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July 26, 2023

Via email: MHill@tomsvrivertownship.com

Honorable Mayor Maurice B. Hill
Township of Toms River
33 Washington Street
Toms River, NJ 08754

Re: Urgent Appeal to Delay Township Ordinance Amendment 189-7(a) (“Ordinance”)

Dear Mayor Hill:

Thank you for your letter to the community addressing the Township’s position in amending the Ordinance. I am writing again on behalf of the Normandy Beach Associates, Inc. (“NBA”) to urgently request a delay in the Toms River Township’s consideration of amending the Ordinance in response to the concerns raised by numerous citizens of our community. As we approach the critical part of hurricane season and given the ongoing appeal by NBA of Judge Hodgson’s decision and as the owner of the property where the dunes lie, it is imperative that we exercise caution and prudence in making any hasty decisions that may impact our community’s environmental stability.

First and foremost, I would like to reiterate the importance of preserving the integrity of the dunes along our beachfront. These dunes, constructed on property owned by NBA by the Federal government, play a crucial role in shielding our community, homes, and infrastructure from potential cost hazards and natural disasters. Preserving them is vital to maintaining our community’s resilience and environmental balance.

Furthermore, as Judge Hodgson’s order granted certain beachfront owners an appurtenant easement, this serves as the abasis for other beachfront owners to argue for the same rights. Please keep in mind, the Judge ordered for the benefit of specific homeowners, in part, an appurtenant easement to cross the NBA property in question. He did not specify where that easement lies. To the extent that it is determined that an appurtenant easement exists (which NBA strongly disagrees), NBA would be amenable to working with a homeowner and the Township to allow access over NBA property in a manner to minimize impact on the dunes. While this legal aspect adds complexity to the situation, it is crucial that we approach it with a balanced perspective. Rushing to amend the ordinance without carefully considering NBA’s ongoing appeal and its well-founded arguments could have far-reaching consequences for our community.

The fact that the Judge’s order was issued well over a year ago on November 21, 2021, raises questions as to why the Township now perceives as urgent to amend the ordinance. Our attorneys representing us in this matter had advised NBA that they were informed previously that the Township would hold off

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attempting to amend the ordinance until NBA was able to appeal the Judge's decision. NBA is imminently filing its appeal of the Judge's decision which is due by July 31. The appellate brief has already been reviewed and is deemed complete. It is clear that NBA is dedicated to pursuing this matter to protect the dunes on behalf of its members. Given the critical time in the hurricane season, NBA must be afforded the opportunity to present its arguments and evidence, as it believes strongly in its likelihood of prevailing.

Moreover, I must stress that NBA had previously filed an interlocutory appeal during the pendency of the litigation, and a request for a stay of proceedings requested. Both were denied. NBA was not able to file its appeal until the underlying litigation was complete and until it was accepted by the Appellate Division, which was not accepted until last month. This further underscores the need for caution and patience in handling this matter and enlist the assistance of the Township. By proceeding with amending the ordinance at the time, we risk degrading the dunes when they are most vulnerable seasonally.

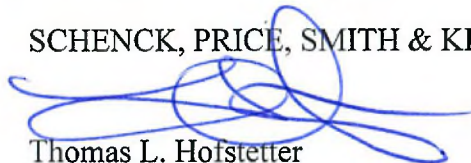
In light of these circumstances, I appeal to the Township to support NBA's efforts and table its consideration of amending the Ordinance until after the conclusion of the appeal process. Doing so will demonstrate the Township commitment to protecting the environment, respecting due legal process, and ensuring the safety and well-being of our community.

As we face the unpredictable challenges of hurricane season, let us unite in safeguarding our natural resources and the interests of our community. I trust that, by exercising patience and prudence, we can arrive at a resolution that aligns with the long-term welfare of Toms River Township.

Thank you for your understanding and consideration. I hope that the Township will stand in support of NBA's appeal during this critical time.

Very truly yours,

SCHENCK, PRICE, SMITH & KING, LLP



Thomas L. Hofstetter

TLH:gi

cc: Councilman Kevin Geoghegan
Councilman Matthew Lotano
Councilman David Ciccozzi
Councilman Josh Kopp
Councilman Justin Lamb
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