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Via Email to: dmcgovern@gpmlegal.com

Diana McGovern. Esq.,
Counsel to West Orange Planning Board
West Orange Municipal Complex
West Orange, New Jersey

Re: WEHI Application — Block 179, Lot 32

Dear Ms. McGovern:

At its March 4, 2026, special public meeting, the West Orange Planning Board enumerated and discussed deficiencies in the application for development of Block 179, Lot 32. Rather than denying the application for incompleteness, which it certainly could have, the Board indicated it would provide the applicant an opportunity to correct the deficiencies the Board specified.

The Board also announced that the scheduling would be formalized at its regular meeting on April 15 and at a possible special meeting on May 6. The Board recognized that the applicant might require more than two months to respond fully to the Board's concerns as to its application. In that eventuality, the Board was prepared to schedule further special meetings during June and July to accommodate the applicant if the applicant needed more time to provide answers to the substantial deficiencies the Board identified.

Thus far, the applicant's response has been limited to a March 30, 2026, letter from its counsel Bryan D. Plocker, Esq. to the WOPB. No response from its engineers or other experts has been provided to the Board. Mr. Plocker's failure to supply any answer from the applicant's numerous experts and his concluding sentence speaks volumes about the applicant's willingness to comply with the Board's requests:

"Kindly provide at your earliest convenience the hearing date on which the Board will conclude this matter."

See Letter of Bryan D. Plocker, Esq., March 30, 2026.

By this statement, the applicant makes two things clear: (i) that the applicant does not plan to submit anything further to the Board; and (ii) that the applicant expects the Board to dispose of this application without the consideration of the weighty concerns expressed by Board members in their request for responses to their seven questions.

Objectors agree that the Board should dispose of this application expeditiously, but we believe that the disposition should be **to deny it for incompleteness and a failure to meet legal requirements**, as well as the extensive evidence of environmental and community harm, as our experts have discussed. Even though the Board bent over backward to give the applicant an extra opportunity to fill in the gaps in its application and respond to the Board's specifically enumerated public health, safety and welfare concerns, the applicant failed to avail itself of that generous opportunity.

Mr. Plocker's letter takes nine pages essentially to reiterate the point his client has been making throughout the extended Planning Board hearings—that by adopting IH-1, the inclusionary housing ordinance relating to this development, the Township limited the Planning Board's jurisdiction to one matter—whether the application comported with the ordinance. Not only is such an argument improper under the Municipal Land Use Law that imposes certain positive obligations on the Board that cannot be overridden by the governing body, but such an approach would effectively neuter the Board and prevent it from considering whether this application would violate the public health, safety and general welfare of its West Orange neighbors and of surrounding municipalities, a primary task of any planning board.

This lengthy hearing process has been notable in many ways, but perhaps one more than others — literally hundreds of statements from members of the public, most of the area municipalities and their environmental commissions, the West Orange Environmental Commission, the Essex County Board of County Commissioners and Environmental Commission, and the Lenape Nation have been presented at the Board hearings, along with letters and formal resolutions to this Planning Board — and literally not a single person, group or governmental body supported the development application. **All neighboring municipalities and their public officials have unanimously opposed the application and offered many substantive reasons for why it should be denied.**

Such unanimity of opposition is almost unheard of — in any contested case *someone* supports the applicant, but, here, there is literally none, an absence that should speak volumes. We address the applicant's response to the Board's recent requests below:

THE BOARD'S SEVEN REQUESTS TO THE APPLICANT

To put a finer point on the ways in which the WEHI development application is incomplete or flawed, at the end of its March 4, 2026, special meeting the Board, through Board Counsel, listed seven items the applicant had to address:

1. A complete tree replacement plan;
2. The location and capacity of a sanitary sewage system that would satisfy the needs of the proposed new development and meet the "feasibility" requirement that is mandated by State law prior to any planning board approval; see Field v. Franklin Township, 190 N.J. Super. 326 (App. Div. 1983);
3. Adjustments to the stormwater management system to re-direct adequate water to the upper wetlands;
4. The need for a water tower to assure sufficient water pressure for regular tenant usage and for firefighting purposes;
5. The extent to which the developer would contribute to the cost of off-site infrastructure needs;
6. The identification of a second point of ingress and egress for regular usage; and
7. The development of an improved plan for emergency access.

OBJECTOR'S RESPONSE TO MR. PLOCKER'S MARCH 30, 2026 LETTER

1. Applicant inadequate response as to the sewer capacity and the disregard of the governing law under Field v. Franklin Township.

Mr. Plocker's letter dutifully contains sections claiming to deal with six of the seven items (the issue of contributions to the costs of necessary off-site improvements is not addressed) and adds a long concluding section entitled "Condominium's Sewer Line", recognizing the importance of this issue, but offers no evidence of actual feasibility of the proposed sewer line and no evidence that the public sewer system can accept the anticipated waste flow of this project. It is precisely this

evidence that is required under Field v. Franklin Township, 190 N.J. Super. 326 (App. Div. 1983) and later decisions.¹

Ms. McGovern, you have already informed the Board in your summary of the binding nature of the decision in Field and later cases. As these decisions hold, “feasibility” of the sewer system **must** be proved at this stage and cannot be left to later determination. The applicant has failed to offer any basis for feasibility and, for this reason alone, the application must be denied outright.

Notably, the only statement about this issue from Mr. Plocker is that the regional sewer authority is obligated to “reasonably cooperate” with the developer. See Letter of Bryan D. Plocker, Esq., March 30, 2026 at 1. This is no answer to the mandatory requirement in Field v. Franklin Township that feasibility **must** be proved **now**, before the planning board makes a decision on approval of the site plan. Under the decision in Field, this cannot be made a condition of approval — under binding case law, feasibility must be shown **now**, in order for the Board to approve the plan. As Mr. Plocker’s letter shows, the applicant has simply failed to demonstrate feasibility of its sewer service, requiring outright denial of the site plan application.

Speaking for the applicant, Mr. Plocker addresses the sewer question in a manifestly inadequate way. First, he repeats what has already been said, that the site plan contains a route on the property map for the sewage line running from the proposed new development to a pump station “south of Road D,” then to a manhole in Bakley Terrace in The Grande, and finally to the public sewer system; and, second, he refers at length to the obligations of West Orange under the 2020 Settlement Agreement to “endorse all required third-party applications for sewer service.”

Both of these statements fail to respond to the Board’s and the Objector’s concerns and ignore the law. Merely demonstrating that a sewer line is traced on the application with a pipe and manhole cover and with a diagram showing a “pump station”

¹ The question of lack of proof of feasibility is not limited only to so-called “checklist” items, as the applicant has repeatedly implied. As Field v. Franklin Township, 190 N.J. Super. 326 (App. Div. 1983) and later decisions make clear, the absence of feasibility renders the application incomplete in substance as Field requires substantial and credible evidence of feasibility, not merely checking off the item. If that evidence is missing, as it is with regard to sewer service, the application is not competent for approval.

does not demonstrate feasibility. All the site plan demonstrates, and all that Mr. Plocker has shown in his March 30, 2026 response, is that a sewer line is proposed to link up to the public system but no evidence of capacity of the system to absorb this additional load is presented. That is what the Appellate Division in Field v. Franklin Township means by “feasibility”, not merely tracing a line on a site plan. The applicant has simply failed to meet the requirement of the law.

Along these same lines, as far as I can tell, the Applicant has never addressed either the detailed requirements of CME’s Sanitary Sewer Review #1, dated December 8, 2025, or the broader municipal infrastructure concerns expressed by Township Engineer Zayibeth Carballo in her October 31, 2025 memorandum to the Planning Board and her related testimony to the Board at its November 10, 2025, public meeting regarding the 4th Round Affordable Housing Plan. CME enumerated many specific requirements for the applicant regarding general, off-site and on-site matters. I found no response from the applicant on the Planning Board’s agenda or elsewhere.

Finally, Mr. Plocker’s claim that West Orange under the 2020 Settlement Agreement has an obligation to “endorse all required third-party applications for sewer service”, does not demonstrate or meet the feasibility test. It is the duty of the applicant in any site plan under Field and later decisions to affirmatively demonstrate feasibility, not to claim the municipality is obligated to approve sewer service in the absence of any analysis demonstrating it is both safe and feasible.

The reference in the Settlement Agreement simply means that if feasibility is shown, the municipality may not withhold approval but it cannot be construed to mean that approval must be granted when the applicant has failed to meet its duty to demonstrate that sewer service is feasible and that the increased waste flow can be safely accommodated by the community’s infrastructure. The Board already knows from the West Orange engineer’s presentation that, at present, it is doubtful that there is existing capacity. It is the applicant’s duty to undertake or obtain this analysis proving feasibility and present it to the Board — it has not done so.

2. Applicant's failure to meaningfully addressed the issue of the fire tower.

Mr. Plocker appears to recognize the necessity of the water tower for fire prevention as he states in the concluding sentence of his section on "Water" at page 6 of his letter, as follows: "If, for any reason, a separate water tower structure is required, Applicant recognizes that it would need to apply for amended site plan approval." See Letter of Bryan D. Plocker, Esq., March 30, 2026 at 6.

All this does is kick the can down the road as to a compelling and fundamental safety question. In fact, the applicant is ignoring the entirety of the question. The whole point of the Board expressing concern about the water tower is because the unrefuted evidence of the Objector's engineer demonstrated its necessity. The purpose of addressing this question now is to avoid construction and development only to have to plan the complex and difficult inclusion of pipes, pumps and a water tower later, after structural elements are in place and it may be too late to find an adequate means of including the infrastructure necessary for the water tower. This Board's task is "planning", and this means addressing the critical matters now, not pushing it down the road for a time when it may be too late to address.

The need for the water tower was addressed by Objector's engineer, it was not refuted and it goes to a primary safety question that this Board found to be compelling but applicant refuses to even discuss. It is not enough to build and construct and then, later, seek to amend to include this facility. It is not even clear at present where it would go, a decision that cannot be left to a point after construction is commenced or undertaken.

3. The applicant's failure to adequately address the means of ingress and egress.

The Board's primary concern that there is only a single way into and out of this large-scale proposed development is paramount and goes to a major and compelling public safety question that is directly within the Board's jurisdiction. In fact, at its March 4, 2026 special meeting, the Board had a separate vote on whether this issue should be included in its list of concerns for the applicant, and the Board voted 8-1 in favor of

including the question of the absence of a second means of ingress and egress. The Board then voted 9-0 in favor of its full list of concerns for the applicant and its mechanism for dealing with them.

The single way in and out of this site is hardly a new concern. In April 2006, when the Planning Board denied a much smaller development application for this site by this applicant, it did so primarily on the ground of there being only a single way in and out and thereby creating serious safety concerns. The Board then put it this way:

The Board concludes, based on the testimony of Mr. Gregor [objectors' engineering expert], Mr. Litwornia [objectors' traffic expert], Ms. Borg [West Orange's full-time planner], and Mr. Lepore [West Orange's full-time engineer] that the proposed 136 single family subdivision with only one access route and insufficiently wide roadways creates dangerous and inefficient vehicular ingress and egress to and within the site....Additionally, the Board finds that a development of this magnitude having only one means of ingress and egress creates an inefficient network of roads that is contrary to the goals and intent of the Master Plan of the Township of West Orange, which encourages providing more than one road into and from a neighborhood rather than developing enclave type neighborhoods." (Doc. PB-04-24 at 4).²

This statement from the Board's 2006 decision is ever the more compelling today. At the time of this denial, the application concerned only 136 homes, whereas the present application concerns 496 residential units, almost four times larger. It is clear that if the lack of an additional means of ingress and egress was critical and compelling for this Board 20 years ago for a project nearly four times smaller, it is exponentially more important and compelling today. Yet, the applicant simply refuses to address the question offering no answer to the Board's very pertinent inquiry.

Mr. Plocker does not deny that the project exceeds the ADT maximum for this site. Instead, the applicant tries to push the issue under the rug by stating, "While it is understandable to focus on ADT, there is nothing in the Board record to suggest that the regular use of Warner Road and Oval Road is unsafe under existing conditions or would pose a safety issue after the proposed development is constructed." See Letter of

² The Board also found at that time that "the Application, as presented, failed to provide a sufficient tree plan" because it did not "provide an accurate count of the trees it proposes to remove from the site." Doc. PB-04-24 at 4. The current application provides no count at all of the number of trees proposed to be removed or proposed to be replaced.

Bryan D. Plocker, Esq., March 30, 2026 at 5. Thus, the applicant does not deny the project exceeds the maximum ADT for the site but tries to avoid the issue by claiming that there is no “safety” hazard. This will not suffice: the maximum ADT is the law and *it* defines the safety margin for the site. Applicant cannot evade the law by claiming it need not obey RSIS because it believes the road is safe. ADT itself is the law and is an objective safety measure. **This Board cannot set aside ADT in favor of the applicant’s subjective view of safety — ADT is the law and the Board must follow.**

ADT in this instance is violated and the application must be denied for this reason alone.

4. Failure of applicant to address other concerns raised by the Board in its March 4, 2026 resolution.

None of the other concerns of this Board are dealt with seriously or adequately in Mr. Plocker’s letter, except to say, in essence, that the applicant feels no need to make changes or any additions to the site plan. Moreover, none of the Board’s concerns are addressed by an engineer, but only by counsel for the applicant. Mr. Plocker cannot offer an expert opinion on these matters, such as why a detention basin cannot be situated to return water to the northern part of the wetlands and avoid massive environmental harm. Only the applicant’s expert can explain *why* the applicant believes it cannot comply with the Board’s seven requests. Mr. Plocker’s letter is not an adequate response and should not be accepted by the Board.

For the most part, Mr. Plocker refers back to materials introduced long ago to the Board in this hearing process, ignoring the fact that by its vote on March 4, 2026, the Board signaled that such prior evidence was not sufficient to satisfy its concerns. The Board’s March 4, 2026 resolution and its seven questions was made precisely because the Board was **not** satisfied with that prior evidence.

Once the Board has identified significant deficiencies in the application, it is not enough, as Mr. Plocker attempts to argue, to say that the Board has a narrowly circumscribed role and that the applicant has adequately demonstrated its compliance with the IH-1 ordinance or that other agencies, such as NJDEP, have provided the

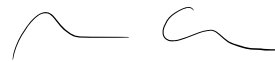
necessary approvals. In effect, Mr. Plocker's client is dismissive of the Board's concerns and refuses to address them, claiming they have (or will) be addressed elsewhere or are beyond what he insists is the Board's constricted jurisdiction.

Finally, a word is in order about the applicant's repeated claims that this Board may not take any action except to approve the site plan, a claim the applicant makes because the plan is a part of the municipal affordable housing program. This is manifestly untrue. This Board retains its full discretion and judgment in reviewing this site plan despite any settlement by the municipality and regardless of any affordable housing element. No decision of our courts diminishes the authority and judgment of the planning board in protecting the public health and safety simply because a proposal contains inclusionary housing. This Board must still meet its full statutory duty to protect the public health, safety and welfare and is not bound to approve this plan by the IH-1 ordinance or the municipality's settlement agreement.

CONCLUSION

Based on the applicant's almost willful failure to address the compelling issues and concerns raised, not only by the Board, but by the vast number of citizens, groups and neighboring governmental bodies, the Board should deny the application.

Respectfully submitted,



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