



Organized December 14, 1667  
"Pride In Middletown"

## THE TOWNSHIP OF MIDDLETOWN

### Environmental Commission

One Kings Highway  
Middletown, NJ 07748-2594  
Tel: (732) 615-2000  
Fax: (732) 957-9090

FEB 17 2015

February 16, 2015

To: Planning Board  
Re: Major Site Plan #14.216, Village 35, LP

The Environmental Commission has reviewed the subject application and presents the following comments and recommendations.

**1. Site Plans** – A) The plans lack detail. The plans need to “zoom-in” on the details of the proposed development.

- B) A utility and storm water management plan need to be presented including calculations on the runoff volume predicted to be generated by the development. Plans need to include the storm water utilities.

- C) The wetland and buffer lines need to be included on the plan sheets.

- D) Current and proposed grades need to be presented.

**2. Wetlands** – A) Does the property’s Letter of Interpretation need to be updated?

- B) Wetlands are protected under state law to maintain an ecosystem which includes the hydrology that created the wetland and the fauna and flora that thrive in a wetland environment. The proposed approximately 2-acre wetland “box” located in the middle of the development goes against the philosophy of wetland protection. How will water that maintains the “wet” enter the box? How can animals thrive trapped within the wetland box when surrounded by pavement, roads and buildings? Where are their food sources? The proposed wetland “box” cannot exist as a natural wetland. There needs to be a better idea here.

**3. Former Agricultural Land Use** – A) Almost the entire property has been formerly farm fields and orchards. The residential area needs to be sampled for arsenic, lead and pesticides per the NJDEP Historical Pesticide Task Force.

B) Site regrading will likely mobilize topsoil pesticide contaminants in all areas of the property. How will sediment movement be controlled? Is there any monitoring proposed for runoff leaving the property that may contain mobilized pesticides?

**4. Pedestrian Friendly** – A) Kings Highway East needs to be widened to accommodate a sidewalk and space for bicycles. The road leads to a rise in the property’s northeast corner where the road narrows with steep bluffs bordering the pavement. This blind hill needs to be safer to accommodate non-vehicular uses.

B) A plan is needed for non-vehicular traffic crossing Route 35 at the Twin Brook Avenue traffic light. Such a plan should even consider a pedestrian bridge if necessary.

C) The proposed new Twin Brook Avenue traffic intersection on Route 35 appears to maintain the current northbound jug-handle configuration which does not accommodate straight westward crossing of Route 35 onto Twin Brook Avenue. The proposed intersection appears to allow Kings Highway East traffic to cross the highway onto Twin Brook Avenue. There appears to be no planned modification of the jug-handle.

D) A road is proposed through the development that connects Kings Highway East and Kanes Lane. This road will function as a cut-through road for the Kanes Lane businesses and municipal recycling center. People on the west side of Route 35 no longer have to use the Cherry Farm Road jug-handle and people in the eastern areas of the Township no longer have to use Chapel Hill Road to get to the recycling center. Woodland Drive traffic can also access Kanes Lane through the shopping center parking lot. Likewise, vehicles leaving Kanes Lane can avoid Route 35 by using the proposed cut-through road shared with the proposed residential development and vehicles supplying the proposed commercial center.

**5. Potable Wells and Fuel Tanks** – The former and existing on-site buildings may have potable wells that would need to be abandoned by a licensed well driller. Fuel oil tanks associated with the on-site buildings need to be properly abandoned and inspected by municipal officials. The current used vehicle sales lot on Route 35 was a former gasoline station. Abandoned gasoline tanks at this location would be regulated by the NJDEP, need to be registered and then properly removed with final documentation presented to the NJDEP.

**6. Sewage Capacity** – The Commission uses this comment letter to ask the Township of Middletown Sewerage Authority (TOMSA) the current carrying capacity of its facility. The Commission has been reviewing development plans that have approved or proposed major residential development on the former Bamm Hollow property, 4 Ponds Center and Taylor Lane. Add the proposed development in the subject application and, overall, there is a relatively large increase in sewage volume. At what percent capacity is the facility currently handling? What is the percent aggregate increase of these four major residential developments? How will the cost of future facility expansion be addressed as these developments push TOMSA toward its current maximum capacity?

The Commission will perform a field inspection of the property after the winter season moderates and may have additional comments. Thank you for your consideration in this matter.

Very truly yours,

Middletown Environmental Commission

*Michael S. Fedosh*  
Michael S. Fedosh  
Chairman

# TOWNSHIP OF MIDDLETOWN

## Planning Board

Johnson-Gill Annex, One King's Highway  
Middletown, NJ 07748-2594

JUDITH H. STANLEY COLEMAN  
Chairman

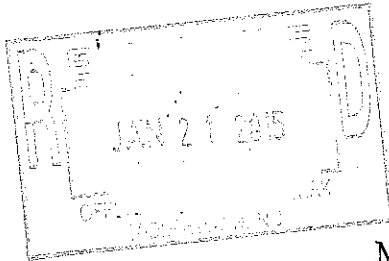


Organized December 14, 1667  
"Pride in Middletown"

JASON A. GREENSPAN, P.P., A.I.C.P.  
Director of Planning and  
Community Development

DEBRA YURO  
Planning Board Secretary

Tel: (732) 615-2102  
Fax: (732) 615-2103



### MAJOR SITE PLAN REVIEW FINAL

# 2014-216

Date 1/20/15

Township Health Officer

Environmental Commission

TOMSA

Middletown Fire Department

Safety Council

Traffic Safety

Department of Public Works

First Aid Squad

Department of Parks & Recreation

Middletown Planning Board

T&M Associates

Enclosed for your review and comments please find a copy of the application and a set of plans for the following final major site plan:

*Village 35, LP*  
*Block 825, Lots 93-97; 99-109; 112-119; 81*  
*Highway 35*

The application will be considered by the Middletown Planning Board on March 4, 2015 or as soon as possible after all reviews and comments are received.

*Reviewed by 3/19/15*  
*meeting. After examining plan we*  
*could not pin point any safety*  
*issues.*  
*F.B.L.*

Respectfully,

*Debi*

Debra Yuro, Secretary  
Middletown Planning Board

JAN 28 2015

**DeBenedetto, Richard**

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**To:** Yuro, Debi  
**Subject:** Major Site Plan Review- 2014-215 Village 35, LP

Debi,  
Please be advised that the Health Dept does not have any concerns regarding the above mentioned Major Site Plan Review.

Rich DeBenedetto  
Health Dept

A handwritten signature in black ink, consisting of a large, loopy 'R' followed by a stylized 'D' and a long horizontal stroke extending to the right.

## MEMBERS OF THE AUTHORITY

CHANTAL N. BOUW  
ChairpersonEMIL F. WREDE  
Vice ChairpersonJOAN A. SMITH  
Secretary/Treasurer

MICHAEL OSTRANDER

CHARLES W. ROGERS, III

THOMAS F. STOKES

ANDREW ZAPCIG

TOWNSHIP OF MIDDLETOWN  
SEWERAGE AUTHORITYPO BOX 205  
BELFORD, NJ 07718

WWW.TOMSANJ.COM

RAYMOND J. NIERSTEDT, P.E.  
Executive DirectorBRIAN RISCHMAN, P.E.  
Staff EngineerADMINISTRATION BUILDING  
100 BEVERLY WAY  
TELE: (732) 495-1010  
FAX: (732) 495-4565

JAN 22 2015

DATE 1/23/15REF 2014-216BLOCK 825LOT 53-57, 58-68, 72-78, 81NAME VILLAGE 35, LPTownship of Middletown Planning Board  
1 Kings Highway  
Middletown NJ 07748

Attn.: Debi Yuro, Secretary

Having reviewed the above referenced property, I hereby advise as follows:

I HAVE OBJECTIONS: \_\_\_\_\_

I DO NOT HAVE OBJECTIONS: XSEWERS ARE AVAILABLE: X

SEWERS ARE NOT AVAILABLE: \_\_\_\_\_

COMMENTS: A sewer capacity analysis was performed for this project. Certain problems with the sewer lines were identified and need to be addressed before project approval.

Yours truly,

  
Raymond Nierstedt  
Executive Director

# **TOWNSHIP OF MIDDLETOWN**

Planning Board  
3 Penelope Lane  
Middletown, NJ 07748-2594

JOHN DEUS  
*Chairman*



DEBRA YURO  
*Planning Board Secretary*

Tel: (732) 615-2102  
Fax: (732) 615-2103

## **TECHNICAL MEMORANDUM**

**DATE:** February 26, 2015  
**BOARD:** Planning Board  
**APPLICATION:** Village 35, LP  
Highway 35  
Block 825, Lots 53-57, 59-69, 72-79 & 81  
General Development Plan

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### **PROJECT DESCRIPTION**

The applicant seeks General Development Plan (GDP) approval at this time to develop 350 residential units, of which 70 are to be affordable, and 400,000 square feet of commercial space. The applicant is pursuing GDP to preserve development rights for a period up to 20 years and to comply with portions of the Township zoning ordinance. Should the applicant receive GDP approval, the project would move forward with an application for subdivision of the property into distinct residential and commercial components, which would then be required to seek site plan approval individually.

The application for GDP does not contain the level of detail required for a major site plan application. Any potential development on this site will be required to submit a full site plan application with additional details for review by the Board professionals.

Please refer to the maps at the end of the report.

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### **PROPERTY DESCRIPTION**

The subject property is slightly more than 118 acres. It is situated with frontage along the northbound side of Highway 35 between Kings Highway East and Kaness Lane. There is an existing commercial development on the site in the northwest corner. The rest of the site is mostly undeveloped with the exception of a single family home and some out buildings. Portions

of the property are cleared and have been used for agricultural purposes. There are wetlands present on the property, as well as several steeply sloped and wooded areas.

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## **ZONING AND SURROUNDING LAND USE**

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The property is located in the Planned Development (PD) Zone. This zone requires a mix of uses and was created in 2009 as a result of a legal settlement.

The property is bordered to the west by Highway 35 and several commercial uses, to the south by Kanen Lane and a mix of commercial and residential uses, to the east by single family homes, and to the north by Kings Highway East. Single and multi-family residential development and several offices are located opposite the property on the north side of Kings Highway East. The adjacent zones are the multi-family residential RGA and RTH zones, the single-family R-22 zone, the B-2 and B-3 commercial zones and the M-1 manufacturing zone.

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## **PLANNING COMMENTS**

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### **1. History**

- a. This site has been the subject of numerous applications to the Township Planning and Zoning Boards, as well as several rounds of litigation in the past two decades. Over time, the scale of the proposed development has diminished. A proposal in 2003 featured over 1 million square feet of commercial gross floor area, a three level parking structure comprising 475,000 SF and a substantial residential component. A proposal in 2009 featured over 600,000 SF of commercial space and 500 residential units.
- b. The current zoning for the property was adopted in 2009 following a recommendation in the 2009 Master Plan Re-Examination Report. The stated goal for development on this site is to provide "measurable benefit to the public by providing significant employment opportunities; by supporting the local economy; by providing public spaces for active and passive recreation; and by providing a variety of housing types with a range of affordability."
- c. The present application represents a smaller scale of development than the previous proposals. The proposed residential component has been reduced from 500 units to 350 units and the proposed commercial component has been reduced from over 1 Million SF to 400,000 SF. The maximum density the applicant could pursue under the current zoning is approximately 540 residential units and 625,000 SF of commercial space. This proposal comes in well below the maximum permitted densities.

- d. The 2014 Master Plan Re-Examination Report identifies the need for updated sign standards for the PD zone. It remains in the interest of the Township and the applicant to establish clear sign standards for the PD zone. The scale of the development and the mix of uses may require more signage than is typically permitted in other zones.

## **2. Planned Development Zone (16-939)**

- a. Building Setbacks – The PD Zone mandates building setbacks as follows:

- i. From Arterial or Collector Roadway – 50 feet
- ii. From a Tract Boundary or other Right-of-Way – 35 feet
- iii. From an Internal Street – 12 feet
- iv. From a jughandle – 20 feet

The plans propose a new roadway connecting Kings Highway East and Kanes Lane. The applicant has indicated that this will remain a private road, but will have unrestricted public access. The proposed affordable housing units are set back 14.2 feet and the market rate townhomes are set back 35.8 feet from the proposed connector road. The applicant shall provide testimony about the classification of this roadway in order to confirm compliance with the building setback requirements.

- b. Lot Coverage – A maximum of 50% is permitted. The applicant has indicated that the plans will comply, but there is not enough information provided to confirm compliance. The applicant shall provide testimony regarding lot coverage.
- c. Other Regulations – Section 16-939.C.4 outlines a requirement for a mix of uses for a development in the PD zone. A minimum of three uses must be included, in a mix where no use exceeds a given percentage of the total development. The applicant has indicated that at least three uses will be present on-site, including multi-family residential, retail, and restaurants. These uses are limited to a proportion of the development as follows:

- Multi-Family Residential – Not to exceed 50% of the development
- Retail – Not to exceed 50% of the development
- Other Uses (restaurants, etc.) – Not to exceed 30% of the development

The ordinance is not clear on how to define the percentage of the development when comparing different uses. Typically, the size of a residential development is measured



by the number of dwelling units, while the size of non-residential development is measured in gross floor area. These are not equivalent, easily comparable measures.

The proposed division of this project into a residential portion and a non-residential portion may make the land area devoted to each use a more suitable measure. When excluding the open space set aside required in the zone, the proposed residential development is 41.726 acres and the proposed commercial development is 40.430 acres. The residential portion is slightly greater than 50%, thereby exceeding the maximum permitted in the zone.

The applicant shall provide testimony regarding the mix of uses and the maximum percentage of the development that will be devoted to each. The applicant must demonstrate compliance with this requirement of the zoning ordinance.

### **3. Land Use Plan**

- a. The land use plan shows the general proposed layout of the development. The applicant proposes separate tracts for the residential development and the commercial development with a private roadway running from Kings Highway East to Kaness Lane between the properties. At this stage, the layout is meant for informational purposes and is likely to change at the time of site plan application. Additional details will be required at the time of site plan application for either portion of the proposal.
- b. The applicant shall make every effort to make the residential and commercial portions of the development function together effectively. The portion of the commercial property facing the connector road should present an aesthetically pleasing façade and serve as a welcoming gateway to the shopping area.
- c. Complete landscaping and lighting plans will be required at the time of site plan application, along with any other details deemed necessary.

### **4. Circulation Plan**

- a. The proposed development will have a significant impact on the circulation and traffic patterns in the area. The plans show re-alignment of existing jug-handles and access points from Highway 35. All highway improvements are subject to review and approval by NJDOT.
- b. The applicant shall provide a traffic impact study that analyzes existing traffic volumes and levels of service at major intersections along Highway 35 and the surrounding area that will be impacted by this project. Attention should also be given to traffic volumes through Twin Brooks Road and Woodland Drive, as this

neighborhood has great potential to be used as a cut-through alternative to Highway 35.

- c. Kanes Lane - The 2004 Master Plan identifies the intersection of Woodland Drive, Route 35, and Kanes Lane as an area that should feature improved access and jug-handle reconfiguration as part of development on the subject property. The applicant has proposed realigning a portion of Kanes Lane and some alterations to the jug-handle at Woodland Drive. The NJDOT has jurisdiction over access to Highway 35. Additional details will be necessary at the time of site plan application.
- d. Kings Highway East
  - i. The 2004 Master Plan designates Kings Highway East as one of a number of scenic roads in the Township. The Master Plan states that scenic corridors contribute to the quality of life for Township residents and function as important landmarks. It states: "Creative design techniques, context-sensitive structure locations, the retention of an agrarian atmosphere, and identification and delineation of important viewsheds are all essential components of scenic corridor preservation."
  - ii. At the time of site plan application, the applicant shall demonstrate design techniques that preserve the scenic nature of the Kings Highway East corridor in accordance with the Master Plan.
  - iii. The applicant has proposed a realignment of a portion of Kings Highway East. The applicant should discuss how this realignment may impact the scenic and historic value of this corridor. At the time of site plan application, the applicant shall provide additional details regarding this proposed realignment.
- e. Proposed Connector Road – The applicant has proposed a connector road through the subject property between Kings Highway East and Kanes Lane. The applicant has indicated that this will be a private roadway, to be maintained by the Homeowner's Association of the residential development, with unrestricted public access. The development of a connector road is identified in the 2011 Master Plan Re-Examination Report, and reiterated in the 2014 Master Plan Re-Examination Report. In addition, the 2014 Re-Examination states that this road should be developed using complete streets and traffic calming principals to ensure accessibility and safe circulation of pedestrians and cyclists as well as automobiles. The applicant shall demonstrate design standards for the connector road in accordance with the recommendations of the Master Plan.

- f. At the time of site plan application, additional details will be required regarding internal pedestrian circulation and connections between the proposed portions of the development. In particular, connections between the residential units and existing and future transit stops at Highway 35 are essential.
- g. At the time of site plan application, the internal road network and proposed parking for the residential development shall comply with RSIS.
- h. At the time of site plan application, additional information will be required for parking calculations, driveways sizes and orientation, and access aisles for the commercial development.
- i. At the time of site plan application, the applicant shall provide turning templates for emergency vehicles and delivery trucks to demonstrate safe and effective circulation throughout the site.

## **5. Open Space Plan**

- a. Per the zone requirements at 16-939.A.5, the PD Zone requires a 30% open space set aside. The total area of the tract is 118.292 acres, thus the required set aside is 35.488 acres. The applicant has proposed an open space set aside of 36.136 acres.
- b. Section 16-939.A.5 references the definition of open space contained at 16-203. This definition reads, in part: "Where open space is a requirement of a zone, not more than 50% shall consist of wetlands, open bodies of water, watercourses, sloped areas of 25% or greater, detention or retention basins, swales, and other drainage structures." Large areas of wetlands and an area of steep slopes are located in the southeasterly portion of the site near Kanes Lane. In addition, the entirety of the proposed storm water management infrastructure is included in the open space area. In order to ensure compliance with the zoning ordinance, the applicant shall provide additional details to confirm that no more than 50% of the proposed open space area consists of the constrained features listed in the definition.
- c. The applicant shall discuss any recreational amenities that are proposed for the open space areas. Additional details will be required at the time of site plan application.
- d. The applicant has indicated that the Homeowners Association will be responsible for maintenance of the open space on the proposed residential tract, while the property owner of the commercial tract will be responsible for the maintenance of the open space thereon.

## **6. Local Service and Utility Plan**

- a. The applicant has provided the locations of proposed underground utility lines and connections throughout the site. Additional details shall be provided at the time of site plan application.
- b. The applicant has indicated that both sites will contract with a private refuse hauler to provide the necessary service. Review of truck turning templates and dumpster locations will be conducted at the time of site plan application. Additional details may be needed at the time of site plan application.
- c. The applicant will be responsible for securing approvals from all appropriate utilities at the time of site plan application. TOMSA has indicated that a capacity study had been performed and that there are some concerns that need to be addressed. The applicant shall work with TOMSA to address these concerns and secure its approval at the time of site plan application.

## **7. Storm Water Management Plan**

- a. The applicant indicates that a mixture of infiltration and detention basins are to be proposed to manage the onsite storm water. Each portion of the development will conduct its own storm water management.
- b. A full storm water management report shall be provided at the time of site plan application for each portion of the development. Any information that is required at that time shall be provided for review by the Board Engineer.

## **8. Environmental Inventory**

- a. At the time of site plan application, the applicant shall provide an inventory of critical areas on the sites as defined by the Township ordinance at 16-624. The applicant shall make every effort to minimize any potential disturbance of critical areas including wetlands and steep slopes.
- b. The applicant has indicated that portions of the tract have been used for agriculture in the past, but there is no mention of potential soil contamination from pesticides. The applicant shall testify if onsite soils were tested for potential contaminants.
- c. The applicant has provided an Environmental Impact Report for the project. Additional information may be necessary at the time of site plan application.

## **9. Community Facility Plan**

- a. The applicant has provided a community facility plan showing amenities for the residential portion of the development. A clubhouse, tennis court, and two "tot-lots" are proposed. Additional details will be required at the time of site plan application.

## **10. Housing Plan**

- a. The subject property is included in the Township's 2008 Housing Plan. That plan identified the significant opportunity for the provision of affordable housing on this site. The plan projected the development of 400 units, of which 80 (or 20%) would be affordable rental units.
- b. The applicant has proposed 350 dwelling units in a mix of 280 market rate townhouses and 70 affordable flats. The 70 affordable units represent 20% of the development, which conforms to the zoning ordinance and is the same proportion described in the Housing Plan.
- c. At the time of site plan application, the applicant shall provide additional information about the design and bedroom mix of the units.

## **11. Fiscal Impact Report**

- a. The applicant has provided a fiscal impact report as required by the Township ordinance. The report finds that this proposal would represent a significant tax ratable for the Township. The applicant shall discuss the findings of this report.

## **12. Timing Schedule**

- a. The applicant has provided a Phasing Plan for the project. The applicant shall discuss the proposed phasing and the potential for concurrent development of the residential and commercial portions of the proposed project.
- b. Additional details may be required at the time of site plan application.

## **13. Settlement Agreement**

- a. Previous litigation related to this property resulted in a settlement agreement between the property owner and the Township. This agreement was acted upon by the Township Committee in September 2009. Resolution 09-219 is attached as a reference.

#### 14. Approvals from Outside Agencies

a. Approvals will be required from the following agencies, and any other entity claiming jurisdiction:

- TOMSA
- NJDOT
- NJDEP
- Monmouth County Planning Board
- Freehold Soil Conservation District


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#### DOCUMENTS REVIEWED

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- Mountain Hill General Development Plan, prepared by Langan Engineering consisting of ten (10) sheets, dated October 31, 2014 and revised through November 14, 2014.
- Fiscal Impact Analysis for a Proposed Mixed-Use Development in the Township of Middletown, Monmouth County, New Jersey, prepared by Phillips Preiss Grygiel LLC, dated November 2014.
- Environmental Impact Report, prepared by Donald A. DiMarzio, MS, PP, dated January 2014, and reviewed by Mike Nevins, PWS and Gerard Fitamant, PE of Langan Engineering on November 5, 2014.
- Project Narrative

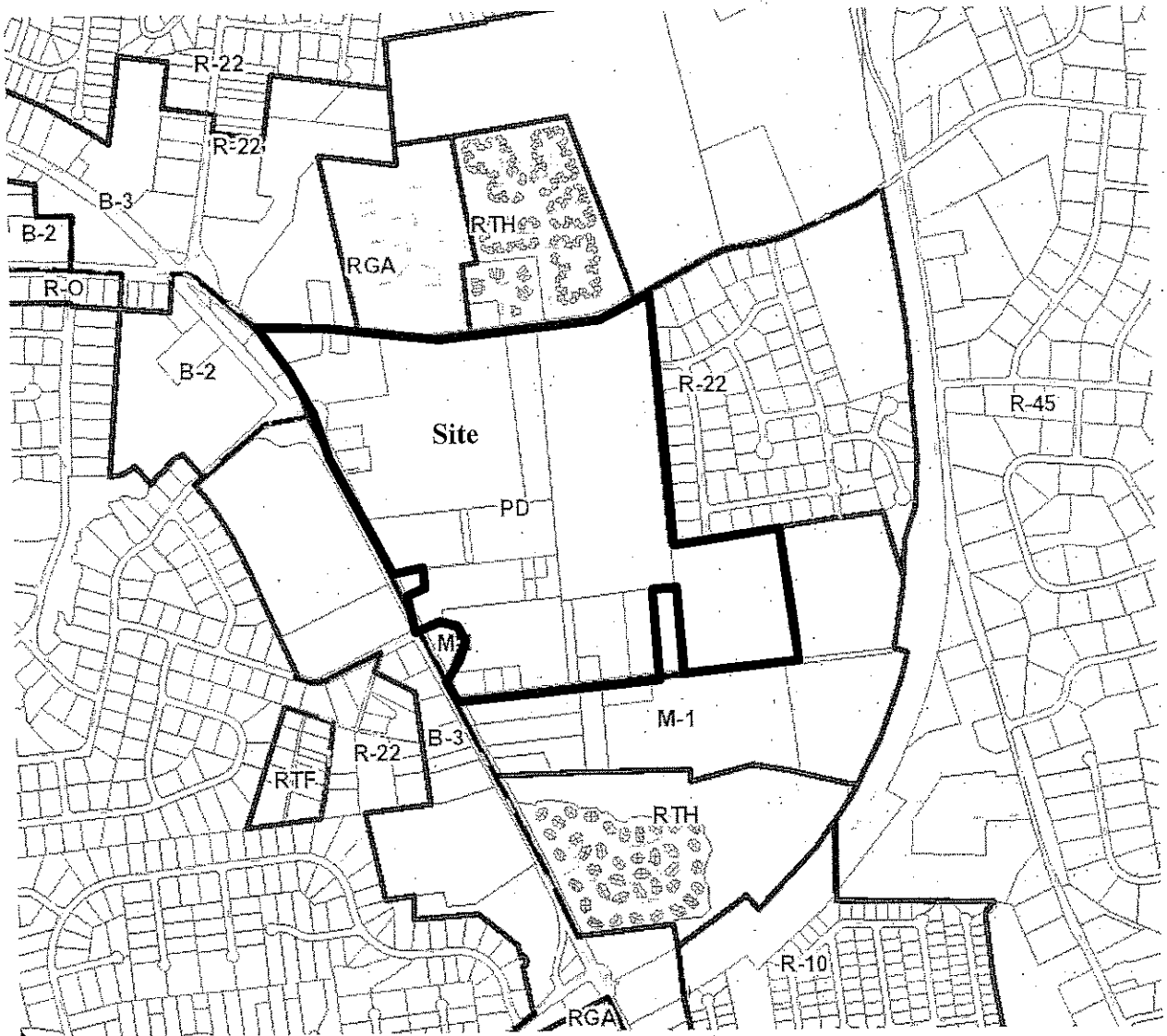
Report Prepared by:



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John A. Barree, PP, AICP  
Assistant Planner







**NOW THEREFORE BE IT RESOLVED** by the Township Committee of the Township of Middletown, County of Monmouth, State of New Jersey as follows:

1. It hereby awards the contract for "Middletown Vehicle Wash Facility" to Consolidated Design & Building Corporation, 440 E. Westfield Avenue, Roselle Park, N.J. 07204. in the amount of: \$ 375,000.00

**BE IT FURTHER RESOLVED**, this contract is awarded pursuant to a Fair and Open Process in accordance with N.J.S.A. 19:44A-20.5 et seq.

**WHEREAS** the Chief Financial Officer of the Township of Middletown has certified that adequate funds are available, and are designated to line item appropriation of the official budget no. C-04-55-908-949. A copy of the said certification is attached hereto and made a part hereof and the funds to be expended herein are assigned to line item no. 007. A copy of the within resolution and certification shall be certified by the Township Clerk. The Township Attorney is satisfied that the certification of availability of funds has been provided and a copy of the within resolution shall be made a part of the file concerning said resolution and appointment. 2. A certified copy of this resolution shall be provided by the Office of the Township Clerk to each of the following:

- A) Purchasing Agent
- B) Comptroller
- C) Robert R. Keady Jr, T&M Associates
- E) All of the above bidders

**Resolution 09-219**

**Resolution Authorizing Development Commitment Agreement for the Mountain Hill, LLC Property on Route 35**

It was moved by Mayor Brightbill, seconded by Deputy Mayor Scharfenberger to pass resolution 09-219.

Roll Call Vote: Ayes: Byrnes, Fiore, Scharfenberger, Short, Mayor Brightbill  
Nays: None  
Abstention: None  
Absent: None

Clerk Brunt stated motion carries adopt resolution 09-219.

**Resolution No. 09-219**

**RESOLUTION AUTHORIZING EXECUTION OF COAH  
COMMITMENT AGREEMENT PURSUANT TO COAH  
REGULATIONS WITH MOUNTAIN HILL, LLC**

**WHEREAS**, on December 11, 2008, the Middletown Township Planning Board adopted an amended Master Plan Housing Element and Fair Share Plan pursuant to COAH's revised third round rules; and

**WHEREAS**, the Township Committee subsequently endorsed the action of the Planning Board and petitioned the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of said Fair Share Plan just before COAH's deadline for compliance on December 30, 2008; and

**WHEREAS**, on April 13, 2009, COAH determined the Township's petition for substantive certification to be complete; and

**WHEREAS**, on July 15, 2009, consistent with the intent and purpose of the Housing and Land Use Elements of the Township Master Plan, the Planning Board has recommended the legal necessity of making certain zoning changes in accordance therewith to comply with COAH's rules; and

**WHEREAS**, on July 20, 2009, the Township Committee adopted Ordinance No. 2009-2979 amending Chapter 16 of the Code of the Township of Middletown (1996) providing zoning for the provision of inclusionary sites as required by the COAH rules pursuant to the Township's Housing Element and Fair Share Plan; and

**WHEREAS**, further agreements with the landowner(s), contract purchaser(s) and/or developer(s) will be necessary at a future date to ensure that all on and off-tract improvements are completed at defined stages of site development relating to matters including but not limited to utility infrastructure, public services and uses, traffic impact mitigation and building demolition; and

**WHEREAS**, Mountain Hill, LLC, is the owner of a +/- 120-acre tract known as Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 as identified on the Middletown Township Official Tax Map; and

**WHEREAS**, Mountain Hill, LLC, intends to commit that, as part of any future development at this tract, it will provide inclusionary housing pursuant to the terms of the Township's Housing Element and Fair Share Plan and as required by COAH's rules; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to take these steps at this time to ensure it is effectively protected from builder's remedy and other litigation brought by developers that could result in a virtual loss of the Township's zoning powers as imposed by COAH and the courts.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey, that the Mayor is hereby authorized to execute a COAH Commitment Agreement with Mountain Hill, LLC, as attached hereto as "Exhibit A" with executed copies being transmitted to COAH and maintained on file with the Township Clerk.

**"EXHIBIT A"**  
**FIRM COMMITMENT FOR THE CONSTRUCTION OF  
FAMILY RENTAL UNITS PURSUANT TO THE  
SUBSTANTIVE REGULATIONS OF THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING**

THIS AGREEMENT entered into this 24<sup>th</sup> day of September 2009 between the Township of Middletown, a municipal corporation in the County of Monmouth, State of New Jersey, having an office at 1 Kings Highway Middletown, New Jersey (hereinafter "Township"), and Mountain Hill, LLC, having an office at 853 Hwy. 35, POB 278, Middletown, NJ, (hereinafter "Developer"); and

WHEREAS, Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel I"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and other applicable laws require the Township to create a realistic opportunity for the provision of its fair share of low and moderate income housing (hereinafter "lower income housing"); and

WHEREAS, the Township seeks to satisfy a portion of its fair share obligation through inclusionary development of a +/- 120 acre tract identified as Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 on the Township's official tax map (hereinafter "Subject Property") in accordance with an ordinance previously adopted (hereinafter "Affordable Housing Zoning Ordinance"); and

WHEREAS, Developer is the owner of the Subject Property and desires the Subject Property to be developed in accordance with the portion of the Affordable Housing Zoning Ordinance concerning rental housing and with the general requirement of COAH and the Uniform Housing Affordability Controls (UHAC) regulations at N.J.A.C. 5:80-26.1 et seq. concerning non-age restricted rental housing; and

WHEREAS, Developer understands that the Township is entitled to rental bonuses for the 80 affordable rental units it intends to construct if it makes a firm commitment to construct the affordable rental units; and

WHEREAS, further agreements with the landowner(s), contract purchaser(s) and/or developer(s) will be necessary at a future date to ensure that all on and off-tract improvements are completed at defined stages of site development relating to matters including but not limited to utility infrastructure, public services and uses, traffic impact mitigation and building demolition; and

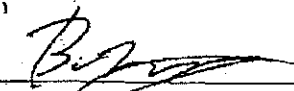
WHEREAS, Developer wishes to make the firm commitment sought by the Township.

NOW, THEREFORE, be it agreed as follows:

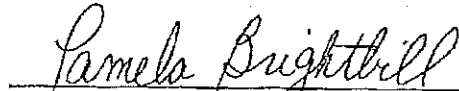
1. Developer intends to develop Phase One of the Subject property in accordance with the Affordable Housing Zoning Ordinance and consistent with the Middletown Township Housing Element and Fair Share Plan. Developer intends to pursue the right to construct 400 units of which 80 will be rented to low and moderate income family households. The parties recognize that Developer may secure the right to construct fewer or greater units in Phase One as a result of the approval processes that lie ahead. In the event that Developer secures the right to construct fewer or greater than 400 units in Phase One, it shall maintain a twenty (20%) percent set aside on the units it does secure the right to construct. Developer shall ensure that at least fifty (50%) percent of the affordable units will be made affordable to low income households.
2. Developer shall adhere to the provisions of COAH's regulations concerning family rental housing which the Township anticipates incorporating into its current affordable housing regulations.
3. Developer shall abide by all applicable regulations of COAH and UHAC:
4. Developer shall complete the development of the Subject property according to the implementation schedule approved by COAH subject to any necessary amendments due to any unforeseen economic or regulatory changes affecting the economic feasibility of the project.
5. Developer reserves the right to make the market units "for sale" units, as opposed to rental units. In such an event, Developer shall maintain a twenty (20%) percent set aside of rental units in the project.

The terms of this agreement shall be binding upon the parties, their successors and/or assigns.

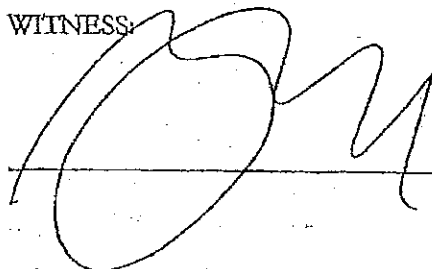
ATTEST:

  
BRIAN M. NELSON  
TOWNSHIP ATTORNEY

TOWNSHIP OF MIDDLETOWN

  
PAMELA BRIGHTBILL, MAYOR

WITNESS:



MOUNTAIN HILL, LLC  
Developer

