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Reply to:

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April 18, 2022

Via E-Mail

**Re: Howell Township “The Fountains” Development OPRA
OPRA Request 22-252**

Dear Madam/Sir:

I am writing on behalf of my client, Howell Township, in response to your records request dated February 22, 2022 that you submitted under the Open Public Records Act (“OPRA”) and the common law right to access to government records. The Township sought an extension of the deadline to respond to your OPRA request and this response is being provided to you prior to the requested deadline.

As you may recall, you sought all emails and attachments regarding the Developer’s Agreement, for what is commonly referred to as “The Fountains” development between August 1, 2021 and 2/2/22, to and/or from:

1. Township Manager Brian Geoghegan
2. Township Attorney Joseph Clark, esq.
3. Fmr. Municipal Clerk Dwayne Harris
4. Director of Land Use and Planning Matthew Howard
5. Mayor Theresa Berger
6. Fmr. Deputy Mayor Thomas Russo
7. Councilman John Bonevich
8. Councilwoman Evelyn O’Donnell
9. Councilwoman Pamela Richmond
10. The developer, 6461 Route 9 Howell, LLC, and/or its representatives
11. Councilwoman Suzanne Brennan
12. Deputy Municipal Clerk Allison Ciranni

Based upon your request, please see the attached records. Please be aware that the attached documents contain redactions for various reasons under OPRA. Of the redacted records, several were redacted for containing privileged material under Howell Township’s attorney-client privilege, exempt from OPRA production requirements. OPRA’s broad right to access is not absolute, but it is

instead limited by “established public-policy exceptions,” stated in the statute, which declare “[a] government record shall not include... information which is deemed to be confidential.” Gilleran v. Bloomfield, 227 N.J. 159, 170 (2016) (quoting N.J.S.A. 47:1A-1.1). Similarly in North Jersey Media Group v. Bergen County Prosecutor's Office, 447 N.J. Super. 182, 201-202 (App. Div. 2016) the Court recognized that the provisions of the Open Public Records Act specifically do not abrogate or erode existing exemptions to public access, including "regulation[s] promulgated under the authority of any statute or Executive Order of the Governor" or "any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law". N.J.S.A. 47:1A-9. Accordingly, OPRA recognizes the attorney-client privilege.

In addition, several records were redacted/withheld as advisory, consultative, or deliberative materials. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. OPRA provides that the definition of a government record “shall not include . . . inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material.” When the exception is invoked, a governmental entity may “withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Educ. Law Center v. N.J. Dep't of Educ., 198 N.J. 274, 285 (2009)(citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). The redacted information involves deliberations, opinions, and advice between governmental officials and is thus exempt from OPRA.

Among the materials withheld under the advisory, consultative, or deliberative material exemption is the draft Developer’s Agreement. The draft Developer’s Agreement was a deliberative document and thus is exempt from production. However, please note we have included in the attached materials the final Developer’s Agreement.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (“GRC”) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their website at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Please feel free to contact me with any questions.

Very truly yours,
GluckWalrath LLP

By: /s/Caitlin Harney
Caitlin C. Harney