

## **WHITE PAPER**

### **Settlement of Litigation with the Rzemieniewski Family – Rzemieniewski Ordinance and Rzemieniewski and Van Cleef Master Plan and COAH Petition Changes**

In preparation of a public hearing scheduled for October 15, 2007, this white paper has been prepared to brief the public on the proposed changes to the agreements reached with the Rezem Family in December 2005 and to Van Cleef site land use and housing changes necessitated by them.

#### **PART A: The Original Rezem and Van Cleef Agreements**

##### **Rezem**

The original agreement reached with the Rezem Family, most of which was incorporated into the Master Plan of December 2005, included the following provisions:

1. **Residential and Commercial Development:** The plan proposed 72 market single-family non-age-restricted units on 19.1 acres of the 67.2 acre Rezem tract, which straddles Somerset Courthouse Road and Route 514. The plan also called for 3.8 acres of the Rezem tract along the northern side Rt. 514 between Somerset Court House Road and Main Street being zoned for retail, with office and apartments above. Approximately 44 acres were to remain as open space, which was to be purchased for \$4,400,000.00 with

funding from Green Acres, the Somerset County Parks Department, the D & R Greenway, and a grant that the Borough was to obtain.

2. **Sewers:** The Rezem Family was to pay the Borough \$2.5 million, and the Borough was to install a pump station and force main along Route 514 with that money. Based upon detailed construction estimates by the Borough's sewer consultants, it was felt at the time that there were sufficient funds to build that infrastructure and to provide sewers for almost all of the remaining portions of the Borough.

3. **Affordable Housing:** The Rezem Family was to provide four affordable apartments among those over the retail and contribute \$400,000.00 to help the Borough satisfy its affordable housing obligation, which Millstone calculated to be 34 units. That fair share obligation was to be satisfied through an 11 unit regional contribution agreement (RCA) with New Brunswick, two five-bedroom group homes on the St. Joe's property, the four apartments, and rental bonus credits.

Borough Council and the Planning Board have signed an agreement with the Rezem Family modifying this. Parts B and C explain the changes and why they were made. The agreement is contingent upon the Planning Board adopting the Land Use Element amendment and new Housing Element and Fair Share Plan and Borough Council endorsing the Housing Element and Fair Share Plan, adopting the implementing ordinance, and filing an amended petition for substantive certification with COAH. Those are the actions before the two bodies on October 15, 2007.

## Van Cleef

The original agreement reached with Van Cleef, most of which was also incorporated into the 2005 Master Plan, included the following provisions:

1. **Residential Development.** The Plan proposed 80 market single-family age-restricted units on Van Cleef's 31.1 acre tract.
2. **Sewers and Affordable Housing.** Van Cleef was to pay the Borough \$1,325,000.00 for affordable housing and other purposes, including sewer. It would at its own cost connect to the sewer line the Borough was to build with Rezem's money.

The portion of the 2005 Fair Share Plan pertaining to Van Cleef is no longer tenable for the reasons set forth in paragraph 5 of Part B. Therefore, a new Fair Share Plan that includes Van Cleef program changes, which must be submitted to COAH as part of the Rezem settlement, and corresponding Land Use Element changes are necessary. As indicated above, they are before both bodies on October 15, 2007. A new agreement with Van Cleef is also necessary, but it has not been negotiated with Van Cleef, and neither an agreement nor an implementing ordinance are before the bodies. In connection with sewerage of the Van Cleef site, the Borough is in dialogue with Hillsborough Township. If an agreement is not reached with Van Cleef, the Fair Share Plan, as well as the Land Use Element amendment, would have to be changed.

## **PART B: Changed Circumstances**

Since the Master Plan adoption and petition to COAH for Fair Share Plan approval in December of 2005, there have been the following developments that have led to the changes to the agreement with the Rezem Family, as well as to a revised land use and housing concept for the Van Cleef site:

1. **Open Space Acquisition and Size of the Residential Development Area:** While Green Acres originally agreed to participate in the purchase of what was to have been the open space portion of the Rezem tract, approximately 44 acres, once it saw how the proposed development was going to encroach into the historic section of the site, it informed the Borough that it was only willing to purchase the entire Rezem tract or nothing at all. During the negotiation process with the Planning Board the land area reserved for housing was increased from 16.7 acres to over 19 acres, and storm water detention basins were proposed within the open space. Green Acres felt that there was too much encroachment into the Revolutionary War encampment sites, the amount of the buffer was too small, and the loss of the hedgerow along Rt. 514 changed the character of the historic landscape along Rt. 514. The staff was of a similar mind.

2. **Appraisal Requirements:** Originally Green Acres appraised the 44 acres to be purchased for open space on the basis of planning scenarios for the Rezem tract the Planning Board considered in the early 2000s, but did not endorse. In late 2006, Green

Acres decided that for appraisal purposes the Borough would have to rezone to a land use classification it found acceptable.

3. **Sewers:** The former plan had called for Rezem to pay the Borough \$2.5 million for the Borough to install sewers. An additional, indeterminate amount would have been available from Van Cleef after affordable housing expenses from its \$1,325,000.00 contribution. The entire responsibility for the installation for the sewers would then have been the Borough's. Because the cost of installing sewers has increased significantly in a very short period of time, according to a 2006 study done by Maser on the Borough's behalf (a function in the rapid increase in commodity prices), Borough Council has had to reassess this obligation. The financial risk to the Borough is now much too high for the Borough to install a sewer system in accordance with the 2005 agreements. Sewers cannot be built under the original agreements given current costs.

4. **Fiscal Impact of Family Housing:** The original proposal for the development of the Rezem tract was for 72 market units that would allow families with school children. Studies had shown that the demographics in the kind of traditional neighborhood development proposed were such that there would not be many children. Recently, however, the Planning Board has learned that a similar type of development in Washington Township has generated a large number of school children. What appeared to be a positive tax ratable thus raised the specter of serious adverse fiscal impacts on the Borough.

5. **Affordable Housing Requirements and Viability of the Regional Contribution Agreement:**

In November 2006 a COAH report evaluating the Fair Share Plan submitted in December 2005 rejected Millstone's fair share calculation of a 34 unit affordable housing obligation, instead calculating the obligation at 43 units. The COAH methodology indicated that that number could be reduced if affordable units were constructed on the Rezem and Van Cleef sites rather than on the St. Joe's site, where the two group homes were to be located, and out of town through the New Brunswick RCA. In addition, New Brunswick declined to comply with a COAH requirement it had to satisfy to be eligible to receive RCA moneys, thereby voiding its RCA agreement with the Borough.

**PART C: Revised Rezem Settlement Terms**

Subsequent to December 2005, Planning Board and Borough Council representatives negotiated a new agreement with the Rezem Family that addressed the intervening events of Green Acres interest in a full, but not partial, acquisition of the Rezem site and of the need for a zoning scheme in place on which to base an appraisal; the ever-expanding development area; the untenable cost of sewers; the need to avoid the negative fiscal impacts Washington Township is experiencing; and the COAH requirement of a different method of calculating the Borough's affordable housing obligation, all of which necessitated a new land use program and Fair Share Plan. The new agreement requires the Rezem Family to apply for Green Acres acquisition of the entire site, which they have

already done, though they are not required to accept a particular offer, and the Borough and Board to consider adopting a land use and housing program that addresses the changed circumstances and provides an appraisal basis for Green Acres. That program is implemented in part by the ordinance before Council and the Board establishing a new Mixed Use Mandatory Cluster Zoning District for Rezem's 67.2 acre tract. This district requires that the 44 acres of open space that was to be acquired by Green Acres for \$4,400,000.00 (plus 2.5 more acres) be preserved *gratis* and that development be limited to designated residential (16.9 acres) and mixed use (3.8 acres) components. In the event that Green Acres and the Rezem Family do not agree upon an acquisition price, the proposed zoning will become the governing ordinance that will allow the Rezem Family to sell the land to a developer and a future developer to build accordingly. This proposed zoning includes the following provisions:

Land use aspects

- a. The 16.9 acre Residential Component has been configured so as to increase the buffer from Somerset Courthouse Road from what was as low as 65 feet to a uniform 150 feet, and the hedgerow along Rt. 514 will be preserved.
- b. The 3.8 acre Mixed Use Component, consisting of up to 28,000 square feet of retail with up to 3,000 square feet of office and 13 apartments above the retail, will be in the same location as in the original plan, along the northerly side of Route 514 extending from the old bank building klocated at the corner of Rt. 514 and Main Street,

- c. Above ground detention basins are limited to the southern side of Rt. 514, where there are County basins, but they must blend into the landscape.
- d. All of the dwelling units must be age-restricted so as to ensure that the development will have a significant positive impact on the Borough's fiscal position.
- e. There is no cap on the total number of units, but, given the minimum lot size, it is anticipated that the maximum number of units will be 92. The allowable density is to be market-driven, thereby allowing a higher value and a better ratable.

Sewer. If the Rezem site is developed, the developer will build at its cost the Route 514 pump station and force main, which all properties in the Borough can connect to without cost. The Borough will cooperate with the developer in this regard, including taking certain land use planning steps (called plan endorsement with a center designation) and sewer planning steps (amending the County's wastewater management plan to include portions of the Borough) so that the New Jersey Department of Environmental Protection would permit sewers to service the Borough. The agreement provides that the Rezem Family or its developer pay half the cost of these planning efforts. The expectation is the Van Cleef agreement will provide that Van Cleef pay the other half.

## Affordable housing

a. If there is no development on Rezem's 67.2 acres, then there will be no need for Rezem to meet any fair share housing obligation. The only exception would be for the commercial development on the .7 acres next to the old bank building. The Borough may exclude this from the acquisition in order to provide more commercial buildings in the Borough. If this occurs, it will be zoned village commercial, and whoever develops that parcel will be responsible for meeting its COAH obligation through second floor affordable apartments. This would be done at no cost to the Borough.

b. If the Rezem Family does not accept a Green Acres offer to acquire the 67.2 acres, then the developer will be responsible for meeting all of the fair share obligation attributable to the development at no cost to the Borough. That would be satisfied by eight affordable apartments for families over the retail.

### **PART D: How do these changes impact the Borough?**

1. **Sewers:** Under the new program, the Borough does not build the sewer infrastructure for the Rezem site, thus avoiding the substantial risk of excess costs the Borough would have to absorb. At the same time, this change affects the timing of sewers for the Borough. The Rezem Family will not be making the \$2.5 million

contribution to the Borough for sewers, although it will be paying half the cost of amending State land use and sewer plans that would permit the Borough to have them. The pump station and force main to serve the needs of the Borough will be built only if the tract is developed as per the new zoning scheme or if Hillsborough, to address septic system failures in its Claremont section, builds this infrastructure, a possibility though not a probability. If the Rezem tract developer builds the infrastructure, the agreement with Rezem provides that there will be no charge for Millstone property owners connecting to it. The Van Cleef development, with 92 dwelling unit plus two group homes, will substantially increase the ratable base for the Borough, as would development of the Rezem tract. This may enable the Borough to float a bond to pay for the remaining sewers.

2. **Open Space and Historic Preservation:** If the Rezem Family accepts an offer from Green Acres, then the open space on the Rezem tract will be enlarged from 44 acres under the original agreement to all 67.2 acres (unless the Borough exempts out the .7 acre commercial piece). This means that there will not be any encroachment into the Revolutionary War encampment sites and provides the Borough with more viable remaining land for a heritage park. If the Rezem Family does not accept a Green Acres offer, then the remaining open space will be approximately 46.45 acres, which is still more than the 44 acres originally proposed and both provides a much greater buffer from Somerset Courthouse Road and protects the hedgerow along Route 514. Both scenarios, and particularly the full acquisition scenario, advance Master Plan goals of preserving the historic character of the community and recognizing its historic past.

3. **Development and Fiscal Impact:** If the Rezem Family accepts an offer from Green Acres, then the only development that may take place will be on the .7 acres next to the former bank building. If the Rezem Family does not accept a Green Acres offer, then there will be the retail development, with 13 apartments and office above, on the 3.8 acres and residential development on the 16.9 acres, with as many as 92 dwelling units. Because the 92 units must be age-restricted as opposed to the original 72 units for families, the new plan will have a much more positive fiscal and tax impact.

4. **Affordable Housing:** In both the existing and the proposed plans, the Rezem Family is responsible for meeting its fair share obligation. The Borough, however, was to have acquired land for and helped arrange construction of two group homes as part of the original plan, with moneys from Rezem and Van Cleef. Under the new program, the Borough is out of the affordable housing business, with the Rezem developer itself (if its tract is developed) providing for all of its units. Eleven units were to have been transferred to New Brunswick originally, but because of the November 2006 COAH report all will now be provided in the Borough.

5. **Termination of Litigation:** If the revised Fair Share Plan is accepted by COAH or Green Acres acquires the Rezem tract, the litigation with the Rezem Family will be ended. If an agreement with Van Cleef is negotiated and accepted by COAH, the entire litigation will finally be finished.

**PART E: Van Cleef Modifications in the Master Plan.** The Housing Element and Fair Share Plan and Land Use Element changes for the Van Cleef tract, which have not been the subject of an agreement or memorialized by an ordinance, are as follows:

1. **Tract and Development Size.** The tract will be extended northward included the back of the Nori and Peterson tracts, an increase in size from 31.1 to 37.3 acres. The number of units have increased from 80 in the original plan to 92, 89 age-restricted and three for handicapped households, plus two group homes. This was done in order to modify the affordable housing program for the site in a manner that reflected the COAH decisions in its November 2006 report and provide a viable affordable housing program for the Borough. It also gives the Borough better control over how the back portions of the Nori and Peterson tracts will be developed.

2. **Affordable Housing.** The November 2006 COAH report was a strong inducement for the Borough to satisfy its affordable housing obligation by on-site units on both the Rezem and Van Cleef tracts. While previously the Van Cleef tract had no affordable units on site, the fair share obligation for the site being satisfied by the group homes on the St. Joe's site and by the regional contribution agreement, as well as by rental bonus credits, under the new program the obligation for each tract would be satisfied on site. Van Cleef would be required to fully satisfy the Borough's Second Round COAH obligation of 22 units plus a four unit Third Round growth share

obligation attributable to its tract. This would be done by the two group homes plus a total of 11 affordable units that are age-restricted (8) or accessible to handicapped households (3) and rental bonus credits.

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