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**In the Matter of the Application
of the Township of Millburn,
County of Essex.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Essex County
Docket No. ESX-L-002778-18

CIVIL ACTION

**Certification of
Joshua D. Bauers, Esq.**

1. I, Joshua D. Bauers, Esq., am an attorney in the State of New Jersey. I certify the following to be true.
2. I am a Staff Attorney at Fair Share Housing Center (FSHC). I submit this certification in support of FSHC's Motion In Aid of Litigant's Rights.
3. Attached as **Exhibit A** is a true and correct copy of the July 20, 2021 settlement agreement between Fair Share Housing Center and the Township of Millburn.
4. Attached as **Exhibit B** is a true and correct copy of the March 1, 2022 Preliminary Judgement and Repose entered by Hon Robert H. Gardner, J.S.C. .
5. Attached as **Exhibit C** is a true and correct copy of the June 2, 2022 Proposed Third Round Housing Element and Fair

Share Plan prepared by Elizabeth McManus and Brett Harris, voted down by the Millburn Planning on June 15, 2022.

6. Attached as **Exhibit D** is a true and correct copy of the April 19, 2018 Complaint for Declaratory Judgement filed on behalf of Millburn by Edward J. Buzak, Esq.

7. Attached as **Exhibit E** is a true and correct copy of the April 25, 2018 Motion for Temporary Immunity filed on behalf of Millburn by Edward J. Buzak, Esq.

8. Attached as **Exhibit F** is a true and correct copy of the April 16, 2018 Complaint in Lieu of Prerogative Writs against Millburn, filed by Inglesino, Webster, Wyciskala, & Taylor, LLC on behalf of 85 Woodland Road, LLC, 87 Woodland Road, LLC, 54 Chatham Road, LLC, and SL 58 Chatham Road, LLC.

9. Attached as **Exhibit G** is a true and correct copy of the April 17, 2020 Order of Hon. Christine A. Farrington, J.S.C. (ret.) appointing a Special Hearing Officer to oversee the site plan application of 800 Sylvan Avenue, LLC.

10. Attached as **Exhibit H** is a true and correct copy of the October 15, 2020 Opinion and Order of Hon. Thomas McCloskey, J.S.C. reversing the denial of Plaintiff SPII and appointing a Special Hearing Officer.

11. Attached as **Exhibit I** is a true and correct copy of the February 24, 2020 Order and Opinion of Hon. Thomas McCloskey, J.S.C. vacating the denial of site plan approval, enjoining the Mayor from participating in consideration of the Hidden Oak site

plan application, and appointing a Mount Laurel Implementation Monitor.

12. Attached as **Exhibit J** is a true and correct copy of the April 22, 2021 Order of Hon. Gregg A. Padovano, J.S.C. appointing a Mount Laurel Implementation Monitor.

13. Attached as **Exhibit K** is a true and correct copy of the August 17, 2021 Millburn Township Committee Minutes where the Settlement Agreement was proposed as resolution 21-237 and approved 5-0.

14. Attached as **Exhibit L** is a true and correct copy of the February 11, 2022 Final Judgment entered by Hon. Stephan C. Hansbury J.S.C. which includes appointing a Mount Laurel Implementation Monitor.

15. Attached as **Exhibit M** is a true and correct copy of the April 22, 2022 Site Investigation Report of Block 1207 Lots 7 & 9 (referred to as 9 Main Street or the DPW site) prepared by Vanasse Hangen Brustlin, Inc. retained by the Millburn Department of Public Works.

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



Dated: July 6, 2022

Joshua D. Bauers, Esq.
Fair Share Housing Center

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SUPERIOR COURT OF NEW JERSEY
Law Division, Essex County
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**CIVIL ACTION
(Mount Laurel)**

**FAIR SHARE HOUSING CENTER'S BRIEF
IN SUPPORT OF MOTION TO ENFORCE LITIGANT'S RIGHTS**

Of Counsel and on the Brief:
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Preliminary Statement

The Mount Laurel doctrine's overriding aim is to provide housing that is affordable to New Jersey's working families.

In order to achieve that aim, Mount Laurel requires that each municipality expeditiously take the necessary steps to create a realistic opportunity for its fair share of the regional need for affordable housing.

Despite the clarity of the aim, the promise of Mount Laurel has often been frustrated by some municipalities' determination to avoid compliance with their constitutional obligations. Whatever these towns seemingly give, at length and grudgingly, with one hand, they have tried to take back with the other.

When confronted with this kind of municipal resistance, New Jersey's courts have firmly demanded that towns either meet their constitutional obligations or face the loss of immunity from exclusionary zoning actions, and other appropriate remedies.

As the New Jersey Supreme Court explained in Mount Laurel II, to do otherwise -- to allow towns to evade their obligations without recourse -- would subvert Mount Laurel by leading not to housing but to process, paper, and interminable delay.

Worst of all, it would continue to deny lower-income households access to the opportunity to live in safe, decent, affordable housing and would deny them equal treatment under New Jersey's Constitution.

In the present matter, despite the obligations that the Township of Millburn assumed voluntarily when it settled with Fair Share Housing Center (FSHC) nearly a year ago in August 2021, it has engaged in a pattern of dilatory conduct that has not led to a realistic opportunity for affordable housing and, if permitted, risks undermining the very basis for the settlement of Mount Laurel litigation.

On June 15, 2022 the Township's Planning Board voted against the adoption of the proposed Housing Element and Fair Share Plan ("HEFSP") necessary to implement the court approved settlement agreement. This is particularly concerning, not only because the adoption of a compliant HEFSP is a necessary condition of the agreement, but because the Planning Board will also need to review each of the proposed zoning ordinances for consistency before they can be adopted and site plan applications for affordable housing sites in the plan. FSHC has grave concerns about whether the Planning Board will conduct either of these important and necessary reviews appropriately.

Also, on June 21, 2022, the Township Committee of Millburn, which was responsible for the introduction of all zoning ordinances voted to introduce only four of the five necessary overlay zoning ordinances to help address the Township's substantial unmet need. The Township failed to introduce the C-Zone overlay on the Canoe Brook Country Club - a major mechanism to address the Township's unmet need.

In light of this flagrant non-compliance and the clear indication of future non-compliance, FSHC respectfully urges the Court to find that both the Township Committee and the Planning Board violated the terms of the court-approved settlement agreement and the court's order after the fairness hearing.

FSHC also respectfully urges the Court to enter an order compelling the adoption of the proposed Housing Element and Fair Share Plan and the adoption of the Canoe Brook County Club overlay zone. In addition, FSHC requests the Court to appoint a Special Hearing Officer to oversee the review of approvals for all sites to be developed as part of the Township's affordable housing plan as the Board has evidently demonstrated that it will not provide an unbiased forum of review of these developments.

In addition, FSHC respectfully urges the Court to revoke the Township's immunity from builder's remedy lawsuits.

Finally, FSHC respectfully submits that it should be awarded reasonable fees and costs under Rule 1:10-3 for being compelled to bring this enforcement action. The Township's non-compliance has diverted FSHC's limited resources towards requiring the Township to do what it already agreed to do, but has refused to finish.

The entire point of settling Mount Laurel cases, and the 340+ settlements that FSHC has now entered into statewide, is to expedite the construction of affordable housing instead of fully trying a case.

If municipalities can settle and receive the benefits of settlement, including immunity from builder's remedy litigation, but then renege and refuse to act when it is time to adopt the specified terms, it would undermine the entire purpose of settlement. Thus, FSHC urges the Court to order a strong remedy so as to make it clear that municipalities must comply with their settlements.

Towns that enjoy the benefits of settlements and judgments of compliance and repose must be expected to fully comply with their voluntarily assumed commitments. When towns deviate or waltz on those commitments, they must be prepared for the consequences and swift, resolute judicial intervention. What is at stake is nothing less than the constitutional rights of lower-income New Jerseyans to have a safe, decent, affordable place to live -- and the dignity that comes with it.

It is now nearly a year since the settlement agreement between Millburn and FSHC was entered, and more than seven (7) years since the Supreme Court called for an end to delay in Mount Laurel IV. Sadly, Millburn -- despite enjoying ongoing immunity - still has a ways to go in addressing its constitutional obligations despite agreeing voluntarily to quickly implement the agreement.

Facts & Procedural History

A. The Mount Laurel IV process and the Township's declaratory judgment action.

In March 2015, the New Jersey Supreme Court held that COAH had been rendered "moribund," and, "[d]ue to COAH's inaction," it

established “judicial processes” to “provide the means for a town. . . to demonstrate that its housing plan satisfies Mount Laurel obligations.” Mount Laurel IV, 221 N.J. at 5-6.

In July 2015, over 300 New Jersey municipalities filed declaratory judgment actions across the state seeking judicial approval of their affordable housing plans. Millburn was not one of these towns.

Millburn did not file a declaratory judgment action seeking constitutional compliance in 2015 and has never previously petitioned the Council on Affordable Housing (“COAH”) for substantive certification. Prior to this case, Millburn has never historically complied or even attempted to comply with Mount Laurel.

On April 16, 2018, 85 Woodland Road, LLC filed a builders’ remedy lawsuit against Millburn for non-compliance with its affordable housing obligations. (JDB Cert. ¶ 8, Ex. F)¹. Shortly thereafter, on April 19, 2018, the Township of Millburn filed a declaratory judgment action seeking for the first time to comply.

FSHC has participated in the Township’s declaratory judgment action since its inception.

Over a period of about three (3) years between April 2018 and July 2021, FSHC engaged in settlement discussions with the Township. The negotiations were complicated for many reasons

¹ “JDB Cert.” refers to the attached certification of Joshua D. Bauers, Esq.

including because there were several developers offering affordable housing sites, the Township was requesting a vacant land adjustment, and also because the Township had not historically constructed very much to address its affordable housing obligations.

Nonetheless, with the assistance of Special Master Frank Banisch, in July 2021 the Township, FSHC, Woodmont Properties, and 249 Milburn Avenue, LLC negotiated the principal terms of a settlement agreement. The agreement constituted the entirety of Millburn's affordable housing obligations, the Township's required mechanisms to address those obligations, and ongoing monitoring of the Township's progress in addressing those obligations.

B. Millburn's Settlement Agreement and Vacant Land Adjustment.

Millburn's affordable housing obligations, under any calculation, either by FSHC's expert Dr. Kinsey or the methodology utilized in Mercer County, are substantial.

Millburn has a Prior Round obligation of 261 and a Third Round obligation of 1,115. (JDB Cert. ¶ 3, Ex. A, p. 2). When the Township filed its declaratory judgment action in 2018 it had yet to see to the construction of its first affordable housing unit.

The Township requested and received a vacant land adjustment of its affordable housing obligations pursuant to N.J.A.C. 5:93-4.2. In the face of total new construction affordable housing obligations of 1,376 units and not having constructed even one unit to address those obligations, the Township conducted its vacant

land analysis. (JDB Cert. ¶ 5, Ex. C, p. 2). Ultimately the Township and FSHC agreed upon a realistic development potential ("RDP") of 114 units. Thus, the Township has an unmet need of 1,262 units. (Id.)

To satisfy its RDP of 114, the Township utilized a number of different sites including: Canoe Brook, 85 Woodland Avenue, LLC, Wells Fargo site, 249 Millburn Avenue, LLC, and several group homes. (Id.)

To partially address its unmet need of 1,262 the Township agreed to adopt several overlay zones to capture future development and redevelopment opportunities with an affordable housing set-aside. (Id.)

The Township also agreed to support the development of an affordable housing development on the 9 Main Street site.

As part of the Settlement Agreement between Millburn and FSHC, the Township agreed to support the construction of an affordable housing site located at Block 1207, Lots 7 and 9 - aka 9 Main Street. (JDB Cert. ¶ 3, Ex. A, p. 2). The Township agreed to support the development of seventy-five (75) affordable homes on this property and to work closely with a reputable affordable housing developer to do so.

Consisting of nearly four full pages in the Settlement Agreement, this compliance mechanism is by far the most detailed. The Township agreed to a very specific process to ensure this site

is suitable for housing and that it actually gets constructed in a timely fashion.

One critical item and process outlined in the agreement is the developability of the site because of some existing contamination. Paragraph 12(e) acknowledges that this site, like many previously developed sites in New Jersey, may have some level of contamination that could need to be cleaned up before the site may be utilized for housing. The Settlement Agreement includes a process for the Township to study this contamination and reach a conclusion as to whether it is possible for the site to be cleaned up to residential standards. The potential contamination on this property has been studied with a preliminary report issued on December 14, 2021 and a Final Report issued in April 2022. (JDB Cert. ¶18, Ex. M) Neither report showed contamination that would prohibit residential development on the site. (Id.)

While every step in this detailed process for the 9 Main Street site has not yet been completed, the Township appears to be moving forward with this part of the Settlement Agreement. It has selected a developer - RPM Development - and has moved forward with potential development plans for the property. The biggest incomplete item from the Settlement Agreement that the Township must complete before it may receive a judgment of repose is the developer's agreement.²

² FSHC's Motion to Enforce Litigant's Rights is focused on the Township's refusal to adopt its HEFSP and the required Overlay Zone for the Canoe Brook Country Club. While the details of the 9 Main Street site have not yet been

C. The Fairness Hearing process and the many public meetings to discuss the Settlement Agreement and fair share plan.

The Settlement Agreement between the Township and FSHC was negotiated over a period of three years. The terms of the agreement were largely finalized in July 2021 and the Township Committee unanimously voted to approve the agreement on August 17, 2021 - the vote was 5-0. (JDB Cert. ¶ 13, Ex. K, p. 7).

Since the Settlement Agreement was executed there have been at least 8 public meetings and information sessions to discuss the Township's affordable housing plan and the Township has created a comprehensive webpage where much of this information is available in one place.³

On August 17, 2021, the Township's affordable housing planner, Ms. McManus, gave a public presentation as to the contents of the Township's settlement agreement and proposed affordable housing plan.⁴ Ms. McManus's 41-slide PowerPoint presentation is available on the Township's website.⁵

On January 10, 2022, the Township's affordable housing counsel, Mr. Buzak, and its affordable housing planner, Ms.

completed, this site is not subject to the motion, but FSHC reserves the right to bring that motion if it is later deemed necessary.

³ Affordable Housing Information, Millburn Township Website (last visited July 7, 2022), <https://twp.millburn.nj.us/427/Affordable-Housing-Information>

⁴ Millburn Township Committee Meeting - August 21, 2021 - Zoom, Millburn Township YouTube (Uploaded Aug. 21, 2021), <https://www.youtube.com/watch?v=mS1SrG7iQAk&list=PLEn44NwsN7Tu8tWWOdQZ9-XyjUfw5mld2&index=20>

⁵ Elizabeth McManus, Affordable Housing Public Information Session, Millburn Township Document Center (Aug. 18, 2021), <https://twp.millburn.nj.us/DocumentCenter/View/7631/Affordable-Housing-Public-Information-Session-Powerpoint?bidId=>

McManus, again conducted a public information session to discuss the settlement agreement and proposed affordable housing plan.⁶

On January 28, 2022, this court conducted its fairness hearing. The hearing was publicly-noticed and invited all members of the public to submit written comments and also to appear at the hearing. In addition, Ms. McManus testified under oath about the contents of the agreement and the Township's proposed affordable housing plan. (JDB Cert. ¶ 4, Ex. B, P. 2).

On March 10, 2022, the Township's affordable housing planner, Ms. McManus, conducted an in-person public information session concerning the Township's affordable housing plan. This two-and-a-half-hour session took place at the Millburn High School and members of the public were permitted to ask questions and make comments.⁷ The 38-slide PowerPoint presentation Ms. McManus utilized that evening is available on the Township's website.⁸

On April 27, 2022, the Township conducted a public information session specifically focused on the 9 Main Street affordable housing site to be developed by RPM Development Company.⁹ At this

⁶ Millburn Township Fair Share Housing Settlement Public Information Session January 10, 2022, Millburn Township YouTube (Uploaded June 10, 2022), <https://www.youtube.com/watch?v=uYpYxvB8Bwo>

⁷ Millburn Township Affordable Housing Public Information Session - March 10, 2022, Millburn Township YouTube (Uploaded Mar. 10, 2022), <https://www.youtube.com/watch?v=EsBfFVwj80E>

⁸ Elizabeth McManus, Affordable Housing Public Information Session, Millburn Township Document Center (Jan. 12, 2022), <https://twp.millburn.nj.us/DocumentCenter/View/8343/220110-EKM-Presentation?bidId=>

⁹Affordable Housing Public Information Session - April 27, 2022, Millburn Township YouTube (Uploaded Apr. 27, 2022), <https://www.youtube.com/watch?v=BcF2h8zTsQo&list=PLEn44NwsN7TvA8JHvf2hPsD0hZoUmCSFM&index=5>

meeting, the Township's Planner, Mr. Graham Petto, a representative from RPM Development, Joe Portelli, and Erin Pumo from Inglese Architecture and Engineering all appeared and provided information concerning the affordable housing site.

On May 5, 2022, the Township's Planner, Mr. Petto conducted an affordable housing "Roundtable on Overlay Zones" wherein he explained the various overlay zoning mechanisms being put into place.¹⁰ Mr. Petto's 20-slide PowerPoint presentation and the video are available on the Township's website.¹¹

On June 1, 2022, the Township's Affordable Housing Planner, Ms. McManus, appeared at the Planning Board meeting and presented the draft of a Housing Element and Fair Share Plan that she prepared.¹²

On June 15, 2022, the Township's Affordable Housing Planner, Ms. McManus, appeared at the Planning Board meeting and conducted the hearing on the Township's HEFSP.¹³

D. The Planning Board's June 15, 2022 hearing on the Housing Element and Fair Share Plan.

¹⁰Roundtable on Overlay Zones - May 5, 2022, Millburn Township YouTube (Uploaded May 5, 2022), <https://www.youtube.com/watch?v=9Rb7cWxE0cY&list=PLEn44NwsN7TtvA8JHvf2hPsD0hZoUmcSFM&index=3>

¹¹ Topology, Affordable Housing Zoning, Millburn Township Document Center (May 10, 2022), <https://twp.millburn.nj.us/DocumentCenter/View/8816/202255-Public-Information-Session?bidId=>

¹² Millburn Township Planning Board Meeting - June 1, 2022, Millburn Township YouTube (Uploaded June 1, 2022), https://www.youtube.com/watch?v=X9ur8K04_sE&list=PLEn44NwsN7Ttvw8IFq00bE0t1uV3bepjcl&index=3

¹³Millburn Township Planning Board Meeting - June 15, 2022, Millburn Township YouTube (Uploaded June 15, 2022), <https://www.youtube.com/watch?v=QDt5Xo6cGDc&list=PLEn44NwsN7Ttvw8IFq00bE0t1uV3bepjcl&index=2>

With all of the above as a direct precursor, the Planning Board's review of the HEFSP should have been simple. Ms. McManus, the Township's Affordable Housing Planner, appeared to review the Township's proposed affordable housing plan with members of the public for at least the sixth time. Instead, many members of the Planning Board professed to be unaware of what they were being asked to do and incredibly claimed that the public had not been kept informed about the Township's affordable housing plan.

Some Planning Board members asserted concerns about the process of the approval of the Settlement Agreement - which is now nearly a year old. They claimed the agreement which was painstakingly negotiated over three years was "rushed" and that the Township Committee was forced to approve the agreement in a "very very very limited timeframe."

Ms. Thall-Eglow, who was is a member of the Township Committee which unanimously approved the settlement agreement, inexplicably stated "at the end of the day I think this is really poor planning, I think it has never put Millburn's best interests out there . . . now we have to do something terrible so I think . . . I can speak for myself that we were given very little time to review this . . . and then, the public had no idea." (See Footnote 13, Millburn Township Planning Board Meeting - June 15, 2022 - 46:26.)

The Board members also expressed opposition to the Township Committee's agreement to the 9 Main Street site. FSHC is aware of several efforts to undue this aspect of the Agreement including the

circulation of a petition that was allegedly signed by over 1,400 residents.¹⁴

Planning Board members inexplicably claimed that very little is known about the contamination on the site despite it having been the subject of testing already. Worse still, some Planning Board members claimed this information was not available to the public even though it was on the Township's website for months at this point.

For instance, Alison Canfield 3:25:24 "Was there any legal reason why this board did not see the environmental report." The Planning Board Chair, Beth Zall, responds to Ms. Canfield's question stating the reality that this report has been on the Township's website for some time. (See Footnote 13, Millburn Township Planning Board Meeting - June 15, 2022 - 3:25:24.)

Also, Dianne Thall-Eglow, a Planning Board member said, "When [it was said] that 'environmental issues were understood by the governing body, I don't think that's true. It's a thousand-page report, so we don't have a clear understanding of that . . . I don't know if anyone else has seen that or even read the summary at the end." It is significant to note that Ms. Thall-Eglow also

¹⁴Stop the high-density, income-segregated housing project on Main Street, Change.org Online Petition (last visited June 6, 2022), https://www.change.org/p/stop-the-affordable-housing-project-on-main-street?recruiter=1264364084&recruited_by_id=de3abb30-cdad-11ec-ae68-f3ee4be887df&utm_source=share_petition&utm_medium=copylink&utm_campaign=petition_dashboard

served on the Township Committee which approved the Settlement Agreement. (JDB Cert. ¶ 13, Ex. K, p. 7).

Throughout the meeting several Planning Board members also expressed a desire to change aspects of the court-approved Settlement Agreement and indicated that refusing to adopt the HEFSP would further this goal.

E. The Planning Board's outrageous refusal to adopt its Housing Element and Fair Share Plan.

A core component of the Township's settlement agreement and request for a judgment of compliance and repose, as it is for every single municipality seeking to do the same, is the adoption of a compliant Housing Element and Fair Share Plan ("HEFSP").

The Settlement Agreement highlights the importance of the HEFSP in the very first substantive paragraph of the agreement on page 1. (JDB Cert. ¶ 3, Ex. A, P. 1). The Settlement Agreement provides more specificity to these requirements on page 15 in Paragraph 18. It makes clear that the adoption of the HEFSP is "an essential term of this agreement." It specifically demands that the Township "shall endorse a Housing Element and Fair Share Plan to be adopted by the Planning Board" and that it must be done "within one hundred twenty (120) days of the Court's approval of this Agreement and the entry of an Order approving this agreement following a fairness hearing." (Id. at 15)

We are now at the 120-day mark required by the agreement and it is clear that the Township has not complied, and will not comply, with the agreement. The court entered an order on March 1,

2022 approving the settlement agreement after conducting a fairness hearing on January 28, 2022. (JDB Cert. ¶ 4, Ex. B). Thus, the Township would be required to adopt and endorse the HEFSP by June 30, 2022. (Id.) Instead of adopting and endorsing the HEFSP the Planning Board voted 5 to 4 to reject the HEFSP on June 15, 2022.

It is crucial to note that the Township and Planning Board have not had just 120-days to complete this task. In fact, the settlement agreement was finalized nearly a year ago in July of 2021, and ultimately finally executed in August of 2021. (JDB Cert. ¶ 13, Ex. K).

Thus, Millburn has had three hundred and twenty-three (323) days and counting and has still not complied with the agreement.

F. The Township Committee's Outrageous refusal to introduce the Canoe Brook Overlay Zoning Ordinance.

As outlined above, due to the Township's vacant land adjustment, the Township agreed to adopt several overlay zoning mechanisms to capture affordable housing set-asides as development and redevelopment occur.

The largest overlay zone, by land and also by potential unit yield is that of the Canoe Brook Country Club. (JDB Cert. ¶ 3, Ex. A, p. 3). In Paragraph 9(a) of the settlement agreement, the Township agreed to adopt overlay zoning on this 129-acre parcel and permit up to 8 du/a. (Id. at 5.) If this overlay zone were to be built to its maximum unit yield, it could produce over 200 affordable housing units towards the Township's substantial and largely unmet affordable housing obligations.

On June 21, 2022, the Township Committee voted to introduce the other overlay zones identified in Paragraph 9(b) through (f) of the settlement agreement, but did not introduce the C-Zone overlay for the Canoe Brook Country Club. The C-Zone affordable housing overlay was only able to muster two votes on the Township Committee for introduction.¹⁵ Surprisingly, two members of the Township Committee - Diane Thall-Eglow and Tara Prupis - who voted in favor of the Settlement Agreement just last year, actually voted against introduction of the C-Zone - despite that overlay zoning mechanism being included in the Settlement Agreement.

Legal Argument

A. Standard for Motions to Enforce Under Rule 1:10-3

"Rule 1:10-3 is, at bottom, a device to enable a litigant to enforce his or her rights." Mount Laurel IV, 221 N.J. at 17; see also id. at 19 ("Rule 1:10-3 is an appropriate vehicle for judicial assistance in enforcing rights."). "The focus [is] on the vindication of litigants' rights," which does not "require establishing that the violator of an order acted with intention to disobey." Id. at 17.

Indeed, "[r]elief under Rule 1:10-3 . . . is not for the

¹⁵ Millburn Township Committee Meeting - June 21, 2022 - at 5:46:22, Millburn has a five-member Township Committee. Apparently three members voted to introduce the other ordinances, but one of those three is a member of the Canoe Brook Country Club and has recused herself from consideration of anything involving this overlay zone. Without her vote the Canoe Brook Country Club zone was not introduced because the vote is 2-2.

purpose of punishment, but as a coercive measure to facilitate the enforcement of the court order.” N. Jersey Media Grp., Inc. v. State, Office of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (quoting Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997)).

“The particular manner in which compliance may be sought is left to the court’s sound discretion.” Ibid. (quoting Bd. of Educ., Tp. of Middletown v. Middletown Tp. Educ. Ass’n, 352 N.J. Super. 501, 509 (Ch. Div. 2001)); see also ibid. (“Rule 1:10-3 . . . allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order.” (citation omitted)).

That said, “[t]he goal is compliance and nothing but compliance. In molding an appropriate remedy, a court[] . . . should not lose sight of the continuing harm done to the victims of defendants’ contumacious conduct.” Middletown Tp., 352 N.J. Super. at 510.

- B. Millburn entered into a binding settlement agreement to address its affordable housing obligations. By refusing to adopt and endorse the HEFSP and to introduce the Canoe Brook Country Club overlay zone the Township’s and Planning Board’s actions violate the settlement agreement and undermine the well-established goals of Mount Laurel settlements.**

The Township’s and Planning Board’s refusal to amend its land-use policies in adopting a valid HEFSP and to adopt the required overlay zone on the Canoe Brook Country Club plainly violate the Settlement Agreement.

Millburn's Settlement Agreement with FSHC as well as the court's fairness order of March 2, 2022, make specifically and unmistakably clear that the Township entered into a binding agreement to adopt a compliant HEFSP and to adopt all necessary ordinances to implement that plan and the agreement. This non-compliance, if unchecked, undermines the legal basis for judicial review of Mount Laurel settlements.

It is well established that "[c]ourts have the power to approve a settlement in an exclusionary case, provided certain procedures are followed to ensure that the interests of low and moderate income households are adequately protected." Toll Bros., Inc. v. Twp. of W. Windsor, 334 N.J. Super. 77, 94 (App. Div. 2000).

"Such settlements have been recognized and tacitly approved by both the Legislature and the Court." Ibid. (citing N.J.S.A. 52:27d-322; Hills Dev. Co. v. Bernards, 103 N.J. 1, 64 (1986)); see also East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996) ("We conclude that a trial judge may approve a settlement of Mount Laurel litigation after a 'fairness' hearing to the extent the judge is satisfied that the settlement adequately protects the interests of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built.").

One of the primary rationales behind permitting municipalities to settle their Mount Laurel litigation is the expectation that "the proposed settlement will result in the expeditious

construction of a significant number of lower income housing units.” East/West Venture, 286 N.J. Super. at 335 (quoting Morris Cnty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 372 (Law Div. 1984)).

Moreover, once the terms of the settlement are approved by a court judgment, “parties have a right to rely on [the] judgment,” and there is “no support for the proposition that developers’ rights embodied in a final . . . judgment can be divested simply because the municipality prefers a different fair-share plan.” Toll Bros., Inc., 334 N.J. Super. at 94-95, 97.

As the above case law and the applicable rule stress, once a municipality has agreed to the development of affordable housing on a site or sites, and once that agreement has been approved by the court, the municipality no longer has the discretion to exercise its authority to change the affordable housing simply because it may “prefer[] a different fair-share plan” or, perhaps, no plan at all. Toll Bros., Inc., 334 N.J. Super. at 94-95.

To the contrary, if a municipality attempts to renege, the parties to the agreement are entitled, under Rule 1:10-3, to the entry of an order enforcing their rights. Accord Mount Laurel IV, 221 N.J. at 19 (“Rule 1:10-3 is an appropriate vehicle for judicial assistance in enforcing rights.”).

In the present matter, Millburn entered into an agreement that recognized that only “through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement” would

the Township "satisfy[y] its obligations under the Mount Laurel doctrine and Fair Housing Act." (JDB Cert. ¶ 3, Ex. A, p. 1). The agreement further made crystal clear that adoption of the HEFSP "within one hundred twenty (120) days" is "an essential term of [the] Agreement." (Id. at 15). The Township also agreed to "introduce an ordinance or ordinances. . . to implement the terms of this Agreement and the zoning contemplated herein[]" and to do so within 120 days. (JDB Cert. ¶ 3, Ex. A, p., 15)

There can be no doubt that the Township knew what it agreed to, and that the lower income citizens whom FSHC represents, are entitled to a good faith expectation that the Township would have moved expeditiously to do whatever it could to implement the settlement agreement. See F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985) ("[G]overnmental officials . . . must 'turn square corners.' . . . [Their] primary obligation is to comport [themselves] with compunction and integrity"); see also Seidenberg v. Summit Bank, 348 N.J. Super. 243, 259 (App. Div. 2002) ("[A] party to a contract may not unreasonably frustrate its purpose."). The Township cannot now upset those expectations, frustrate the development of affordable housing, and simultaneously escape accountability.

Furthermore, if the Township were permitted to evade its affordable housing commitments, this would not only pose a real and substantial risk of harm to the protected class, but it would undermine one of FSHC's principal reasons for entering into the

settlement in the first place as well as the very legal basis for judicial review of Mount Laurel settlements.

In many of the declaratory judgment actions that have taken -- and are taking -- place, FSHC has been willing to offer, among other concessions, a settlement number well below what its expert found a municipality's fair share obligation to be.

It has made such concessions based in large part upon case law that rightly emphasizes that "in deciding whether a settlement is 'fair,' the judge must consider 'whether the proposed settlement will result in the expeditious construction of a significant number of lower income housing units.'" East/West Venture, 286 N.J. Super. at 335 (quoting Morris Cnty., 197 N.J. Super. at 372).

The promise of the expeditious construction of lower income housing is the single most important legal basis upon which courts approve settlements in Mount Laurel matters without a full adjudication of all claims, even though a full adjudication might result in requirements for even more lower income housing.

If municipalities, like Millburn, can have it both ways -- that is, if they can secure concessions through promises to move expeditiously only to delay and, ultimately, refuse to adopt the HEFSP and adopt all ordinances -- that would undermine the very basis upon which Millburn's settlement and many others have been approved. Such an outcome is contrary to law, contrary to the parties' settled expectations, and would encourage municipalities to enter into so-called agreements with the deceitful belief that,

should they so desire, they will later be able to escape the terms without penalty. FSHC urges the Court to reject this conduct.

C. Immunity is intended to reward "prompt voluntary compliance," not permit abuse of the process and delay.

In Mount Laurel IV, the New Jersey Supreme Court explained that immunity is a privilege intended to reward "prompt voluntary compliance," not a right, and should extend only for a "brief, finite period" during which the municipality must act with "good faith effort and reasonable speed." 221 N.J. at 28, 33-34.

Consistent with that understanding, the Court adopted generous standards for initial grants of immunity, but it held that more discerning standards should be applied after municipalities were provided an opportunity to demonstrate their good faith, or lack thereof.

The Court directed trial judges to conduct an ongoing "individualized assessment" to "evaluate the extent of the obligation and the steps, if any, taken toward compliance with that obligation." Id. at 28.

It provided clear guidance for how the "individualized assessment" should be conducted:

Mount Laurel-designated judges . . . [should] assiduously assess whether immunity, once granted, should be withdrawn if a particular town abuses the process for obtaining a judicial declaration of constitutional compliance. Review of immunity orders should therefore occur with periodic regularity and on notice.

. . . .

. . . Immunity, once granted, should not continue for an undefined period of time; rather, the trial court's orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity

[Id. at 26, 28.]

The Court linked "prompt voluntary compliance" with immunity from builder's remedy litigation, writing as follows:

If [prompt voluntary compliance] cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy to proceed against the towns

[Id. at 33-34.]

Millburn has abused the Mount Laurel process and failed to adopt the HEFSP it already agreed to and for which it has already received continued immunity. Shockingly, it is clear that the Planning Board's counsel made all of the board members aware of the potential ramifications of rejecting its court-approved affordable housing plan - and they voted against it anyway. At the June 15, 2022 Planning Board meeting where the HEFSP was voted down, it was expressed by members of the Board that they understood not adopting the plan could reopen the town to potential litigation.¹⁶ By not

¹⁶Millburn Planning Board Meeting - Jun 15, 2022 at 3:29:07, Beth Zall responding to a question from a board member regarding what happens if they vote down the HEFSP "I would just reraise something that had been discussed at our June 1st meeting that comes to mind which is that the builder's remedy case, I believe we would remain vulnerable to some such situation if we do not have an adopted plan in place"

voluntarily complying, the Township "brings upon itself the potential that multiple builders will force it to comply." See In re the Township of South Brunswick, 448 N.J. Super. 441, 451 (Law Div. 2016) (internal citations omitted).

In revoking immunity, however, the court should in no way release the Township from its existing obligations under prior court orders, or the Settlement Agreement.

The Township and Planning Board cannot have it both ways: enjoy the protection of immunity (which it has now enjoyed for over three years) from the settlement and the resulting fairness order, but not actually allow the development required by the agreement and court orders. The court should revoke the Township's immunity so that they cannot be shielded by an agreement that they refuse to abide by.

- D. A special hearing officer should be appointed to review and make recommendations to the Court or Special Master concerning any further review of the site plan applications for sites in the Township's HEFSP. The Planning Board's refusal to adopt the HEFSP make it clear that affordable housing developers cannot receive an unbiased review of their site plan applications before the Planning Board of Millburn.**

In light of the Planning Board's clear intent to delay and frustrate the development of affordable housing in the Township, FSHC respectfully submits that the Court should appoint a Special Hearing Officer, subject to judicial oversight, to oversee preliminary and final site plan approvals for all affordable housing sites in the HEFSP.

A special hearing officer is permitted, and encouraged, under these circumstances by relevant rules and case law.

Rule 4:59-2 states that,

[i]f a judgment or order directs a party to perform a specific act and the party fails to comply within the time specified, the court may direct the act to be done at that cost of such defaulting party by some other person appointed by the court, and the act when so done shall have like effect as if done by the defaulting party.

[R. 4:59-2.]

Likewise, in Mount Laurel IV, the Court quoted Rule 4:59-2 when it noted that “[t]he Court Rules overall evince an intent toward flexibility when the enforcement of rights is at stake. They provide various means for securing relief and allow for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order.” 221 N.J. at 17-18.

The appointment of a “Special Hearing Examiner” has become an accepted “means for securing relief” when courts have faced determined municipal intransigence. See, e.g. Cranford Dev. Assocs., LLC v. Twp. of Cranford, 445 N.J. Super. 220, 232-233 (App. Div. 2016); see also IMO Borough of Englewood Cliffs, BER-L-6119-15, April 17, 2020 Order (JDB Cert. ¶ 9, Ex. G.); see also CT07 SPII LLC and DT07 SPII LLC. v. Zoning Bd. of Twp. of Monroe, et al., October 10, 2020 Order (JDB Cert. ¶ 10, Ex. H.).

Mount Laurel courts have also taken the intermediate step of appointing an Implementation Monitor wherein the Planning Board would retain jurisdiction, but with additional and closer oversight

from a party that reports directly back to the court regularly. See Tomu Dev. Co. v. Borough of Carlstadt, No. A-5512-05T1 (App. Div. Aug. 29, 2008) (“The appointment of the Implementation Monitor, with defined powers, is an inspired and appropriate exercise of the court’s judicial powers, consistent with the Mount Laurel decisions, to assume oversight responsibility for the constitutional right to have zoning throughout New Jersey appropriately accommodate affordable housing where, as here, the municipalities neglected such constitutional obligations.”).¹⁷

The use of a Mount Laurel Implementation Monitor has been utilized by trial courts in the post-Mount Laurel IV process.

In the matter of East Brunswick, the Hon. Thomas McCloskey, J.S.C., appointed a Mount Laurel Implementation Monitor after the East Brunswick Planning Board dragged out hearing on the application for an inclusionary development and then, like here, denied it based on specious reasons. Judge McCloskey granted the Monitor specific powers and ordered the Monitor to oversee the Township’s and Planning Board’s implementation of the judgment and to review all applications for development in order to ensure expeditious compliance. (JDB Cert. ¶ 11, Ex. I.)

In the matter of Emerson, the Hon. Gregg A. Padovano, J.S.C., appointed a Mount Laurel Implementation Monitor after the Borough slow-rolled an inclusionary development that, like here,

¹⁷ This unpublished opinion is attached to the certification of Joshua D. Bauers, Esq., Counsel is unaware of any contrary unpublished opinions. See R. 1:36-3.

constituted the vast majority of affordable units in the Borough's plan. Judge Padovano granted the Monitor specific powers and ordered the Monitor to "ensur[e] that the Settlement Agreement and Conditional Final Judgment are fully complied with." (JDB Cert. ¶ 12, Ex. J.)

In the matter of the Township of Mine Hill, Hon. Stephan P. Hansbury, J.S.C. (ret. T/A), ordered the appointment of a Special Compliance Monitor to oversee the implementation of municipal approvals. (JDB Cert. ¶14, Ex. L.)

Here, the Millburn Planning Board's conduct is outrageous. Nearly a year after a settlement agreement was signed, countless meetings to discuss its contents, a publicly-noticed fairness hearing, and despite being made aware of the constitutional implications, the Board refused to adopt the HEFSP.

Equally as appalling are the Board member's stated reasons for refusing to adopt the HEFSP which ranged from the purely pretextual to the outright fabricated. Many board members spoke with an intent to frustrate the existing Settlement Agreement with the express purpose of attempting to force FSHC to amend the agreement with terms those board members view to be more favorable. This is not the role of the Planning Board in this process.

FSHC has grave concerns about this Planning Board's ability to conduct an unbiased review of the site plan applications that will necessarily be filed to construct the much-needed and long-delayed affordable housing in Millburn.

FSHC is especially concerned here because of Millburn's prior delays in complying with Mount Laurel. If affordable housing compliance were analogized to a track meet, many other towns in Essex County and statewide have already finished the race or at least have started running. Millburn is still in the locker room putting on its shoes. And with the Planning Board's outrageous refusal of the HEFSP, its shoes are on the wrong feet.

The totality of the circumstances in this case call for a firm remedy from the Court. Lower-income households who were promised housing nearly fifty years ago should not have to wait any longer for Millburn to get its act together.

E. FSHC Should Be Awarded Reasonable Fees and Costs for Bringing This Enforcement Action.

Because Millburn's actions in contravention of the court-approved settlement agreement have forced FSHC to bring this enforcement action, FSHC respectfully submits that it is entitled to reasonable attorney's fees, costs, and interest expended in litigating this matter.

The authority to award fees and costs is long recognized under Rule 1:10-3, which provides in relevant part that "[t]he court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule." R. 1:10-3.

Comments on the rule explain that, "[a]lthough the so-called American rule . . . continues to require each party to bear his own

attorney's fees except as otherwise provided by R. 4:42-9, this rule provision allowing for attorney's fees recognizes that as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment . . . is properly chargeable with his adversary's enforcement expenses." Pressler & Verniero, Current N.J. Court Rules, cmt. 4.4.5 on R. 1:10-3 (2020).

Judicial opinions have likewise affirmed the principle that courts have wide discretion to enter an award of fees when an order or judgment is enforced. See, e.g., Haynoski v. Haynoski, 264 N.J. Super. 408 (App. Div. 1993); see also Jersey City Redevelopment Agency v. Clean-O-Mat Corp., 289 N.J. Super. 381, 405 (App. Div. 1996) ("R. 1:10-3 . . . which pertains to enforcement of litigant's rights, permits a court 'in its discretion [to] make an allowance for counsel fees . . . to a party accorded relief.'").

The Township's determination to be noncompliant and its flagrant violations of the court-approved settlement agreement have compelled FSHC to bring this enforcement action to ensure that the constitutional rights of low- and moderate-income households are protected.

If municipalities and planning boards can enter into settlement agreements and then refuse to adopt the necessary Housing Element and Fair Share Plans pursuant to settlement agreements with impunity, then the very rationale for settlement, that it leads to the more rapid construction of affordable housing, is undermined.

FSHC reasonably anticipated that when it entered into an agreement with the Township and the court approved it, the Township would abide by the court's orders. FSHC's time expended to force the Township and Planning Board to do what it agreed to do when agreeing to the settlement and defending that agreement at the fairness hearing, the extensive time researching and writing this brief, and arguing the motion, force FSHC to divert its limited resources from other organizational priorities. FSHC, if Millburn had complied with its constitutional obligations as it promised to do in its Settlement Agreement, otherwise would have been able to focus on other pending matters. FSHC thus should be reimbursed by the Township in accordance with Rule 1:10-3.

Conclusion

For the foregoing reasons, FSHC respectfully urges the Court to grant the motion to enforce litigant's rights and to enter an order requiring the Township and Planning Board to adopt and endorse the HEFSP. In addition, the Court should appoint a Special Hearing Officer to oversee the site plan approvals of affordable housing sites in the HEFSP, or appoint a Mount Laurel Implementation Monitor.

The Court should also revoke the Township's immunity from builders' remedy lawsuits.

Finally, FSHC should be awarded reasonable fees and costs for bringing this enforcement action.

Dated: July 6, 2022

Respectfully submitted,
FAIR SHARE HOUSING CENTER

A handwritten signature in cursive script that reads "Joshua D. Bauers". The signature is written in black ink and is positioned above a horizontal line.

Joshua D. Bauers, Esq.

Fair Share Housing Center

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By: Joshua D. Bauers, Esq. (174532015)

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**In the Matter of the Application of
the Township of Millburn, County
of Essex.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Essex County
Docket No. ESX-L-002778-18

**CIVIL ACTION
(Mount Laurel)**

**Order to
Enforce Litigant's Rights**

THIS MATTER having been brought before the Court on the application of Movant Fair Share Housing Center, through its counsel, Joshua D. Bauers, Esq., for an Order In Aid of Litigant's Rights requiring the Township of Millburn to comply with the March 1st, 2022 Order of Final Judgment and Repose, and the Township's court-approved August 17, 2021 Settlement Agreement with Fair Share Housing Center, and the Court having considered all filed written submissions, if any, and having heard and considered the oral arguments of all counsel, if any, and for good cause shown;

IT IS on this _____ day of _____, 2022,

ADJUDGED and **ORDERED** as follows:

1. Fair Share Housing Center's Motion in Aid of Litigant's Rights against the Township of Millburn is **GRANTED**.

2. The Court finds that the Planning Board's refusal to adopt a Housing Element and Fair Share Plan(HEFSP) is a breach of the Settlement Agreement and is a violation of the March 1, 2022 Order approving the Settlement Agreement.

3. The Court finds that the Township Committee's refusal to introduce and adopt the Canoe Brook Overlay Zoning Ordinance is a breach of the Settlement Agreement and is in violation of the March 1, 2022 Order approving the Settlement Agreement.

4. The Court finds that the Township has acted in bad faith in connection with its Mount Laurel obligations.

5. The Court hereby Orders the Township to present an adopted, compliant Housing Element and Fair Share Plan by July 30, 2022.

6. The court hereby Orders the Township to present all adopted, compliant ordinances necessary to implement the Settlement Agreement by July 30, 2022.

7. The Court appoints _____ as Special Hearing Officer in this matter, for the purposes of reviewing and making recommendations to this court as to the site plan applications of all developers/developments contemplated in the Township's court-approved Settlement Agreement in accordance with the procedures set forth in *Cranford Development Associates, LLC et al's v. the Borough of Cranford et als.*, 445 N.J. Super. 220 (App. Div. 2016). The Planning Board and its experts, including its engineer and the Township Planner, shall be permitted to participate in any hearing on a site plan application as directed by the Special Hearing Officer and further elucidated in

this order. The participation of the Planning Board or the failure of the Planning Board members to participate or constitute a quorum shall not delay, thwart, otherwise impede the site plan hearings scheduled by the Special Hearing Officer. The Special Master shall assist the Special Hearing Officer who together shall provide an initial procedural memorandum to all parties of record. The Planning Board members shall be provided copies of any developer's plan and supporting documents.

8. The Special Hearing Officer shall undertake the following specific tasks in the review, evaluation, and recommendation as to any developer's site plan application:

- a. Conduct a hearing on public notice as to all aspects of the developer's site plan application for the purposes of rendering a recommendation to the Court as to whether the Court should enter an order and judgment approving, denying, or approving with conditions the proposed site plan application.
- b. All parties of record shall receive at least one (1) copy of any developer's proposed site plans, reports, and supporting documentation at least sixty (60) days prior to the hearing date scheduled by the Special Hearing Officer;
- c. The developer shall also file at least twelve (12) sets of site plans, reports, and supporting documentation with the Township Planning Department for distribution to other experts and officers of the Township as the Township deems appropriate.

- d. Any developer requesting a site plan review by the Special Hearing Officer shall post a professional review escrow fee for the review of the site plan application as required by the Township Ordinance with the initial submission. Any additional or supplemental escrow requested by the Township shall include the basis for the additional escrow and be directed to the developer and Special Master. The Special Master shall resolve any and all disputes as to the supplemental escrow requests.
- e. All responsive reports, requests for additional information, and comments by the Township shall be filed with the Special Hearing Officer, Special Master, and applicable developer at least thirty (30) days prior to the hearing date. The developer may be asked to submit additional information, reports, or studies by the Township, with such requests being made at least thirty (30) days prior to the hearing date. Such request shall be made promptly upon determination by the Township, and any objection to such additional information shall be resolved by the Special Master. In no event shall the submission of such additional information delay the hearing date. Any supplemental review by the Township shall be filed with the Special Hearing Officer, Special Master, and applicable developer no later than fourteen (14) days prior to the hearing date. The Special Master shall be the final arbiter of any disputes relating to the submissions and reports on the developer's site plans.

- f. Public notice of the hearing before the Special Hearing Officer shall be provided in accordance with N.J.S.A. 40:55D-12, which notice shall be provided by the developer. All documents, reports, plan, and other data in support of the developer's submission shall be on file with the Township Planning Department and the Township Clerk at least ten (10) days prior to the hearing date.
- g. The Special Hearing Officer shall conduct the proceedings in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-10. The developer shall present such expert testimony as it deems necessary to demonstrate the developer's proposal meets sound land-use planning principles and satisfies applicable regulations. The developer shall present its testimony and evidence in support of its site plan, which may be subjected to cross-examination. Following completion of the developer's testimony and evidence, the Township may present its response and testimony regarding the developer's site plan, which also may be subjected to cross-examination. The public and all interested parties shall be permitted to comment and/or present evidence and testimony either for or against the developer's site plan upon the conclusion of the Township's presentation.
- h. The Special Master shall participate in all hearings before the Special Hearing Officer and shall provide such planning review and testimony as may be deemed necessary by the Special Hearing Officer. The developer shall identify all other Federal, State, and

ancillary governmental permits and approvals that are required for the developer's project, and the satisfaction of these ancillary permit requirements shall be a condition of any Order approving the developer's application.

- i. In the event the Special Hearing Officer requires additional expertise by separate expert review of the developer's site plan, the Special Hearing Officer may engage such additional experts as the Special Hearing Officer deems appropriate, upon notice and consultation with the Court and all parties.
- j. All hearings conducted by the Special Hearing Officer shall be in the Superior Court of New Jersey in Newark during regular court hours, at a courtroom designated by the Court. The developer shall secure a transcript of each hearing on an expedited basis, to be paid for by the developer, and shall distribute copies of the hearing transcripts to the Township, Special Hearing Officer, and Special Master.
- k. All costs for the Special Hearing Officer, and any expert retained on behalf of the Special Hearing Officer, shall be equally shared between the Township and the developer. All costs associated with the Special Master shall be borne by the Township.
- l. Upon conclusion of a hearing, the Special Hearing Officer shall provide the Court, the Township, and the developer with its recommendation as to whether the developer's site plan should be approved, denied, or approved with conditions, which recommendation shall be in the form of a resolution. Any comments

or objections to the Special Hearing Officer's recommendations set forth in the resolution shall be filed with the court no later than ten (10) days from the date of the recommendation. The Special Hearing Officer shall set forth such findings of fact and conclusions necessary to appropriately summarize the evidence presented, so as to enable the court to enter judgment. The Court's order as to the site plan shall be considered a preliminary and final site plan approval for purposes of filing an application for a building permit.

9. The Court hereby expands the duties of the Special Master, Frank Banisch to include those of a Mount Laurel Implementation Monitor, including review, approval, and oversight of any remaining issues after a site plan application is granted by the Special Hearing Officer which shall include during the construction of any affordable housing development in the HEFSP and Settlement Agreement to prevent further interference therewith by the Township of Millburn or the Millburn Township Planning Board. All fees, costs and expenses of the Monitor shall be borne solely by Millburn, with the Monitor having the following powers:

- a. The Monitor shall oversee all actions of Millburn with regard to the affordable housing developments with the overriding goal and purpose of expediting construction and completion of the project by eliminating all impediments which either stop or delay such construction.
- b. If Millburn should fail to give review and approval on an expedited basis, the Monitor shall have the ability to direct and order issuance

of applications for building permits, or other governmental approvals, including, but not limited to, the ability to direct appropriate Millburn Officials to sign Approved Site Plans required in connection with issuance of construction permits.

- c. The Monitor shall have unfettered access to all documents and information the Monitor deems necessary to assist in the execution of their duties.

10. Attorney's fees and costs in favor of Fair Share Housing Center pursuant to Rule 1:10-3 and the Township's settlement agreement with FSHC for its application in aid of litigant's rights are hereby granted. FSHC shall provide certification of services and wire transfer instructions within ___ day of receipt of this Order. Within ___ days of the filing of the certification of services the Township shall be required to transfer, by wire transfer, to FSHC, the amount set forth in the certification of services, which shall be held in the attorney trust account(s) for FSHC for a period of ___. In the event that the Township of Millburn does not challenge the reasonable of the award of counsel fees within ___ days, such funds may be disbursed in the ordinary course.

11. Copies of this order shall be served through eCourts. Counsel for FSHC shall forward a copy of this Order to the Court's Special Master within five (5) days of receipt.

Hon. Robert H. Gardner, J.S.C.

Fair Share Housing Center

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Attorneys for Fair Share Housing Center

By: Joshua D. Bauers, Esq. (174532015)

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**In the Matter of the Application
of the Township of Millburn,
County of Essex.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Essex County
Docket No. ESX-L-002778-18

CIVIL ACTION

**Notice of Motion
In Aid of Litigants Rights**

To: Clerk
Superior Court of New Jersey
Historic Court House, Chambers
404
470 Dr. Martin Luther King, Jr.
Boulevard
Newark, New Jersey 07102

Edward J. Buzak, Esq.
The Buzak Law Group, LLC
Montville Office Park
150 River Road, Suite N-4
Montville, New Jersey 07045

On
Notice
To: Derek W. Orth, Esq.
Inglesino, Webster, Wyciskala,
and Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07504

Thomas F. Carroll, III, Esq.
Hill Wallack LLP
21 Roszel Road
P.O. Box 5226
Princeton, New Jersey 08543

PLEASE TAKE NOTICE that, on July 22, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, Fair Share Housing Center, by undersigned counsel, will apply through a motion to the Superior Court of New Jersey, before the Hon. Robert H. Gardner, J.S.C., Historic Courthouse, 4th Floor, Chambers 404 Newark, New Jersey, 07102, or through electronic video-conferencing or teleconferencing required by the court, for an Order In Aid of Litigants Rights against the Township of Millburn for violating its settlement agreement with FSHC and numerous court orders.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Fair Share Housing Center will rely upon the enclosed brief, proposed order, and certification of counsel.

Oral argument is requested.



Dated: July 6, 2022

Joshua D. Bauers, Esq.
Fair Share Housing Center