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HARTZ MOUNTAIN INDUSTRIES, INC.,
LLC, H-CRANFORD CONDUIT LP, and
H-CRANFORD CREDIT LP,

Plaintiffs,

v.

TOWNSHIP OF CRANFORD, TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANFORD, and THE PLANNING BOARD
OF THE TOWNSHIP OF CRANFORD,

Defendant.

SUPERIOR COURT OF NEW JERSEY
UNION COUNTY, LAW DIVISION

DOCKET NO.: UNN-L- 3679-19

CIVIL ACTION

SUMMONS

From the State of New Jersey

To the Defendant Named Below:

Township Committee of the Township of Cranford

Plaintiffs, named above, have filed a lawsuit against you in the Superior Court of New Jersey. The Complaint (and Amendment(s) if any) attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the Complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, New Jersey 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiffs' attorney whose name and address appears above, or to plaintiffs, if no attorney is listed above. A telephone call will not protect your rights; you must file and serve a written

answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiffs' demand, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf

/s/ Michelle M. Smith
Michelle M. Smith, Esq.
Clerk, Superior Court of New Jersey

Dated: October 24, 2019

Name of Defendant to be Served: **Township Committee of the Township of Cranford**

Address of Defendant to be Served: Patty Donahue
Clerk of the Township of Cranford
8 Springfield Avenue
Cranford, New Jersey 07016

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COMMITTEE OF THE TOWNSHIP OF
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OF THE TOWNSHIP OF CRANFORD,

Defendant.

SUPERIOR COURT OF NEW JERSEY
UNION COUNTY, LAW DIVISION

DOCKET NO.: UNN-L- **3679-19**

CIVIL ACTION

COMPLAINT IN LIEU OF
PREROGATIVE WRITS

Plaintiffs, Hartz Mountain Industries, Inc., H-Cranford Conduit LP, and H-Cranford Credit LP (hereinafter "Hartz" or "Plaintiffs"), whose place of business is located at 400 Plaza Drive, P.O. Box 1515, Secaucus, New Jersey 07096, say by way of Complaint:

INTRODUCTION

1. This is an action challenging: (i) a Resolution, issued by the Defendant Planning Board of the Township of Cranford, on September 4, 2019 which memorializes its decision to recommend the denial of Plaintiffs' application for a rezoning of Plaintiffs' property; (ii) the Planning Board's failure to acknowledge and act on Plaintiffs' request to have its property considered for a designation of redevelopment; and (iii) the Township Committee of the Township of Cranford's decision adopting the Planning Board's recommendation denying

Hartz's rezoning request. Hartz's rezoning application contemplates, in part, the redevelopment of the subject property to allow multi-family development of up to thirty (30) dwelling units per acre. The current zoning on the property only allows for commercial and industrial uses.

Through this Complaint, Hartz asserts that the Planning Board of the Township of Cranford, through its September 4, 2019 Resolution, acted in an arbitrary and capricious manner when it failed to properly consider the evidence presented by the Plaintiffs' experts during the fourteen (14) public hearings concerning the subject rezoning application. Hartz also asserts that, in light of the above, the decision of the Township Committee of the Township of Cranford to deny Plaintiffs' rezoning application was also arbitrary and capricious, as same was based on the indefensible recommendations of the Planning Board. The actions of the Township, the Planning Board of the Township of Cranford, and the Township Committee of the Township of Cranford, as further described herein, also constituted inverse condemnation in violation of the United States Constitution and the New Jersey Constitution, and violated the federal Fair Housing Act, 42 U.S.C. § 3601 -19, federal Civil Rights Act of 1983, 42 U.S.C. § 1983, and the New Jersey Civil Rights Act, N.J.S.A.10:6-2, as well as the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* In addition, Defendants' decision to deny Plaintiffs' request for the rezoning of the subject property deprives Plaintiffs of their ability to replace the obsolete use that currently exists on the subject property, and impedes Plaintiffs' ability to provide much needed affordable housing in the Township. Defendants have also failed to acknowledge and act on Plaintiffs' request for the Township to consider the subject property for designation for redevelopment, pursuant to N.J.S.A. 40A:12A-1 *et seq.*

Plaintiffs now seek invalidation of the September 4, 2019 Resolution, as well as the invalidation of the Township Committee of the Township of Cranford's decision to deny the

Plaintiffs' rezoning application, an award of damages, litigation costs and reasonable attorney fees, and such other relief as the court may deem just and equitable.

THE PARTIES

2. Plaintiff Hartz Mountain Industries, Inc. ("Hartz Mountain") is a corporation with its principal place of business located at 400 Plaza Drive, P.O. Box 1515, Secaucus, New Jersey 07096.

3. Plaintiffs H-Cranford Conduit LP, and H-Cranford Credit LP are limited partnerships with their principal place of business located at 400 Plaza Drive, P.O. Box 1515, Secaucus, New Jersey 07096.

4. Plaintiff Hartz Mountain is the general partner of H-Cranford Conduit LP and H-Cranford Credit LP, which own the property designated as Block 541, Lot 2 on the official tax map of the Township of Cranford Township and located at 750 Walnut Avenue, Cranford, New Jersey ("Subject Property").

5. Defendant the Township of Cranford ("Township") is a body corporate and political whose principal place of business is located at 8 Springfield Avenue, Cranford, New Jersey, 07016.

6. Defendant Township Committee of the Township of Cranford ("Township Committee") constitutes the governing body of the Township. Its principal place of business is located at 8 Springfield Avenue, Cranford, New Jersey, 07016.

7. Defendant Planning Board of the Township of Cranford ("Planning Board") is a municipally created board with ordinance and statutory authority to hear and decide issues within

the jurisdiction of planning boards, including the issues raised by the subject rezoning application, described in more detail herein. Its principal place of business is located at 8 Springfield Avenue, Cranford, New Jersey, 07016.

VENUE

8. Venue is properly laid in Union County because defendants, Township, Township Committee, and the Planning Board (collectively referred to as "Defendants"), are public entities located in Union County, and the cause of action arose in Union County.

FACTUAL ALLEGATIONS

The Subject Property

9. The Subject Property is approximately 30.5 acres in size and is located within the Township of Cranford.

10. The Subject Property is located at 750 Walnut Avenue, Cranford, New Jersey, and it enjoys sufficient road access and other infrastructure suitable for the proposed rezoning.

11. The Subject Property is triangular in shape, bounded to the east by Walnut Avenue, to the northwest by a freight rail line, and to the southeast by Hyatt Hills Golf Complex (hereinafter "Golf Course").

12. The Subject Property is situated in the southern portion of the Township, near the Clark Township border.

13. The vast majority of the Subject Property is paved or improved with impervious coverage.

14. The Subject Property has no sensitive environmental features such as wetlands, open waters, or threatened or endangered species habitat.

15. There is a landscaped berm along a portion of the Walnut Avenue frontage, which was built by Hartz.

16. Access to the Subject Property is provided via two driveways along Walnut Avenue.

17. The Subject Property is presently within the C-3 zoning district, a commercial zone isolated from other commercial zones by the surrounding residential zones.

18. The C-3 zoning district regulations permit office, research, and light industrial uses.

19. The Subject Property is one of only two parcels in Cranford that fall within the C-3 zoning district, the other being a very narrow parcel comprising part of the Golf Course.

20. Hartz purchased the Subject Property in 1988, prior to which it had been used for manufacturing purposes.

Tenants and Current Use of the Subject Property

21. After purchasing the Subject Property, Hartz built an extension on an existing building and made significant improvements to convert much of the existing building (approximately 163,000 square feet) to office use, then subdivided the Subject Property into seven distinct commercial condominium units. The units include:

- i. Unit 1: consists of 28,554 square feet. Trinitas Hospital held a lease on this unit until its expiration in May of 2017;
- ii. Unit 2: consists of 75,638 square feet and includes two floors of office space located above open parking. Hartz constructed this unit for use by Summit Bank/Bank of America;
- iii. Unit 3: 141,519 square feet of office space. This space was converted from its original manufacturing use for Summit Bank/Bank of America;
- iv. Unit 4: 31,017 square feet. This unit was previously used by Summit Bank/Bank of America for storage purposes;
- v. Unit 5: 81,563 square feet. The most recent lease was held by LabCorp and expired on July 31, 2019;
- vi. Unit 6: 40,088 square feet, previously used for warehousing and distribution purposes by Jagro Customs; and
- vii. Unit 7: 21,770 square feet. This space was previously occupied by PSE&G but is now vacant as PSE&G's lease has expired and PSE&G has declined to renew its lease. Approximately 3,000 square feet of this unit was once occupied by Summit Bank/Bank of America.

Plaintiffs' Rezoning Application

22. On or about March 27, 2017, Hartz filed an application with the Planning Board under Section 136-67 of Cranford's Land Use Ordinance ("Township Ordinance") for the

rezoning of its property from C-3 to a new zone permitting construction of 905 multi-family units, including a substantial amount of low and moderate income housing units, or alternatively for a redevelopment designation ("Rezoning Application").

23. In the same submission, Hartz requested that the Township consider the Subject Property for designation for redevelopment under N.J.S.A. 40A:12A-1 et seq.

24. The Planning Board reviewed the Rezoning Application and declared it complete on May 18, 2017.

25. The Planning Board scheduled the matter for a first day of hearing on June 7, 2017.

26. On May 30, 2017, representatives of Hartz met informally with representatives of the Township, including its municipal attorney and redevelopment attorney, to discuss the possibility of proceeding via redevelopment rather than a rezoning of the Subject Property.

27. Since municipal officials seemed receptive to the exploration of this idea, Hartz postponed the scheduled hearing before the Planning Board and sought the opportunity to make a presentation directly before the municipal governing body.

28. On June 21, 2017, Hartz made a written request seeking to be placed on the Township Committee's agenda for purposes of discussing redevelopment of the Subject Property.

29. Having received no response from the Township Committee, Hartz appeared at the July 5, 2017 meeting of the Township Committee and renewed its request.

30. At that time, the Township Committee announced that it would put Hartz on its agenda for the meeting of July 18, 2017.

31. At the July 18, 2017 Township Committee meeting, Hartz appeared and made a detailed presentation, including presentations by its consulting planner, engineer, architect, and traffic engineer.

32. The presentation and Hartz's efforts up to this point were to no avail as the Township Committee ultimately failed to act on the redevelopment process proposed by Plaintiffs, resulting in Plaintiffs commencing review of its Rezoning Application before the Planning Board.

33. There were a total of fourteen (14) public hearings before the Planning Board in connection with Plaintiffs' Rezoning Application. The public hearings were conducted on the following dates: May 16, 2018, July 18, 2018, August 1, 2018, September 5, 2018, September 12, 2018, October 17, 2018, November 28, 2018, December 5, 2018, January 30, 2019, March 6, 2019, March 20, 2019, April 3, 2019, May 8, 2019, and May 15, 2019.

34. During the hearings, Hartz presented testimony from the following experts: Matthew McDonough, New Jersey Commercial Real Estate Broker; Bruce Englebaugh, Architect; Jeffrey M. Martell, Civil Engineer; Keenan Hughes, Professional Planner; William J. Sitar, Jr., expert on northern New Jersey industrial real estate market; Karl Pehnke, Traffic Engineer; and also testimony from a fact witness, Charlie Reese, Vice President of Sales and Leasing at Hartz Mountain.

35. Each of Plaintiffs' witnesses provided testimony in support of Plaintiffs' Rezoning Application and/or provided evidence supporting the viability of Plaintiffs' proposed development on the Subject Property.

36. The Planning Board presented testimony from several of its own experts, including: James Brunette, Real Estate Broker; and Maurice Rached, Traffic Engineer; Dr. Scott Rubin, Superintendent of Schools for the Cranford Public School System; Dr. Ross Haber, demographer; Robert Carfagno, Business Administrator for Cranford Public Schools; and Raymond Liotta, Professional Planner.

37. The Planning Board's experts presented findings that conflicted with some of those presented by Plaintiffs' witnesses; however, some opinions expressed by Plaintiffs' witnesses were not controverted by the Planning Board's experts.

38. During the end of the final hearing before the Planning Board on May 8, 2019, Plaintiffs presented two rebuttal witnesses, Mr. Martell, professional engineer, and Mr. Hughes, professional planner, who each responded to the conclusions made by the Planning Board's experts.

39. Nonetheless, during the September 4, 2019 Planning Board meeting, the Planning Board adopted a Resolution recommending that the Township Committee deny Plaintiffs' Rezoning Application. See September 4, 2019 Resolution of the Planning Board, a true copy of which is annexed hereto as "Exhibit A" and is incorporated herein by reference.

FIRST COUNT

Arbitrary and Capricious Action by the Planning Board

40. The allegations set forth above are repeated as if fully set forth at length herein.

41. The Township Ordinance sets forth the criteria an applicant must prove in order to qualify for a rezoning. The criteria include consideration of the following factors: Necessity - a showing that the relief sought cannot be granted through a different application for development other than a rezoning; the Master Plan - whether the proposed rezoning is in the best interest of the municipality to amend the Master Plan; Modification - which allows the Planning Board to make modifications to the proposal set forth by the applicant; Inutility- whether the zoning now applying to the property regulates it into inutility; or Benefit - a showing that the rezoning of the property will substantially and meaningfully benefit the municipality; and lastly Undue Burden - a showing that the rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden on the community's services and facilities. See Township Ordinance Article VII, Section 255-56, et seq.

42. In determining to recommend the denial of Plaintiffs' Rezoning Application, the Planning Board disregarded or improperly gave little weight to the expert's reports and lengthy expert testimony provided by Plaintiffs' experts during the fourteen (14) public hearings before the Planning Board.

43. The March 2017 Planning Report by Mr. Hughes, Plaintiffs' Planner, set forth and addressed the criteria under the Township Ordinance. Therein he noted that Plaintiffs have met the necessity criteria under the Township Ordinance because the Subject Property constitutes approximately 60% of the C-3 zone and, as a result, any major changes to the zone scheme can only be legally accomplished by the Township Committee through a rezoning. In addition, Mr. Hughes provided testimony during the September 5, 2018 public hearing stating that a use variance granted for the proposed redevelopment would constitute a usurpation of the governing body's legislative power, and, thus, that proceeding with the Rezoning Application was required.

44. Regarding the second criterion - consistency with the Township's Master Plan - Mr. Hughes testified that the rezoning of the Subject Property would meet several goals set forth in the Township's Master Plan. This includes allowing for the development of a wide range of housing suitable for a diverse group of residents from different income groups. It was also noted that the natural barriers surrounding the Subject Property, such as the Golf Course, the berm, and the rail line, will minimize the impacts of the proposed development on the surrounding neighborhood.

45. The next criterion - modification - is technically not a criterion requiring proof by Plaintiffs as this criterion authorizes the Planning Board to make modifications to the proposed plan. Nonetheless, as stated by Mr. Hughes, Plaintiffs were and are more than willing to make reasonable modifications to its proposed plan in an effort to work with the Township. In fact, Plaintiffs have already made several modifications in response to the comments provided by the Planning Board. However, the Township Committee and Planning Board have exhibited a complete reluctance to work with the Plaintiffs and to properly consider the Rezoning Application.

46. As to the last criterion under the Township Ordinance, which involves a showing of either inutility or a substantial and meaningful benefit to the municipality, Mr. Hughes testified that the property is zoned into inutility due to the growing vacancies that have been experienced on the Subject Property, and the demonstrated difficulty in re-leasing the Subject Property despite Plaintiffs efforts to obtain and retain tenants.

47. In short, the existing C-3 zone on the property does not encourage the most appropriate use of the Subject Property, while Plaintiffs' proposed use would be the most

appropriate use of the Property. In fact, the Planning Board's expert broker acknowledged the difficulties faced by Plaintiffs in connection with the outdated building on the Subject Property. Indeed, the Planning Board's expert broker highlighted the poor access to the Subject Property for the zoned uses, the inadequacy of the ceiling height of the currently standing building, and the fact that there are not many large users in the current market to occupy such a large space.

48. Testimony was also provided highlighting the fact that the proposed redevelopment would further the purposes of the MLUL by encouraging municipal actions to guide the appropriate use of all lands in the State in a manner that will further the public health, safety, morals and general welfare. See N.J.S.A. 40:55D-2. The inclusion of both market-rate housing and affordable housing will benefit the general welfare of the community by providing more diverse options for housing for a larger segment of the community. Such housing is needed in the Township, as demonstrated by the lack of affordable housing currently existing in the Township.

49. Among other things, the Planning Board disregarded or improperly gave little weight to the fact that Plaintiffs provided sufficient evidence, supported by expert's reports and testimony, that meets the requirements set forth under the Township Ordinance; thereby entitling Plaintiffs to the rezoning of the Subject Property.

50. Further, Plaintiffs' experts also made a showing that the proposed use of the Hartz property is no more intense than the historic uses currently permitted in a C-3 zone, which include intensive industrial and commercial uses. In fact, as indicated in the traffic report prepared by Langan Engineering, the total peak time volume of traffic generated by Hartz's

proposed development will be closely comparable to that generated under the current zoning of the property. This conclusion went unchallenged by the Planning Board's traffic consultant.

51. Plaintiffs provided more than ample support for the rezoning of the Subject Property. Nevertheless, instead of approving the Rezoning Application, or approving the same with reasonable modifications, the Planning Board completely denied Plaintiffs' request for the rezoning of the Subject Property in contravention of the ample evidence presented by Plaintiffs in support of the Rezoning Application.

52. Through its Resolution, the Planning Board acted in an arbitrary, capricious and unreasonable manner when it recommended against the granting of Plaintiffs' Rezoning Application, as the Rezoning Application was fully consistent with the standards and criteria set forth in the above-referenced Township Ordinance, as well as the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1, et seq.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring the Resolution of the Planning Board, recommending the denial of Plaintiffs' Rezoning Application, to be arbitrary, capricious and unreasonable; and therefore invalid and void;
- b. Declaring the Township Committee's decision to deny the Plaintiffs' Rezoning Application to be invalid inasmuch as the Township Committee based its determination on the invalid recommendations of the Planning Board;
- c. Declaring Plaintiffs' Rezoning Application approved;

- d. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit;
and
- e. Awarding such further relief as the Court deems just and proper.

SECOND COUNT

Arbitrary and Capricious Action by the Township Committee

53. The allegations set forth above are repeated as if fully set forth at length herein.

54. On September 10, 2019, the Township Committee held a public meeting during which it voted on several resolutions as part of a "consent agenda", one of which was a resolution addressing Plaintiffs' Rezoning Application.

55. During said Township Committee meeting, no member of the public, attorney, or member of the Township Committee provided any statements or comments in support of the Planning Board's Resolution, which recommends the denial of Hartz's Rezoning Application.

56. Nonetheless, comments were made by a representative of Plaintiffs requesting that the Township Committee reject the Planning Board Resolution recommending against approval of Plaintiffs' Rezoning Application.

57. At said meeting, the Township Committee completely disregarded the voluminous record made before the Planning Board, completely failed to even discuss the merits of the Rezoning Application, and adopted a Resolution endorsing the Planning Board Resolution recommending denial of Plaintiffs' Rezoning Application.

58. The Township Committee did not make any independent evaluations or undertake even minimal analysis of the Planning Board's recommendation as to Plaintiffs' Rezoning Application, but simply adopted the flawed recommendation set forth in the Planning Board Resolution, and the Township Committee then moved on with other business.

59. The aforementioned action by the Township Committee was arbitrary, capricious, unreasonable and unlawful, as the Township Committee simply endorsed the recommendation in the Planning Board's invalid Resolution without evaluation or comment.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring the Resolution of the Planning Board, recommending the denial of Plaintiffs' Rezoning Application, to be arbitrary, capricious and unreasonable; and therefore invalid and void;
- b. Declaring the Township Committee's decision to deny the Plaintiffs' Rezoning Application to be invalid, as the Township Committee based its determination on the invalid recommendations of the Planning Board;
- c. Declaring Plaintiffs' Rezoning Application approved;
- d. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit; and
- e. Awarding such further relief as the Court deems just and proper.

THIRD COUNT

Violation of the Federal Fair Housing Act, 42 U.S.C. § 3601 -19

(Intentional Disparate Treatment)

60. The allegations set forth above are repeated as if fully set forth at length herein.

61. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631 ("FHA") was enacted to provide for fair housing opportunities throughout the United States. 42 U.S.C. §3601.

62. Under the FHA, it is unlawful to "... make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national origin." 42 U.S.C. § 3604(a).

63. The Township is a municipality that has actively fostered the creation of employment through its zoning during the period 1980 to the present. Even though the population remained stable, the number of jobs in the Township increased by approximately 40 percent between 1990 and 2006. Cranford has a very high ratio of jobs to housing as compared to Union County or other nearby counties. By contrast, no low and moderate housing available to families - i.e., not restricted to the elderly or the handicapped - was created in the Township during the aforementioned period.

64. More recently, the Township violated a court-ordered judgment, which requires the Township to construct 54 affordable housing units on property once owned by Cranford Development Associates LLC ("CDA"). The court-ordered judgment resulted from a builder's remedy lawsuit in a case captioned Cranford Development Associates, LLC, et al. v. Township of Cranford, et al., Docket No.: UNN-L-3759-08, that was filed against the Township by CDA. In December of 2011 the court granted CDA relief by way of a builder's remedy, authorizing the

development of 360 market rate units on the CDA property, which would include a 54 unit set aside that would be made affordable to low and moderate income individuals within the Township. Nevertheless, after the Appellate Division affirmed the builder's remedy order, see Cranford Development Associates., LLC v. Twp. of Cranford, 445 N.J. Super. 220. (App. Div. 2016), certif. denied 227 N.J. 237 (2016), the Township purchased the CDA property for the sole purpose of reducing the size of the court-approved development, thereby decreasing the amount of affordable units available to families constructed on the site. In addition, instead of meeting the 20-unit shortfall with the construction of actual affordable units on a different site within the Township, the Township instead seeks to replace the 20 unit shortfall with rental bonus credits (i.e. "paper units").

65. Also, the Township has grossly understated the viable density on the Subject Property.

66. The Township has now denied Plaintiffs' Rezoning Application altogether, even though it proposes the construction of affordable housing units that would be available for families.

67. Defendants' actions, as stated herein, make unavailable or deny dwellings affordable to low and moderate income individuals in violation of Section 3604(a) of the FHA, as the actions of Defendants demonstrate intentional discrimination based on race, color, and familial status.

68. The actions of Defendants, as stated herein, therefore amount to unlawful discriminatory housing practices under 42 U.S.C. § 3602.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants, as aforesaid, violated rights secured under the federal Fair Housing Act;
- b. Declaring Plaintiffs' Rezoning Application approved;
- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit; and
- d. Awarding such further relief as the Court deems just and proper.

FOURTH COUNT

Violation of the Federal Fair Housing Act, 42 U.S.C. § 3601 - 19

(Discriminatory Effect)

69. The allegations set forth above are repeated as if fully set forth at length herein.

70. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631 ("FHA") was enacted to provide for fair housing opportunities throughout the United States. 42 U.S.C. §3601.

71. Under the FHA, it is unlawful to "... make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national origin." 42 U.S.C. § 3604(a).

72. Defendants' actions, as stated herein, make unavailable or deny dwellings affordable to low and moderate income individuals in violation of Section 3604(a) of the FHA in that the actions of Defendants result in discriminatory effects including the disparate treatment of

low income individuals and families based on their race, color, or familial status, and/or by perpetuating unlawful racial and ethnic segregation within the Township.

73. The actions of Defendants, as stated herein, therefore amount to unlawful discriminatory housing practices under 42 U.S.C. § 3602.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants, as aforesaid, violated rights secured under the Fair Housing Act;
- b. Declaring Plaintiffs' Rezoning Application approved;
- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit; and
- d. Awarding such further relief as the Court deems just and proper.

FIFTH COUNT

Violation of the Federal Civil Rights Act of 1983, 42 U.S.C. § 1983

74. The allegations set forth above are repeated as if fully set forth at length herein.

75. The Federal Civil Rights Act of 1983, 42 U.S.C. § 1983, et seq., (hereinafter "FCRA") provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

76. Pursuant to 42 U.S.C. § 1988, litigants establishing a violation of 42 U.S.C. § 1983 are entitled to an award of attorney's fees and costs of suit.

77. For the reasons aforesaid, by denying Plaintiffs' Rezoning Application and by not properly considering the expert testimony presented by Plaintiffs' witnesses in support of the Rezoning Application, the Defendants have violated the procedural and substantive due process rights of Plaintiffs to a fair consideration of its application in violation of 42 U.S.C. § 1983, et seq., entitling Plaintiffs to injunctive relief, damages, attorney's fees and costs of suit.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants violated rights secured under the Federal Civil Rights Act as aforesaid;
- b. Declaring Plaintiffs' Rezoning Application approved;
- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit;
and
- d. Awarding such further relief as the Court deems just and proper.

SIXTH COUNT

Violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c)

78. The allegations set forth above are repeated as if fully set forth at length herein.

79. The New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c) (hereinafter "NJCRA"), states that "[a]ny person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or law of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State . . . may bring a civil action for damages and for injunctive or other appropriate relief."

80. The NJCRA further provides: "In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection (c) of this section, the court may award the prevailing party reasonable attorney's fees and costs." N.J.S.A. 10:6-2(f).

81. For the reasons aforesaid, by denying Plaintiffs' Rezoning Application without the adequate consideration of the evidence presented by Plaintiffs' experts during the fourteen (14) public hearings held on the Application, Defendants have violated the due process and other constitutional rights of Plaintiffs to a fair consideration of its application in violation of Plaintiffs' rights as guaranteed by the New Jersey Constitution, as well as rights secured by Plaintiffs under the Township Ordinances and the MLUL, N.J.S.A. 40:55D- 1, et seq., entitling Plaintiffs to damages, attorney's fees and costs of suit.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants violated rights secured under the New Jersey Civil Rights Act as aforesaid;
- b. Declaring Plaintiffs' Rezoning Application approved;

- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit;
and
- d. Awarding such further relief as the Court deems just and proper.

SEVENTH COUNT

Violation of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.

82. The allegations set forth above are repeated as if fully set forth at length herein.

83. The New Jersey Law Against Discrimination (hereinafter "NJLAD") provides in relevant part that: "[a]ll persons shall have the opportunity to . . . obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right." See N.J.S.A. 10:5-4.

84. In addition, the NJLAD provides legal remedies "to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State[.]" including compensatory and punitive damages. See N.J.S.A. 10:5-3.

85. Plaintiffs have derivative standing to assert claims of those negatively affected by the challenged actions of Defendants.

86. For the reasons aforesaid, Defendants have unlawfully denied accommodations to, and discriminated against, the potential occupants of the housing proposed by Plaintiffs on the basis of race, color, marital status, and familial status, constituting a violation of the NJLAD.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants violated rights secured under the New Jersey Law Against Discrimination as aforesaid;
- b. Declaring Plaintiffs' Rezoning Application approved;
- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit;
and
- d. Awarding such further relief as the Court deems just and proper.

EIGHTH COUNT

Inverse Condemnation

87. The allegations set forth above are repeated as if fully set forth at length herein.

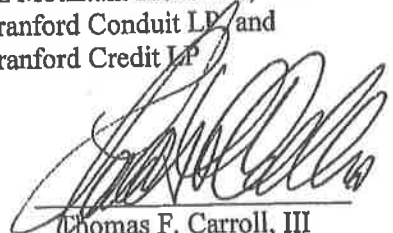
88. Defendants' denial of Plaintiffs' Rezoning Application results in the Subject Property being regulated into a state of inutility, as there is no appreciable market for the uses that are permitted by the currently applicable zoning, and the denial of Plaintiffs' Rezoning Application therefore constitutes a taking of private property without payment of just compensation, and inverse condemnation, in violation of both the United States Constitution and the New Jersey Constitution.

89. The Defendants' denial of Plaintiffs' Rezoning Application will continue to cause Plaintiffs such economic harm, unless restrained or just compensation is paid to Plaintiffs.

WHEREFORE, Plaintiffs seek entry of judgment as follows:

- a. Declaring that the actions of the Defendants violated rights secured under the United States Constitution and the New Jersey Constitution;
- b. Declaring Plaintiffs' Rezoning Application approved or, in the alternative, ordering Defendants to pay just compensation to the Plaintiffs;
- c. Awarding Plaintiffs reasonable damages, attorney's fees and costs of suit; and
- d. Awarding such further relief as the Court deems just and proper.

HILL WALLACK LLP
Attorneys for Plaintiffs,
Hartz Mountain Industries, Inc.
H-Cranford Conduit LP and
H-Cranford Credit LP

By: 

Thomas F. Carroll, III

Dated: 

R. 4:5-1(b)(2) CERTIFICATION

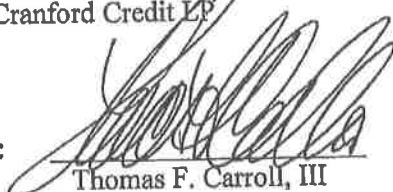
I certify that the matter in controversy is not the subject of any other action pending in any court or any pending arbitration proceeding, and that no such action or arbitration proceeding is contemplated. It should nevertheless be noted that there is a pending declaratory

judgment action concerning Mount Laurel compliance, captioned In the Matter of the Township of Cranford, County of Union; Docket No.: UNN-L-3976-18. I further certify that there are no further parties to be joined except as provided herein, subject to amendment upon discovery if necessary.

I further certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

HILL WALLACK LLP
Attorneys for Plaintiffs,
Hartz Mountain Industries, Inc.
H-Cranford Conduit LP, and
H-Cranford Credit LP

By:


Thomas F. Carroll, III

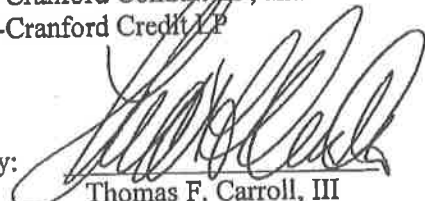
Dated: 10/24/19

R. 1:4-8(a) CERTIFICATION

I am the attorney for the plaintiff and hereby certify that the Complaint and all documents annexed thereto comport with the requirements of Rule 1:4-8(a).

HILL WALLACK LLP
Attorneys for Plaintiffs,
Hartz Mountain Industries, Inc.
H-Cranford Conduit LP, and
H-Cranford Credit LP

By:


Thomas F. Carroll, III

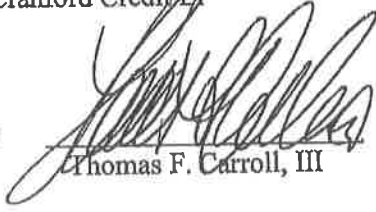
Dated: 10/24/19

R. 1:38-7(b) CERTIFICATION

I hereby certify that any confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)

HILL WALLACK LLP
Attorneys for Plaintiffs,
Hartz Mountain Industries, Inc.
H-Cranford Conduit LP, and
H-Cranford Credit LP

By:


Thomas F. Carroll, III

Dated:

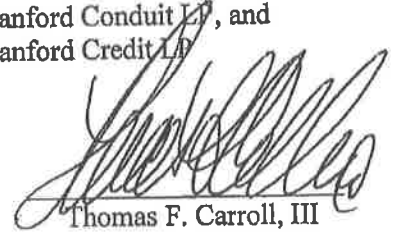


R. 4:69-4 CERTIFICATION

I hereby certify that transcripts of the Planning Board and Township Committee meetings held in connection with the subject Rezoning Application have been obtained and are in the possession of counsel.

HILL WALLACK LLP
Attorneys for Plaintiffs,
Hartz Mountain Industries, Inc.
H-Cranford Conduit LP, and
H-Cranford Credit LP

By:


Thomas F. Carroll, III

Dated:



EXHIBIT A

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

CRANFORD TOWNSHIP PLANNING BOARD

**HARTZ MOUNTAIN INDUSTRIES, INC.
BLOCK 541 LOT 2
750 WALNUT AVENUE**

APPLICATION NO. PBA 17- 00004

**RESOLUTION MEMORIALIZING PLANNING BOARD ACTION TO NOT
RECOMMEND REZONING THE APPLICANT'S PROPERTY LOCATED IN C-3
ZONE UNDER SECTION 136-ET SEQ., TO INCLUDE INCLUSIONARY MULTI-
FAMILY RESIDENTIAL DEVELOPMENT**

WHEREAS, H-Cranford Credit Limited Partnership is the owner of the property located at 750 Walnut Avenue in the Township of Cranford the same designated on the Tax Map of the Township of Cranford as Block 541, Lot 1 (the "Property" or the "Site"), which; and

WHEREAS, Hartz Mountain Industries, Inc., ("The Applicant") an affiliate of H-Cranford Credit Limited Partnership owning 99% of H-Cranford Credit Limited Partnership is itself owned by Hartz Mountain Industries – NJ LLC, which is owned by The Hartz Group Inc., which is owned by the Leonard H. Stern Trust, by way of application before the Planning Board of the Township of Cranford requested a recommendation to re-zone the Property to eliminate the current office and warehouse use in favor of inclusionary multi-family residential use ("Proposed Rezoning"); and

WHEREAS, the Board has subject matter jurisdiction over the Application for the Proposed Rezoning by virtue of the Cranford Township Land Development Ordinance, Article VIII (the "Application for Rezoning") Section 136-59 et seq., (See Great Atlantic v. Point Pleasant, 137 N.J. 136, 148-149 (1994) citing with approval Messer v. Burlington Twp., 172 N.J. Super. 479, 484-485 (Law Div. 1980); and

WHEREAS, the Property is in the Commercial-3 zoning district (the "C-3 Zone"), and upon which is located seven units (hereinafter "The Buildings") all principally permitted; and

WHEREAS, the Property, located in the C-3 zone, currently consists of commercial office and warehouse buildings comprised of seven units: Unit 1 being 28,554 sf, Unit 2 being 75,638 sf, Unit 3 being 141,519 sf, Unit 4 being 31,017 sf, Unit 5 being 81,563 sf, Unit 6 being 40,088 sf and Unit 7 being 21,770 sf all being principally permitted; and

WHEREAS, numerous documents and exhibits in this matter were submitted that are part of the record as follows:

1. Application for Rezoning dated March 27, 2017, under cover;

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

2. Ownership disclosure, revised January 31, 2019;
3. Checklist compliance under Sections 136-60 and 136-13A.4;
4. Proof of Service under N.J.S.A. 40:55D-12;
5. Site specific engineering plans entitled "Zoning Plans for Hartz Mountain Industries, Inc., Proposed Residential Redevelopment Plan, prepared by Jeffery A. Martell, PE, Stonefield engineering & design, 92 Park Avenue, Rutherford, NJ for Block 541 Lot 1, Township of Cranford, Union County, New Jersey, dated March 21, 2017, and revised November 23, 2018, consisting of 23 sheets (the "Engineering Plan") as follows:

- a. Sheet 1 of 23 entitled "Cover Sheet" (C-1);
- b. Sheet 2 of 23 entitled "Overall Site Plan-Phase 1 (C-2);
- c. Sheet 3 of 23 entitled "Overall Site Plan-Phase 2" (C-3);
- d. Sheet 4 of 23 entitled "Subdivision Exhibit" (C-4);
- e. Sheet 5 of 23 entitled "Existing Conditions" (C-5)
- f. Sheet 6 of 23 entitled "Site Plan-Phase 1" (C-6);
- g. Sheet 7 of 23 entitled "Site Plan-Phase 2" (C-7);
- h. Sheet 8 of 23 entitled "Grading & Drainage Plan-Phase 1" (C-8);
- i. Sheet 9 of 23 entitled "Grading & Drainage Plan-Phase 2" (C-9);
- j. Sheet 10 of 23 entitled "Utility Plan-Phase 1" (C-10);
- k. Sheet 11 of 23 entitled "Utility Plan-Phase 2" (C-11)
- l. Sheet 12 of 23 entitled "Lighting Plan-Phase 1" (C-12);
- m. Sheet 13 of 23 entitled "Lighting Plan-Phase 2" (C-13);
- n. Sheet 14 of 23 entitled "Soil Erosion & Sediment Control Plan-Phase 1" (C-14);
- o. Sheet 15 of 23 entitled "Soil Erosion & Sediment Control Plan-Phase 2" (C-15);
- p. Sheet 16 of 23 entitled "Overall Landscaping Plan-Phase 1" (C-16);
- q. Sheet 17 of 23 entitled "Overall Landscaping Plan-Phase 2" (C-17);
- r. Sheet 18 of 23 entitled "Tree Replacement Plan" (C-18);
- s. Sheet 19 of 23 entitled "Sanitary Profiles" (C-19)
- t. Sheets 20, 21 of 23 entitled "Storm Profiles" (C-20, C-21);
- u. Sheet 22 of 23 entitled "Fire Truck Turning Plan" (C-22);
- v. Sheet 23 of 23 entitled "Delivery Truck Turning Plan" (C-23).

6. Architectural plan set by Minno & Wasko, AIA dated March 2017, and Building Section Diagrams dated November 27, 2018;
7. Traffic Impact Study by Langan Engineering and Environmental Services, Inc., dated March 20, 2017 and revised January 18, 2019;
8. Statement of incompleteness from Zoning Officer dated April 27, 2017, from Mr. Ronald Johnson;
9. Correspondence dated May 18, 2017, from Ruthanne Della Serra, Board administrator;
10. Correspondence from counsel dated July 6, 2017, confirming consent to adjourn hearing date;
11. Correspondence dated January 31, 2019, to Kathy Lenahan, Board

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

Administrator, amending Ownership disclosure to state that the Applicant, Hartz Mountain Industries, Inc., is 99% owned by Hartz Mountain Industries – NJ, LLC and Hartz Martin Industries – NJ, LLC is wholly (100%) owned by The Hartz Group Inc., and The Hartz Group Inc., is wholly owned (100%) by the Lenard H. Stern Trust dated January 31, 2019;

12. Radius map prepared by Stonefield Engineering and Design LLC dated July 10, 2018, under cover dated July 19, 2018;

13. Correspondence from counsel dated September 4, 2018, regarding applicant's response to the use of Residential Site Improvement Standards for parking stall dimensions rather than local design standards;

14. Revised report from Phillips Preiss Grygiel Lenehy Hughes LLC including updated fiscal impact analysis dated October 2018, under cover dated November 2, 2018

15. Revised engineering plan set by Stonefield Engineering & Design via digital link from counsel under cover dated December 3, 2018;

16. First revised engineering plan set prepared by Stonefield Engineering and Design LLC entitled, "Zoning Plans for Hartz Mountain Industries, Inc. Proposed Residential Redevelopment Plan", dated May 24, 2018, (23 sheets), under cover dated August 30, 2018;

17. Second revised engineering plan set prepared by Stonefield Engineering and Design LLC entitled, "Zoning Plans for Hartz Mountain Industries, Inc. Proposed Residential Redevelopment Plan", dated November 27, 2018, (23 sheets) under cover dated November 28, 2018;

18. Stormwater Management Statement prepared by Stonefield Engineering and Design LLC dated November 28, 2018;

19. Environmental Impact Statement prepared by Stonefield Engineering and Design LLC dated November 28, 2018;

20. Supplemental traffic report prepared by Langan Engineering and Environmental Services, Inc., dated January 18, 2019;

21. Review of Applicant's initial traffic study from Maser Consulting dated May 15, 2018;

22. Review of Applicant's initial planer's report from Maser Consulting dated May 1, 2018;

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

23. Review of Applicant's engineering plan set by Township engineer dated May 10, 2018;
 24. Review response from Environmental Committee of the Township of Cranford dated June 28, 2017;
 25. Review response from Cranford Fire Department dated May 30, 2017;
 26. Review response from Cranford Township Health Department dated May 18, 2017;
 27. Review response from Cranford Township Historic Preservation Advisory Board report dated May 23, 2017;
 28. Correspondence from Applicant's traffic (TOE) expert, Langan Engineering and Environmental Services, Inc. to Ronald Johnson, Zoning Officer and the Board's traffic consultant, Maser Consulting dated September 5, 2018;
- Certain documents were specifically marked as hearing exhibits as follows:
- A1: Applicant's aerial photograph of the Property;
 - A2: Applicant's floor plan of existing Buildings;
 - A3: Applicant's proposed Phase 1 concept plan prepared by Minno & Wasko, Architects and Planners, 80 Lambert Lane, Suite 105, Lambertville, NJ 08530;
 - A4: Applicant's proposed Phase 2 concept plan prepared by Minno & Wasko, Architects and Planners, 80 Lambert Lane, Suite 105, Lambertville, NJ 08530;
 - A5: Illustrative rendering of proposed point of view perspective at street level prepared by Minno & Wasko, Architects and Planners, 80 Lambert Lane, Suite 105, Lambertville, NJ 08530;
 - A6: Stonefield Engineering and Design LLC, sheet C2 included in its plan set dated March 21, 2017;
 - A7: Stonefield Engineering and Design LLC, sheet C3, included in its plan set dated March 21, 2017;
 - A8: Stonefield Engineering and Design LLC, sheet C18, included in its plan set dated March 21, 2017;
 - A9: Stonefield Engineering and Design LLC, sheet C17, included in its plan set dated March 21, 2017

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

Reese-1: Applicant's marketing materials for the Property's current use;

Englebaugh-1: Proposed illustrative rendering of concept plan point of view perspective at street level prepared by Minno & Wasko, Architects and Planners, 80 Lambert Lane, Suite 105, Lambertville, NJ 08530;

Englebaugh-2: Illustrative building section diagram with firefighting aerial ladder apparatus located in fire lane abutting building section 1;

Martell 1-23: Stonefield Engineering and Design LLC revised plan set dated November 28, 2018, (23 sheets);

Brunette-1: Multi-page marketing materials;

Brunette-2: Additional marketing materials (LoopNet webpages);

School District-1: multi-slide presentation from report entitled "Potential Impact of the 750 Walnut Avenue Development on the Cranford public Schools" prepared by Township of Cranford Public School District;

School District-3: Report entitled "Potential Impact of the 750 Walnut Avenue Development on the Cranford Public Schools" by Ross Haber, Ph. D.;

School District-4: Report entitled "School-Age Children in Rental Units in New Jersey: Results from a Survey of Developers and Property Managers," Rutgers Center for Real Estate, June 30, 2018;

School District-5: Comprehensive Annual Financial Report for Fiscal Year July 1, 2017, through June 30, 2018, Cranford Township School District;

School District-6: Data Summary by Ross Haber, Ph.D.;

School District-7: Taxpayers' Guide to Education Spending -- 2018 from New Jersey, Department of Education;

Planning-1: Zone Map of the Township of Cranford labeled as, "Zoning Exhibit for the Township of Cranford";

Planning-2: Selected portions from Cranford Township's Master Plan;

Planning-3: Multi-slide presentation, collectively 15 pages, entitled "Fiscal Impacts Analysis 750 Walnut Avenue," by Raymond C. Liotta, LLP, LLA, AICP, Maser Consulting, P.A. dated April 2019;

The Board also received applicant's counsel's submission (19 pages) dated May

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

24, 2019;

The record also includes the decisional flow chart used by the Board during deliberations of June 5, 2019.

WHEREAS, the Board held 15 duly noticed public hearings to consider the Application on May 16th 2018, July 18th 2018, August 1st 2018, September 5th 2018, September 12th 2018, October 17th 2018, November 28th 2018, December 5th 2018, January 30th 2019, March 6th 2019, March 20th 2019, April 3rd 2019, May 5th 2019, May 15th 2019 and June 5th 2019; and

WHEREAS, the Applicant was represented by James Rhatican, Assistant General Counsel and Vice-President of Land Use and Development, Hartz Mountain Industries, Inc.;

WHEREAS, the Applicant provided testimony during the hearing from the following fact witness:

1. Charles Reese, Hartz Mountain Industries Inc., Vice-President, Sales and Leasing; and

WHEREAS, the Applicant provided testimony from the following expert witnesses:

1. Matthew McDonough, Managing Director, Transwestern, 300 Kimbal Drive, Parsippany, NJ 07054 on behalf of Applicant (expert opining upon commercial real estate market);
2. Bruce Englebaugh, AIA, Minno Wasko, Architects and Planners, 80 Lambert Lane, Lambertville, NJ 08530 on behalf of Applicant (expert prepared Illustrative Renderings);
3. Jeffrey M. Martell, P.E., Stonefield Engineering and Design, 92 Park Avenue, Rutherford, NJ 07070 on behalf of Applicant (expert prepared Applicant's Residential Redevelopment Plan Set);
4. Keenan Hughes, PP, Philips Press Grygeil Leheny Hughes, 33-41 Newark Street, Hoboken, NJ 07030;
5. William J. Sitar, Jr., Sr. Vice President, Sitar Realty, on behalf of Applicant (expert opining upon industrial real estate market); and
6. Karl Pehnke, P.E., P.T.O.E., Langan Engineering and Environmental Services, Inc. (expert opining upon traffic operations and traffic impact).

WHEREAS, the Board provided testimony from professionals as follows:

1. James Brunette, Brunette Commercial Realty, 502 Centennial Avenue, Cranford, NJ 07016 (expert opining upon commercial and industrial real estate market);
2. Raymond C. Liotta, PP, LLA, AICP, Maser Consulting, 331 Newman Springs Road, Suite 203, Red Bank, NJ 07701 (professional planner including fiscal impact);
3. S. Maurice Rached, PE, PTOE, Maser Consulting, 1000 Waterview Drive, Suite 201, Hamilton, NJ 08691 (traffic operations and impact engineering expert).

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

WHEREAS, the Board heard testimony presented by Cranford Public School District as follows:

1. Dr. Scott Rubin, Superintendent, Cranford School District, 132 Thomas Street, Cranford, NJ 07016 (fact and expert witness regarding current conditions within the Cranford School District and opining upon the district's specific capacity to accommodate anticipated increase in student population);

2. Ross Haber, Ph. D., Ross Haber Associates, 23 Garden Terrace, Milltown, NJ 98850 (expert witness opining upon projected increase to student population within the Cranford School District from proposed Project);

3. Robert Carfagno, CPA, RMA, PSA, Business Administrator, Cranford School District, 132 Thomas street, Cranford, NJ 07016 (fact and expert witness regarding current facilities, use, management, capacities, facilities expansion process and opining upon the ability of CSD to accommodate proposed increase in student population and budget impacts);

WHEREAS, the Applicant provided rebuttal testimony from Jeffrey Martell, P.E., and Keenan Hughes, LPP.

WHEREAS, 22 members of the public provided comments under oath objecting to the Applicant's proposed request for recommendation to rezone the Property to include 905 residential units in the current C-3 zone; no members of the public came forward to provide testimony in favor of the Applicant's proposed request for recommendation to rezone the Property; and

WHEREAS, THE BOARD UPON THE CONCLUSION OF ALL OF THE TESTIMONY PRESENTED ON BEHALF OF THE APPLICANT, THE BOARD, OBJECTORS AND PUBLIC AND CONSIDERING ALL OF THE DOCUMENTS AND EXHIBITS REFERENCED HEREINABOVE AND ALL OF THE TESTIMONY AND GIVING APPROPRIATE WEIGHT TO ALL OF THE SAME AND APPLYING ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING ITS ACTION TO VOTE TO DENY THE APPLICANT'S REQUEST UNDER ARTICLE VIII, SECTION 136-59 ET SEQ., OF THE OF THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF CRANFORD FOR RECOMMENDATION TO REZONE APPLICANT'S PROPERTY IN A WRITTEN RESOLUTION AS SET FORTH BELOW:

FACTUAL FINDINGS

1. The Property, Existing Zone and Current Uses.

1a. The Property located in the southern portion of Cranford Township, situated in the C-3 Zone as set forth above, is 30.5 acres in size.

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

2. The Property, which is a triangle shape, at its rear northwest portion borders a common carrier freight rail line, the eastern portion of the Property is bounded by Walnut Avenue, the southern and south eastern portions of the Property are bounded by Hyatt Hills Golf Course. Single family homes are located on the other side of the common freight rail lines. There is an existing berm, created by the Applicant, along a portion of the Property that bounds the Walnut Avenue frontage.

3. The Applicant purchased the Property in 1988. Prior uses for the property included manufacturing; however, no prior use included single family or multi-family residential units. The site is currently 65.5% impervious with two above ground storm water management basins that assist in managing stormwater runoff.

4. The Applicant completed certain improvements at the Site including the construction of an extension to an existing structure as well as an improvement to change a portion of the building (approximately 163,000sf) to provide for office use. The Applicant completed a subdivision to create seven commercial condominium units as follows:

a. Unit Number 1 is 28,554sf. This unit was formerly occupied by Trinitas Hospital. The tenancy expired under the terms of the lease in May 2017.

b. Unit Number 2 is 75,638sf. The Applicant improved this Unit to include office space for its tenant, Summit Bank. The improvements created office space that consisted of two floors of office use above open parking. Summit Bank's current successor in interest, Bank of America, leased approximately 248,174sf, which included Unit Number 2 which was constructed specifically for Bank of America. Bank of America vacated the Property, which has created a vacancy of 59%.

c. Unit Number 3 is 141,519sf. This Unit is now office space that was converted from a prior manufacturing use for the improvements made by Applicant on behalf of its then tenant, Summit Bank.

d. Unit Number 4 is 31,017sf. This Unit was used by Summit Bank and its current successor in interest, Bank of America, for storage. Unit Number 3 and Unit Number 4 were recreated from the former manufacturing use.

e. Unit Number 5 is 81,563sf. This Unit is occupied by LabCorp., under terms of a lease that expired, July 31, 2019.

f. Unit 6 is 40,088sf. This Unit is occupied by Jagro Customs, which uses the space for distribution and warehouse.
Ex. A-2)

g. Unit 7 is 21,770sf. This Unit is occupied by PSE&G as a call center. This tenant did not provide notice to continue its tenancy. The lease term for this tenant expires in calendar year

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

2019. The Applicant, by and through counsel, acknowledge that it did receive an inquiry from PSE&G to purchase 10 acres, which purportedly would be used by PSE&G for its transmission operations, a permitted use in the C3 Zone.

5. The subject property is located within Cranford's "Commercial - 3 District (C-3)." The Applicant's Property along with the Cranford Township's portion of the adjacent golf course (Block 541, Lot 1) are the only properties located within the C-3 zone. According to the 2009 Master Plan, the C-3 is "intended to provide for Class A office space in a campus-like setting." The Master Plan Land Use Map was shown in "Exhibit Planning 1," Radius map prepared by Stonefield Engineering and Design LLC dated July 10, 2018, under cover dated July 19, 2018 and received July 20, 2018.

The C-3 Zone is a commercial zone that includes the following principally permitted uses:

1. Business, administrative, executive and professional offices
2. Health care facilities
3. Office-distribution centers
4. Research laboratories
5. Essential services
6. Golf courses

The key bulk standards for the C-3 Zone applicable to the development of the property are as follows:

1. Min. lot area - 20 acres;
2. FAR- 0.6;
3. Total lot coverage - 60%;
4. Building coverage - 25%;
5. Max. building height - 3 stories/45 feet

The current C-3 zoning is planned for office, research and low-intensity distribution uses. It is the only commercial property in the Township subject to the C-3 zone standards.

6. All the Applicant's tenants utilized their leaseholds for principally permitted uses as either warehouse, office and storage which is a permitted accessory use to those permitted principal uses. The Property currently contains 1154 off-street parking spaces. Currently access to the site is provided via 2; two-way, access driveways from Walnut Avenue (CR 632).

7. The Proposed Request to Re-Zone the Property:

The Applicant seeks a recommendation to rezone the Property as described above to include 905 multi-family rental units in two phases. The Applicant's proposed approach includes initial development of a portion of the Property (Phase 1) as a planned unit development (PUD). The PUD would include development of the front portion of the

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

Property that is bounded at its easterly boundary along Walnut Avenue. The Applicant proposes that during Phase 1, the rear portion of the property would remain unchanged and retain its current permitted uses. The second and final phase of development (Phase 2) would include a planned unit residential development (PURD). More specifically, Phase 1 of the project would utilize the proposed PUD option to demolish a portion of the existing building at the site and subdivide the existing property into two (2) separate lots. New Lot A would consist of approximately 15.5 acres and would front on Walnut Avenue (CR 632) whereas New Lot B would consist of approximately 15.0 acres and would front on both Walnut Avenue (CR 632) and the Consolidated Rail Corporation right-of-way (ROW). New Lot A would be developed with two (2) 5-story buildings consisting of a total of 433 apartments, a covered parking area, a structured parking garage and a community clubhouse. Parking would be provided for a total of 858 total vehicle spaces on New Lot A with access to be provided to the site via an unsignalized two-way, right-in/right-out access drive from Walnut Avenue (CR 632), a signalized two-way access drive from Walnut Avenue (CR 632) and additional two-way access drives to the parking facilities on New Lot B.

8. New Lot B would be 15.0 acres and it would be occupied by the remaining 199,582sf of the existing industrial/office building to remain at the site. Parking would be provided for a total of 909 vehicle spaces on New Lot B with access to be provided to the site via a two-way access drive from Walnut Avenue (CR 632) and four (4) two-way access drives to the parking facilities on New Lot A. The existing stormwater management system at the site would be reconfigured and the existing and proposed buildings will be serviced by modification of the existing on-site sanitary sewer system and extensions of the various utilities on Walnut Avenue (CR 632). Phase 2 of the project would utilize the proposed PURD option to demolish the remainder of the existing building on New Lot B and construct three (3) additional 5 story buildings consisting of a total of 472 additional apartments, covered parking areas and a structured parking garage and an additional community clubhouse. Parking would be provided for a total of 915 vehicles on New Lot B, resulting in a total of 1,773 parking spaces at the site upon completion of Phase 2 of the project. Phase 2 would also include the expansion of the stormwater management system, sanitary sewer system and all other utilities to service the proposed development on New Lot B.

9. The Applicant proposes a density of 30 residential units per acre for a total of 905 residential units of which 766 will be market rate and 139 are proposed to be designated as affordable units. The units designated as market rate to be included in the proposed Phase 1 would include 198 one-bedroom units; 12 one-bedroom units with a den; and, 155 two-bedroom units for a total of 365 market rate residential units. The units designated as affordable would be allocated so that the Phase 1 development would include 14 one-bedroom units; 40 two-bedroom units; and 14 three-bedroom units for a total of 68 units designated as and for affordable residential units. The units designated as affordable to be included in the proposed Phase 2 development would include 14 one-bedroom units, 42 two-bedroom units and 15 three-bedroom units for a total of 71 units designated as and for affordable residential units. The units designated as market rate to be included in the proposed Phase 2 would include 154 one-bedroom units, 16 one-bedroom units with a den,

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

and 231 two-bedroom units for a total of 401 market rate units. The proposed request to rezone the Property would include a bulk height standard to permit 5 story building construction at a height of 67 feet.

10. The Applicant proposes that access to the Property would be provided by three driveway connections all of which would be located along the westerly portion of Walnut Avenue. The Applicant proposes that driveways 1 and 2 as identified on Applicant's "Propose Residential Redevelopment Plan" at C-2 would be full-movement intersections with side street approaches at drive 1 under a stop-control. The Applicant's request to rezone the property includes a signalized approach for driveway 2, which is proposed to be centrally located. The remaining driveway 3, is the most southernly proposed driveway and it would be limited as a right-in and right-out only intersection. This driveway approach would be controlled by a stop sign. The two existing driveways along Walnut Avenue would be eliminated under the plan for rezoning the Property proposed by the Applicant.

11. The existing structures now located at the Property would be demolished in order to allow for the Applicant to construct the proposed residential units as required by the Applicant's proposed development schedule. Thus, at the completion of the development, the same multi-family use would exist throughout the Property.

12. The Applicant included a proposed zone ordinance that would rezone the current C-3 Zone as follows:

Proposed C-3/Planned Unit Development Zone.

A. Principal Permitted Uses

1. Planned unit development
2. Planned unit residential development
3. Business, administrative, executive and professional offices
4. Essential services
5. Golf courses
6. Health care facilities
7. Office distribution centers
8. Research laboratories

Accessory Uses

1. Customary accessory uses
2. Parking facilities serving a permitted principal use on the same lot

B. Planned Unit Development (PUD) Regulations

1. Area. The land area required for a planned unit development shall be a minimum of 30 acres.
2. A planned unit development shall consist of the following components:

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

- a. A residential district with no more than 1,750 feet of frontage along Walnut Avenue and consisting of no more than 52% of the overall tract
 - b. An office-industrial district with at least 450 feet but not more than 550 feet of frontage along Walnut Avenue and consisting of no less than 48% of the overall tract.
- 3. Permitted principal uses
 - a. Residential district
 - i. Multifamily dwellings
 - b. Office-industrial district
 - i. Office distribution centers, business, administrative, executive and professional offices
- 4. Development yield
 - a. Residential district. Notwithstanding any other provisions contained herein, the total number of multifamily dwelling units shall not exceed a density of 30 units per acre based on the gross area of the Residential district tract. A minimum of 15% of the total dwelling units shall be set aside as affordable to low- and moderate-income households.
 - b. Office-industrial district. Notwithstanding any other provisions contained herein, the total floor area of office-industrial uses shall not exceed 200,000 square feet.
- 5. Permitted accessory uses
 - a. Residential district
 - i. Off-street parking and loading facilities
 - ii. Swimming pools
 - iii. Clubhouses
 - iv. Recreational and other amenities customarily incidental to a multifamily residential development
 - v. Streets and driveways
 - vi. Any other use which is subordinate and customarily incidental to a multifamily residential development
 - b. Office-industrial district
 - i. Off-street parking and loading facilities
 - ii. Any other use which is subordinate and customarily incidental to an office distribution center
- 6. PUD development standards
 - a. Floor area ratio (FAR)
 - iii. Residential district: 0.9. FAR shall be calculated as the ratio of the gross floor area of all buildings within the residential district to the total area of the residential district.
 - iv. Office-industrial district: FAR: 0.4. FAR shall be calculated as the ratio of the gross floor area of all buildings within the office-industrial district to the total area of the office-industrial district.
 - b. Maximum building height
 - v. Residential district: five stories/67 feet
 - vi. Office-industrial district: three stories/45 feet
 - c. Maximum impervious coverage:

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

- i. Residential district: 55%
 - ii. Office-industrial district: 70%
- d. Minimum building setbacks:
 - i. Residential district
 - 1. To Walnut Avenue: 50 feet
 - 2. To the Office-industrial district: 40 feet
 - 3. To NJ Transit railroad ROW: 150 feet
 - 4. To Block 541, Lot 1: 50 feet
 - ii. Office-industrial district
 - 1. To Walnut Avenue: 475 feet
 - 2. To Residential district: 40 feet
 - 3. To NJ Transit railroad ROW: 50 feet
 - 4. To Block 541, Lot 1: 90 feet
- e. A swimming pool and clubhouse shall be included in the residential district.
- f. A minimum of 10,000 square feet of outdoor amenity space (not including the swimming pool and clubhouse) shall be provided. Such space may consist of communal roof deck spaces integrated within the residential buildings.
- g. Any planned unit development shall conform to the buffering and landscaping standards for the C-3 zone set forth in §136-22.0(3).
- h. The design of any structured parking facility shall conform to the design standards set forth in §136-23.7.14
- i. Off-street parking
 - i. Residential district: parking shall be provided in accordance with the Residential Site Improvement Standards, as follows:
 - 1. 1 Bedroom: 1.8 spaces per unit
 - 2. 2 Bedroom: 2 spaces per unit
 - 3. 3 Bedroom: 2.1 spaces per unit
 - ii. Office-industrial district: parking shall be provided in accordance with §136-39.
- j. Signs
 - i. One freestanding monument sign shall be permitted at each driveway entrance to the property.
 - 1. The maximum height of each sign shall not exceed 5 feet above finished grade.
 - 2. The maximum area of the sign shall not exceed 30 square feet on each side.
 - 3. The minimum distance to the Walnut Avenue right-of-way shall be 10 feet.
 - 4. The base of the sign shall be appropriately landscaped.
 - 5. Each monument sign shall be externally illuminated.
 - ii. Directional and site identification signage shall be permitted except within 50 feet of the Walnut Avenue right-of-way.
- k. Traffic and circulation
 - i. Access to the property shall be provided from three separate driveways
 - 1. A right-in/right-out driveway aligned with Mitchell Place.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

2. A full-movement driveway aligned with Behnert Place.
 3. A full-movement driveway aligned with Lexington Avenue.
 - ii. Shared access to both districts is permitted at each driveway, except that all truck traffic associated with the Office-industrial district shall be restricted to the driveway aligned with Lexington Avenue.
 - iii. If warranted, a signalized intersection shall be created at the driveway aligned with Behnert Place.
 - iv. To enable the intersection to function at an acceptable level of service, the northbound approach of Walnut Avenue shall include a left- turn lane and one shared thru/right-turn lane.
 - v. A Traffic Reduction Plan shall be provided in compliance with the requirements of §136-53.
7. Findings for Planned Unit Development. Prior to approval of any planned unit development, the Planning Board shall make findings in accordance with N.J.S.A. 40:55D-45.

C. Development Standards for Planned Unit Residential Developments

1. Area. The land area required for a planned unit residential development shall be a minimum of 30 acres.
2. A planned unit residential development shall include a multifamily residential community consisting of multiple residential buildings, recreational facilities, including swimming pools and fitness centers, amenity spaces, including lounges, clubrooms and outdoor gathering spaces, and off-street parking facilities.
3. Permitted principal uses
 - a. Multifamily dwellings
4. Development yield. Notwithstanding any other provisions contained herein, the total number of multifamily dwelling units shall not exceed a density of 30 units per acre based on the gross area of the entire PURD tract. A minimum of 15% of the total dwelling units shall be set aside as affordable to low- and moderate-income households in accordance.
5. Permitted accessory uses
 - i. Off-street parking and loading facilities
 - j. Swimming pools
 - k. Clubhouses
 - l. Recreational and other amenities customarily incidental to a multifamily residential development
 - m. Streets and driveways
 - n. Any other use which is subordinate and customarily incidental to a multifamily residential development
6. Planned unit residential development standards
 - a. FAR. 1.0. FAR shall be calculated as the ratio of the gross floor area of all buildings within the planned unit residential development to the total area of the tract.
 - b. Maximum building height: five stories/67 feet

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

- c. Maximum impervious coverage: 60%
- d. Minimum building setbacks:
 - i) to Walnut Avenue: 50 feet;
 - ii) to NJ Transit railroad ROW: 45 feet
 - iii) to Block 541, Lot 1: 45 feet
- e. Two swimming pools and two clubhouses shall be integrated in the community.
- f. A minimum of 30,000 square feet of outdoor amenity space (not including the swimming pool and clubhouse) shall be provided. Such space may consist of communal roof deck spaces integrated within the residential buildings.
- g. The planned unit residential development shall conform to the buffering and landscaping standards for the C-3 zone set forth in §136-22.0(3).
- h. The design of any structured parking facility shall conform to the design standards set forth in §136-23.7.14
- i. Off-street parking:
 - i. Parking shall be provided in accordance with the Residential Site Improvement Standards, as follows:
 - 1. 1 Bedroom: 1.8 spaces per unit
 - 2. 2 Bedroom: 2 spaces per unit
 - 3. 3 Bedroom: 2.1 spaces per unit
 - ii. At least 1 parking space per unit shall be included within each multifamily building. The balance of parking spaces may be provided in surface parking lots.
- j. Signs
 - i. One freestanding monument sign shall be permitted at each driveway entrance to the property.
 - 1. The maximum height of each sign shall not exceed 5 feet above finished grade.
 - 2. The maximum area of the sign shall not exceed 30 square feet on each side.
 - 3. The minimum distance to the Walnut Avenue right-of-way shall be 10 feet.
 - 4. The base of the sign shall be appropriately landscaped.
 - 5. Each monument sign shall be externally illuminated.
 - ii. Directional and site identification signage shall be permitted except within 50 feet of the Walnut Avenue right-of-way.
- k. Traffic and circulation
 - i. Access to the property shall be provided from three separate driveways
 - 1. A right-in/right-out driveway aligned with Mitchell Place.
 - 2. A full-movement driveway aligned with Behnert Place.
 - 3. A full-movement driveway aligned with Lexington Avenue.
 - ii. If warranted, a signalized intersection shall be created at the driveway aligned with Behnert Place.
 - iii. To enable the intersection to function at an acceptable level of service, the northbound approach of Walnut Avenue shall include a left-turn lane and one shared thru/right-turn lane.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

- iv. A Traffic Reduction Plan shall be provided in compliance with the requirements of §136-53.

7. Findings for Planned Unit Residential Development. Prior to approval of any planned unit residential development, the Planning Board shall make findings in accordance with N.J.S.A. 40:55D-45.

D. General Development Plan Option

a. An application for a planned unit development or planned unit residential development may be submitted pursuant to a general development plan in accordance with N.J.S.A. 55D-45.1. The application shall consist of the following plans and statements:

- i. A land use plan, indicating the tract area and general locations and approximate land areas to be devoted to the proposed land uses. The land use plan shall be prepared at a scale of not smaller than one-inch equals 50 feet. The total amount of floor area and floor area ratio (FAR) for the entire planned development shall be specified, including the total amount of floor area and FAR for each type of use to be developed in the planned development.

- ii. A traffic circulation plan indicating the location of all internal roadway parking and loading areas and the locations of ingress and egress, as well as all planned improvements to local and county streets, roads and intersections. A traffic impact analysis shall also be submitted. The traffic impact analysis shall indicate the impact of the proposed development on the surrounding road network. The traffic report shall specify sufficient intersection improvements which may be provided by the applicant or the county to mitigate any adverse impacts identified in this traffic report and ensure that each intersection functions at an acceptable level of service in accordance with the standards for intersection operation accepted by the Institute of Traffic Engineers (ITE). The plan shall indicate how the overall collector and arterial road network relates to the overall design of the planned development and the county and municipal road network. The traffic circulation plan shall conform to the plan adopted by Cranford Township in connection with any off-tract improvements.

- iii. A drainage and stormwater management plan, indicating the general size and location of on-site and off-site drainage areas and the direction of runoff flow, the approximate size of major existing conduits and pipes, existing watercourses and floodplains and the existing and proposed methods of controlling and draining surface water on and from the site. The drainage plan shall be in accordance with the provisions of Article VI, Stormwater Control; Flood Damage Prevention, of this chapter.

- iv. An open space and buffering plan, indicating the approximate major land areas to be open space and buffer areas, a description of the intended improvements within said areas and the allocation of responsibility for maintenance of the open space and buffers. This plan shall be prepared in accordance with the buffering and landscape guidelines specified in § 136-22D of this chapter.

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

v. A fiscal report describing the anticipated demands on municipal services to be generated by the planned development and any other financial impacts to be faced by the municipality as a result of the completion of the planned development. The fiscal report shall also include a detailed projection of property tax revenues which will accrue to the county, municipality and school district according to the time schedule for development of the planned development and following the completion of the planned development in its entirety.

vi. A housing plan outlining the number of housing units to be provided and the extent to which any housing obligation assigned to the municipality will be fulfilled by the development.

vii. In the case of a planned development whose construction is contemplated over a period of years, the general development plan shall include a proposed timing schedule, including any terms or conditions which are intended to protect the interest of the public and the occupants of any section or phase of the planned development prior to the completion of the development in its entirety.

b. Effect of general development plan approval.

i. The term of effect of the general development plan approval shall be determined by the Planning Board, except that the term of the effect of the approval shall not exceed 20 years from the date upon which the developer receives final approval of the first section or phase of the planned development.

ii. Approval of preliminary and final site plan and/or subdivision applications which may be submitted from time to time for portions of a planned development shall be granted upon proof of compliance with the approved general development plan and with the permitted uses, densities and development standards set forth in this chapter and, in the case of a planned development with an approved Traffic Reduction Plan, Article VIII, of this chapter as of the date of approval of the planned development option. Notwithstanding the above, the applicant may be required by the Planning Board to post any performance or maintenance guaranties and pay any inspection fees permitted by statute in accordance with N.J.S.A. 40:550-53 and required by ordinance.

c. Planned development approval revisions. Any revisions to the general development plan shall be in accordance with the provisions of the Municipal Land Use Law (N.J.S.A. 40:550-45.4 to 550-45.6).

13. Evaluation of the Request to Rezone

The Applicant as stated above is seeking a recommendation from the Board to rezone the Applicant's property to include multi-family residential units in the C-3 zone where such use is not principally or conditionally permitted. The Applicant has proposed the zone change together with design standards set forth above; however, requests to rezone are evaluated under Article

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

VIII of the Township's Land Development Ordinance, Section 136-59 et seq. The standards of review under §136-67 require each application for rezoning to comply with and address the following standards:

A. Necessity. No application for rezoning shall be granted if the relief sought could be granted through an application for development other than one pursuant to N.J.S.A. 40:55D-70d.

B. Master Plan. In submitting its recommendations, the Planning Board shall submit a report in accordance with N.J.S.A. 40:55D-26. The governing body shall comply with such section in acting on the application. If the proposed rezoning is inconsistent with the Master Plan, the Planning Board shall include in its recommendation whether it is in the best interest of the municipality to amend the Master Plan in accordance with the Municipal Land Use Law.

C. Modification. In making its recommendations, the Planning Board may recommend that the application for rezoning be granted, in whole or in part, or be modified. If the Planning Board recommends the granting of the application with modifications or conditions, the Planning Board shall set out such modifications or conditions in detail, including findings, conclusions and recommendations.

D. Effect of Current Zoning. The applicant shall demonstrate by proper proof that, absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility or that the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.

E. Municipal Services. In demonstrating that the proposed rezoning will substantially benefit the municipality and will advance the purposes of the Municipal Land Use Law, the applicant shall demonstrate that the proposed rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities. Where deemed appropriate by the Planning Board, the Board may require traffic studies, fiscal impact studies or such other information as it requires to be produced either by the applicant or for the Board at the applicant's expense.

14. Findings as to §136-67A "Necessity"

The Board's findings as to "Necessity" are as follows:

a. The Board finds that while the Applicant's property is a single lot; the size of the lot being 30.5 acres and the scope of the proposed plan to rezone the Property to include 905 residential multi-family units in a zone that currently does not permit such a use is significant and would if presented before the Zoning Board of Adjustment for relief under N.J.S.A. 40:55-70d(1) abrogate the power of the governing body to adopt zone plans. Accordingly, the Board finds that the Applicant's request for a recommendation to rezone the Property is by necessity properly before the Board under §136-67A.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Board finds that the Applicant under the facts and circumstances presented has made and proven a case for Necessity and thus satisfied the requirements under §136-67A. The Board finds that the Applicant's request to rezone is one that would not be appropriately venued before the Zoning Board of Adjustment for consideration under NJSA 40:55D-70d (1). The Applicant's property is 30.5 acres, which the Board finds to be significant. The Board finds that the proposed plan to include 905 residential units on the Property would be a significant development project. The Board finds that the Project as proposed would create a significant new residential density of 30 units per acre in an area that currently does not principally permit any residential uses, either single-family units or multi-family, or multi-level inclusionary units. The Board finds that the overall proposed increase in population of residents would also be significant. The Board finds that based upon the Applicant's information included in the reports of the Applicant's professional planner, there could be an increase of between 1,622 to 1,846 residents occupying the proposed new residential units, which would be over a 7% overall increase in the Township's residential population. The Board, even at the lower projected population increase, finds that such an increase in the Township's residential population would be significant. The Board finds that the proposed inclusion of 905 residential units in the C-3 zone that does not currently permit such use together with the proposed gross dwelling density that is well beyond the downtown corridor, where higher residential densities are encouraged and principally permitted; will likely have significant impact on the Township's zone plan. The Applicant's expert in the area of professional planning principles, Mr. Keenan Hughes, acknowledge that the current C-3 zone does not permit residential development and thus by definition is not consistent with the current zone plan.

In sum, the Board finds that while the Applicant's property is a single lot; the size of the lot being 30.5 acres and the scope of the proposed plan to rezone the Property to include 905 residential multi-family units in a zone that currently does not permit such a use is significant and would if presented before the Zoning Board of Adjustment for relief under N.J.S.A. 40:55-70d(1) abrogate the power of the governing body to adopt zone plans. Accordingly, the Board finds that the Applicant's request for a recommendation to rezone the Property is by necessity properly before the Board under §136-67A.

15. Findings as to §136-67B "Master Plan"

In submitting its recommendations, the Planning Board shall submit a report in accordance with N.J.S.A. 40:55D-26. The governing body shall comply with such section in acting on the application. If the proposed rezoning is inconsistent with the Master Plan, the Planning Board shall include in its recommendation whether it is in the best interest of the municipality to amend the Master Plan in accordance with the Municipal Land Use Law. The Board in submitting its report, for the reasons set forth below, finds that the proposed rezoning is inconsistent with the Master Plan and the Board finds, for the reasons set forth below, that it is not in the best interest of the Township to amend the Master Plan; and, accordingly, the Board's report will not include recommendations regarding amendments to the Master Plan in accordance with the Municipal Land Use Law.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

16. Findings as to §136-67C "Modification"

In making its recommendations, the Planning Board may recommend that the application for rezoning be granted, in whole or in part, or be modified. If the Planning Board recommends the granting of the application with modifications or conditions, the Planning Board shall set out such modifications or conditions in detail, including findings, conclusions and recommendations. The Board, for the reasons set forth below, finds that it is not in the best interests of the Township to recommend that the application for rezoning be granted, in whole or in part, or to include a modification or conditions; and, accordingly, the Board's report will not include modifications or conditions.

17. Findings as to §136-67 D "Effect of Current Zoning"

The Board's findings as to the effect of the current zone scheme are as follows:

As set forth above, the Applicant must demonstrate that absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility, or that the proposed rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.

a. Regarding the effect and impact of the current zoning on the Applicant's Property and whether the Applicant demonstrated that absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility; the Board finds that, the Applicant has not demonstrated by proper proofs that absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility.

The Applicant provided testimony from Mr. William Sitar, accepted by the Board as an expert in the area of industrial real estate. Mr. Sitar testified that that the existing buildings simply are not suitable for an industrial user. Mr. Sitar testified that activity in the industrial real estate market in New Jersey is now centered on very large open floor plan warehouse/distribution centers. Nevertheless, the Board finds that the buildings located on the Property are not in the same class of assets as the examples offered by Mr. Sitar. Further, one relevant example offered by Mr. Sitar that included self-storage as a possible repurpose was dismissed out of hand by him because he stated that the Property lacked visibility from the street. The Applicant constructed a berm along Walnut Avenue that offers screening, but there was no empirical data to support his conclusion that the Property was not suited for self-storage and Mr. Sitar did not discuss any measures that could heighten the visibility of the Property to make self-storage an attractive alternative. The Board finds that Mr. Sitar's testimony was overly broad, not relevant and often conclusionary for the reasons set forth herein and thus not persuasive.

The Applicant also provided testimony from Mr. Matthew McDonough, accepted by the Board as an expert in the area of commercial real estate. The Applicant acknowledged

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

that it constructed the existing office portions to comply with a request from a now former tenant. The Applicant's commercial real estate expert testified that the building isn't appropriate for office use in today's current commercial real estate market. Mr. McDonough testified that in his opinion the buildings located on the Property lack appeal, are not well laid-out and the buildings lack amenities like a health club and restaurant. However, the Board finds that the testimony provided by Mr. McDonough was inconsistent and unpersuasive. The Board finds that contrary to the testimony provided by Mr. McDonough, there is a gym on site and there is a large, modern fitness club and several restaurants directly across the street from the Applicant's Property. Mr. McDonough also opined that any effort to make the office space more attractive or to repurpose the building would be too expensive and would lack an appropriate rate of return; however, Mr. McDonough failed to provide detailed data or specific plans with related proposed costs or critical data regarding standard rates of return that would be customary in such cases. Mr. McDonough testified that he failed to predict current urban growth in the commercial market and the Board finds that his conclusions about the Applicant's Property may have the same potential for accuracy; and, accordingly, the Board finds that his testimony was not persuasive.

The Applicant provided fact testimony from Charles Reese, Hartz Mountain Industries Inc., Vice-President, Sales and Leasing who testified that while he received some inquiries to lease space at the Property, the prospective inquiries didn't result in the acceptance of a formal lease and his marketing techniques of listing the property through online list services failed to produce new tenants. Mr. Reese, who appeared initially and thereafter to present additional testimony, provided an example of one, potential tenant inquiry from Summit Medical Group, a well-known medical provider in the county, that he felt was promising, but the inquiry failed to conclude in a formal lease agreement. The Board finds that the testimony provided by Mr. Reese was not persuasive especially in light of his own testimony that he did in fact receive inquiries from prospective tenants but did not follow up with the inquiries or pursue similar active market tenants like hospitals, or medical care providers, like Robert Wood Johnson Hospital or Memorial Sloan Kettering Cancer Center (principal permitted uses) which have recently made decisions to lease similar sized properties in the central and northern New Jersey real estate market.

The Board also heard testimony from Mr. James Brunette, which the Board finds was credible and persuasive. Mr. Brunette was engaged by the Board as an expert in commercial and industrial real estate. The Board finds that Mr. Brunette offered testimony on market trends, leasing and selling commercial real estate in the northern and central New Jersey real estate market that on balance was more credible than the testimony provided by the Applicant's fact and expert witnesses. Mr. Brunette agreed that the market condition for commercial office space in northern and central New Jersey, which includes the Applicant's Property, has a vacancy rate that may be 15%; however, Mr. Brunette, offered examples of successful efforts by landlords who made investments in their properties to repurpose their building to attract new tenants. Mr. Brunette provided an example that included an investment by Tulfra, a real estate investment firm, to repurpose a property that included similar options as the Applicant's property.

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Board finds that the Applicant, other than an investment to create office space for a prior tenant in and about the time that Applicant purchased the property, did not make any significant changes or alterations to the buildings. Mr. Brunette opined that the Applicant could undertake a similar effort to repurpose the property, as the entities did in his cited examples, at an amount that was substantially below the scenario offered by Mr. McDonough. Mr. Brunette concluded that it was reasonable for the Applicant to make an investment to repurpose the property to include, among other things, smaller leasable spaces, and that the added investment would not require a zone change. Mr. Brunette also testified that the information contained on the common online list serve sites like CoStar included information about the Property that was not accurate and which in his opinion would cause him to avoid showing the property to a prospective client. Further, Mr. Brunette testified that the Applicant did not even post a sign on the property to advertise the available lease space; which in Mr. Brunette's opinion was not standard practice in the industry. Mr. Brunette also testified that since the filing of the request to rezone the property in 2017, he would be obligated to tell a potential client that the owner of the property is attempting to get permission to demolish the existing warehouse and office buildings in favor of constructing residential units, which in his opinion would cause a prospective tenant to look elsewhere. Mr. Reece, the Vice-President, of Sales and Leasing for the Applicant, testified that he would not be obligated to inform a prospective tenant that the property was the subject of a rezoning request and that the buildings as part of the request were, if approved, going to be demolished. The Board finds that the response from Mr. Reece lacks candor and under the circumstances the knowledge that the Site is the subject of a rezoning request that includes demolishing all of the existing commercial buildings in favor of residential units would impact a potential tenant's decision to consider the Property and commit to a financial obligation as a tenant as Mr. Brunette concluded.

Further, Mr. Brunette also provided testimony that included references to industry publications that included the Applicant's real estate experts or were authored by the Applicant's real estate experts, which contradicted their prior testimony and conclusions. Mr. Sitar's firm's publication, "SITAR Realty Company," provided a very bullish report on the state of the industrial market, which Mr. Brunette opined has a vacancy rate of less than 5% in Union County. Mr. Sitar's firm's publication for the First Quarter of 2018, reported a decline in the vacancy rates for industrial market space in northern and central New Jersey from 5.1% to 4.6%; this geographic area includes the location of the Applicant's Property. Mr. McDonough also included a better outlook for commercial office space in an industry market release. Mr. McDonough who is pictured above a statement that indicates that office market rents in the second quarter of 2018, are rebounding; which rents according to the market release from Mr. McDonough's firm, have been buoyed by strong quarterly and year-over-year rent increases, in Newark, the Parsippany submarket and the Union/ Parkway Corridor, which area also includes the Applicant's Property. Mr. Brunette testified that there is a very healthy market for commercial warehouse distribution in Union County because there is no real inventory that is less than 50,000sf. Mr. Brunette testified that this market class is on "fire", which is consistent with the published material by the Applicant's real estate experts that is offered to their potential real estate clients. Mr. Brunette's testimony included an example of a tenant in the same local commercial market area having to renew a

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

commercial lease at a premium of approximately 60% over the prior rental amount because of a lack of available rental space. The Applicant's Vice-President, of Sales and Leasing testified that the Applicant was not interested in creating leasehold space less than approximately 28,000sf, notwithstanding that market interest is greater at lesser square footages. While the Applicant's experts testified that the property lacked appropriate access to transportation routes, the Board finds that the testimony was not persuasive especially in light of the testimony provided by Mr. Brunette who concluded that the market user or tenant that is likely to be attracted to the Property under current market trends is a tenant that is not likely to require tractor trailers. Mr. Burnette's description of a commercial tenant in this rental market is looking at rental space below 50,000 square feet and is more likely to require vans than large tractor trailers.

Further, the Applicant's real estate experts referred to market changes, loss of rental income and the current conditions of the buildings; they did not testify that the zone code has caused inutility or absent rezoning, there would be a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility. Mr. Burnette testified that he made an inquiry, prior to the filing of the within request to rezone the property, for rental space on behalf of two potential tenants and was advised by the Applicant's representative that there was no available space. Mr. Brunette's testified that his clients would have easily satisfied the minimum rental square footage that the Applicant's Vice-President, of Sales and Leasing established during his testimony.

Further, the Board finds that the Applicant's Vice-President, of Sales and Leasing inability to provide data on the actual marketing budget or provide information on a marketing plan that the Applicant developed to attract health care providers or technical schools after receiving related inquiries is illustrative of the Applicant's lack of investment and effort. The Board was persuaded by the testimony offered by Mr. Brunette. The Board finds that the Property still has tenants and thus, on its face, there is utility. The Board based upon the testimony, finds that the Property has potential to be leased in a manner that is consistent with a principally permitted use or permitted conditional use or repurposed to include a principally permitted use with an appropriate level of investment without a zone change. The Board finds that while the Applicant's real estate experts may have offered a better economic alternative for the Applicant, the Applicant's real estate expert witnesses failed to demonstrate by sufficient proofs that in their professional opinion there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility. Under the circumstances as stated above, the Board finds that testimony provided by Mr. Burnette was credible and compelling. Mr. Brunette opined that the local zone code did not cause the Property to suffer inutility. The Board, for the foregoing, finds that the Applicant failed to show that there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

18. Findings as to §136-67 D "The Proposed Rezoning Shall Substantially And Meaningfully Benefit The Municipality And Further The Purposes Of The Municipal Land Use Law, Including Purposes Set Forth In N.J.S.A. 40:55D-2."

As set forth above the Applicant in seeking a recommendation to rezone the Property may also demonstrate that the proposed rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The Board finds, for the reasons set forth below, that the Applicant failed to demonstrate that the proposed rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.

a. The Board finds that the Applicant failed to show that the proposed request to rezone the Property will substantially and meaningfully benefit the municipality and more specifically, the Board finds that while the Applicant's professional planner provided testimony that the proposed rezoning would provide a net positive fiscal impact in favor of the Township and the CSD; the Board specifically finds that the testimony provided by the Applicant's planning professional failed to establish that the putative net fiscal benefit testified to, would under the circumstances, be a substantial and meaningful benefit to the Township. The Board finds that the three reports provided by the Applicant's professional planner regarding the putative net fiscal impact to the Township provided an increasing proposed benefit to the Township with each submission. However, the Board finds that the reports were based upon underlying assumptions that were included to bolster a specific outcome, lacked credibility and were not persuasive. The testimony and final report from the Applicant's professional planner provided a gross valuation for the Project of \$290,951,147.00, which included an unexplained mathematical error of \$264,020.00 and adjustments from prior reports that included a lower projected gross presumptive residential population growth as a result of the proposed rezoning, reduced costs to the municipality and an insufficient explanation to include a lower capitalization rate from 6% to 5.5%. The result of the change in the capitalization rate; mathematically, will inversely affect the gross valuation; as the capitalization rate decreases the gross valuation of the property will increase. Further, a reduction in the population projections like the kind included by the Applicant's professional planner over the course of the three reports submitted by the Applicant's professional planner would increase the net fiscal benefit because as the total population decreases, the per capita costs decrease, which will flow through to provide a greater reported net fiscal benefit.

The Board finds that the Applicant's professional planner failed to adequately explain the revised reduction in the capitalization rate to 5.5% where the prior two reports maintained that the appropriate capitalization rate was 6% and there was less than three months between the second report and the final report. Further the Board finds that the lack of disclosure of the actual population study, the decision to use a modified proportional methodology and unilateral inclusion of discount for per capita municipal costs, which methodology was not supported by general practice methodology as testified to by Mr. Liotta; together with a failure to account for the same costs at full buildout provided a conclusion that lacked credibility and was not persuasive. The Board finds that the testimony presented by Mr. Liotta was creditable and

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

persuasive and finds that the market value of the proposed Project, if approved, with a capitalization rate of 5.5% would be \$290,687,127.00; and giving the Applicant the benefit of the average of the Applicant's proposed population increase as a result of the proposed rezoning of 1,761 (which averaging, the Board finds is reasonable under the circumstances where the Applicant's professional planner provided three different population projections that were progressively lower with each submission and lacked underlying data disclosure to support the reduction); and a municipal cost per resident of \$937.00; and a student population increase of 353 students, at a cost per student of \$15,915.00 per student would have an annual, negative fiscal impact on the Township and the CSD of [- \$2,032,568.00]. (The Board finds, for reasons set forth below, that its appropriate to use the proposed student population increase of 353 students that is contained in the report and testimony presented by Dr. Ross Haber rather than the proposed student population increase of 135 students provided by the Applicant's professional planner).

The Board finds that the market value of the proposed Project that would be part of the request to rezone the Applicant's property, if approved, with a capitalization rate of 6.0% would be \$266,463,200.00; and giving the Applicant the benefit of the average of the Applicant's proposed population increase as a result of the proposed rezoning of 1,761; and a municipal cost per resident of \$937.00; and a student population increase of 353 students, at a cost per student of \$15,915.00 per student, would have an annual, negative fiscal impact on the Township and the CSD of [- \$2,468,858.00] (the Board finds, for reasons set forth below, that its appropriate to use the proposed student population increase of 353 students that is contained in the report and testimony presented by Dr. Ross Haber rather than the proposed student population increase of 135 students provided by the Applicant's professional planner). Thus, under the circumstances, the Board finds that the proposed request to rezone the property would have a negative fiscal impact under either of the scenarios presented by the Applicant's professional planner. The proposed rezone request using the Applicant's initial capitalization rate of 6% would result in a negative fiscal impact to the Township and CSD after full buildout of [- \$2,468,858.00]. The proposed rezone request using the Applicant's subsequent capitalization rate of 5.5% would result in a negative fiscal impact to the Township and CSD after full buildout of [- \$2,032,568.00]. The Board also finds that the Applicant's proposed request to rezone the property during just Phase 1 would likewise have a negative fiscal impact on the Township and CSD of [- \$514,579.00], as set forth under "Exhibit P3." The Board finds that under the circumstances, the Applicant failed to show that the proposed rezoning will provide a positive, beneficial fiscal impact for the Township and CSD.

b. The Board also finds that the Applicant has failed to show that the proposed request to rezone the Property will further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The Board finds that the proposed request to rezone the Property is inconsistent with the current zone plan. The Board principally heard testimony from two planning professionals, Mr. Keenan Hughes, a licensed professional planner engaged by the Applicant and Mr. Raymond Liotta who was engaged by the Board as a licensed professional planner. The experts concurred in opining that the Applicant's proposed rezoning of the Property is not consistent with the current zone plan. Mr. Keenan Hughes acknowledge that the current

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

C-3 zone does not permit residential development and thus by definition is not consistent with the current zone plan.

While the testimony provided by Mr. Hughes included stated goals of the Master Plan and N.J.S.A. 40:55D-2, the Board finds that the recited goals are inconsistent with the actual elements, effects and consequences of the Applicant's proposed plan to rezone the Property. For example, Mr. Hughes opined; notwithstanding that the proposed plan to rezone the Property is inconsistent with the current zone and Master Plan, the request to rezone the Property would, nevertheless, advance the stated goals of the Township's Master Plan. Mr. Hughes testified that the proposed rezoning would advance the residential goal to "provide a wide range of housing to meet the needs of residents in diverse income groups that is contained in Goal Number 1 of the Master Plan. Further, Mr. Hughes opined that the proposed rezoning would provide in-fill development, the option of creating a mixed-use planned development and to the extent the proposed rezoning provides the option of creating a mixed-use planned development, it also furthers the focus on encouraging the development of a diversified economic base that generates employment growth, increases property values, and promotes the improvement of underutilized properties all of which are stated goals contained in the Master Plan. The Applicant's proposed rezoning would also include designated affordable rental units, shuttle service to the local train station, which Mr. Hughes concluded would advance the Master Plan's sustainability goal of "promoting development in existing non-residential areas that accommodate alternative modes of transportation and shared parking.

The Board examined the proposed rezoning in light of dwelling unit densities per acre in the current zone plan. The zone plan contains; R6 Zone, which includes townhouse dwelling units at 8.7 units per acre; R7 Zone, which includes garden apartments at a density of 10.8 to 17.4 residential units per acre; R8 Zone, which includes a residential apartment units density at 25.6 to 33.5 units per acres; RSC-1 which includes senior citizen at a density at 25.6 to 33.5 units per acre; 1M, inclusionary multi-family residential developments that include Woodmount Station with 163 units within 5 acres or 32.5 units per acre; Riverfront with 127 units within 2.7 acres or 47 units per acre; Cranford Crossing with 50 units within 1.3 acre or 38.5 units per acre; and Birchwood with 225 units within 15.5 acres or 14.3 units per acre. The current zone plan also includes Lincoln Apartments and Edward G. Gill Apartment Complex at 101 units and 131 units, respectively, within 7.18 acres or 32.3 dwelling units per acres. The Applicant's Property is in the C3 Zone that includes business, administrative, executive and professional, essential services, golf courses, health care facilities, office/ distribution and research.

The Board finds that the request to rezone the Property is inconsistent with the Township's zone code, the Master Plan, including the Land Use Element of the Master and sound planning principals. The Board's findings are the independent conclusions of the Board and not the restatement of the Board's professionals. The Board is guided by the principals, goals, objectives and development policy contained in the Master Plan and zone code. The Master Plan is intended to guide growth and development within the Township over the course

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

of the lifecycle of the Master Plan and is the guiding document to follow when a new zone or land development decision is required. The Board in making its findings considers the vision for development contained in the Master Plan including the Master Plan's direction to implement sensible land-use development policies to avoid adversely impacting the Township's high quality school district, preserve small town characteristics and historical architecture of the Township, concentrate dense residential development in the downtown core with less residential density emanating out from the downtown area so that density decreases as the proposed development is sited further from the downtown. The Master Plan is based upon its stated principals of balanced land use that provides sustainable and equitable development that meets public needs and serves the goals and objectives of the Master Plan, housing element, economic development, redevelopment, green spaces, community facilities and services. The Master Plan directs that development be sustainable so that the proposed development will not exceed the limits of Township's natural systems and infrastructure nor should the proposed development degrade them and importantly, the Master Plan directs that the benefits and burdens of the proposed growth, development and rezoning must be shared and balanced to avoid inequities. The Master Plan also includes residential development goals that emphasize the Township's mass transit options, maintain current residential boundaries to guard against intrusion from incompatible land uses, and locate or concentrate higher density residential uses in the downtown area to take advantage the mass transit infrastructure.

The Master Plan also includes direction that standards for a proposed location, population density, extent and intensity of development of land to be used in the future for varying types of land uses and other public and private purposes throughout the Township and delineates areas where development should occur and areas which are generally not developed; appropriate densities in the appropriate places and adjacent to appropriate uses and compatible other uses. The Master Plan is primary to the establishment of the zone code and the Land Use Plan Element follows that order so that a proposed change to the zone code shall be consistent with the Land Use Plan Element or designed to effectuate it.

Considering the foregoing, the Board finds that the Applicant's proposed request to rezone the Property is not, among other things, consistent with the Land Use Plan Element or designed to promote it. The Board finds that the Applicant's proposed rezoning is not consistent with the Land Use Plan Element standards for population density and development intensity; the Board finds that the proposed rezoning is not consistent with the Master Plan's directions regarding where intensity and density should occur. The Board finds that the Master Plan and zone code evidences the Township's effort to include a land-use pattern where dwelling density is greater in the downtown area and is reduced as development is located farther from the downtown area. The Board finds that the proposed rezoning is inconsistent with the Master Plan's design to offer refinement and balance to future growth and to preserve growth within established zones. The Board finds that the C3 Zone, which currently does not include residential uses, is clearly unlike the current residential zones set forth above. Further the Board finds that the Master Plan directs that office development that is in the C3 Zone, be continued in the zone. The C3 Zone is located adjacent to the intersection of Walnut Avenue, and Raritan Road both of

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

which are located near or in close proximity to larger roadway systems. The Board finds that including population density and intensity at the level proposed under the request to rezone the Property is inequitable in that it burdens the neighboring property owners and neighborhoods with an increase of population that would be over 7% of the total population of the Township without a substantial benefit. The proposed increase in property values recited by the Applicant's professional planner was not supported by actual data and thus the Board finds the related conclusion to be unpersuasive. The Board also finds that importantly, the Master Plan includes direction that if the golf course, a permitted use, cannot be maintained, the property should be included in the C3 Zone's current campus-like setting. The Board finds that the Master Plan's direction to include the golf course property within the current C3 Zone if it cannot be maintained in its current recreational use is strong evidence that supports maintaining the current zone scheme rather than permitting residential development as requested by the Applicant to occur.

The Board finds that the proposed plan to rezone the Property is inconsistent with the stated Land Use and Transportation Planning directions contained in the Master Plan, especially the Master Plan's direction that "it is impossible to separate land use and transportation planning." The Board finds that the proposed development that would be included in the proposed rezoning of the current C-3 Zone is too far from current transportation infrastructure. The Board finds that the Applicant's effort to include shuttle bus service to prospective residents does not overcome the Master Plan's direction to complement land-use development by locating capacity that stimulates development in desired areas and include development where the Master Plan directs density and intensity should be located. The Board finds that the related testimony from the Applicant's professional planner was not well defined, it did not include specific details on scheduling of the shuttle service and the shuttle scheme was not part of the proposed ordinance. The Board finds that the proposed rezoning of the Property does not support the effort of the Master Plan to encourage development that supports appropriate transportation investment; and thus, the proposed rezoning does not complement the transportation land-use goals contained in the Master Plan.

Further, the Board finds that the Applicant's proposed plan to rezone the Property is not consistent with the purposes of the MLUL under NJSA 40:55D-2. The Board finds that the proposed rezoning plan does not encourage appropriate use and development of the land within the Township that will promote the public health, safety, morals and general welfare. While the Applicant's planner asserted that the general welfare is promoted with an elimination of the commercial use in favor of including 905 residential units, 139 (units) of which to include affordable dwelling units, bordered by a freight line ROW and county roadway with onsite recreation facilities for the residents, limited shuttle service to the downtown area where transportation services are located and design features like signaled controlled intersections; the Board finds that the proposed benefits are for the benefit of the Applicant and not to promote appropriate use and development of the lands in the state in a manner that will promote the stated goals of the MLUL. The Board finds that the proposed rezoning does include dwelling units to be designated as affordable housing which the Board finds are beneficial, but the units are

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

included in a proposed request to rezone the Property that includes, among other things, 905 residential units in the C-3 Zone that the Board finds is not consistent with the Master Plan and will not substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law. The Board finds that the inclusion of beneficial affordable dwelling units does not make the entire request to rezone the Property beneficial under NJSA 40:55D-2. The Board finds that the putative benefits that the Applicant's professionals testified to are a reaction or mitigation measures needed to counter the Applicant's proposed request to rezone the Property to include 905 residential units to be sited in an area that is inappropriate for its density and intensity based upon the Master Plan's direction that high density development take place in the downtown area. Further the Board finds that the mitigation efforts proposed by the Applicant address conditions that currently do not exist and to include the putative improvements, which the Board finds are mitigation efforts, as benefits that would promote the general welfare are opposite to the purposes stated under NJSA 40:55D-2. The Board finds that the overall proposed increase in population of residents would also be significant and negatively impact the zone plan. The Board finds that based upon the Applicant's information included in the reports of the Applicant's professional planner, there could be an increase of between 1600 to 1800 residents occupying the proposed new residential units, which would be over a 7% increase in the Township's residential population. The Board finds that such an increase in the Township's residential population would be significant and to recommend a zone change as requested by the Applicant, would be inconsistent with the Master Plan. The Board finds that the Applicant has failed to show that the proposed request to rezone the property will promote the establishment of appropriate population densities and concentrations that will contribute to the wellbeing of persons, the neighborhoods, community and regions and preserve the environment. The proposed plan to rezone the Property would include a density and intensity that would be contrary to the Master Plan in that the proposed rezoning request would locate high density development away from the downtown area where it should be located under the Master Plan's directions. The proposed rezoning would provide an increase in the population of the Township of over 7% that would be located upon 1% of the area of the Township in area that is inconsistent with the Master Plan.

Further, the Board finds that the Applicant failed to show that the proposed request to rezone the Property would satisfy the Master Plan's goal of including "in-fill" where appropriate. The testimony provided by the Applicant's professional planner asserted the request to rezone the Property is appropriate "in-fill" and as such satisfies one of the goals of the Master Plan. The Board finds that the request to rezone the Property creates a new zone and in-fill is appropriately used where existing neighborhoods have need. Thus, under the circumstances, the Board finds that the proposed request to rezone the Property does not include providing "in-fill" as a benefit.

The Board finds that the Applicant failed to show that the proposed request to rezone the property will further the purposes of the Master Plan where the proposed bulk building height standard for the rezoned C-3 would be 67 feet; a significant 26.6% increase from the current bulk standard of 45 feet and a substantial departure from the neighboring zone that

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

include a building height bulk standard of 37 feet. The Board finds that the proposed bulk standard included in the request to rezone the C3 Zone to include building heights of 67 feet is inconsistent with the current zone, inconsistent with the adjoining neighborhoods some of which include the historically noted homes of Sunny Acres that were original Sears Roebuck kits and all of which are single family residential homes. The Board finds that under the circumstances the proposed request to rezone the Property is inconsistent with the Master Plan and not designed to foster its Land Use Element Plan. The board finds that the proposed building height of 67 feet would substantially alter the zone scheme and is not designed to provide a wide range of housing to meet the needs of the residents. The Applicant's architect testified that he was simply tasked with creating a proposed residential project that would include a gross residential dwelling density of 30 units per acre. There is no zone beyond the downtown area that includes bulk height standards of 67 feet and there is no zone beyond the downtown area that includes a density and intensity equal to that which is included in the Applicant's proposed request to rezone the Property.

The Board finds that while the Applicant's proposed rezoning includes similar development that would be common to other like-projects consisting of multi-family units, the Board finds that the Applicant's proposed development would have a higher density in an area that is at the outer most boundary of the Township, which is contrary to the Land Use Plan contained in the Master Plan that directs higher density development should be within the downtown area. Further the Board finds that while the other multifamily higher density development projects are closer to the downtown area where such development should be located under the Master Plan, the other higher density development projects are much less intensive; all the hereinabove mentioned existing multi-family projects combined have 797 units. The Applicant's proposed rezoning would include 905 units all of which would be located in an area where the Master Plan directs that such development should not occur. Thus, the Board, under the circumstances, finds that comparisons made by the Applicant's plaining professional are not comparable and as such not persuasive. Further, the Board finds that Birchwood is a better comparable. Birchwood is a multi-family inclusionary development that is of similar construction style with a similar percentage set aside for affordable housing units; however, Birchwood is much closer to the downtown area which is more consistent with the directions contained in the Master Plan for such development and much less intensive, with 225 units and a destiny of less than 15 units per acre. Thus, under the circumstances, the Board finds that the Applicant's has not shown that the proposed rezoning of the Property is consistent with N.J.S.A. 40:55D-2e.

Further the Board finds that the overall proposed increase in the population of residents to be located in the C3 Zone would be significant and inconsistent with the Master Plan. The Board finds that based upon the Applicant's information included in the reports of the Applicant's professional planner, there could be an increase of between 1,622 to 1,846 residents occupying the proposed new residential units, which would be over a 7% overall increase in the Township's residential population. The Board, even at the lower projected population increase, finds that such an increase in the Township's residential population would be significant. The Board finds

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

that the proposed inclusion of 905 residential units in the C-3 zone that does not currently permit such use together with the proposed gross dwelling density that is well beyond the downtown corridor, where higher residential densities are encouraged and principally permitted; will likely have significant negative impact on the Township's zone plan.

The Board finds that the Applicant has failed to show that the proposed rezoning will provide sufficient space in appropriate locations for the uses set forth under N.J.S.A. 40:55Dg and more specifically the Board finds that Applicant failed to show that the proposed rezoning that would eliminate the current commercial and industrial use with its proposed inclusion of 905 residential units is in an appropriate location where the density and intensity of residential development is to be less than the density within the downtown area. The Board finds that while the Applicant asserted that the Property is bounded by low impact uses like the ROW for the Conrail freight line and golf course, the testimony provided by the Applicant's planning professional is not sufficient to overcome the directions included in the Master Plan that direct that development should include lower density further out from the downtown area. The Board finds that the proposed rezoning to include 905 units at 30 units per acre at the outer most boundary of the Township is inconsistent with the location for such development set forth in the Master Plan and NJSA 40D:55D.

The Board finds that the Applicant failed to show that the proposed request to rezone the C3 Zone includes or promotes a desirable visual environment through creative development techniques and good civic design and arrangement under N.J.S.A. 40:55D-2i. The proposed development would include similar construction as other multi-level, multifamily residential units within the Township. The Board finds that the opinion provided by the Applicant's planning professional that the proposed design includes creative development technique and good civic design through creating a sense of place that is pedestrian friendly with high quality architecture and landscape is too broad to be persuasive; under the Applicant's proposed definition most development projects would be acceptable. The Board, under the circumstances, finds that the testimony provided by the planning professional on behalf of the Applicant failed to comport with the vision contained in the Master Plan.

Further the Board finds that the Applicant failed to show that the proposed rezoning would be pedestrian friendly or welcoming; the Board finds that the testimony provided by the Applicant's professional planner failed to show the basis for such a conclusion. While the Applicant's professional planner opined that the proposed development to be included in the proposed request to rezone the Property had an advantageous walk score, he did not provide an explanation of how he calculated the walk-score or transportation-score. In considering the following scale where a score of 0-24 indicates that all most all tasks require a vehicle; 25-49 indicates that most tasks require a vehicle; 50-69 indicates that some tasks will require a vehicle; 70-89 indicates tasks can be accomplished by walking and a score of 90-100 indicate that tasks can be accomplished without a vehicle. The Board finds that the Applicant's planning professional's assigned walk score of 43 is not pedestrian friendly and

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

vehicle transportation would be required for most tasks. The Board finds that the proposed request to rezone the Property does not comport with the Master Plan's goal of being pedestrian friendly or welcoming or supporting conservation.

The Board finds that the testimony provided by the Applicant's professional planner regarding shared parking failed to support a finding that the proposed request to rezone the Property would further the purposes of the transportation goals or parking goals of the Master Plan. The Board finds that the Applicant's planner's effort to include the concept of shared parking, which under the proposed request to rezone the Property is exclusively residential and not commercial or mixed business and residential, is misplaced and thus not persuasive. The Board finds that the concept of shared parking incorporates a situation where a potential patron can use the same parking space to complete more than one task something that could be accomplished in the downtown area.

The Board finds that the Applicant failed to show that the proposed request for rezoning will further the purposes of the Master Plan where the proposed rezoning will include the demolition and removal of all of the commercial buildings and eliminate jobs rather than encourage the development of a desirable economic base that generates employment growth as set forth under Goal 7.

The Board for foregoing finds that the Applicant failed to establish that the Applicant's proposed request to rezone the Property will substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The Board further finds that under Paragraph B hereinabove, while the Board may elect to make a recommendation to the Township Committee to adopt the proposed zone change notwithstanding the patent inconsistency with the current zone and the Master Plan by including in its report to the Township Committee a recommendation that the Master Plan should be amended to include the proposed changes to the zone; the Board, nevertheless, declines to do so. The Board finds that, for the reasons set forth herein, the proposed request to rezone the Property is inconsistent with the Master Plan and the Board finds that it is not appropriate to amend the Master Plan to include changes to the C-3 Zone to include the Applicant's proposed ordinance as same is set forth above.

19. Findings as to §136-67E "Municipal Services"

Pursuant to Paragraph E:

"In Demonstrating That The Proposed Rezoning Will Substantially Benefit The Municipality And Will Advance The Purposes Of The Municipal Land Use Law, The Applicant Shall Demonstrate That The Proposed Rezoning Will Not Unduly Burden The Planned And Orderly Development Of The Municipality Or Place An Undue Burden Upon Community Services And Facilities".

The Board finds, as stated above, that the proposed request to rezone the property would have a negative fiscal impact to the Township and CSD after full buildout of [- \$2,032,568.00].

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Board also finds that the Applicant's proposed request to rezone the property during just Phase I would likewise have a negative fiscal impact on the Township and CSD of [-\$514,579.00]. The Board finds that under the circumstances, the Applicant failed to show that the proposed rezoning will provide a positive, beneficial fiscal impact for the Township and CSD.

The Board, finding that the Applicant failed to demonstrate that the proposed rezoning will substantially benefit the municipality and will advance the purposes of the Municipal Land Use Law (as set forth above) also finds, for the reasons set forth below, that the Applicant failed to demonstrate that the proposed rezoning will not unduly burden the planned and orderly development of the Township or place an undue burden upon community services and facilities and the Board finds, based upon the facts set forth below, that the Applicant failed to demonstrate that the proposed rezoning will not unduly burden the Cranford School District (CSD).

Regarding the Board's finding that the Applicant failed to demonstrate that the Applicant's proposed request to rezone the Property will not place an undue burden upon community services and facilities including the CSD; the Board considered the testimony of Dr. Scott Rubin, Superintendent of Cranford School District (CSD), Robert Carfagno, Business Administrator for the Cranford School District and Dr. Ross Haber, a demographer and principal of Ross Haber Associates. Dr. Haber had been engaged to provide demographic studies to the CSD that were related to other development and program issues was also engaged by CSD to provide demographic information on the impact upon the local school district as a result of the proposed request to rezone the Applicant's property. The Applicant provided the testimony of Mr. Hughes, a professional planner that included his opinion regarding projected impacts and proposed student population increases as a result of the proposed request to rezone the Property. Mr. Hughes is not a demographer. The Board also considered the testimony from Mr. Hughes regarding the proposed fiscal benefit to the Township and CSD as set forth above. The Board for the reasons set forth below finds that the Applicant failed to show that the proposed request to rezone the Property will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities including the CSD.

The Board finds that the testimony from Dr. Rubin was credible and persuasive. Dr. Rubin's professional career began as an educator, he is certified as a public-school principal and as a superintendent. Dr. Rubin has school administrator's certification for superintendent from the Department of Education of the State of New Jersey (DOE). Dr. Rubin as the superintendent of the CSD is responsible and involved in development of the curricula for the CSD, expansion of educational programs, new hiring, in service programs, budgets, facilities management, transportation systems, legal mandates placed upon the CSD, strategic goals, initiatives and objectives, future planning, setting policies; and as, superintendent he is responsible for implementing all of those policies and procedures. In sum Dr. Rubin is the chief executive officer of the CSD.

Dr. Rubin provided both factual and expert testimony in several areas, the first of which included the budget and the budget process for the CSD. Dr. Rubin stated that while the process

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

to consider a proposed budget begins in the early part of a calendar year, usually February, the proposed budget is actually for the next school year that begins in September. For example, the budget that is being considered in February 2019, will be the school budget for school year that begins September 2019 and ends June 2020. The commencement date for the budget is July 1, which is the start of the fiscal year for the CSD. The CSD, as with all public-school districts, has a budget process that is compelled by many factors, including local Board of Education Finance Committee review and deliberation, presentation at required public hearings, state review by the DOE and public vote to approve the amount of the proposed budget as levy on the local taxpayers. The budget process must be completed before the commencement of the upcoming fiscal year. The final budget is also completed before the CSD has confirmed the actual student enrollment, which is certified in mid-October of the current school year. Further, pursuant to state law, the overall budget with few exceptions is capped year over year to not exceed 2% from the previous budget year. While there is an exception for certain enrollment increases; that exception is computed by DOE rules and does not provide for a dollar for dollar increase to fully fund or accommodate the increase in student population; and the added adjustment, if any, would only be available in the following fiscal year and not in the current school year. Thus, under the circumstances that the CSD must operate under, there is a resulting funding lag of one school calendar year approval of any enrollment exception. Dr. Rubin testified that because there is no ability for the CSD to increase a current budget; the CSD in order to accommodate added enrollment in the current budget or fiscal year would be forced to enlarge class size and curtail current services and programs.

The CSD has eight school buildings and students are assigned to each school building, excepting the one high school in the school district, under an attendance zone system. Dr. Rubin testified that under the current attendance system it is projected that 70% of the school age children from the Applicant's proposed Project will attend two schools, (1) Walnut Avenue School (WAS) an early childhood education school with kindergarten through second grade instruction and (2) Livingston Avenue School (LAS) which includes instruction from third grade through fifth grade. Students from WAS and LAS would attend Hillside Avenue School (HAS) through the eighth grade. HAS also provides instruction for students in its related attendance zone from kindergarten through 8th grade. Dr. Rubin testified that WAS, LAS and HAS currently operate at capacity and using either of the projected increases to student population provided by the Applicant's professional planner, Mr. Hughes, or the projected student increases provided by the demographer engaged by the CSD, Dr. Haber; WAS, LAS and HAS would not be able to accommodate the proposed added students that would result from the proposed rezoning of the Property without an increase in the CSD's budget, which procedurally would not be available or sufficient even in out-years because of the 2% budget cap. Further, Dr. Rubin testified that the CSD could not accommodate the projected increase in student population without physical additions to existing buildings for classrooms. Dr. Rubin testified that in his opinion the increase in the student population included in the reports from Mr. Hughes and Dr. Haber would result in an adverse budget adjustment that would also cause a reduction of offered programs and curtailment of current services.

The Board also considered the testimony of Mr. Robert Carfagno, the Business Administrator for the Cranford School District. Mr. Carfagno was accepted as an expert in the

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

areas budgetary issues, strategic planning, facility management and related expansion, the budgetary process, including the process of collaboration between the office of the Business Administrator, the Superintendent and the Board of Education as well as how the CSD budget is prepared, how it's allocated, how the audit process occurs, what is required for expansion of the district, how that process works, current class size, facility utilization and facility management.

Mr. Carfagno provided expert testimony on the impact of the proposed request for rezoning presented by the Applicant and based upon his understanding of the Cranford School District and the testimony presented on behalf of the Applicant. Mr. Carfagno opined that Applicant's proposed request for rezoning will have a significant adverse impact on the Cranford School District. Mr. Carfagno testimony included several prominent areas of consideration; existing student enrolment and related available classroom space, staffing, financial impacts as well as the state's mandated budget process, fulfillment of educational goals, strategic plans, transportation and lack of current ability to expand the physical spaces within the CSD to accommodate an increase in student population projected to from the request to rezone the property in a timely manner because of the process for expansion imposed on the CSD by DOE policies, regulations and procedures.

Mr. Carfagno testified that the CSD must prepare its budget for the next school year without actual enrollment data because the budget process requires that the proposed budget for a school year beginning in September be submitted for approval in March of the current calendar year. The Cranford School District is on a fiscal calendar commencing July 1, through June 30. The proposed budget submitted in March is submitted to the State Department of Education for formal review and approval. The State Department of Education has a significant role that is independent from the local BOE and state review also places time restraints on the local school board's budget planning agendas. The BOE schedules a hearing on the proposed budget at the end of April. The DOE may make changes to a proposed budget and the local hearing may cause a budget to undergo revisions; however, the proposed budget must be adopted by the beginning of May of the calendar year because the BOE must certify the amount of the budget as part of the local tax levy which is a process accomplished through the County Board of Taxation by May 19th, of the current calendar year.

Mr. Carfagno testified that student population is one of the key driving forces of the CSD's budget. Mr. Carfagno testified that for the most part, over the last 10 years, the student population has been very consistent so that the budget has been predictable for the current fiscal year and out-years. Mr. Carfagno testified that a stable student population has also limited the CSD's ability to increase budget amounts because of the 2% budget cap to accommodate a rapid and sudden increase in student population that would result from the proposed request to rezone the property. Mr. Carfagno testified that the budget increase that a 2% increase would provide would have to be used for any fluctuations in expenses that are out of the ordinary, or extraordinary; for example unplanned expense that are not capital expenses, added legal costs, added enrollments, placements outside of the district, transportation and other added costs above the items within the fixed budget costs that include over 94 percent of the budget. Mr. Carfagno testified that the CSD has 50 students that are being sent out of district because the CSD cannot service their needs. The out of district tuition costs requires 5 percent of the CSD's budget

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

because the average placement cost is \$87,000, per student and that amount does not include transportation costs. Where the student needs require transportation, and most do, Mr. Carfagno testified that the additional transportation costs are between \$20,000 and \$25,000 per student per year.

Mr. Carfagno testified that 94% of the CSD's budget is subject to the 2% budget cap restriction. There are possible exceptions, the most important of which for purposes of accommodating a sudden increase in student population, is an enrolment exception; however, adjustment to the budget cap for enrollment increases are also limited because the increases in student population have to be based upon actual student enrollment and that data is not certified until the following October when the students are already attending CSD; and, even if there was a way to certify the actual enrolment earlier, the DOE review and approval, if granted, does not permit the CSD to recoup the added costs on dollar for dollar basis for each of the added students. For example, if the added increase is one to two and a half percent over the prior enrollment, the DOE formula provides an approximate budget percentage adjustment equal to the costs associated with 0.25 per student only; the added adjustment is increased as the percentage over the prior enrollment increase, but CSD is not allowed to fully recover the full costs. None of the added adjustment, if there is an added adjustment, includes transportation costs. The process for an enrollment waiver will always leave the CSD a year behind, notwithstanding that the students are already enrolled, and the process doesn't permit CSD to receive the full amount of the actual costs.

Further, Mr. Carfagno testified that there is no reserve included the CSD's budget that would be available for the initial soft engineering costs, or the costs of constructing additional classrooms. Mr. Carfagno testified that the process to apply for construction approval and to complete construction is complex. The process must be initially funded within a current budget, which funds Mr. Carfagno testified are not available because there are no provisions for such expenses included in the current budget. Further, Mr. Carfagno testified that any request for additional new classrooms must be bonded a process that requires voter approval and the request for additional classrooms is based upon actual current enrolment, which means that the students are already present. Mr. Carfagno testified that the process to construct additional classroom space could take a minimum of three years and often longer.

The Board also considered the testimony provided by demographer, Dr. Ross Haber's professional practice is limited to school demography. Dr. Haber had been a teacher and public-school principal for many years in New Jersey and New York. Dr. Haber is engaged in a similar capacity by over 125 school districts throughout the state as well as other school districts located in neighboring states for the past 22 years.

Dr. Haber visited each of the potentially impacted CSD school buildings and completed a detailed Field Utilization Study that included review of the buildings' floor plan, site survey and interviews with the principals for each school. He described WAS, LAS and HAS as being at capacity, or fully utilized. All the witnesses on behalf of CSD described current use at these schools as having to accommodate multiple uses for classrooms and cafeterias. The witnesses described "art in a cart" because of the lack of available dedicated classroom space and using the

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

cafeteria as a multi-purpose space that was referred to as a cafetorium. Dr. Haber also described a current reality for school districts, including CSD, that limits available classroom space because of mandates or increased programs and services.

Dr. Haber employs a methodology that he describes as District Factor Groups (DFG) that he reports allows him to predict protentional enrollment to within an accuracy of 3% or less. Dr. Haber testified that the proposed request to rezone the Applicant's Property to include 905 residential units would produce 353 additional students, 70% of which would initially attend WAS, LAS and HAS. Dr. Haber also concluded that the CSD would have to construct additional classrooms to accommodate the additional students. The Board finds that the testimony provided by Dr. Haber is credible and persuasive.

Dr. Haber's methodology has been accepted by Boards of Education in over 125 school districts in this state, the DOE as well as other school districts in New York State. Dr. Haber conducts look-backs of his prior projections to determine accuracy. Dr. Haber reports that the post report review of his projections have a deviation of less than three percent. Mr. Hughes, the Applicant's professional planner, projected a net increase of approximately 135 students. However, the Board finds that this net projection enrolment of 135 student includes an arbitrary adjustment for students attending private high school, which the Board finds was not supported, considering that such an option may be beyond the financial means of prospective tenants and the reported results presented by Mr. Hughes lacks the reliability and accuracy of the report and opinion provided by Dr. Haber. Further, Mr. Hughes did not visit the schools that would be impacted by the proposed request to rezone the Property and he did not consider or adjust his report to account for the method of assigning students within CSD under an attendance zone system. Dr. Haber testified that the CSD could not accommodate an increase of 100 students let alone the 135 students that the Applicant's professional planner, Mr. Hughes, opined would result from the full build out. Mr. Hughes provided no indicia of the accuracy of his prior demographic projections or the impacts on school districts resulting from other development applications that he has opined upon. Further, the Board finds that Mr. Hughes's conclusions also lack credibility and persuasiveness due to his issuance of multiple reports during the pendency of the matter that successively improved the projected impacts and benefits of the Applicant's proposed request to rezone the Property without a credible explanation or convincing rational for the amendments and revised favorable conclusions. Nevertheless, the Board finds that even considering the proposed increase in the student population of 135 students opined by the Applicant's professional planner; 70% of the approximate total of 135 students would attend WAS and LAS or HAS and each of those schools are fully utilized, operate at capacity and cannot accommodate the additional students.

Further the Board finds that the CSD has a current per student cost of \$15,915.00. The projected student increase of 353 students that the Board finds would be associated with the proposed request to rezone the Property would increase budget costs or expenses for the CSD by \$5,617,995.00; there would be no opportunity for the CSD to make a request for additional budget dollars in the then-current fiscal budget year and even during just the Phase 1 buildout, the Board finds that there would be an added cost to CSD of \$2,466,825.00 from an additional 155 students. The per student cost of \$15,915.00 covers tuition related expense but does not

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

include any provision for out of district placement and transportation of special needs students. The tuition and transportation costs of just one additional student in this category would more probably than not exceed \$100,000.00 per student. Based upon the testimony and example provided by Mr. Carfagno, the Board finds that considering the current mandated limited 2% budget cap increase of \$1,160,000.00 and the current tuition costs for every out-of-district special needs student of \$87,000.00; at current costs, this would be 7.5% of the total budget increase of \$1,160,000.00. The added likely transportation costs between \$20,00.00 to \$25,000 per student are over and above the tuition costs and considering the tuition and transportation costs; the erosion to the 2% budget increase would be over 9% of the putative increase from the 2% budget increase. The addition of two special needs students would require almost 20% of the putative increase in budget funding provide by the permitted 2% budget increase.

Further the Board finds that the testimony offered by the Applicant's planning professional regarding how the putative fiscal benefit from the proposed request to rezone the Property would flow to the CSD had no indicia of accuracy; and accordingly, not persuasive. The Board finds that the added assessment that would be associated with the Property if the proposed request to rezone were approved would not benefit the CSD. The CSD receives its funding directly from a levy that is part of its budget process set forth above. The assessed value of the Applicant's Property doesn't affect the CSD's budget process. The Board finds that the CSD would be have an unmet budget need for the costs of the projected students of [-\$5,617,995.00] at full buildout and even if the Applicant was correct and the added student population from the proposed rezoning of the Property was closer to 135 students, if it was approved as proposed, it would still leave the CSD with an unmet budget need of [-\$2,164,440.00] (135 students at a cost of \$15,915 each). The Board further finds that in either case, the CSD would need to construct additional classrooms in order to accommodate even the lower student levels. The costs of the proposed expansion would have to come from a bond or debt instrument that the CSD would be under obligation to pay. The payment would come from an assessment or levy on taxpayers. The construction that the putative bonding would authorize, would be contingent upon public vote, an uncertainty that is beyond the CSD's control and any such bonding would not offer any financial assistance in the CSD's current budget year. The construction would not offer any improvement for current needs; new construction would take at least 3 years and the process to begin the request for additional space can only occur after the additional students are attending CSD under DOE rules and regulations.

In sum for all the foregoing, including the reasons put forth upon the record, the Board finds that the Applicant has failed to show that the proposed request to rezone the Property, to include 905 residential units where no such use now exists, would offer a substantial and meaningful benefit and not unduly burden the Township and CSD; and, for all the forgoing, including the reasons put forth upon the record, the Board finds that the Applicant failed to demonstrate that the proposed request to rezone the Property will not place an undue burden upon community services and facilities including the CSD.

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

20. Ultimate Finding

For all of the foregoing reasons, the Board's ultimate finding is that the Applicant under Cranford Township Land Development Ordinance, Article VIII (the "Application for Rezoning") Section 136-59 et seq., failed to demonstrate by proper proof that, absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility or that the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The Board finds further that notwithstanding that the Applicant failed to show that the rezoning would substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The Board finds that the Applicant also failed to demonstrate that the proposed rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities. The Board further finds that the proposed request to rezone the Applicant's property is inconsistent with the Master Plan and it is not in the interest of the Township to recommend amending the Master Plan.

LEGAL CONCLUSIONS

1. The Planning Board has jurisdiction to act upon the Application pursuant to the Municipal Land Use Law 40:55D-1 et seq., and under Article VIII of the Township's Land Development Ordinance, Sections 136-59 et seq.

2. The Board's review of this Application under §136-67, as stated above, requires a conclusion that the Applicant has complied with Article VIII of the Township's Land Development Ordinance, Sections 136-59 et seq. by appropriately addressing the following:

- (i) Necessity (§136-67A);
- (ii) Master Plan (§136-67B);
- (iii) Modification (§136-67C);
- (iv) Effect of Current Zoning (§136-67D); and
- (v) Municipal Services (§136-67E).

2(i) Review considerations under §136-67A. The Board finds that the Applicant under the facts and circumstances presented has made and proven a case for Necessity and thus satisfied the requirements under §136-67A. The Board finds that the Applicant's request to rezone is one that would not be appropriately venued before the Zoning Board of Adjustment for consideration under NJSA 40:55D-70d(1). The Applicant's property is 30.5 acres which the Board finds to be significant. The Board finds the proposed plan to include 905 residential units on the Property would be a significant development project. The Board finds that the proposed request to rezone the Property would create a significant new residential density of 30 units per acre in an area that currently does not principally permit any residential uses either single-family units or multi-family, multi-level inclusionary units. The Board finds that the overall proposed increase in population of residents would also be significant. The Board finds that based upon the

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

Applicant's information included in the multiple reports of the Applicant's professional planner, there could be an increase of between 1600 to 1800 residents occupying the proposed new residential units, which would be almost a 7% overall increase in the Township's residential population. The Board finds that such an increase in the Township's residential population would be significant and the proposed placement of the Project would be inconsistent with the Master Plan. The Board finds that the proposed inclusion of 905 residential units in the C-3 zone that does not principally permit such use, and which proposed use and proposed principally permitted density is well beyond the downtown corridor where higher residential densities are encouraged and principally permitted and will likely have significant negative impact on the Township's zone plan.

The Board is guided by the Supreme Court's directions that include zoning by ordinance rather than by variance is preferred. Medici v. BPR Co., 107 N.J. 1 (1987). Further, the Board considers the benefit from promoting proper planning policies rather than ad hoc decision making that flows from relief granted by variance. Kaufman v. Planning Bd. Warren Twp., 110 N.J. 551, 557 (1988); Twp. Of Dover Bd. of Adj. of the Twp. Of Dover, 158 N.J. Super. 401, 412-413 (app. Div. 1978). Thus, the Board finds that the overall size and scope of the Applicant's proposed rezoning will have a significant impact on the local zone and neighboring property owners with the potential to sustainably alter the zone plan; and accordingly, the Board finds that the Application represents a request to rezone rather than a request for a use variance and is under all of the circumstances of this Application properly before the Board under §136-67A.

2(ii) Review considerations under §136-67B.

Pursuant to Paragraph B:

"in submitting its recommendations, the Planning Board shall submit a report in accordance with N.J.S.A. 40:55D-26. The governing body shall comply with such section in acting on the application. If the proposed rezoning is inconsistent with the Master Plan, the Planning Board shall include in its recommendation whether it is in the best interest of the municipality to amend the Master Plan in accordance with the Municipal Land Use Law."

The Board in submitting its report, for the reasons set forth above, finds that the proposed rezoning is inconsistent with the Master Plan and the Board finds, for the reasons set forth above, that it is not in the best interest of the Township to amend the Master Plan; and, accordingly, the Board's report will not include recommendations regarding amendments to the Master Plan. It is undisputed that the Applicant's request to rezone the Property is inconsistent with the current zone, which does not include residential uses. The Applicant's request to rezone the Property is not consistent with the overall zone plan, which directs that higher density development should occur within the downtown area; the zones that emanate out from the downtown area should have lower densities. The Applicant's request to rezone the property is not designed to complement the Land Use Plan or effectuate it. The proposed 905 units to be located at the outskirts of the Township rather than in the downtown area where such development is directed

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

under the Master Plan together with the proposed inclusion of bulk standards that include building heights with a maximum of 67 feet are not consistent with the surrounding residential neighborhoods. Further the proposed request to rezone the property, for the reasons set forth above, is not consistent with the stated goals of the Master Plan. The proposed request to rezone the Property fails to promote the principals of balanced land use, sustainable development that includes the directions not to promote development that degrades the limits of the Township's systems and is contrary to the direction for equitable growth by failing to balance the benefits and burdens of growth and development within the Township on an equitable basis. The proposed request to rezone the property is not consistent with the direction to support and complement existing transportation; the proposed rezoning would require vehicle transportation for most tasks. The Property is not located within walking distance of the Township's mass transit facility. The proposed request to rezone the property is inconsistent with the goal and objective of continuing to development in existing centers of commerce. The proposed request to rezone the Property is not consistent with residential goals that include the direction to avoid residential development that does not promote residential boundaries and lacks protections against intrusion from incompatible land uses. The proposed request to rezone is also inconsistent with the Land Use Element that provides standards for proposed location, extent, intensity of development. The proposed land use plan change would create a residential use in a commercial zone that does not permit residential uses at a population density and intensity that contrary to the overarching zone plan to include higher density development in the downtown area. Accordingly, it is not in the best interest of the Township to amend the Master Plan; and, accordingly, the Board's report will not include recommendations regarding amendments to the Master Plan.

2(iii) Review considerations under 136-67C.

In deciding to not recommend the Applicant's proposed request to rezone the Property, in whole or in part; there are no related modifications or conditions to be included hereunder.

2(iv) Review considerations under §136-67D and 2(v) review considerations under §136-67E.

It is the Applicant's burden to demonstrate by proper proof that either absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility or that the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. Further, it is the Applicant's burden to show that in demonstrating that the proposed rezoning will substantially benefit the Township and advance the purposes of the Municipal Land Use Law; the proposed rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities. The Board considered its findings, as reflected in the transcripts of all the meetings of the Planning Board at which the Applicant's request to rezone the Property was considered; all of which are specifically incorporated herein by reference and made a part hereof. The Board also considered the following:

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Review Standards:

The Board is permitted to recommend rezoning; if the Board concludes that one or the other or both primary standards (§136-67D) stated below have been proven. If the Board determines that the primary standards have been met, the Board is required to consider and determine whether the stated secondary standards stated below have been met. First and foremost, the Applicant has the burden of proof. The Board, in reviewing the Applicant's proposed request for rezoning, must consider the following two Primary standards (§136-67D):

(1) absent a rezoning, is there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility; or (2) rezoning proposed by the applicant will substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2.

Upon considering and reviewing the Primary standards, the Board must consider the applicable secondary standards (§136-67B), (§136-67E). Under both of the above primary standards, the board must also determine whether the proposed rezoning is consistent or inconsistent with the Master Plan; and if the proposed rezoning is inconsistent with the Master Plan, the Board must include with its recommendation whether it is in the best interest of the Township to amend the Master Plan. Under the Second Primary Standard, the Board must determine whether the applicant has demonstrated that the proposed rezoning will not unduly burden the planned and orderly development of the Township or place an undue burden upon municipal services and facilities, including traffic impact, fiscal impact and the like.

In light of the foregoing the Board was guided by the following decisional flow chart:

FIRST REVIEW STANDARD:

The Board Considered the following questions, from the jury charge, which was made part of the record:

1. Has the applicant met its burden of demonstrating through the presentation of sufficient credible evidence that it is more likely than not that, absent a rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility? (Inutility means uselessness or having no practical use.)

(Explain why you find that the applicant has or has not met its burden and include in your explanation the evidence or lack of evidence relied upon by you in making your finding).

2. If the answer to No. 1 is: "No" then you have concluded that rezoning **IS NOT** warranted based upon economic inutility, and you may vote to **NOT** recommend the rezoning.

Proceed to question No. 8.

3. If the answer to No. 1 is "Yes" then You must ask and answer the following two questions:

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

(a) What rezoning should be recommended to the Township Committee so that the Property is not zoned into economic inutility?

(b) Is the recommended rezoning consistent or inconsistent with the current master plan?

(Explain why you find that the rezoning is warranted so that the property is not zoned into inutility. Also, explain why you find that the recommended rezoning is either consistent or inconsistent with the current Master Plan).

4. If the answer to No. 3 is that the recommended rezoning is "consistent" with the current Master Plan, then You have concluded that rezoning is warranted on the basis of inutility, and you may vote to recommend in it whole or in part as necessary to eliminate the inutility.

Proceed to question No. 8.

5. If the answer to No. 3 is YES, rezoning is recommended; BUT IT IS NOT consistent with the current Master Plan; you must ask and answer the following question:

Is it in the best interests of the Township to amend the Master Plan to make it consistent with the proposed rezoning?

(Explain why you find that it is or is not in the best interests of the Township to amend the Master Plan to make it consistent with the recommended rezoning).

6. If the answer to questions No. 5 is YES (that it is in the best interest of the Township to amend the Master Plan to make it consistent with the recommended rezoning), You have concluded that rezoning is warranted on inutility grounds, and you may vote to recommend it in whole or in part, as necessary, to eliminate the inutility.

Proceed to question No. 8.

7. If the answer to questions No. 5 is: IT IS NOT in the best interest of the Township to amend the Master Plan, you have concluded that rezoning IS NOT warranted on inutility grounds, and you may vote to NOT recommend the rezoning.

Proceed to questions No. 8.

SECONDARY REVIEW STANDARD:

8. Consider (ask and answer) the following question:

Has the Applicant met its burden of demonstrating through the presentation of sufficient credible evidence that the rezoning proposed by the Applicant will substantially and meaningfully benefit the Township and further the purposes of the Municipal Land Use Law (MLUL)?

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

(The purposes of the MLUL are found in N.J.S.A. 40:55D-2. You may consider substantial and meaningful benefit furthering the purposes of the MLUL to include the promotion of the general welfare pursuant to N.J.S.A. 40:55D-2a and providing sufficient space in appropriate locations for a variety of residential uses to meet the needs of all New Jersey citizens pursuant to N.J.S.A. 40:55D-2g. These two purposes of the MLUL would encompass providing affordable housing to meet the Township's constitutional Mt. Laurel fair share obligation.)

(Explain why you find that the applicant has or has not met its burden of proving that the rezoning proposed by the Applicant will substantially and meaningfully benefit the Township and further the purposes of the MLUL and include in your explanation the evidence or lack of evidence you relied upon in making your finding).

9. If Your answer to No. 8 is "No" then You have concluded that the proposed rezoning **IS NOT** warranted on the bases of providing substantial and meaningful benefit to the Township and furthering the purposes of the MLUL, and you may vote to **NOT** recommend the rezoning.

You may conclude your deliberations, there are no further questions to answer.

10. If Your answer to No. 8 is "YES," then You must ask and answer the following question:

Has the Applicant met its burden of demonstrating through the presentation of sufficient credible evidence that the proposed rezoning will **NOT** unduly burden the planned and orderly development of the Township, or place an undue burden upon community services and facilities (which may include traffic, fiscal impacts, services and other negative impacts)?

(Explain why you find that the applicant has or has not met its burden and include in your explanation the evidence or lack of evidence that You relied upon in making your finding).

11. If Your answer to No. 10 is: Applicant's proposed rezoning **WILL UNDULY BURDEN** the Township, then You have concluded that the proposed rezoning **IS NOT** warranted on the basis that the proposed rezoning will provide a substantial and meaningful benefit; you may vote to **NOT** recommend the rezoning request.

You may conclude your deliberations, there are no further questions to answer.

12. If Your answer to No. 10 is "Yes" (the applicant's proposed rezoning **WILL** provide a substantial and meaningful benefit **AND** the proposed request for rezoning **WILL NOT** unduly burden the Township), then you must ask and answer the following question:

Is the proposed rezoning consistent, or inconsistent with the current Master Plan?

(Explain why you find that proposed rezoning is either consistent or inconsistent with the current Master Plan).

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

13. If the answer to No. 12 is that the proposed rezoning is "consistent" with the current Master Plan, then You have concluded that the Applicant's proposed rezoning is warranted on the basis of proving a substantial and meaningful benefit; you may vote to recommend rezoning in whole or in part as necessary to provide for the substantial and meaningful benefit.

You may conclude your deliberations; there are no further questions to answer.

14. If the answer to No. 12 is that the proposed rezoning is not "consistent" with the current master plan, you must ask and answer the following question:

Is it in the best interests of the Township to amend the master plan to make it consistent with the proposed rezoning?

(Explain why you find that it is or is not in the best interests of the Township to amend the Master Plan to make it consistent with the recommended rezoning).

15. If the answer to No. 14 is "Yes" (that it is in the best interest of the Township to amend the master plan to make it consistent with the proposed rezoning, then you have concluded that the proposed rezoning is warranted on the basis of providing a substantial and meaningful benefit and you may vote to recommend rezoning in whole or in part, as necessary, to provide the substantial and meaningful benefit.

You may conclude your deliberations; there are no further questions to answer

16. If the answer to No. 14 is "No" (that it is NOT in the best interest of the Township to amend the Master Plan to make it consistent with the proposed rezoning), then you have concluded that the proposed rezoning IS NOT warranted on the basis of providing a substantial and meaningful benefit; you may vote to NOT recommend the rezoning request.

You may conclude your deliberations; there are no further questions to answer.

While Article VIII (the "Application for Rezoning") Section 136-59 et seq., and the MLUL contemplates that the Board will retain professional consultants to assist in reviewing and evaluating the within request to rezone the Applicant's Property; it was, nevertheless, the Board that exercised the authority to consider and recommend or not, the request to rezone the Property. The Board's finding and conclusions contained herein are the independent acts of the Board and not those of the professionals and consultants.

**NOW, THEREFORE, BY THE BOARD, BY MOTION DULY MADE AND
SECONDED ON JUNE 5, 2019, BE IT RESOLVED AS FOLLOWS:**

The Board, having considered decisional Flow Chart #1 concludes that the Applicant failed to show that absent a request to rezone the Property there is a substantial likelihood that the zoning regulations currently in existence will zone the Property into inutility. The Board incorporates the hearing testimony and the Board's findings set forth above. The Board's

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

findings were the independent conclusions of the Board and not the restatement of the Board's professionals. However, briefly, under the circumstances as stated above, the Board finds that testimony provided by Mr. Brunette was credible and compelling. Mr. Brunette opined that the local zone code did not cause the Property to suffer inutility. Further, all the Applicant's experts referred to putative market changes, loss of rental income and the current conditions of the buildings; they did not testify that the zone code has caused inutility or absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility. The Board was persuaded by the testimony offered by Mr. Brunette. The Board finds that the Property still has tenants and thus there is utility. The Board, based upon the testimony, finds that the Property has potential to be leased in a manner that is consistent with a principally permitted use or permitted conditional use or repurposed to include a principally permitted use with an appropriate level of investment without a zone change. The Board finds that while the Applicant's real estate experts may have offered a better economic alternative for the Applicant, the Applicant's expert witnesses failed to demonstrate by sufficient proofs that in their professional opinion there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility. The Board, for the foregoing, finds that the Applicant failed to prove that there is a substantial likelihood that the zoning regulations currently in existence will zone or have zoned the property into inutility.

Pursuant to the decisional Flow Chart # 2, in finding that the Applicant failed to show that absent a rezoning there is a substantial likelihood that the zoning regulations currently in existence will zone the Property into inutility under #1; the Board was not required to further consider this issue until the Board's deliberations under #8.

The Board having considered decisional Flow Chart #2, concludes that the Applicant failed to show that the proposed rezoning will substantially and meaningfully benefit the Township and further the purposes of the MLUL as set forth under NJSA 40:55D-2. The Board incorporates the hearing testimony and the Board's findings set forth above. Nevertheless, the Board briefly restates that in reviewing the Applicant's request to rezone the Property, the Board concludes that the proposed request was inconsistent with the zone, the Master Plan, the MLUL and sound planning principals. The Board's findings were the independent conclusions of the Board and not the restatement of the Board's professionals. The Board was guided by the principals, goals, objectives and development policy contained in the Master Plan, Land Use Plan Element, and Zone Code. The Master Plan is the guiding document to follow when a new zone or land development decision is required. The Board in making its findings considers the vision for development contained in the Master Plan including the need to implement sensible land-use development policies to avoid adversely impacting the Township's high quality school district, preserve small town characteristics and historical architecture of the Township, concentrate dense residential development in the downtown core with less residential density emanating out from the downtown core so that density decreases as the proposed development is sited further and further from the downtown core. The Master Plan is based upon the principals of balancing land use and equitable sustainable development that meets public needs and serves the goals and objectives of the Master Plan, housing element, economic development,

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

redevelopment, green spaces, community facilities and services. The Master Plan directs that development should not exceed the limits of Township's natural systems and infrastructure nor should the proposed development degrade them and importantly, the Master Plan directs that the benefits and burdens of the proposed growth, development and rezoning must be shared and balanced to avoid inequities. The Master Plan also includes residential development goals that emphasize the Township's mass transit options, maintain current residential boundaries to guard against intrusion from incompatible land uses, and locate or concentrate higher density residential uses in the downtown area to take advantage of the mass transit infrastructure. The Board concluded that based upon all of the foregoing including the factual findings set forth above, the Applicant failed to show that the proposed request to rezone the Property would substantially and meaningfully benefit the Township and further the purposes of the MLUL. The Board finds that the proposed rezoning does include dwelling units to be designated as affordable housing, which are beneficial, but the designated units are included in a proposed request to rezone the Property that is not and includes, among other things, 905 residential units in the C-3 Zone that does not include residential development as a principal or conditional permitted use, which the Board finds is not consistent with the Master Plan and will not substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.

The Board concludes that the Applicant failed to show that the proposed request to rezone the property would not unduly burden the planned and orderly development of the Township or place an undue burden upon community services and facilities. The Board finds that the testimony offered by the Applicant's planning professional regarding how the putative fiscal benefit from the proposed request to rezone the Property would flow to the Township and CSD was not accurate and therefore not persuasive. The Board concluded that the proposed request to rezone the property would have a negative fiscal impact to the Township and CSD after full buildout of [- \$2,032,568.00]. The Board also finds that the Applicant's proposed request to rezone the property even during Phase I, would likewise have a negative fiscal impact on the Township and CSD of [-\$514,579.00]. Further, the Board finds that the added assessment that would be associated with the Property, if the proposed request to rezone the Property were to become part of the Zone Plan and zone ordinance, would not benefit the CSD. The CSD receives its funding directly from a levy that is part of its budget process set forth above. The assessed value of the Applicant's Property doesn't impact the CSD's budget process. The Board finds that the CSD would have an unmet budget need at least equal to the costs of the projected student increase of [-\$5,617,995.00] (at full buildout) and even if the Applicant was correct and the added student population from the proposed rezoning of the Property would be 135 students; such an increase would still leave the CSD with an unmet budget need of [-\$2,164,440.00] (135 students at a current cost of \$15,915 each). The Board further finds that the CSD would need to construct additional classrooms in order to accommodate even the lower student levels projected by the Applicant's expert. The Board finds that the costs of expansion would have to come from a bond or debt that the CSD would be under an obligation to pay and not from a putative increase in an added assessment on the Applicant's Property. The repayment of the debt that is needed to construct additional classrooms would come from an assessment or levy on taxpayers. In sum the Board finds that the Applicant has failed to show that the proposed request to rezone the

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

Applicant's property would offer a substantial and meaningful benefit and not unduly burden the Township and CSD.

The Board considered and deliberated upon the Applicant's request to rezone the Property under §136-59 et seq., as set forth above to report as follows:

(i) the Applicant came before the PB with a request to rezone Property. (§136-59). Clearly the Applicant complied and presented a detailed request; thereafter,

(ii) the Board reviewed the Applicant's proposal for rezoning. (§136-64). The matter was reviewed by the Board throughout 15 scheduled hearings dates; thereafter

(iii) the Board decided to not recommend the Applicant's proposal to rezone the Property and voted to not favorably recommend the proposed request to rezone the Property to the Township Committee. (§136-64). Further, Board found that (i) the Applicant failed to show that absent a rezoning there is a substantial likelihood that the current zone regulations will zone the property into inutility and (ii) that the Applicant failed to show that the proposed request to rezone the Property would substantially and meaningfully benefit the Township and further the purposes of the MLUL (iii) it is not in the best interest of the Township to recommend amending the Master Plan; and thereafter,

(iv) The Board at the conclusion of the matter deliberated and made certain detailed findings and conclusions of law concerning the applicant's proposal (§136-64).

(v) The specific detailed findings of fact and conclusions of law concerning the applicant's proposal were related to the stated review standards. (§136-67).

NOW, THEREFORE, BE IT RESOLVED, on this 4th day of September 2019, that the presentation for recommendation of the proposed rezoning of the Property located at 750 Walnut Avenue to include among other things 905 residential units where none are permitted under Cranford Township Land Development Ordinance, Article VIII (the "Application for Rezoning") Section 136-59 et seq., having been considered for review is hereby not recommended as set forth herein.

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Motion, as to whether the Applicant presented sufficient credible evidence to show absent a rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the Applicant's Property into inutility made by Dr. Christopher Chapman; received a second by Ms. Donna Pedde, was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☐ In Favor/Yes	☒ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☐ In Favor/Yes	☒ Opposed/No
3.	Lynda Feder	☐ In Favor/Yes	☒ Opposed/No
4.	Donna Pedde, Secretary	☐ In Favor/Yes	☒ Opposed/No
5.	Andrew Cossa	☐ In Favor/Yes	☒ Opposed/No
6.	Dr. Christopher Chapman	☐ In Favor/Yes	☒ Opposed/No
7.	Peter Taylor	☐ In Favor/Yes	☒ Opposed/No
8.	Deputy Mayor Ann Dooley	☐ In Favor/Yes	☒ Opposed/No
9.	Mayor Patrick Giblin	☐ In Favor/Yes	☒ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

The Motion, as to whether the Applicant's proposed request to rezone the Property was inconsistent with the Township's Master Plan was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☒ In Favor/Yes	☐ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☒ In Favor/Yes	☐ Opposed/No
3.	Lynda Feder	☒ In Favor/Yes	☐ Opposed/No
4.	Donna Pedde, Secretary	☒ In Favor/Yes	☐ Opposed/No
5.	Andrew Cossa	☒ In Favor/Yes	☐ Opposed/No
6.	Dr. Christopher Chapman	☒ In Favor/Yes	☐ Opposed/No
7.	Peter Taylor	☒ In Favor/Yes	☐ Opposed/No
8.	Deputy Mayor Ann Dooley	☒ In Favor/Yes	☐ Opposed/No
9.	Mayor Patrick Giblin	☒ In Favor/Yes	☐ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

PB 17-00004
HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Motion, as to whether the Applicant presented sufficient credible evidence to show that the proposed rezoning by the Applicant will substantially and meaningfully benefit the Township and further the purposes of the Municipal Land Use Law made by Dr. Christopher Chapman received a second by Deputy Mayor Ann Dooley was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☐ In Favor/Yes	☒ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☐ In Favor/Yes	☒ Opposed/No
3.	Lynda Feder	☐ In Favor/Yes	☒ Opposed/No
4.	Donna Pedde, Secretary	☐ In Favor/Yes	☒ Opposed/No
5.	Andrew Cossa	☐ In Favor/Yes	☒ Opposed/No
6.	Dr. Christopher Chapman	☐ In Favor/Yes	☒ Opposed/No
7.	Peter Taylor	☐ In Favor/Yes	☒ Opposed/No
8.	Deputy Mayor Ann Dooley	☐ In Favor/Yes	☒ Opposed/No
9.	Mayor Patrick Giblin	☐ In Favor/Yes	☒ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

The Motion, as to whether the Applicant presented sufficient credible evidence to show that the proposed rezoning by the Applicant will not unduly burden the planned and orderly development of the Township or place an undue burden upon municipal services and facilities made by Deputy Mayor Ann Dooley received a second by Dr. Christopher Chapman was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☐ In Favor/Yes	☒ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☐ In Favor/Yes	☒ Opposed/No
3.	Lynda Feder	☐ In Favor/Yes	☒ Opposed/No
4.	Donna Pedde, Secretary	☐ In Favor/Yes	☒ Opposed/No
5.	Andrew Cossa	☐ In Favor/Yes	☒ Opposed/No
6.	Dr. Christopher Chapman	☐ In Favor/Yes	☒ Opposed/No
7.	Peter Taylor	☐ In Favor/Yes	☒ Opposed/No
8.	Deputy Mayor Ann Dooley	☐ In Favor/Yes	☒ Opposed/No
9.	Mayor Patrick Giblin	☐ In Favor/Yes	☒ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

The Motion, as to whether the Applicant presented sufficient credible evidence to show that the proposed rezoning by the Applicant will not unduly burden the planned and orderly development of the Township or place an undue burden upon municipal services and facilities including traffic impact, fiscal impacts and the like, made by Deputy Mayor Ann Dooley received a second by Dr. Christopher Chapman was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☐ In Favor/Yes	☒ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☐ In Favor/Yes	☒ Opposed/No
3.	Lynda Feder	☐ In Favor/Yes	☒ Opposed/No
4.	Donna Pedde, Secretary	☐ In Favor/Yes	☒ Opposed/No
5.	Andrew Cossa	☐ In Favor/Yes	☒ Opposed/No
6.	Dr. Christopher Chapman	☐ In Favor/Yes	☒ Opposed/No
7.	Peter Taylor	☐ In Favor/Yes	☒ Opposed/No
8.	Deputy Mayor Ann Dooley	☐ In Favor/Yes	☒ Opposed/No
9.	Mayor Patrick Giblin	☐ In Favor/Yes	☒ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

The Motion as to whether to recommend to the Township Committee to amend the Master Plan to make the proposed request to rezone the Property consistent with the Master Plan made by Deputy Mayor Ann Dooley having received a second by Ms. Linda Feder was voted on as follows:

ROLL CALL VOTE:

The Members of the Planning Board present at the Meeting held on June 5, 2019, voted upon the motion as follows:

1.	Kathleen Murray, Chair	☐ In Favor/Yes	☒ Opposed/No
2.	Bobbi Andersen, Vice-Chair	☐ In Favor/Yes	☒ Opposed/No
3.	Lynda Feder	☐ In Favor/Yes	☒ Opposed/No
4.	Donna Pedde, Secretary	☐ In Favor/Yes	☒ Opposed/No
5.	Andrew Cossa	☐ In Favor/Yes	☒ Opposed/No
6.	Dr. Christopher Chapman	☐ In Favor/Yes	☒ Opposed/No
7.	Peter Taylor	☐ In Favor/Yes	☒ Opposed/No
8.	Deputy Mayor Ann Dooley	☐ In Favor/Yes	☒ Opposed/No
9.	Mayor Patrick Giblin	☐ In Favor/Yes	☒ Opposed/No
10.	Daniel Aschenbach, Alternate	☐ In Favor/Yes	☐ Opposed/No
11.	Julie Didzbalis, Alternate	☐ In Favor/Yes	☐ Opposed/No

PB 17-00004

HARTZ MOUNTAIN INDUSTRIES, INC., SEPTEMBER 4, 2019

ROLL CALL VOTE:

The Members of the Planning Board present at the meeting held on September 4, 2019, voted upon the motion to adopt the within Resolution of memorialization as follows:

1.	Kathleen Murray, Chair	☐ In Favor	☐ Opposed	☐ Not Present
2.	Julie Didzbalis,	☐ In Favor	☐ Opposed	☐ Not Present
3.	Lynda Feder	☐ In Favor	☐ Opposed	☐ Not Present
4.	Donna Pedde, Secretary	☐ In Favor	☐ Opposed	☐ Not Present
5.	Andrew Cossa	☐ In Favor	☐ Opposed	☐ Not Present
6.	Dr. Christopher Chapman	☐ In Favor	☐ Opposed	☐ Not Present
7.	Peter Taylor	☐ In Favor	☐ Opposed	☐ Not Present
8.	Deputy Mayor Ann Dooley	☐ In Favor	☐ Opposed	☐ Not Present
9.	Mayor Patrick Giblin	☐ In Favor	☐ Opposed	☐ Not Present
10.	Daniel Aschenbach, Alternate	☐ In Favor	☐ Opposed	☐ Not Present
11.	Roy Walton, Alternate	☐ In Favor	☐ Opposed	☐ Not Present

The foregoing Resolution of Memorialization of action taken at the Meeting of the Planning Board held on June 5, 2019, was voted on and adopted by the members of the Planning Board of the Township of Cranford who were present at the public meeting held on September 4, 2019. No member who was not present at the Meeting held on June 5, 2019, voted on the adoption of the within Resolution of Memorialization. The foregoing is a Resolution of Memorialization adopted by the Planning Board of the Township of Cranford at its public meeting on September 4, 2019.

Dated: September 4, 2019

Kathleen Murray, Chair

Donna Pedde, Secretary

EXHIBIT B

**TOWNSHIP OF CRANFORD
CRANFORD, NEW JERSEY**

RESOLUTION NO. 2019-314

**RESOLUTION ACCEPTING PLANNING BOARD'S RECOMMENDATION
TO NOT REZONE PROPERTY LOCATED IN THE C-3 ZONE**

WHEREAS, H-Cranford Credit Limited Partnership is the owner of the property located at 750 Walnut Avenue in the Township of Cranford the same designated on the Tax Map of the Township of Cranford as Block 541, Lot 1 (the "Property" or the "Site"), which; and

WHEREAS, Hartz Mountain Industries, Inc., ("The Applicant") an affiliate of H-Cranford Credit Limited Partnership owning 99% of H-Cranford Credit Limited Partnership is itself owned by Hartz Mountain Industries – NJ LLC, which is owned by The Hartz Group Inc., which is owned by the Leonard H. Stern Trust, by way of application before the Planning Board of the Township of Cranford requested a recommendation to re-zone the Property to eliminate the current office and warehouse use in favor of inclusionary multi-family residential use ("Proposed Rezoning"); and

WHEREAS, the Planning Board, pursuant to Cranford Township Land Development Ordinance, Article VIII (the "Application for Rezoning") Section 136-59 et seq., had subject matter jurisdiction over the Application for the Proposed Rezoning; and

WHEREAS, the Planning Board held 15 duly noticed public hearings to consider the Application, at which the Applicant was represented by counsel, and at which the Board received fact and expert testimony, numerous exhibits, and public comment; and

WHEREAS, on September 4, 2019, the Planning Board memorialized its factual findings and legal conclusions in a report and recommendation to deny the Applicant's Proposed Rezoning (the "Report and Recommendation"); and

WHEREAS, the Report and Recommendation and Applicant's application for Proposed Rezoning have been transmitted to the Township Committee;

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Cranford, in the County of Union, New Jersey that the Planning Board's Report and Recommendation are accepted;

BE IT FURTHER RESOLVED that, the Township Committee denies the Applicant's Proposed Rezoning for the reasons set forth in the Report and Recommendation.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held September 10, 2019.


Heather Capone, RMC
Deputy Clerk

Dated: 9/11/19

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-003679-19

Case Caption: HARTZ MOUNTAIN INDUSTRIES, INC. VS
TOWNSHIP OF CR

Case Initiation Date: 10/21/2019

Attorney Name: THOMAS FRANCIS CARROLL

Firm Name: HILL WALLACK LLP

Address: 21 ROSZEL RD PO BOX 5226

PRINCETON NJ 085435226

Phone: 6099240808

Name of Party: PLAINTIFF : Hartz Mountain Industries, Inc

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/21/2019

Dated

/s/ THOMAS FRANCIS CARROLL

Signed