

**FILED**

**September 28, 2023**

**Hon. Thomas Daniel McCloskey, J.S.C.**

**The Hon. Thomas Daniel McCloskey, J.S.C.**

Superior Court of New Jersey  
Law Division, Middlesex County  
Middlesex County Courthouse  
56 Paterson Street, 3<sup>rd</sup> Floor  
Chambers/Courtroom 306  
New Brunswick, New Jersey 08903-0964

**PREPARED BY THE COURT:**

**IN THE MATTER OF THE  
BOROUGH OF SOUTH PLAINFIELD  
FOR A JUDGMENT OF  
COMPLIANCE OF ITS THIRD  
ROUND HOUSING ELEMENT AND  
FAIR SHARE PLAN**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY  
DOCKET NO. MID-L-3994-15

Civil Action – Mt. Laurel

**ORDER SCHEDULING  
PRELIMINARY FAIRNESS AND  
COMPLIANCE HEARING**

**THIS MATTER** has been opened to the Court upon joint application (“Application”) of the **Borough of South Plainfield** (the “Borough”) and Defendant-Intervenor, **Durham Plaza, LLC** (“Durham”), seeking an Order establishing a procedure for approving the Settlement Agreement dated January 20, 2023 (the “Agreement”) by between the Borough and Durham and entering a Preliminary Judgment of Compliance and Response as to such Agreement, and for approving a means of notice to interested parties or persons of the Agreement; and it appearing that the parties have considered and agreed to the entry of a Consent Order;

**AND THE COURT**, having reviewed and considered the status of the matter, having been advised of the parties' consent to the relief sought and to the form, substance, and entry of the within Order pursuant to R. 4:42-1(d), and, for good cause having otherwise been shown:

**IT IS** on this **28th** day of **SEPTEMBER 2023 ORDERED** that the Application, be, and hereby is **GRANTED**; and, more specifically, it is further

**ORDERED**, as follows:

1. A Fairness and Preliminary Compliance Hearing on the Agreement will be held on **NOVEMBER 9, 2023, at 10:00 A.M.**, before the Honorable Thomas Daniel McCloskey, J.S.C., at the Middlesex County Courthouse, 56 Paterson Street, Chambers/Courtroom 306, New Brunswick, New Jersey 08903-0964, to consider the entry of a Preliminary Judgment of Compliance and Repose as it pertains to the Agreement. Through this judicial proceeding, which will take place in-person, the Court will evaluate whether the Agreement is fair and reasonable to the region's low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984), *aff'd o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

2. All comments or objections regarding the Agreement shall be in writing and shall be filed as set forth below no later than **OCTOBER 27, 2023**. Written responses by any of the parties to the comments or objections shall be filed as set forth below no later than **NOVEMBER 3, 2023**. Such comments, objections, and responses, together with copies of any supporting affidavits or other documents, must be filed in writing with the Honorable Thomas Daniel McCloskey, J.S.C., Middlesex County Courthouse, 56 Paterson Street, Chambers/Courtroom 306, New Brunswick, New Jersey 08903-0964, and, if filed by an attorney, filed on eCourts. In addition,

copies of all comments, objections and responses, together with copies of any supporting affidavits or other documents, must be forwarded by mail or e-mail to:

**Elizabeth K. McManus, PP, AICP, LEED AP**  
Kyle + McManus Associates  
PO Box 236  
Hopewell, New Jersey 08525  
Email: [bmcmanus@kylemcmanus.com](mailto:bmcmanus@kylemcmanus.com)

Adam M. Gordon, Esq.  
Zoey Chenitz, Esq.  
**Fair Share Housing Center**  
510 Park Boulevard  
Cherry Hill, New Jersey 08002  
Email: [zoeychenitz@fairsharehousing.org](mailto:zoeychenitz@fairsharehousing.org)  
Email: [adamgordon@fairsharehousing.org](mailto:adamgordon@fairsharehousing.org)

Alex G. Fisher, Esq.  
**Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher, P.A.**  
56 East Main Street, Suite 301  
Somerville, New Jersey 08876  
Email: [fisher@centraljerseylaw.com](mailto:fisher@centraljerseylaw.com)

Derek W. Orth, Esq.  
**Inglesino, Webster, Wyciskala & Taylor, LLC**  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054  
Email: [dorth@iwwt.law](mailto:dorth@iwwt.law)

3. Counsel for the Borough shall upload on eCourts all comments, objections, and responses, together with copies of any supporting affidavits or other documents that were not filed directly on eCourts, for ease of access by the Court.

4. The Borough shall give notice of the Fairness and Preliminary Compliance Hearing on the Agreement to interested persons and entities by:

- a. Publishing a copy of the notice annexed hereto as **Exhibit A** at least 30 days prior to the hearing in a newspaper of general circulation in Housing Region 3, such as the Star Ledger.

- b. Mailing copies of the annexed notice at least 30 days prior to the hearing to the persons and organizations set forth on **Exhibits B and C**, which are the Region 3 Service List and the Borough's Service List.
  - c. Posting the notice conspicuously at the Borough's municipal building.
  - d. Posting the notice conspicuously on the Borough's official website.
5. Copies of the Agreement shall be made available for public inspection and copying at the offices of the Borough Clerk during ordinary business hours.
6. Any person wishing to be heard, whether or not a written objection has been filed, shall advise the Court and all counsel of record in writing as set forth above no later than **OCTOBER 27, 2023**. Failure to provide such written notice may preclude presentation of any evidence, oral presentation, or argument.
7. Proof of service and publication shall be filed on eCourts by the Borough seven (7) days prior to the hearing.

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on all parties and counsel of record upon its posting by the Court to the eCourts case jacket for this matter. Pursuant to R. 1:5-1(a) and R. 1:32-2A, counsel for the Defendant-Intervenor shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order.

SO ORDERED:



**HON. THOMAS DANIEL McCLOSKEY, J.S.C.**

(X) By Consent, as modified by the Court.<sup>1</sup>

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<sup>1</sup> By letter dated/posted on September 26, 2023 (Trans. ID:CHC20232945238), counsel for the Defendant-Intervenor confirmed to the Court that all parties have consented to the form and substance of this Order.

**EXHIBIT A****Public Notice of Fairness and Preliminary Compliance Hearing to Approve Settlement of Mt. Laurel Litigation.**

**PLEASE TAKE NOTICE** that a Fairness and Preliminary Compliance Hearing (the “Hearing”) will be held on **NOVEMBER 9, 2023 at 10:00 A.M.**, before the Honorable Thomas Daniel McCloskey, J.S.C., at the Middlesex County Courthouse, 56 Paterson Street, Courtroom 306, New Brunswick, New Jersey 08901 to consider the Settlement Agreement between the Borough of South Plainfield (the “Borough”) and Durham Plaza, LLC (“Durham”) in the Mt. Laurel action entitled In the Matter of the Borough of South Plainfield for a Judgment of Compliance of Its Third Round Housing Element and Fair Share Plan, Docket No. MID-L-3994-15. The Hearing will be in-person.

Through this judicial proceeding, the Court will evaluate whether the proposed Settlement Agreement is fair and reasonable to the region’s low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984), *aff’d o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

The Settlement Agreement will resolve the litigation as it relates to Durham and the Borough. Pursuant to the Settlement Agreement, Durham proposes to develop Block 541, Lot 10.02 as shown on the Tax Map of the Borough of South Plainfield (the “Property”) with a residential development to provide affordable housing, which will assist in meeting the 36-unit deficit in the Borough’s Prior Round and Third Round Mount Laurel Affordable Housing obligation which resulted from the Colonial Oaks project. Pursuant to the Settlement Agreement, the Borough will adopt a rezoning ordinance permitting the construction of an inclusionary development on the Property. The Borough will prepare and endorse an amended Housing Element and Fair Share Plan (“HEFSP”), which will be supported by Durham. The Borough and Durham submit that the Settlement Agreement is in a form which is substantially consistent with and fair to the interests of lower-income New-Jerseyans.

The public is invited to review and comment on the Settlement Agreement and proposed amendment to the HEFSP. All comments or objections by any interested party or person must be submitted in writing and filed no later than **OCTOBER 27, 2023**, to the following addresses and emails:

**The Honorable Thomas Daniel McCloskey, J.S.C.**  
Middlesex County Courthouse  
56 Paterson Street, Chambers 306  
New Brunswick, New Jersey 08903-0964  
Attn: Alexa R. Zuppa, Judicial Law Clerk  
[Alexa.Zuppa@njcourts.gov](mailto:Alexa.Zuppa@njcourts.gov)

**Elizabeth K. McManus, PP, AICP, LEED AP**

Kyle + McManus Associates  
PO Box 236  
Hopewell, New Jersey 08525  
Email: [bmcmanus@kylemcmanus.com](mailto:bmcmanus@kylemcmanus.com)

Adam M. Gordon, Esq.  
Zoey Chenitz, Esq.  
**Fair Share Housing Center**  
510 Park Boulevard  
Cherry Hill, New Jersey 08002  
Email: [zoeychenitz@fairsharehousing.org](mailto:zoeychenitz@fairsharehousing.org)  
Email: [adamgordon@fairsharehousing.org](mailto:adamgordon@fairsharehousing.org)

Alex G. Fisher, Esq.  
**Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher, P.A.**  
56 East Main Street, Suite 301  
Somerville, New Jersey 08876  
Email: [fisher@centraljerseylaw.com](mailto:fisher@centraljerseylaw.com)

Derek W. Orth, Esq.  
**Inglesino, Webster, Wyciskala & Taylor, LLC**  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054  
Email: [dorth@iwwt.law](mailto:dorth@iwwt.law)

In addition, any persons wishing to be heard, whether or not a written objection has been filed, shall advise of that intention on or before **OCTOBER 27, 2023**. Failure to provide such written notice may preclude presentation of any evidence, oral presentation or argument. Written responses by any of the parties to the comments or objections shall be filed no later than **NOVEMBER 3, 2023**.

This Notice is provided pursuant to the directive of the Court and is intended to inform interested parties and persons of the Settlement Agreement and inform such parties and persons that they are able to comment on said Settlement Agreement before the Court reviews and evaluates whether to approve the Settlement Agreement. This Notice does not indicate any view by the Court as to the fairness or the adequacy of the Settlement Agreement.

**EXHIBIT B****Region 3 – Service List**

Habitat for Humanity Middlesex County 51 Trinity Lane Woodbridge, NJ 07095	New Jersey Citizen Action 118 W. State Street Trenton, NJ 08608
Latino Action Network PO Box 943 Freehold, NJ 07728	Middlesex County NAACP New Brunswick Area Branch PO Box 235 New Brunswick, NJ 08901-0235
Coming Home of Middlesex County 75 Bayard Street New Brunswick, NJ 08901	Habitat for Humanity of Greater Plainfield 2 Randolph Road Plainfield, NJ 07060
Supportive Housing Association of New Jersey 15 Alden St # 14 Cranford, NJ 07016	Council on Affordable Housing 101 South Broad Street PO Box 813 Trenton, NJ 08625
NJ State Conference of the NAACP 4326 Harbor Beach Blvd. #775 Brigantine, NJ 08203	Dan McGuire Homeless Solutions 540 West Hanover Avenue Ste 100 Morristown, NJ 07960
Central Jersey Housing Resource Center 600 First Avenue, Ste 3 Raritan, NJ 08869	Susan McDonough, Ex. Dir. Friends of the Carpenter c/o Watchung Ave. Presbyterian Church 170 Watchung Ave. North Plainfield, NJ 07060
Jacqui Adam, Housing Coordinator Allies, Inc. 1262 White Horse-Hamilton Square Road Bldg. A Suite 101 Hamilton, NJ 08625	Robin Bynoe Enable, Inc. 13 Roszel Rd., Ste B110 Princeton, NJ 08540
Mary Mae Henley Cooperative Housing Corp. Somerville, NJ 08876	Raritan Valley Habitat for Humanity, Inc. 100 West Main Street Somerville, NJ 08876
NJ Statewide Independent Living Council 390 George St, 2 <sup>nd</sup> Floor New Brunswick, NJ 08901	Faith Fellowship CDC 2707 Main Street Sayreville, NJ 07062
Jewish Renaissance Community Foundation 149 Kearny Avenue Perth Amboy, NJ 08861	Making it Possible to End Homelessness 60 Clif Prescod Lane Edison, NJ 08817
The Intersect Fund 109 Church Street New Brunswick, NJ 08901	

**EXHIBIT C****Borough of South Plainfield's Service List**

The Honorable Matthew Anesh Borough of South Plainfield 2480 Plainfield A venue South Plainfield, New Jersey 07080	Paul R. Rizzo, Esq. DiFrancesco Bateman 15 Mountain Boulevard Warren, New Jersey 07059
Amy Antonides, Municipal Clerk Borough of South Plainfield 2480 Plainfield A venue South Plainfield, New Jersey 07080	Stanley C. Slachetka, PP, AICP T & M Associates 11 Tindall Road Middletown, New Jersey 07748-2792
Glenn Cullen, Municipal Administrator/CFO Borough of South Plainfield 2480 Plainfield A venue South Plainfield, New Jersey 07080	Marie Dudek, MHL Borough of South Plainfield 2480 Plainfield A venue South Plainfield, New Jersey 07080
James F. Clarkin, III, Esq Clarkin & Vignuolo, P.C. 1100 Centennial A venue, Suite 203 Piscataway, New Jersey 08854	Mary Beth Khidre, Planning Board Clerk Borough of South Plainfield 2480 Plainfield A venue South Plainfield, New Jersey 07080
Elizabeth C. McKenzie, PP, AICP 9 Main Street Flemington, New Jersey 08822	Ronald Aulenbach JSM / Edgewood Properties 1650 Stelton Road Piscataway, New Jersey 08854
Mirah Becker Middlesex County Department of Planning 40 Livingston Avenue New Brunswick, New Jersey 08901	Robin J. Bynoe Enable, Inc. 13 Roszel Road, Suite B 110 Princeton, New Jersey 08540
Melissa Field, Director of Housing Development Allies, Inc. 1262 White Horse-Hamilton Square Road Bldg. A, Suite 101 Hamilton, NJ 08690	Karl Hartkopf, PP, AICP, Director of Planning State of New Jersey-Office for Planning Advocacy 225 W. State Street, 3rd Floor PO Box 820 Trenton, NJ 08625-0820
Thomas A. Loughlin, III, Municipal Administrator City of New Brunswick City Hall 78 Bayard Street New Brunswick, NJ 08903	Elizabeth Semple NJ Dept. of Environmental Protection PO Box 402 Trenton, NJ 08625
Tom Toronto, President Bergen County's United Way 6 Forest Avenue, Suite 210 Paramus, NJ 07652	George Ververides, Director Middlesex County Planning Board 100 Bayard Street New Brunswick, NJ 08903



Ronald Ladell, Development Director Avalon Bay Communities, Inc. 517 Route 1 South, Suite 5500 Iselin, NJ 08830	Middlesex County Planning Board 40 Livingston Avenue New Brunswick, NJ 08901
Tyler Properties, LLC 1640 New Market Avenue South Plainfield, NJ 07080	Art Bernard, PP Bernard & Associates, LLC 77 N. Union Avenue Lambertville, NJ 08530
Piazza & Associates, Inc. 216 Rockingham Road Princeton Forrestal Village Princeton, NJ 08540	

