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October 4, 2016

VIA LAWYERS SERVICE

Motion Clerk, Superior Court of New Jersey
Law Division
Monmouth County Court House
71 Monument Park
P.O. Box 1266
Freehold, NJ 07728

Re: Highview Homes, LLC v. Township of Hazlet, et al.
Docket No. MON-L-4224-15
Motion Returnable October 14, 2016

Dear Sir or Madam:

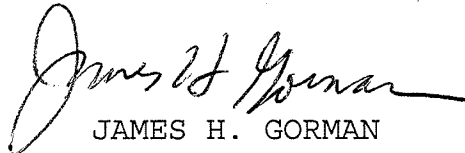
I am enclosing an original and one copy of the following on behalf of the defendant, Third Party Plaintiff, Township of Hazlet:

- Defendant, Third Party Plaintiff's Response to Third Party Defendant's Statement of Material Facts;
- Letter brief in opposition to Third Party Defendant's motion; and
- Certification of Service.

This motion is returnable on October 14, 2016 before the Honorable Jamie S. Perri, J.S.C.

Please charge all fees to my Superior Court Account No. 141377.

Very truly yours,



JAMES H. GORMAN
Attorney for Defendant,
Third Party Plaintiff
Township of Hazlet

JHG/jo

Enclosures

cc: Honorable Jamie S. Perri, J.S.C., via *Lawyers Service*
Edgar Alden Dunham, IV, Esq., via *Email and Lawyers Service*
Richard J. Hoff, Jr., Esq., via *Email and Lawyers Service*
Gregory W. Vella, Esq., via *Email and Regular Mail*
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Third Party Plaintiff
Township of Hazlet

HIGHVIEW HOMES, LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	
Plaintiff,	:	MONMOUTH COUNTY
	:	LAW DIVISION
v.	:	
	:	DOCKET NO. MON-L-4224-15
TOWNSHIP OF HAZLET and	:	
PLANNING BOARD OF THE TOWNSHIP	:	CIVIL ACTION
OF HAZLET,	:	
	:	HAZLET TOWNSHIP'S RESPONSE TO
Defendants,	:	HOLY FAMILY'S STATEMENT
	:	OF MATERIAL FACTS
and	:	
	:	
TOWNSHIP OF HAZLET,	:	
	:	
Defendant/Third Party	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE CHURCH OF THE HOLY FAMILY,	:	
	:	
Third Party Defendant.	:	

1. Admitted.
2. Admitted.
3. Admitted.

a. Disputed. Holy Family only requested the rezoning of a portion of the property.

b. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

c. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

d. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

e. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

f. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

g. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

h. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

i. Admitted.

j. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs. Highview Homes has redacted the relevant portions of the contract. See certification of James H. Gorman.

4. Admitted.

5. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

6. Admitted.

7. Disputed. Subject to discovery. Fact not established. Holy Family is left to its proofs.

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Honorable Jamie S. Perri, J.S.C.
Superior Court of New Jersey
Law Division
Monmouth County Court House
71 Monument Park
P.O. Box 1266
Freehold, NJ 07728

**Re: Highview Homes, LLC v. Township of Hazlet, et al.
v. The Church of the Holy Family
Docket No. MON-L-4224-15
Response to Holy Family's Motion
Returnable: October 14, 2016**

Dear Judge Perri:

Please accept this letter brief on behalf of the Township of Hazlet in opposition to the motion by the third-party defendant, The Church of the Holy Family ("Holy Family") to dismiss the complaint, alleging a failure to state a cause of action.

LEGAL ARGUMENT

POINT I

**THE MOTION FOR SUMMARY JUDGMENT DOES NOT COMPLY
WITH R. 4:46-2 AND SHOULD BE DENIED**

Holy Family is relying upon the certification of Neil Pirozzi, an employee of the Diocese of Trenton, who "assist[s] parishes in . . . sales of real property." Pirozzi Cert. ¶1.

October 4, 2016

Under R. 4:46-2, Holy Family's motion is deemed to be a motion for summary judgment since it seeks to rely upon matters beyond the pleadings.

Holy Family's Statement of Material Facts is deficient. Specifically, the alleged facts set forth in Paragraph 3.a, 3.b, 3.c, 3.d, 3.e, 3.f, 3.g, and 3.j are not contained in the pleadings or in Mr. Pirozzi's certification. These so-called facts are subject to discovery and subject to discovery. Pursuant to R. 4:46-2(a), this motion may be denied on this basis alone, without prejudice for the deficient statement of facts.

Furthermore, the assertion in Paragraphs 5 and 7 that Holy Family's numerous developers are not acting as "agents" of Holy Family is a conclusion of law, not a statement of fact. Facts related to this issue are also subject to discovery.

Discovery will no doubt show that the developers were only permitted to develop projects authorized by, and agreed to, by Holy Family. The contracts with its numerous developers will almost certainly show that Holy Family never sought affordable housing on its property.

Hazlet Township is confident that discovery will show that Holy Family acted in bad faith on its own, and jointly with its numerous developers.

Hazlet Township has already served interrogatories on Holy Family and noticed the deposition of Mr. Pirozzi to better ascertain the facts related to the dealings between Holy Family and its various developers.

Beyond the non-conforming Statement of Material Facts, Holy Family's motion for summary judgment is premature. Discovery has not yet been completed and the motion should be denied. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189 (1988). A comment to the Rules, citing Wilson v. Amerada Hess Corp., 168 N.J. 236, 253 - 254 (2001), "made clear that where a claim for relief is based on the allegation of the adverse party's bad faith, discovery that would adduce facts giving rise to an inference of bad faith must be permitted before the summary judgment motion is heard." Pressler & Verniero, N.J. Court Rules (Gann 2017), Comment 2.3.3. to R. 4:46-2.

POINT II

HOLY FAMILY IS AN INDISPENSABLE PARTY

Pursuant to R. 4:28-1(a), Joinder of Persons Needed for Just Adjudication, provides as follows:

(a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(Emphasis added).

The joinder of Holy Family is mandatory under R. 4:28-1(a)(2)(i), since "the disposition of the action in the person's absence may . . . impair or impede the person's (Holy Family's) ability to protect that interest."

Take one possible scenario for the outcome of this matter -- a settlement resulting in the rezoning of Holy Family's property. Such a settlement certainly affects Holy Family's interest in its property, and Holy Family must be a party to that settlement.

And in another scenario, if a builder's remedy is denied because the court finds the site not to be suitable, that certainly affects Holy Family's interests.

Joinder is also mandatory under the next subsection, R. 4:28-1(a)(2)(ii), since Hazlet Township would be "subject to a substantial risk of incurring double, multiple or other inconsistent obligations by reason of" Holy Family's property interest. Suppose Hazlet Township is successful, whether completely or partially, in its defense of the complaint. That judgment must bind Holy Family, or else the Township could face yet another lawsuit by Holy Family's next proposed developer.

Holy Family's property rights will be affected by the outcome of this litigation. Can there be any doubt that any potential development rights resulting from this litigation run with the land? They are not personal to Highview Homes. A builder's remedy runs with the land, the land owned by Holy Family, an indispensable party in interest.

Likewise, if the court were to find that this site is not suitable for a builder's remedy, that decision should also be binding on Holy Family as the property owner. There is no reason to re-litigate these issues.

Under the mandatory joinder rule, Holy Family is an indispensable party both because its property interests are affected under R. 4:28-1(a)(2)(i), and because the Township

would have a substantial risk of further claims by Holy Family or a new developer under R. 4:28-1(a)(2)(ii).

Holy Family focuses only on R. 4:28-1(a)(1) when it incorrectly asserts in footnote 1 at page 4 of its brief, that a party is indispensable only if "complete relief cannot be accorded among those already parties." Holy Family is conveniently ignoring the next subsection, R. 4:28-1(a)(2), cited above in defense of this motion.

Please note that this point has nothing to do with whether Holy Family or Highview Homes acted in bad faith or not. That issue is briefed in the next Point.

POINT III

HOLY FAMILY MISREADS THE GOOD FAITH REQUIREMENT OF MOUNT LAUREL II

Holy Family's position seems to be that the court can only look at Highview Home's actions, and must ignore Holy Family's own actions. It seems to further argue that if the court finds that Highview Homes did not act in good faith, the slate is erased and Holy Family can just start all over again with a new developer. Such an interpretation of the good faith requirement enunciated in Mount Laurel II, 92 N.J. 158, 218 (1993) renders that requirement meaningless.

Such an interpretation would mean that no matter how badly a property owner acts, or how badly its proposed

developers act, those bad acts would all be ignored when the next developer comes along.

It is acknowledged that Mount Laurel II just says "Where the plaintiff has acted in good faith . . ." Id. However, the Supreme Court never said that bad faith actions of the property owner should be ignored. Nor, did the Supreme Court say that the slate somehow is magically wiped clean by subbing in a new developer.

This is an unanswered legal question to be determined when all the facts are known.

At this early stage of the litigation, it seems clear that Holy Family never proposed any affordable housing on its property. It also seems clear that none of its numerous developers proposed any affordable housing, until Highview Homes proposed a deficient set-aside in a last minute email from its planner.


Since Holy Family is an indispensable party for the reasons set forth in the prior Point of this brief, Hazlet Township, and the court, should be allowed the opportunity to review Holy Family's actions for a fair and complete adjudication of this important public issue.

Honorable Jamie S. Perri, J.S.C.
Page 8
October 4, 2016

CONCLUSION

For the foregoing reasons, Hazlet Township respectfully requests that Holy Family's motion should be denied without prejudice.

Respectfully submitted,



JAMES H. GORMAN
Attorney for Defendant,
Third Party Plaintiff
Township of Hazlet

JHG/jo

cc: Edgar Alden Dunham, IV, Esq., *via Lawyers Service*
Motions Clerk, *via Lawyers Service*
Richard J. Hoff, Jr., Esq., *via Email and Lawyers Service*
Gregory W. Vella, Esq., *via Email and Regular Mail*
Client, *via Email*

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HIGHVIEW HOMES, LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	
Plaintiff,	:	MONMOUTH COUNTY
v.	:	LAW DIVISION
TOWNSHIP OF HAZLET and	:	
PLANNING BOARD OF THE TOWNSHIP	:	DOCKET NO. MON-L-4224-15
OF HAZLET,	:	
	:	CIVIL ACTION
Defendants,	:	
	:	CERTIFICATION OF SERVICE
and	:	
	:	
TOWNSHIP OF HAZLET,	:	
	:	
Defendant/Third Party	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE CHURCH OF THE HOLY FAMILY,	:	
	:	
Third Party Defendant.	:	


I hereby certify that the enclosed reply brief and supporting papers were served within the time prescribed by the Rules of the Court upon the Clerk of the Superior Court, Monmouth County Courthouse, 71 Monument Park, Freehold, NJ 07728 and upon:

Honorable Jamie S. Perri, J.S.C.
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Dated: October 4, 2016