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August 8, 2023

VIA EMAIL

Mayor and City Council
City of Englewood
2-10 North Van Brunt Street
Englewood, NJ 07631
Attn: Yancy Wazirmas, City Clerk

Re: Ordinance 23-22 and Resolutions Implementing Fair Share Housing Settlement Agreement

Dear Ms. Wazirmas:

This firm represents Englewood One Community and we are writing to urge the City Council to reject Ordinance 23-22 (creating affordable housing overlay zones), Resolutions 267-08-08-23 (Reasons for Adoption of Ordinance 23-2022 in face of Master Plan inconsistency) and 268-08-23 (Endorsing Hosing Element and Fair Share Plan) at tonight's Council meeting, all of which implement a fatally flawed affordable housing Settlement Agreement with Fair Share Housing Center. If the Council approves these actions, the residential areas of the City will be forever altered because the overlay zoning mechanism being implemented to address the City's unmet need constitutes unsound bad planning in contravention of the *Mt. Laurel* doctrine.

The process to approve and implement the Settlement Agreement has fundamentally excluded public participation. This Council approved a Settlement Agreement with Fair Share Housing Center without providing the Settlement Agreement and approving Resolution in advance of the Council meeting to the public so that the residents could not begin to understand its devastating impact on already existing residential areas within the City. And, once the Settlement Agreement was approved, the City was contractually obligated to implement all of its requirements including the overlay zoning contained within Ordinance 23-22 and the Resolutions identified above. Stated differently, the City's failure to adequately inform the public of the substance of its pending settlement agreement with Fair Share Housing Center before the November 1, 2022 Council meeting meant the City Council intended to force the overlay zoning ordinance on its residents regardless of their view. For those who say "we had no choice", you are wrong. You had a choice and made the wrong one in approving the Settlement Agreement.

Another procedural defect is striking. Even though the City Planning Board is an instrumental component in implementing the Settlement Agreement with Fair Share Housing Center through the adoption of a Housing Element and Fair Share Plan, the Planning Board members did not view the report until the evening it was instructed it had to adopt the plan. Now that certainly is not good government.

On its merits, the Housing Element and Fair Share Plan which the Council is considering endorsing through Resolution 268-08-08-23, does not meet the requirements of the Municipal Land Use Law, N. J.S.A. 40:55D-1 et. seq. The most glaring defect is that it does not provide a rationale and analysis for the overlay zone areas. This defect is especially glaring because some

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of the overlay zones are in flood hazard area or encompass a site eligible to be placed on the historic register. And, perhaps most importantly, the proposed overlay zoning violates the New Jersey Supreme Court's decision in S. Burlington County NAACP v. Mt. Laurel, 92, N.J. 158 221-22 (1983) (Mt. Laurel II), which unequivocally states the "provision of affordable housing does not require bad planning". In this regard, it is well settled that sound municipal planning must adhere to the requirements at N.J.A.C. 5:93-5, which requires in part that the proposed affordable housing sites must be "suitable". A suitable site is one that is adjacent to compatible land uses. Here, the provision of multi-family dwellings from 15-50 units per acre adjacent to single family homes is bad planning. Just imagine an apartment building lodged between two single family lots. That could happen here in Englewood.

Englewood One Community has retained Peter G. Steck, a professional planner, to present expert testimony at tonight's Council meeting. I am attaching Mr. Steck's report dated August 8, 2023. Please distribute this report to the Mayor and Council members. In addition, we request a waiver of the three minute rule and permission to make a thirty minute presentation to the Governing Body. Given the stakes, we would hope the Council accommodates this request.

Very truly yours,
Pashman Stein Walder Hayden, P.C.

By: s/s Andrew Bayer
Andrew Bayer

AB:sc

cc: Frank Huttle, Esq.