

25 INDEPENDENCE BOULEVARD
WARREN, NEW JERSEY 07059-6747

HEROLD LAW
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

TEL 908 • 647 • 1022
FAX 908 • 647 • 7721
www.heroldlaw.com
rsimon@heroldlaw.com
Ext. 113

September 16, 2013

via HAND DELIVERY AND EMAIL

John P. Inglesino, Esq.
Inglesino Pearlman Wyciskala & Taylor, LLC
600 Parsippany Road – Suite 204
Parsippany, New Jersey 07054-3715

Clerk, Township of Parsippany
Parsippany-Troy Hills Town Hall
1001 Parsippany Boulevard
Parsippany-Troy Hills, NJ 07054

**Re: Block 421, Lot 29 – Waterview Boulevard and US Route 46,
Parsippany-Troy Hills**

Dear Mr. Inglesino and Clerk, Township of Parsippany:

As you are aware, this office represents Citizens for Health, Safety & Welfare, Inc. d/b/a Don't Rezone Waterview ("CHSW"), a neighborhood organization that has recently expressed concern over proposed ordinance No. 2013:28 intending to create the RCR Overlay District so to permit the development of the above-referenced property (the "Property") for retail and townhouses (the "Ordinance"). We are forwarding the following to you as counsel and Clerk for the Township of Parsippany-Troy Hills (the "Township").

Enclosed please find the following on behalf of CHSW in opposition to any proposed adoption of the Ordinance:

1. My prior letter to you of June 28, 2013 (a copy of which – including the attached June 19, 2013 letter from Dolan & Dolan Consulting Engineers, LLC – is enclosed herewith for ease of reference). The contents of same remain valid and should be considered by the Township in whether to adopt the Ordinance.
2. Planning Evaluation of Peter G. Steck, P.P., dated September 16, 2013, as to the Ordinance.
3. Letter from Dolan & Dean Consulting Engineers, LLC, dated September 16, 2013, as to the Ordinance.
4. Preliminary Review Letter from Princeton Hydro, LLC, dated August 21, 2013, regarding its comments to the development contemplated by the Ordinance.
5. Review of Burgis Associates Fiscal Impact Analysis by Economic Stewardship, Inc., dated September 12, 2013.

6. Protest Petition pursuant to N.J.S.A. 40:55D-63 as to the Ordinance, consisting of 13 pages.
7. Certification of Boris Kushkuley, Ph.D., as to the calculation performed in determining lots or land representing 20% or more of the area extending 200 feet in all directions from the lots or land included in the proposed Ordinance, inclusive of street space, either within or outside the Township of Parsippany-Troy Hills.
8. List of owners within 200 feet as provided by the Township of Parsippany-Troy Hills and the Borough of Mountain Lakes.
9. All deeds, including property descriptions, of property abutting Intervale Road (excluding Block 421, Lot 29) within 200 feet of the lot included in the proposed Ordinance, and cover letter from Title Lines, dated August 29, 2013.
10. Deed and title report for Block 421, Lot 29, Township of Parsippany-Troy Hills.
11. Evidence of ownership of Intervale Road and Sherwood Drive by the Borough of Mountain Lakes.

As you know, under N.J.S.A. 40:55D-63, a protest against any proposed amendment or revision in a zoning ordinance may be filed with the municipal clerk, with signatures from owners of lots or land representing “20% or more of the area either (1) of the lots or land included in such proposed [ordinance] change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space”, either within or outside the municipality. If a successful protest is filed, the proposed amendment or zoning revision must receive a favorable vote of two-thirds (2/3) of all the members of a fully-constituted governing body. The Appellate Division has held that calculating the 20% number can be done “by identifying each owner having a lot or land any part of which lies within 200 feet of the area to be rezoned ... consider[ing] only the area or portion of the lot or land which actually lies within the 200 foot perimeter.” (emphasis in original) Friends of Dinky Woods v. Township of West Windsor, 291 N.J. Super. 325, 329 (App. Div. 1996). As you can see from the enclosed, the Borough of Mountain Lakes (as the owner of “street space” within 200 feet from the “lots or land included in the proposed ordinance change”) has signed the Protest Petition. We enclose deeds of property owners within 200 feet abutting the “street space” evidencing that no such owner has any ownership rights in the subject roadways with the sole exception of property identified on the Township tax map as Block 421, Lot 34 (the Doremus cemetery lot) which property extends to the centerline of Intervale Road. We also enclose documentation demonstrating that the Borough of Mountain Lakes has a vested right of use and ownership in said “street space”.

If landowners submit a successful protest petition, 2/3 of all members of the governing body must adopt the ordinance to approve it. In Mountain Hill, LLC v. Middletown Twp., 353 N.J. Super. 57, 60-61 (App. Div. 2002), the Appellate Division adopted the trial court’s conclusions on statutory construction of the words “all members of the governing body”, concluding it does not mean “all members of the governing body who have no conflict and are qualified to vote.” This court concludes, therefore, that “the number of persons who constitute all

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the members of the governing body” of Middletown Township is not reduced because of the disqualification of one of the Committee members. Two-thirds of the membership is to be computed in light of a five-member committee. To satisfy the statutory mandate, four affirmative votes are required. Id. at 61, n1.

For the foregoing reasons, as well as others that may be articulated at the September 17, 2013 (and any subsequent) public hearing conducted in connection with the Ordinance, we respectfully request that the above and enclosed be considered in determining whether to adopt the Ordinance. We further reserve our right to amend or supplement the above or enclosed at any time, and look forward to our participation at the public hearing.

By a copy of this letter, we are hand delivering copies of this letter and its enclosures to the Clerk for delivery to the Mayor and each Township Council Member. We ask that the electronic versions of same (simultaneously transmitted to you) likewise be forwarded electronically to the Mayor and Council.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Simon', with a long horizontal flourish extending to the right.

Robert F. Simon

Enclosures
RFS/tac

cc: See attached

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Township of Parsippany-Troy Hills Mayor James R. Barberio
Township of Parsippany-Troy Hills Council Members
(all via hand delivery to Clerk, Township of Parsippany-Troy Hills w/enclosures)

Edward J. Sneikus, Jr., LA, PP, LLA, ASLA / Burgis Associates, Inc.

Peter G. Steck, Community Planning Consultant

Gordon E. Meth, Senior Associates and Director / The RBA Group

Gary W. Dean, P.E., P.P. / Dolan & Dean Consulting Engineers, LLC

Carl S. Bisgaier, Esq. / Bisgaier Hoff LLC

Robert C. Garofalo, Esq. / Garofalo & O'Neill, PA

Citizens For Health, Safety & Welfare, Inc.

(all via email / all w/enclosures)