroom units within the entirety of the proposed 1200 units do not impact RRP’s compliance with UHAC standards, and the RRP Settlement does not conflict with the FSHC Settlement. In fact, the RRP Settlement specifically notes the affordable units will comply with legal requirements.

3. The 615 River Road Site Provides a Realistic Opportunity

The Objector claims the 615 River Road Site is not appropriate for use as an inclusionary housing site because it fails to meet the four-prong test to provide for a realistic opportunity for affordable housing pursuant to the Second Round Rules at N.J.A.C. 5:93-1 et. seq. The Objector, however, mischaracterizes the application of the definitions of available, suitable, developable and approvable set forth at N.J.A.C. 5:93-1.

Pursuant to COAH’s Second Round Rules at N.J.A.C. 5:93-5.3(b), in zoning for inclusionary development, municipalities are to designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1.3.

a. The 615 River Road Site is Available for Inclusionary Development

Pursuant to N.J.A.C. 5:93-1.3 an “available site” is one with clear title and free of encumbrances which preclude development. RRP owns clear title to the property and has proposed the use of the site for an inclusionary development within the Borough. This is sufficient to satisfy the availability prong and Objector does not dispute the property is available for inclusionary zoning.

b. The 615 River Road Site is Suitable for Inclusionary Development

A “suitable site”, in accordance with N.J.A.C. 5:93-1.3, “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.” RRP’s property at 615 River Road is clearly suitable for inclusionary development.

As noted in the Planning Memorandum of Kathryn Gregory (Exhibit A to the Rubinstein Cert. at pages 3-4), the proposed development at 615 River Road is adjacent to compatible commercial land uses which provide shopping opportunities for the future residents and symbiotically provides future patrons for the commercial uses. Moreover, although SJ 660’s objection suggests the site is not suitable due to the proposed height, this objection is misguided as the adjacent sites to the north and south have their “backs” facing RRP’s property and will not be impacted by the proposed building height. See Rubinstein Cert., Exh. A, Gregory Report, at 4. Moreover, the visibility of the building does not render the site unsuitable, it is a well-settled matter of law that “in the absence of a restrictive covenant, a property owner has no right to an unobstructed view across a neighbor’s property.” Bubis v. Kassin, 323 N.J.Super. 601, 616, 733 A.2d 1232 (App.Div.1999) (citing Harwood v. Tompkins, 24 N.J.L. 425, 427 (1854)). As such, the development of the site does not make it incompatible with surrounding land uses by virtue of the height of the proposed buildings, as is alleged by Mr. Steck.

As noted above, the suitability of a site is also dependent on consistency with environmental policies delineated in N.J.A.C. 5:93-4. Objector claims the site is not suitable because it is located within the 100-year flood hazard area. Once again, Objector is mischaracterizing the facts and the regulations governing the development of the site. What Mr. Steck neglects to include in his analysis of the environmental conditions at 615 River Road, is that a large percentage, of the Hudson Riverfront in Edgewater is within the 100 year flood hazard area. Yet, incredibly, there exists numerous other multi family developments on the easterly side of River Road in Edgewater that have received permits from the New Jersey Department of Environmental Protection (“DEP”). Moreover, N.J.A.C. 5:93-4 does not mandate the removal of a property from consideration because it is subject to the Coastal Resource and Redevelopment Rules, N.J.A.C. 7:7E-1 (“Coastal Permit Rules”), and the New Jersey’s Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-1 (“FHA”), rather, it requires adherence with the rules. Therefore, the inclusion of the site within the FEMA 100-year flood zone does not render the site unsuitable. This misguided allegation is also addressed in Ms. Gregory’s Planning Memorandum on pages 1-2.

c. The 615 River Road Site is Developable for Inclusionary Development

A site is to be considered “developable” for affordable housing if the site “has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP” See N.J.A.C. 5:93-1.3. it is undisputed that 615 River Road is developable as it has access to water and sewer, as well as gas, electric and communications services.

d. The 615 River Road Site is Approvable for Inclusionary Development

According to N.J.A.C. 5:93-1.3, an “approvable site” is one that may not currently be zoned for low and moderate income housing, but “that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site.” As noted above, RRP’s property at 615 River Road, is subject to the jurisdiction of the DEP. Contrary to the opinion of Mr. Steck, this oversight does not preclude the approvability of this site.

Neither the FSHC Settlement nor the RRP Settlement purport to negate the need for compliance with DEP rules. Important to note, the Coastal Permit Rules and the FHA do not prevent the ability for residential construction to occur within the 100 year flood zone. While Mr. Steck references N.J.A.C. 7:13-12.5(o) of the FHA as proof that the 615 River Road site is environmentally constrained as part of his claim that the rule requires multi-family residence buildings to have roadway access elevated by at least one foot above the 100-year flood; this is, yet again, a misrepresentation by Mr. Steck and the Objector. The full text of N.J.A.C. 7:13-12.5(o) provides:

The Department **shall** issue an individual permit to construct a critical building or multi residence building, or to convert an existing building to on of those uses, only if the applicant demonstrates that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building, **unless**:

1. The building is located in a tidal flood hazard area or is a multi-residence building that is part of a redevelopment project; and
2. The applicant demonstrates that such access is not feasible in accordance with N.J.A.C. 7:13-12.6(e)” (emphasis added).

This particular rule, rather than eliminate the ability to receive a permit for construction, sets forth the limited circumstance in which the DEP **must** issue a permit. Moreover, if RRP does not qualify for this individual permit as of right, the Hudson River is a tidal waterbody, and RRP could still move forward under N.J.A.C. 7:13-12.5(o)1 and N.J.A.C. 7:13-12.6(e), regardless of whether or not the multi residence building is part of a redevelopment project. See Rubinstein Cert., Exh. A, Gregory Report, at 1-2

Objector also claims the 615 River Road site is not approvable due to the nature of the RRP Settlement as contract zoning and due to the redevelopment mechanism speculated in the RRP Settlement. As noted in the definition of “approvable site”, “a site may be approvable although not currently zoned for low and moderate income housing.” N.J.A.C. 593-1.3. As further discussed supra, the fairness hearing is not designed to address the municipal actions related to the Municipal Land Use Law or Redevelopment Law as those claims have no impact on the determination, for purposes of the fairness hearing, of whether a site is approvable. Moreover, it is well settled within Mount Laurel actions that “there is nothing unlawful about a municipality granting a developer

more favorable zoning in order to produce affordable housing.” East/West Venture, 286 N.J. Super. 339.

4. Proper Planning Principles

As noted in Ms. Gregory’s Planning Memorandum, Mr. Steck’s assertion that the proposed 25-story development is “bad planning” because it is unprecedented is factually incorrect. See Rubinstein Cert., Exh. A, Gregory Report, at 4-5. The proposed project is located the Hudson Riverfront area where development is encouraged as the regulations acknowledge the existence of development pressures and heavily disturbed areas ripe for redevelopment. See N.J.A.C. 7:7-9.46. The proposed development does not require “suburban spread” and it is consistent with the goals of the State Planning Act See id at 5. Increasing the allowable height in exchange for a reduction in building coverage is also consistent with the Borough’s Master Plan Reexamination Review in 2014 as well as the DEP’s Coastal Permit Rules at N.J.A.C. 7:7-15.14.

5. The FSHC and RRP Settlement are Fair and Reasonable

As noted in the “Report of the Special Master Regarding the Fairness of A Settlement Agreement Between the Borough of Edgewater and River Road Partners, LLC In the Matter of the Application of the Borough of Edgewater County of Bergen Docket No. BER-L-6364-15” Prepared by Francis J. Banish III, PP/AICP on June 10, 2020, the standards articulated in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996) are the relevant yardstick for measuring the fairness of an affordable housing Settlement for low and moderate income housing. Those standards include consideration of the following:

1. The number of affordable housing units being constructed,
2. The methodology by which the number of affordable units has been derived,
3. Any other contribution being made by the developer to the municipality in lieu of affordable units,
4. Other components of the agreement which contribute to the municipality’s satisfaction of its constitutional obligation, and
5. Any other factors which may be relevant to the “fairness” issue

The FSHC Settlement will provide the opportunity for the Borough to satisfy an obligation of 624 affordable units in the Third Round. The RRP Settlement proposes to provide 180 of those units. The RRP Settlement will also provide additional parkland public transit improvements, pedestrian safety improvements, an opportunity for increased school facilities and other public benefits that are set forth in the RRP Settlement and in the Planning Memorandum prepare by Ms. Gregory.

In addition, the FSHC Settlement also provides for additional mechanisms which contribute to the Borough’s satisfaction of its constitutional obligation including, but not limited to the adoption of an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more with set asides fifteen percent for rental developments and twenty percent (20%) for sale units and the creation of the Affordable Housing 2 Zone. Additionally, the Borough will require 13% of all units approved after July 1,

2008 to be very low income units; at least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households; at least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families; and at least half of all units addressing the 624-unit obligation will be available to families.

Conclusion

For the reasons set forth herein, the Borough respectfully requests the court deny SJ 660's objections and approve the FSHC Settlement and the RRP Settlement as fair and reasonable to the region's low and moderate income households in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div.1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996).

Respectfully submitted,

/S/ Wendy Rubinstein

cc: Francis J. Banish III, PP/AICP, Special Master
All Counsel of Record

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IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF EDGEWATER,
COUNTY OF BERGEN,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-6364-15

CIVIL ACTION

**CERTIFICATION OF
WENDY RUBINSTEIN, ESQ.**

WENDY RUBINSTEIN, ESQ., of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and partner at the law firm DeCotiis, FitzPatrick, Cole & Giblin, LLP, counsel to Petitioner Borough of Edgewater (“Borough” or “Petitioner”) in the within captioned declaratory judgment action brought pursuant to In re Adoption of N.J.A.C. 5:96 and 5:97 by the NJ Council on Affordable Housing, 221 N.J. 1 (2015) (“*Mount Laurel IV*”). As such, I am familiar with the facts herein.

2. I attach as Exhibit A, the Planning Memorandum “*Response to Planning Evaluation, Lower Income Persons Fairness Analysis, prepared by Peter G. Steck, dated July 8, 2020*” prepared by Kathryn M. Gregory, PP, AICP, dated July 14, 2020

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

/s/ Wendy Rubinstein, Esq.

Dated: July 14, 2020



PLANNING MEMORANDUM

From: Kathryn M. Gregory, PP, AICP
Principal

Re: *Response to Planning Evaluation, Lower Income Persons Fairness Analysis, prepared by Peter G. Steck, dated July 8, 2020.*

Date: July 14, 2020

INTRODUCTION

This memorandum has been prepared in response to the report submitted to the Court authored by Peter Steck, Dated July 8, 2020: *Planning Evaluation, Lower Income Persons Fairness Analysis*.

Objector's first argument, that the easterly side is not approvable or suitable because the site and its road access are entirely within a 100-year flood hazard area, is incorrect.

The Objector's reliance on the excerpt of the Federal Emergency Management Agency (FEMA) Map (Panel O278H) provided by Mr. Steck on page 9 of his report, stating that the "site" (Lots 1 and 5 in Block 76), is located in the 100-year flood hazard area, misses the point and is incomplete.

The Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-12.5(o) (the "Rules") direct the DEP to issue an individual permit to construct a multi-residence building if the applicant demonstrates that the building is served by at least one existing roadway, and the travel surface of which is constructed at least one foot above the Flood Hazard Area Design Flood Elevation. Moreover, if the building is a multi-residence building that is part of a Redevelopment project within an AINR (Area in Need of Redevelopment), DEP has determined that the access roadway can be at an elevation up to one-foot below the Flood Hazard Area Design Flood Elevation. (N.J.A.C. 7:13-12.6(e)3i).

The DEP relies upon Federal Emergency Management Administration ("FEMA") maps to specify flood elevations. According to FEMA, the flood elevation on River Road is at elevation 9. The Flood Hazard Area Design Flood Elevation would be one foot above that. Therefore, 10 is the Flood Hazard Area Design Elevation, wherein, according to USGS LiDAR topography as researched by Edgewater's engineers, Boswell Engineering, the approximate elevation of River Road is 11. DEP allows access for projects within an AINR (Area in Need of Redevelopment) one foot below the Flood Hazard Elevation. Therefore, assuming that the property is in an AINR, River Road and other access routes must be at least at elevation 8.

Furthermore, pursuant to Boswell Engineering, construction in this area may be permitted by DEP by reason of it being a tidal area, and not subject to the same restrictions as upland flood

zones. The prospective developer would also be entitled to fill the site to raise required facilities above the flood elevation, if needed.

The DEP has the authority to approve the contemplated elevations, the elevation may be changed during the process, and a site plan has not even been submitted yet and is not required at this stage. Moreover, the only entity that can officially determine whether the DEP rules are met is the DEP, which the DEP will determine during the site plan review process.

Therefore, the blanket statement that this site is not approvable or suitable is incorrect.

Objector's second argument, that the easterly site is not approvable owing to the redevelopment mechanism stipulated in the settlement agreement and the improper influence arising from the underlying allegations associated with settlement agreement, is incorrect.

This legal contention made by Mr. Steck is a legal argument that will be addressed by counsel. However, it is worth noting that the development contemplated by the settlement agreement is consistent with Edgewater's Master Plan, which was created and adopted well before the settlement agreement; indeed, before the litigation that the settlement resolved.

Objector's third argument, that the easterly site is not approvable due to the defective nature of the Settlement Agreement as contract zoning, is incorrect.

Contract zoning can, for the sake of argument, occur where a community approves a zoning change that benefits a private party *exclusively*, to the detriment of the public interest as a whole. However, the contemplated development provides at least the following benefits to the public.

1. Affordable Housing: While the affordable housing obligation has not been agreed upon to date for the Borough, we anticipate in the Fairness Hearing that 624 units will be determined to be Edgewater's affordable housing obligation. Of the 624 required units, it is anticipated this site will provide 180 affordable housing units, representing 29% of the Borough's affordable housing obligation.
2. Parkland. The 2012 Community Facilities Element identified the need for parks as follows: The Borough falls short of the recommended minimum for Community Parks by 2 acres, and falls short of the recommended minimum for neighborhood parks by approximately 8.33 acres. The development contemplated by the settlement agreement provides additional needed park land to address that shortage.
3. An opportunity for increased school facilities. As of the time of the 2012 Community Facilities Element, George Washington School was being expanded, to address the increase in school enrollment. The George Washington School reached capacity after one year of operation. The schools as of the school year 2019- 2020 have an enrollment of 930 students in both the Eleanor Van Gelder School and the George Washington School. Current class size is 22 students per classroom. The development contemplated by the settlement agreement will enable the Borough's Board of Education to build an additional school to satisfy those needs and provide for students who may reside at this project.
4. Improved transportation infrastructure. The settlement of the lawsuit and exhibits thereto also provide for significant upgrade to the mass transit in the Borough, including a new ferry stop, two new bus stops including a "super" bus stop for New Jersey transit and a pedestrian walkway, which is needed in an area of high pedestrian traffic.

These public benefits show that the settlement is not contract zoning.

"Contract zoning" refers to a municipality's attempt "by contract with a property owner, to authorize the property owner to use his property in contravention of the zoning ordinance *and without compliance with the statutorily established procedures for either obtaining a zoning variance or an amendment to the master plan and zoning ordinance.*" Livingston Builders, Inc. v. Township of Livingston, 309 N.J. Super. 370, 381-82 (App. Div. 1998) (citing William M. Cox, New Jersey Zoning and Land Use Administration, (1997), § 34-8.2, at 603-04; emphasis added). The settlement agreement provides for compliance with land use and redevelopment laws, procedures and standards. These procedural safeguards, and required compliance with redevelopment and land use law show that the settlement is not contract zoning.

Lastly, zoning by "contract" is not prohibited when designed to facilitate construction of Mount Laurel housing, East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 339 (App. Div. 1996) ("there is nothing unlawful about a municipality granting a developer more favorable zoning in order to produce affordable housing"), and is particularly appropriate given the related public benefits of additional open space public parkland, significant infrastructure and transportation improvements and a municipal site for a school or recreational uses - all of which are needed in the Borough. Thus, assuming, again for the sake of argument, that there is any "contract zoning," that concept - despite the word "contract" - does not bar the settlement or the Borough's affordable housing plan.

Objector's fourth argument, that the easterly side is not suitable for the magnitude of high-rise towers contemplated in the Settlement Agreement, is incorrect.

Mr. Steck states a site suitable for inclusionary development is one that is adjacent to compatible land uses. This is true according to the Substantive Rules on Affordable Housing, as defined at N.J.A.C. 5:93-1, et seq. However, in the definition he quotes from The Complete Illustrated book of Development Definitions by Harvey S. Moskowitz, et al, Fourth edition, page 115:

Compatible Land Use

A use of land and/or building(s) that, in terms of development intensity, building coverage, design, bulk and occupancy, traffic generation, parking requirements, access and circulation, site improvements, and public facilities and service demands, is consistent with and similar to neighboring uses and does not adversely affect the quality of life of persons in surrounding or nearby buildings.

Nowhere in this definition is the word "adjacent" used.

Mr. Steck's critique of Mr. Bernard's report is flawed in that Mr. Bernard's analysis included neighboring and surrounding uses. The uses Mr. Bernard mentions, including the school, post office, and multi-family developments, are neighboring uses. A 1,000 foot walk equates to 5 minutes. Any rational planner would agree that these uses are neighboring and surrounding uses.

Mr. Steck's "compatibility" analysis only focuses on height, but not the actual land uses that are located adjacent to the site in question. A suitable site, as defined under the Substantive Rules on Affordable Housing, at N.J.A.C. 5:93-1, et seq., "means a site that is adjacent to compatible land uses, has access to appropriate streets, and is consistent with environmental policies delineated in N.J.A.C. 5:93-4."

Nowhere in Mr. Steck's report does he state that the adjacent commercial uses are not compatible with proposed mixed-use development as envisioned by the settlement agreement. In fact, the contemplated development is extremely compatible with adjacent commercial land uses because the adjacent uses will also provide shopping opportunities for the future residents and future patrons for the commercial uses.

With regard to height, while the adjacent sites to the north and south have buildings that are one to two stories in height, there is no negative impact to these adjacent buildings and sites from a potential 25-story building, as both commercial properties have their "backs" facing the property in question (Lots 1 and 5). There will be no effect in terms of adequate light, air, and open space, as the rear of both developments have no windows and contain loading areas for businesses. Shadows may be cast on the property to the north, but it would be across a commercial parking lot. There are no parks or recreational facilities at this location that would impact the daily lives of residents.

Mr. Steck's reference to the Palisades Cliffs is irrelevant. There are no deeds, covenants, or restrictions that would prohibit a building taller than the Palisades Cliffs. In fact, case law exists that does not protect views. In the case of Riverview Development, LLC, Waterfront Development Permit No. 0908-05-0004.3 WFD 060001, Townhome residents were found to not have a protected property interest in scenic views and thus were not entitled as a third-party to a formal administrative hearing in the Office of Administrative Law to contest waterfront development permit which Department of Environmental Protection issued to high-rise developer. and there was no covenant or deed restriction granting protection to any views, and high-rise structure regulations for waterfront developments did not create an absolute prohibition against development interfering with views of inland residents, but rather qualified goal of protecting scenic views "to the maximum extent practicable." N.J.S.A. 52:14B-3.3; N.J.A.C. 7:7E-7.14.

Mr. Steck is also incorrect in his statement that the proposed 25-story building is 80 feet taller than the tallest buildings permitted in the Borough. The R-5 zone permits buildings taller than the 20 stories listed in the bulk table. A building is permitted to increase one story for every 1% reduction in building coverage. Thus, there is no actual limit to the permitted height of a building. The rationale behind this was determined during the last Master Plan Reexamination Review in 2014. The views within Edgewater are blocked by 4- and 5-story developments that span from property line to property line, mostly along the east side of River Road. Taller and thinner buildings help to preserve views from properties in Edgewater, not only those located along the Palisade Cliff. This was also the rationale for the development of Waterford Towers to the east of the Shadyside District - tall, thinner buildings preserving views from and to Shadyside (Old River Road) rather than 4-story developments that would mask this little commercial area. This is also consistent with the intent of DEP rules for High Rise Structures in coastal areas as set forth in N.J.A.C 7:7-15.14

The claim that the building height will have a regional impact is far-fetched,

Objector's fifth argument, regarding "bad planning," is incorrect

The New Jersey Supreme Court, in its Mt. Laurel II case, stated that:

The Constitution of the State of New Jersey does not require bad planning. It does not require suburban spread. It does not require rural municipalities to encourage large scale housing developments. It does not require wasteful extension of roads and needless construction of sewer and water facilities for the out-migration of people from the cities and the suburbs. There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to

*provide lower income housing and, at the same time, plan the future of the state intelligently.
(emphasis supplied)*

Mr. Steck's assertion that the proposed 25-story development is "bad planning" because it is unprecedented is not supported by the statement above, which he presents in his report, because the proposed mixed-use development, even at 25 stories, does not:

- require rural municipalities to encourage large scale housing developments.
- require wasteful extension of roads and needless construction of sewer and water facilities for the out-migration of people from the cities and the suburbs

In fact, the proposed mixed-use development is located in an urban-suburban area, utilizing an existing site that has existing road, sewer, and water facility access. This promotes the goals of the State Planning Act as follows:

- encourage development, redevelopment and economic growth in locations that are well situated with respect to present or anticipated public services or facilities and to discourage development where it may impair or destroy natural resources or environmental qualities.
- reduce sprawl
- promote development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expenditures of public funds. (N.J.S.A. 52:18A-196, et seq.)

SUMMARY OF PLANNING CONCLUSIONS

The site in question is approvable and suitable under the Substantive Rules on Affordable Housing, as defined at N.J.A.C. 5:93-1, et seq.; the settlement is not contract zoning as multiple public benefits will be derived from it including open space on the waterfront, a school or recreational facility, and affordable housing; the site is suitable for high-rise towers to preserve viewsheds in Edgewater; and the settlement agreement (with potential subsequent rezoning) represents good planning practice as it promotes the policy of the State Planning Act in providing redevelopment in areas with existing infrastructure and public services.