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October 5, 2021

OUR FILE NO. 210426

Chairman Jeremiah J. Crean and All Board Members
Township of Mahwah Planning Board
475 Corporate Drive
P.O. Box 733
Mahwah, New Jersey 07430

**Re: Application of Fyke Road Estates, LLC
Premises: Block 21, Lots 21, 22, 23
1 Fyke Road, Mahwah, New Jersey ("Property")**

Dear Chairman Crean and Board Members:

As you know, we represent Rio Vista Mahwah Homeowners Association, Inc. ("Rio Vista Mahwah") and Darlington Village Condominium Association, Inc. ("Darlington Village"). Rio Vista Mahwah is a community with 459 homes. Darlington Village is a community within Rio Vista Mahwah that consists of 62 homes which are also members of Rio Vista Mahwah (sometimes collectively the "HOA").

We have previously raised various issues, but the Planning Board has not addressed them. The last hearing was postponed until October 11, 2021. We wish to further comment as set forth below.

1. **Request to be recognized as panelist:** At the last hearing, right before the adjournment, I tried to "get recognized." I "raised my hand" during the zoom meeting—numerous times. The secretary announced there was a "Lori" Lamb trying to be recognized. But that was ignored. Respectfully, did not any of the participants who knew I had entered an appearance think that Lori Lamb might have a connection to John Lamb? (when I had to disconnect the zoom link because of audio issues, the default was to my wife's computer). Moreover, there could have been another attorney from my office covering the hearing—with a different name than Lamb. Also, I could have had an important statement even

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if I was not counsel of record for an interested party. If someone raises their hand, they should be recognized—not ignored.

Moreover, this is not the first time a representative of my client was not recognized. At the first hearing on April 26, 2021, the Manager for the HOA tried to get recognize to correct a mistake and error and comment. Ms. Catherine Abbott was not recognized.

My client as the representative of 459 property owners—and an estimated 1,000 residents—wants to be recognized and participate. Thus far we appear to be slighted. We want to avoid this going forward.

I assume that the Planning Board secretary is able to visually see the participants. How could not someone see me in a suit trying to get recognized? Were there that many participants wearing suits?

I even emailed the evening of the last hearing to let everyone know I could not speak and get recognized. One would have thought as a matter of courtesy someone would have responded to my email or apologized for the "mistake" (if it was a mistake).

The Department of Community Affairs ("DCA") remote hearing regulations allow an objection to be made for a virtual hearing. This letter will serve as our objection to this hearing being held by zoom and we will wish to be heard on that issue as a threshold matter. If we cannot obtain assurances that fairness and due process will be followed, we will continue with that objection.

I have not had any problem with all the other zoom meetings in which we have participated in numerous other jurisdictions.

We note that the Township attorney was observed and recognized as a "panelist." And she was not going to participate. So the question is, why was an attorney for an interested party who entered his appearance not so recognized when someone who was not going to participate but just observe was so recognized?

I would therefore request that I be recognized as a panelist when the matter is next called for a hearing (and for all the hearings thereafter). Please confirm that will be the case.

We will respectfully object if we are not so recognized and not able to participate. We will object to any proceeding where we are unable to participate. We hope this can be avoided.

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2. Continued request to post our submissions on application website: We continue to request this letter and all prior submissions be posted on the website for this application. As of today, not one letter or email was posted. We ask that this letter be posted as well. Every submission by the Applicant is posted. But that is only one side of the application. We have addressed the other side. How can an expert report of the Applicant be posted (before testimony) but an expert report from an interested party be ignored?

3. Request for response by Planning Board professionals: Finally, as of today, the Planning Board professionals have not responded to any of our letters or issues and, on a substantive matter, the two reports submitted by my client's engineer, John Thonet. I understood that the Board engineer was reviewing same and preparing a review letter. Mr. Thonet's first report was submitted by my letter dated August 17, 2021, and thereafter a supplemental report by my letter dated September 2, 2021. There was certainly more than sufficient time to respond. However, Mr. Michael Kelly, P.E. has confirmed he has not been authorized to respond.

We could have chosen to keep quiet, say nothing, and raise these issues for the first time at the hearing and/or when we present our case, and cause an unnecessary delay. But respectfully that is a waste of everyone's time. For the Planning Board to find out there are errors and mistakes on the site plan which preclude the Board's review is a threshold issue. The developer, simply put, has proposed a project on the site of a stream and tributary and on part of the pond—and without proper buffers. This is something that should be decided on a preliminary basis. We ask that the Planning Board consider this threshold issue—and the other threshold issues—at the start of any hearing.

* * *

We just received Mr. Whitaker's letter dated October 4, 2021 and will separately respond to that.

Thank you for considering our comments.

Respectfully yours,

John J. Lamb

John J. Lamb

JJL:lb

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cc: Ms. Geraldine Entrup (Planning Board Administrative Officer)
Ms. Mary Jo Wood (Planning Board Secretary)
Peter Scandariato, Esq. (Planning Board Attorney)
Boswell Engineering (Planning Board Engineer)
Attn: Mr. Michael Kelly, P.E.
Colliers Engineering & Design (Planning Board Planner)
Attn: Mr. Nicholas Dickerson, P.P.
Bruce E. Whitaker, Esq. (Applicant's Attorney)
Rio Vista Mahwah Homeowners Association, Inc.
Attn: All Board Members
Darlington village Condominium Association, Inc.
Attn: All Board Members
John Rizzo, Esq. (Rio Vista Mahwah HOA General Counsel)