PREPARED BY THE COURT

D.R. HORTON, INC. Plaintiff, vs. TOWNSHIP OF SPRINGFIELD, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BURLINGTON COUNTY DOCKET NO. BUR-L-684-22 OPINION

Procedural History and Statement of Facts

This matter originates with the filing of two separate complaints in lieu of prerogative writs by two separate plaintiffs. The first was filed by plaintiff, 1245 Old York Rd. LLC, under L-2041-21 on September 27th, 2021. The second was filed by plaintiff, DR Horton, on April 18th, 2022, under L-684-22. The Court consolidated both Builder's Remedy (Mount Laurel affordable housing) lawsuits in June, 2022. Ultimately, the Township of Springfield settled with 1245 Old York Rd. by purchasing the property and entering into a stipulation of dismissal on April 11, 2023.

Historically, Springfield Township, the defendant in this matter, applied for and received first and second round substantive certification from the Council on Affordable Housing for a plan to construct low and moderate income housing. Substantive certification of Springfield's third round plan was received by COAH on June 10th, 2009, but third round regulations were subsequently invalidated. After the New Jersey Supreme Court decided Mount Laurel IV in 2015, Springfield Township chose not to file for a declaratory judgment action following the expiration of its 2009 certification, and therefore had no immunity against DR Horton's Builders

Remedy lawsuit. Additionally, upon being sued, the Township contended for the first time that they had no constitutional obligation to provide affordable housing.

While both plaintiffs were still involved in the litigation, the Court heard and decided the threshold question of Springfield's constitutional obligation to provide their fair share of the regional affordable housing demanded by the NJ Constitution. After briefs were submitted and oral argument was conducted, the Court on October 21st, 2022 determined that Springfield did have such an obligation, and rendered an oral opinion with reasons. As previously stated, plaintiff Old York Road's matter was then dismissed by way of settlement.

DR Horton, Inc., is a national residential developer, building residential communities since 1978. DR Horton is the contract purchaser of approximately 286 acres of property located along Arney's Mount, Birmingham Road, known as block 1201, lots 27.01, and block 1202, lot 3 on the official Springfield Township tax maps. The north side of the property consists of 126 acres along the northern side of Arney's Mount, Birmingham Road near its intersection with Arney's Mount Rd., County Route 668. The south side of the property consists of approximately 160 acres situated along the southern side of Arney's Mount, Birmingham Road near its intersection with N. Pemberton Road, County Route 630.

On March 18th, 2022, DR Horton submitted plans to the Township proposing to develop the property with a planned, mixed residential community of 622 units, having reduced from their original plan to build 1,540 units, consisting of a combination of fee simple active adult single family homes and traditional single-family homes on the north side, together with multi-family rental apartments on the south side. Under this proposal, the north side would consist of 419 dwellings, 300 active adult single family dwellings, and 119 traditional single-family dwellings. The south side would consist of 203 dwellings, consisting of 107 townhomes, and a

96-unit multifamily apartment which would be restricted to low and moderate income households. The proposed 94 low- and moderate-income rental dwellings would constitute a 15% set aside, for low and moderate income, affordable housing. However, almost directly prior to trial in this matter of the Builder's Remedy, DR Horton modified their proposal to instead develop the property as a mixed residential community consisting of 389 units; 115 detached single-family units and 138 townhomes, as well as 80 townhouses and 56 "stacked" affordable units on the south side of the property. The proposed low- and moderate-income housing would consist of 56 units, or a 14.4% set aside. This alteration having occurred by submission dated December 18, 2023, and subsequent to Springfield having already submitted their expert reports. The Court then permitted Springfield an additional 3 weeks to provide supplemental expert reports which could respond to the revised proposal, and the Court granted the special master an additional 5 days to provide his report for the same reason.

Springfield Township is a rural municipality in Burlington County. In 2020, it had a population of 3,245 people. As of 2018, approximately 13,163 acres in Springfield were assessed as farmland and approximately 1,016 acres were purchased and preserved for open space and appear on the township's recreation and open space inventory. Thus, approximately 75% of the municipality is either farmland assessed or preserved open space. Less than 3% of the township's land is devoted to industrial or commercial use. There is no public water or sewer. There are no public transportation facilities in Springfield Township. The number of employed persons in the resident labor force in the Township declined in 2007, 2019 and 2020.

Springfield's master plan, initially adopted in 1967, and reexamined in 1993, 1996, 2005, 2010, and 2021 set forth an overarching goal to "preserve its rural character, enhance the current and future viability of agriculture, protect its fragile ecosystem, and manage development

prudently." Farmland preservation and the retention of agriculture as a viable industry were and are the primary forces behind Springfield's land use vision.

Burlington County's most recent comprehensive farmland preservation plan identifies the entirety of Springfield Township as an agricultural development area, and a long-term target for County farm easement acquisition efforts leading to 5,827 acres of preserved farmland. Similarly, the State Development and Redevelopment Plan ("SDRP") adopted March 1st, 2001, by the New Jersey State Planning Commission identifies no growth areas in Springfield Township, (a term that has fallen out of favor) and designates the entire town as rural within Planning Area 4 ("PA-4").

Following multiple unsuccessful settlement sessions regarding the DR Horton development proposal in Springfield Twp., on May 16th, 2023, the court issued a Case Management Order directing that the parties file briefs relating to the Builder's Remedy issue, with a hearing to be held October 19th, 2023. On that date the Court again rendered an oral Decision, determining the need for an evidentiary trial on the issue of site suitability, which began on January 24th, 2024, and which continued on January 26th and January 29th until completion. The following Decision is a result of that trial.

I. The DR Horton Proposal At Trial Was Improperly Timed At Best and Could Have Been Procedurally Barred At Worst

(A). DR Horton never amended their pleadings to conform with their new Proposed Builder's Remedy of 389 units as is required by R.4.5-2, R. 4.9-1, and R. 4.9-2.

On December 18, 2023, six hundred and nineteen days into this Builder's Remedy litigation, just weeks before trial, and on the discovery end date, DR Horton submitted a new

design for the site, via expert reports, reducing the proposed unit count from 622 to 389. In correspondence dated December 22, Counsel for DR Horton justified this change by referencing this Court's statement from the October 19 hearing, that it was not likely to permit the 622-unit proposal based on its outsized magnitude, a position the Court had stated from day one. Yet, DR Horton submitted the new design without amending its complaint, without prior notice to Defendants, and without leave of Court.

The Court's admonition in its Opinions does not relieve DR Horton of its obligations under the Court rules to amend its complaint, or to get this Court's permission to do so. R. 4.9-1. To date, DR Horton has never sought leave to conform its pleadings to the evidence presented at trial, despite opportunity and obligation to do so. R. 4:9-2; New Mea Const. Corp. v. Harper, 203 N.J. Super 486, 492 (App. Div. 1985) (affirming the denial of the motion made and noting that the movant had foregone numerous prior opportunities to amend or seek to amend his pleading). DR Horton similarly failed to fairly apprise Defendants of its intent to drastically revise its proposal, subverting R. 4:5-2, which requires adequate notice to one's adversary. Finally, they never provided any explanation for why they waited until the discovery end date to reduce their proposal, when they were acutely aware of the challenges of a larger development from the inception of this case.

DR Horton's untimely conduct was unfairly prejudicial to Defendants. Defendants diligently submitted interrogatories shortly after the October 19 hearing to determine whether DR Horton planned to revise their proposal, but did not receive a response until after the discovery end date and the submission of its expert reports, rendering those reports partially nonresponsive, and also in need of revision.

(B). DR Horton's failure to respond to Defendant Township's interrogatories by the discovery end date violated the Court's October 19, 2023 discovery order. R. 4.23-2.

On October 25, Springfield Township submitted interrogatories to DR Horton, to determine if Plaintiff intended to vary its proposal. DR Horton did not respond to the interrogatories by the discovery end date, of December 18, but did in fact drastically reduce the housing number in their proposal. Then, after Springfield requested additional time to prepare responsive expert reports, based on the new proposal, DR Horton objected, stating that "Plaintiff does not believe that Defendants need to supplement or submit new reports." DR Horton also stated it had not exceeded the sixty-day period allowed to answer interrogatories, having answered Springfield's interrogatory on December 22.

This rationale misses the point. Defendants' inquiry was clearly made for one purpose, to prepare responsive expert reports. Providing a response to Defendant's interrogatories after the discovery end date, and after Defendants incurred the expense of their reports, is a superficial attempt at compliance with the rules and this Court's Order. DR Horton's chosen strategy required this Court to allow additional time for Defendants to obtain further, responsive expert reports, at taxpayer expense. Because of this behavior, the Court could have struck part of Plaintiff's pleadings, but did not, opting for liberality, and moving the trial forward. R. 4:23-2(b).

In sum, if plaintiff did not openly violate the Rules of Court, they at least conducted themselves in a way that is contrary to the spirit of open discovery, transparency, and timelines, which is the hallmark of a fair trial system in New Jersey, by waiting until the very last minute, during the holiday season, to reveal their new proposal.

II. The Court Will Reach Its Decision Without Reliance On Net Opinion

"The admission or exclusion of expert testimony is committed to the sound discretion of the trial court." Townsend v. Pierre, 221 N.J. 36, 53 (2015) *quoting* State v. Berry, 140 N.J. 20, 293 (1995). "When a trial court determines the admissibility of expert testimony, N.J.R.E. 702 and N.J.R.E. 703 frame its analysis. N.J.R.E. 702 imposes three core requirements for the admission of expert testimony:

> (1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

Ibid. (internal citation omitted).

N.J.R.E. 703 addresses the foundation for expert testimony. It requires that expert opinion be grounded in "facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." Ibid., *quoting* State v. Townsend, 186 N.J. 473, 494 (2006).

The net opinion rule is a "corollary of [N.J.R.E. 703] . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Id., at 53. The rule requires that an expert 'give the whys and wherefore' that supports the opinion, rather than a mere conclusion." Ibid.

Courts reject expert testimony that is merely the *ipse dixit* of the expert. See., e.g., Pomerantz Paper Corp., v. New Comm. Corp., 207 N.J. 344, 373 (2011) ("[I]f an expert cannot offer objective support for his or her opinions, but testifies only to a view about a standard that is 'personal,' it fails because it is a mere net opinion."). Ibid.

On February 27, 2024, twenty-nine (29) days after the conclusion of trial, the parties submitted summaries of their trial arguments. In Plaintiff's summary, but not at trial, Plaintiff objected to the recommendations made in the Special Master's report, and also to the report and testimony of Township witness, Mr. Zellner. Plaintiff argues that both the conclusions offered in the Special Master's report, along with specific testimony offered by Mr. Zellner, constitute a net opinion which should not be considered by the court. Psb., p. 26-30.

At the outset, Plaintiff's objection is untimely, raised in a summation of trial arguments for the first time, again without regard to Defendant's ability to respond. See Pressler & Verniero, Current N.J. COURT RULES, (GANN), Comment R. 1:7-2[1]. "The absence of an objection suggests that trial counsel perceived no error or prejudice, and, in any event, prevented the trial judge from remedying any possible confusion in a timely manner." Ibid., *citing* Bradford v. Kupper Associates, 283 N.J. Super. 556, 573-74 (App. Div. 1995), *certif. den.* 144 N.J. 586 (1996). In fact, Plaintiff accepted, without objection, the expertise, testimony, and reports of both Mr. Maczuga and Mr. Zellner at trial.

Where, as here, no objection is advanced at trial, the standard by which the statements are to be tested is that of plain error on appeal. Id., at 493. Under that standard, the issue is whether the comments had the "clear capacity for producing an unjust result." Ibid., *citing* State v. Melvin, 65 N.J. 1, 18 (1974); R. 2:10-2. While this Court does not presume to act as an Appellate Court in any way, it also hastens to note that the purpose of written summations after trial was to allow the parties to present organized arguments to the Court; it was not an opportunity to rectify inaction or substitute action which is specifically reserved for trial, where an adversary has the opportunity to respond.

First, Plaintiff challenges the Court's Special Master's report, specifically, Mr. Maczuga's ultimate conclusion, that DR Horton's proposal "does not represent sound planning and would have **environmental impacts** that would alter the character of the area." Exhibit C-1, p. 4. (emphasis added). The factual findings of a Special Master are reviewed by the same standard applicable to trial judges, that is, the court will defer to the findings of fact supported by credible evidence in the record. Pressler & Verniero, Current N.J. COURT RULES, (GANN), Comment R. 2:10-2[6.8] *citing* Little v. Kia Motors America, 242 N.J. 557, 593 (2020).

Plaintiff contends Mr. Maczuga's conclusion is "unsubstantiated" because it does not "reconcile his [ultimate conclusion …] with the current AR-10 zoning or municipal master plan and …. [i]nstead [] [relies] on the Property's non-binding, unaffected depiction [in](sic.) the 2022 Burlington County Farmland Preservation Plan to support his planning opinion." Plaintiff's Summary Brief (Psb), p. 27. Plaintiff also argues Mr. Maczuga's report lacks support because he did not include his own "Site Suitability" or "Environmental Impacts" analyses. Psb, p. 27 *citing* N.J.A.C. 5:93-5.3; N.J.A.C. 5:93-4.

Plaintiff also takes issue with Mr. Maczuga's definition of "environmental impact". Ibid. At trial, Mr. Maczuga explained that environmental impact "describes the changing character of the Property area 'from like rural farm area to kind of a suburban setting.'" Ibid. Plaintiff states Mr. Maczuga's definition should have, but "does not refer to any specific criteria like wetlands, landscape, [] endangered species", referencing N.J.A.C. 5:93-4. Id., at p. 28. Plaintiff argues that Mr. Maczuga's ultimate conclusion is a net opinion which cannot be considered by this Court. Id., p. 27-28 *quoting* 3T:149, 150:1-5.

Despite this assertion, the Court notes the COAH regulations provide no competing definition for 'environmental impacts' in N.J.A.C. 5:93-1.3 and discerns no standard which

would disallow the Special Master to consider the 2022 Burlington County Farmland Preservation Plan in N.J.A.C. 5:93-4. Interestingly, Plaintiff does not contend that Mr. Maczuga's report does not rely on the multiple site suitability and environmental suitability analyses offered by both parties' experts, but rather, the essence of Plaintiff's contention is that Mr. Maczuga himself did not conduct his own, independent, site suitability and environmental impact study and include the same in his report. Plaintiff identifies no source, in statute or caselaw, to support the proposition that the creation of an independent site suitability or environmental impact analysis by Mr. Maczuga is necessary or appropriate. Such instructions are certainly not found in N.J.A.C. 5:93-5.3 or N.J.A.C. 5:93-4.

The bottom line is, that based on all the evidence presented, and based on Mr. Maczuga's own personal observations of the site in question, Mr. Maczuga chose to give greater weight to the incongruence of the proposed development with the surrounding area, and, based upon the factors stated in his report, determined this incongruence outweighed other proofs advanced by Horton's experts. Indeed, the Court can certainly understand why Plaintiff would have preferred if Mr. Maczuga's analysis gave more weight to its own experts, but there is no support for the proposition that Mr. Maczuga must ignore this Plan in reaching his ultimate recommendation to the Court.

"A special master's role is purely advisory." Matter of Tp. of Bordentown, 471 N.J. Super. 196, 231 (App. Div. 2002) *citing* Deland v. Twp. of Berkeley, 361 N.J. Super. 1, 12, (App. Div. 2003). "Special masters may be appointed by a trial court to render opinions, propose findings, issue recommendations, and assist "the court in other similar ways as [the court] may direct." Id., 361 N.J. Super. at 8; *see also* Mount Laurel II, 92 N.J. at 281-85, (authorizing trial courts assigned to hear Mount Laurel cases to appoint special masters).

In this matter, both parties engaged experts to prepare site suitability and environmental impact analysis, and the Special Master relied upon these reports to reach his ultimate recommendation, as is his role. The Court is the ultimate decision maker. Matter of Tp. of Bordentown, 471 N.J. Super. 196, 231 (App. Div. 2022).

Similarly, Plaintiff challenges Mr. Zellner's report and testimony, and the conclusion that "Horton would not be able to obtain land use permits from State agencies absent compliance with the COAH site suitability criteria at N.J.A.C. 5:93-5.4." Exhibit D-7, p. 8. Plaintiff argues Mr. Zellner gave a planning opinion although he is not a licensed professional planner, and further that he did not perform a site suitability analysis to support his opinion. Psb., p. 28.

Again, it must be reiterated that Plaintiff accepted Mr. Zellner as an expert and did not object to his testimony at trial as either outside the scope of his expertise or as improper net opinion. That said, the Court does not rely on Mr. Zellner for the complained of proposition, that Horton would be unable to obtain the necessary land use permits for lack of compliance with the applicable COAH regulation. Rather, the Court relies on Mr. Zellner for the proposition that the regulator will not view each permit in a silo, but instead will carefully review the permit applications together, in a wholistic manner, to understand and balance the collective impact of the proposal against the relevant laws and regulations. Further, the Court relies on Mr. Zellner's testimony that the layered permitting process is not one which, as Plaintiff suggests, can simply be paved over with enough time and money.

III. Even If DR Horton's Case Is Not Fatally Flawed On Procedural Grounds, It Also Fails On The Merits, And Their Builder's Remedy Is Denied

The Court, having already determined that Springfield Township has an unmet obligation to provide its fair share of regional affordable housing and the number therewith,

was left with the final issue as to whether a Builder's Remedy action brought by DR Horton was the appropriate means for meeting that obligation. In concluding that it is not, the Court can distill its reasoning to this, simply because DR Horton can reconstitute this plot in Springfield Township to accommodate some affordable housing, does not mean that they should under existing Mt. Laurel doctrine.

While much was made of the constitutional mandate to provide affordable housing by DR Horton, the Court notes that they have only proposed to construct a development containing 14.4% of same, below the generally accepted 15% set-aside and well below the permissible 20%. (Albeit at trial, they indicated they could meet the 15% set-aside). Additionally, their planner, Tiffany Morrisey, testified that the situation of the town was immaterial, as the entire analysis rests upon the need for affordable housing. 1T:242-5 to 245-11. This is blatantly incorrect, as both the constitutional mandate for affordable housing and the position of the town must be considered together, in the context of an intricate web of case law, state plans, county plans, and municipal wherewithal, which form the basis and concept of site suitability. That townships should provide affordable housing under our Constitution is without question, and this Court could not be more committed to that mandate, as its previous decisions in this matter demonstrate. But, the how and the where are also relevant, and in this case dispositive.

The Court further notes that Fair Share Housing Center participated in earlier stages of this litigation, but declined to participate in this trial, indicating they would not assist Springfield Township in fending off a builder's remedy. In its previous briefs, Fair Share argued Springfield has a constitutional obligation to provide affordable housing, and that this

Court should award the builder's remedy to DR Horton unless Springfield could demonstrate the site was not suitable or was contrary to sound land use principals.

However, Fair Share declined to take any position on the suitability of the site at trial, stating this was because they believed it is the Township's duty to demonstrate why the site is not suitable.

Legal Standard of Review

A plaintiff is entitled to a Builder's Remedy if they are able to satisfy a three-prong test. The plaintiff must first succeed in litigation, then propose to construct a substantial amount of affordable housing, and finally, pursue a project that is not unsound from a planning or environmental standpoint. Mt. Laurel II, 92 NJ at 279-280. The Court having already decided prongs one and two in plaintiff's favor (although their most recent proposal falls slightly short on prong two, this Court accepts plaintiff's representation that they will remedy same for the purpose of this Opinion), left only prong three for trial determination – is the DR Horton project contrary to sound land use planning and therefore unsuitable?

In order to determine this, the Court should consider four factors under COAH regulation N.J.A.C. 5:93-5.3 which states inclusionary developments must be available, suitable, developable, and approvable as defined by N.J.A.C. 5:93-1. Further, the Council shall give priority to sites where infrastructure is currently or imminently available. In line with this requirement, the site shall be consistent with the area-wide water quality management plan or be included in an amendment thereto prior to substantive certification. Id. Further, inclusionary developments in rural areas outside of planned Centers is disfavored. SDRP p.250. In sum, the availability of infrastructure, proximity to goods and services, regional accessibility,

environmental suitability, and compatibility with surrounding land uses must be evaluated. J.W. Field Co. v. Township of Franklin, 204 N.J. Super. 445, 453 (Law Div. 1985).

Finally, at every level of planning, the township of Springfield falls within the following parameters: at the local level, 75% of the municipality is either farmland assessed or preserved open space; at the County level, the entirety of Springfield Township is an agricultural development area with a long-term target to expand; and at the State level, it falls within the PA-4, or rural designation under the SDRP. PA-4 is a rural planning area and an area with limited growth. SDRP at p. 205. The PA-4 area designation seeks to "[m]aintain the environs as large contiguous areas of farmland and other lands; revitalize cities and towns; accommodate growth in Centers; promote a viable agricultural industry; protect the character of existing stable communities; and confine programmed sewer and public water services to Centers." SDRP at p. 186. (State agencies involved in development of the State Plan include NJDEP, COAH, NJDCA, NJ Office of Smart Growth, and the State Planning Commission. (D-7 in evidence).

Legal Analysis

A. The Site Is Available

This prong of the analysis is undisputed by the parties; DR Horton is under contract to purchase the property and the site has clear title, free of encumbrances which preclude the development of inclusionary housing. N.J.A.C. 5:93-1.3.

B. The Site Is Not Suitable Under Prong (2) Of The COAH Analysis Pursuant To N.J.A.C. 5:93-1.3.

A suitable site means a site that is adjacent to compatible land uses, has access to appropriate streets, and is consistent with the environmental policies delineated.

In arguing that their site is suitable, plaintiff relies on the fact that there are other residences in the vicinity of this development, thus making the proposed development compatible with adjacent uses. But this is misleading, and was confirmed by Plaintiff's Planner, Ms. Morrisey's own testimony where she stated that the development is "isolated from the rest of the community." Further, Ms. Furey-Broder (Defendant's Planner) clarified that the few residences nearby evolved over time gradually, are few in number, and bear no relation to the scope of development being proposed here.

In fact, the adjacent uses include a County Park (Arney's Mount Park – Arney's Mount is the highest peak in the county and in all of South Jersey and lies currently uninterrupted on this very site). Elsewhere, there is cultivated farmland and some woodlands, as well as a Quaker Meeting House and Cemetery. Multiple witnesses testified that the surrounding area is defined by open spaces, and farmland.

This incompatibility of adjacent uses is best understood in the report of the Special Master Expert. "The placement of approximately 1,000 new residents, representing what would be a quarter of the total township population, in an isolated development in the heart of what is clearly a rural farm belt, which has been planned over many years by local, County, and State agencies, is unquestionably character-changing and bad planning, and in fact may conflict with past and future farm preservation efforts in the area…the DR Horton site is totally isolated from the remainder of the community and would rely on a local farm road (Arney's Mt-Birmingham Rd.) as its primary access." (C-1 in evidence).

It is well-documented in the testimony and uncontested by the parties that there are both preserved and unpreserved farms adjacent to the proposed site. The incompatibility of these adjacent uses is a recipe for tension according to multiple witnesses (Zellner, Pinto, Furey-Broder). The introduction of a large suburban, dense development, would fragment the carefully planned farm belt, and threaten working farms. As Mr. Pinto stated, once farmland is lost, it cannot be reclaimed; it is done.

Nathan Mosley, a Civil Engineer from Shropshire Inc., testified as an expert on behalf of plaintiff regarding traffic and roads. He indicated that the main roads through this proposed development are country roads, including Arney's Mount-Birmingham Roads, which are one lane in each direction and vary in width, but can be as narrow as 14 ft. and as wide as 24 ft., with drainage ditches on both sides within a right-of-way, that varies between 33 ft. to 49.5 ft. wide. There are three major intersections, all with four-way stop signs and no traffic lights. The recommendation of the expert was to make left-turn improvements at North Pemberton Road where it intersects Brandywine Road. Additionally, while everyone agreed the roads would have to be widened in some places and sidewalks added, there was dispute as to whether this would even be possible, as the frontage and right of way contain preserved farmland and would need to go through County and State approvals, which may not be given. Additionally, the plaintiff's expert did not consider farm vehicles and speeds in his analysis of the roads or the traffic patterns.

In evaluating the environmental impacts of this proposed development, the Court finds that because the entire northern part of the property contains steep slopes in excess of 15% and is therefore environmentally sensitive, it is not available for development. In recognition of this, Plaintiff eliminated this area completely from the latest iteration of their concept plan. However,

all concede that there are wetlands on the site, with habitats for grassland birds and kestrels according to even Mr. DuBois (Plaintiff's Environmental Expert). He further indicated that mitigation and maintenance would at a minimum be necessary to sustain these habitats within the development, provided the DEP permitted it at all. But, he admitted that no one knows who would be responsible for this, but it was not the developer.

C. The Site Is Not Appropriately Developable

A developable site means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area-wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area-wide water quality management plan submitted to and under review by DEP. N.J.A.C. 5:93-1.3.

There is neither potable water nor sewer infrastructure available on the proposed project site, nor anywhere in Springfield Township. DR Horton proposes to seek inclusion of the site in a new franchise area of the NJ American Water Co. But again, all agree, this would require approval of both Springfield Township's governing body as well as the State Board of Public Utilities. And, any of these improvements also requires a seal of approval from the DEP. Testimony from all sides puts estimates for these approvals in the neighborhood of 3-4 years at best.

Additionally, if approved, the water main would need to be extended approximately 2.1 miles from Eastampton Township ("the extension"). There was much back and forth in the testimony about the classification of this extension, and whether the extension would constitute a "transmission" or "distribution" main. The parties agreed that N.J.A.C. 5:21-5.3(b) requires "[d]istribuion mains" to be "connected into loops so that the [water] supply can be brought to the

consumer from more than one direction." Id. (emphasis added). According to plaintiff's expert (Brian Dougherty), this "looping" is not necessary because the extension is a 'transmission' main, not a 'distribution' main. Defendant's expert, Mr. Noll, strenuously disputes that classification, testifying that the extension would be a 'distribution main' which requires looping, and as such, DR Horton would be required to run a looped, 4.2-mile distribution main to the Eastampton connection. At a minimum, no one knows for sure, how these mains will be classified by the approving agencies.

Mr. Dougherty testified that, even if looping was required, DR Horton planned to install a 155-foot-tall water tower on the property. That water tower, he opined, was a separate "supply" of water, thus bringing water to the consumer from "more than one direction", thereby satisfying the requirements, if any, of N.J.A.C. 5:21-5.3(b).

The Court notes that according to Plaintiff, the water tower would be placed at the highest buildable point on the property, on the slope of Arney's Mount. Arney's Mount is the highest point in the County, at 243 feet, and a portion of Arney's Mount, directly adjacent to the property, is a Burlington County Park. Although the principles of engineering and requirements of N.J.A.C. 5:21-5.3(b) might require such a location for the water tower, for adequate gravity fed service on the site, accepting the proposed location would require this Court to ignore planning principles, disregard the aesthetic effect on plaintiff's neighbors, and even the entire County's residents, given the location of the water tower at its highest vista, and disregard the surrounding sensitive environmental area on Arney's Mount to allow DR Horton to save money on a looped water main.

Finally, while the plaintiff's expert, Mr. Dougherty, testified that American Water confirmed there was an adequate supply of water as well as pressure, he conceded that no applications have as yet even been submitted.

Also, public sewer access is currently not available either at the DR Horton site or anywhere within Springfield Township. DR Horton proposes to construct an on-site ground discharge sewerage treatment facility to service the development. The area is not currently included in a sewer service area pursuant to the NJDEP Water Quality Management Plan ("WQMP"), in this instance the Tri-County Water Quality Management Plan. All of the adjacent and nearby properties are served by individual wells and septic systems.

All of Springfield Township, including this farm plot, is within the PA-4 Rural Planning Area designation of the State Planning Commission. Thus, in order to get a WQMP amendment, the development will need a Center designation, as well as NJDEP approvals and TWA approvals. Among other "midnight revelations" at trial was the abrupt about-face from DR Horton, announcing that they would no longer be seeking a Center designation. They then proceeded to cite various other approved HEFSP plans within a PA-4 that did not have Center designations either. To the extent that defendant was able to address this revelation at all, they countered that in those examples, there were factual differences, in that sewer was available nearby, that all of the cited cases involved settlements rather than contested cases, and that the hallmarks of a Town Center were already in existence in the given examples. To the contrary, this proposed site would not be the logical extension of any approved sewer service area.

Additionally, the only commerce in the area consists of a drug store, a gas station with a market, and a Dollar Tree. There are no public transportation routes within a mile of the isolated development, and even that bus route was speculative, according to testimony. There is little

dispute that this is not a Town Center, village, hamlet, or even a node, and DR Horton's decision not to develop commerce here or seek a Center designation means that there is an intention to leave the residents of this affordable housing development utterly without resources or transportation to resources. This is particularly troublesome considering DR Horton proposes that roughly one-quarter of the Township's population would be living in this one isolated development. This project takes sound planning and turns it on its head, along with a demonstrated and overt lack of concern for the would-be residents of this community. As Judge Serpentelli stated in Orgo Farms & Greenhouse v. Colts Neck, 204 NJ Super. 585, 591 (Law Div. 1985) "[m]assive development in the middle of [] farmland would impact significantly upon the planned growth of the community." Ibid. All of that said, there is also nothing about this property that would lead this Court, or anyone else for that matter, to want to designate this area as a Town Center, for the many reasons already outlined. [1]

The project site is instead designated as a priority acquisition site pursuant to the 2022 Burlington County Comprehensive Farmland Preservation Plan. The site abuts the 215-acre Arney's Mount Park, part of a planning effort to provide recreational access to preserved and active farms. The property and surrounding areas are part of a large rural farm belt. Springfield Township's population has not grown in over 20 years and it has intentionally fought to maintain its rural nature, going so far as to impose a levy upon its citizens of $.02 an acre per $100 of

[1] For purposes of a complete record, the Court notes that the testimony and evidence presented about the implications of the proposed site being within two miles of Joint Base McGuire-Dix-Lakehurst come out to a wash. Plaintiff's Planner testified that a 2023 report issued by the Joint base showed a shortage of available on base housing, and an overall lack of adequate affordable housing in the area for single, enlisted military personnel at lower ranks. 1T:224-16 to 21. Alternatively, Defendant's planner testified about a Department of Defense Program out of the Joint Base which has worked extensively to preserve farmlands within a five-mile radius of the base, described as the 'Military Buffer zone'. Defendant's Planner testified that the goal of the Readiness in Environmental Protection Integration Program is to remove or avoid land use conflicts within the buffer zone surrounding military installations. Defendant's Planner noted that the proposed site falls within the Military Buffer zone, being approximately two miles from the Joint Base. 3T:61-15 to 63-25.

assessed valuation, and the County with a levy of $.04, demonstrating a clear commitment on the part of the Township and the County to maintain the farming community as it is. The Township and the County, along with the State, have for decades invested in planning which will preserve the Garden State through communities such as Springfield Township. They have carefully avoided suburban sprawl, and they support the agricultural needs of the citizens of New Jersey, the Nation, and even the World. This has been achieved through careful and meticulous planning. As was artfully expressed by Judge Serpentelli again in Orgo Farms, "[t]he thought that the Monmouth Consolidated would expend the funds involved to bring a small water line nearly four miles to service only the Orgo tract defies logic and is contrary to sound planning." Orgo Farms & Greenhouse v. Colts Neck, 204 NJ Super. 585, 592 (Law Div. 1985). While Orgo might have such a commitment, the Court should not encourage such an inefficient use of resources. Ibid. Furthermore, the existence of that line will inevitably create developmental pressures for the enlargement of the line which would be more difficult to resist once it is in place." Id., at 592. DR Horton asks this Court to do exactly what the State Plan tells courts not to do, and this Court must understand its role.

D. The Site, While Potentially Approvable, Should Not Go Forward As An Inclusionary Affordable Housing Development, As It Defies The Principals Of Sound Land Use Planning

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

An oft repeated phrase throughout trial was the refrain, "with enough time and money, anything is possible." In other words, all permits will be granted, even if takes years. However, defendant's witness, Adam Zellner, of Greener By Design, and former Director of the Highlands Council, former Commissioner of the Environmental & Planning Policy Commission under Governor Corzine, and former Deputy Commissioner of Environmental Protection, testified that was not necessarily true. He labeled this a "very challenged site," because it lacks infrastructure, has many regulated features from an environmental standpoint, and the development proposal runs completely contrary to the State Plan for this area (the preservation of agriculture), not to mention the County and the Town's own Master Plan. He described the approval process as synergistic, and opined that with this many challenges, the various agencies (Delaware Valley Regional Planning Commission Tri-County Water Quality Management Board, Board of Public Utilities, Department of Environmental Protection, Burlington County Planning Board, Burlington County Soil Conservation District, Department of Community Affairs, and Department of Transportation, to name a few) may not approve it at all.

He additionally contradicted the testimony of Ms. Morrisey that what the town could absorb in housing was immaterial. To the contrary, he asserted that this project would be a large and dense development, outside of any Center amenities, leading to an abrupt population surge and potential suburban sprawl in the Township. He testified that he understood Springfield's obligation to supply affordable housing, but on balance there were far better ways to meet it. Mr. Pinto, also of Greener By Design, and an urban planner by trade, echoed the concerns raised by Mr. Zellner, highlighting that the soils on the site are among the best in the State of New Jersey, and Springfield Township is among the prime agrarian regions in the World. He further testified that once farmland is removed, it cannot be recovered.

Ms. Furey-Broder testified for Springfield Township and indicated that Springfield now understood that by court order, they have an affordable housing obligation that they look forward to meeting through a plan to be developed with Court oversight for 100% affordable housing in the Township. But, that the present proposed development was poor planning from the start, consisting of a willing seller, but a developer that gave no consideration to any land use or planning, instead initially proposing a project of 1,540 units in a town with only 3,200 residents, then reducing it to 622 units, and finally 389 units.

Finally, the expert Special Master, John Maczuga, added his firm opinion that this site was not suitable, even though it could produce affordable housing. Even at 389 units, the sheer magnitude of this development, "smack in the middle" of the farm belt, in a rural municipality with no public water or sewer, isolated and without real amenities or transportation is in essence the tincture of unsound planning at the Township, County, and State level. He concluded that the permits even if allowed, would take years and that the Township could proceed more quickly on their own with a better plan. Therefore, he could not recommend that the Court accept this proposal. (C-1 in evidence).

This Court concurs, for while the constitutional obligation of a Township toward affordable housing is sacred, it is not unfettered; and should not be undertaken in areas where the State has made clear it has intended for preservation, where infrastructure is lacking, and where the addition of said housing will entirely alter the character of a community. Likewise, courts should not "throw planning to the wind by allowing the predominantly undeveloped community to experience large scale development in the middle of an essentially rural farm area." Orgo Farms & Greenhouse v. Colts Neck, 204 NJ Super. 585, 590-91 (Law Div. 1985).

"Mt. Laurel is not designed to sweep away all land use restrictions or leave our open spaces and natural resources prey to speculators. Municipalities consisting of largely conservation, agricultural, or environmentally sensitive areas will not be required to grow because of Mt. Laurel." Mt. Laurel II at 211.

In sum, "the Judiciary should not contribute to irrational development discordant with the State's own vision for the future" Mt. Laurel II at 247. An approval of this plan would be the epitome of "unsound planning" and contrary to the constitutional mandate of Mt. Laurel caselaw as enunciated by our Supreme Court, that enforced Municipal obligations to produce affordable housing, yet frowned upon approval of a site such as this one.

Conclusion

For the many reasons stated in this Opinion, the Court finds that the Defendant Township has met their burden of demonstrating that the proposed site is not suitable for development of affordable housing, therefore the Court denies DR Horton's Builder Remedy action. The Township of Springfield, however, remains without immunity against any further Builder's Remedy until such time as they file a Declaratory Judgment Action with this Court.