

Prepared by the court

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF SADDLE RIVER,
a municipal corporation of the State of
New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-6120-15

Civil Action

ORDER

FILED
MAR 14 2023
GREGG A. PADOVANO, J.S.C.

THIS MATTER having come before the court on motion of intervenor Saddle River Investors I, LLC (“SRI”), through its counsel, Sills Cummis & Gross, P.C., seeking an order to enforce litigant’s rights and revoking the Borough of Saddle River’s immunity from builder’s remedy suits; and intervenor Fair Share Housing Center having submitted papers in support of SRI’s motion; and opposition having been filed by Stickel, Koenig, Sullivan & Drill, LLC on behalf of the Borough of Saddle River (“Borough”); and the court having considered all papers submitted and oral argument of counsel; and for the reasons set forth in the attached rider; and for other good cause shown

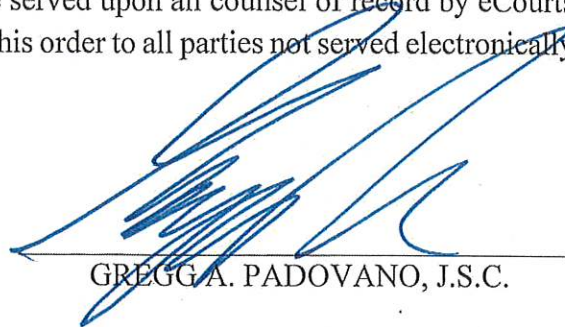
IT IS ON THIS 14th DAY OF MARCH 2023

ORDERED that SRI’s motion to enforce litigant’s rights is **DENIED**; and it is further

ORDERED that the temporary immunity previously granted to the Borough of Saddle River and the Borough of Saddle River Planning Board from any and all exclusionary zoning lawsuits is extended up to and including March 31, 2023, subject to further order of the court; and it is further

ORDERED that all requests for fees and costs associated with the subject motion are **DENIED**; and it further

ORDERED that a copy of this order shall be served upon all counsel of record by eCourts. The Borough of Saddle River shall serve a copy of this order to all parties not served electronically.



GREGG A. PADOVANO, J.S.C.

**IN THE MATTER OF THE APPLICATION OF
THE BOROUGH OF SADDLE RIVER,
a municipal corporation of the State of New Jersey**

Docket No. BER-L- 6120-15

RIDER TO ORDER DATED MARCH 14, 2023¹

Before the court is a motion to enforce litigant's rights filed on behalf of intervenor Saddle River Investors, I LLC ("SRI") seeking, amongst other remedies, court mandated approval of SRI's application for preliminary and final site plan approval and vacating any order of temporary immunity. A support brief having been filed on behalf of the Fair Share Housing Center ("FSHC") and opposition have been filed on behalf of the Borough of Saddle River (the "Borough"). The court considered all papers filed and heard oral argument of counsel.

This matter having initially come before the court upon a complaint seeking declaratory judgment filed wherein the Borough sought determination of compliance pursuant to procedures set forth in In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the court having previously conducted a combined "fairness" and "compliance" hearing on December 28, 2021 so to review a settlement agreement between the Borough and FSHC. The Borough has secured initial temporary immunity from exclusionary zoning actions, which the court has since periodically extended from time to time through March 14, 2023.

¹ Not for publication without the approval of the committee on opinions (See R. 1:36-1).

SRI is the purchaser of property located at 115 East Allendale Road, 111 East Allendale Road, and 107 East Allendale Road, Saddle River, Bergen County, New Jersey and identified as Block 1402, Lot 23, 24, and 25 on the Official Tax Maps of the Borough of Saddle River (the "Property" or the "O'Donnell Site"). SRI is also the contract purchaser of property located at 167 West Saddle River Road and identified as Block 1603, Lots 1 and 2 and Block 1602, Lot 1 on the Official Tax Maps of the Borough of Saddle River (the "Algonquin Site"). SRI wishes to develop both the O'Donnell Site and the Algonquin Site in an "inclusionary fashion."

SRI was permitted to intervene in this action by order of the court dated February 20, 2018. Thereafter, the parties engaged in extension motion practice, discovery, and briefing before the court scheduled this matter for trial to commence on or about January 20, 2020. Prior to the court ordered trial, the parties agreed to settle the litigation to allow for the construction of inclusionary residential developments on the O'Donnell Site and the Algonquin Site.

On February 10, 2020, the Parties entered into a comprehensive settlement agreement (the "Settlement Agreement") with respect to the Property and SRI's proposed development. The Borough's council adopted Resolution Number 59-20 approving the Settlement Agreement. SRI has filed a motion to enforce litigant's rights alleging that the Borough is in default of the Settlement Agreement because of the denial by the Saddle River Planning Board (the "Planning Board") of SRI's application for preliminary and final site plan approval (the "Application") for an inclusionary development on the O'Donnell site. SRI seeks an order granting the following relief: 1) approval of the Application subject to reasonable, non-cost generative conditions; 2) directing the Board to immediately draft a resolution of approval consistent with the requested relief; 3) the appointment of a implementation monitor; 4) revocation of the Borough's immunity

from exclusionary zoning builder's remedy actions; and 5) an award of reasonable attorneys' fees and costs in relation to the current motion and the Application.

SRI's Brief in Support of its Motion to Enforce Litigant's Rights

In support of its motion, SRI argues that the Borough has violated the terms of the Settlement Agreement and the court should direct the Planning Board to summarily grant approval of the Application, subject to potential imposition of reasonable conditions. SRI's Brief at 16. In reliance upon §9.h. of the Settlement Agreement, SRI argues that the Borough must be considered to be in default of the Agreement because of "the Planning Board's failure to approve" SRI's application. *Id.* SRI also notes that §27 of the Settlement Agreement entitles SRI to request that the court direct the "issuance of any required local government approvals for the [proposed development]." *Id.* In reliance upon the holding in In re Fair Lawn Borough, Bergen County v. Motion of Landmark at Radburn, 406 N.J. Super. 433 (App. Div. 2009), SRI asserts that that the Borough should not be allowed to evade its obligations to provide for affordable housing through perpetual delay, as is alleged here. *Id.*

SRI further alleges that the Planning Board's action in continuing its application for development by imposing additional requirements for review is evidence of its intentional delay of the land use process. *Id.* at 18. SRI contends that the Planning Board intentionally refused to address relevant issues during resolution compliance. *Id.* SRI notes that the Planning Board recently awarded conditional approval to allow for the construction of an inclusionary housing development on Block 1601, Lots 9, 10, 10.01, and 11 (the "Choctaw Trail Project"). *Id.* SRI asserts that the Planning Board approved the Choctaw Trail Project after two public hearings and allowed that developer to address revisions to the site plan, the landscaping plan, and the

stormwater management plan during resolution compliance whereas here SRI's proposed development on the O'Donnell Site has been addressed in ten public hearings and SRI was not allowed to address revisions during resolution compliance. Id. at 18-19. SRI specifically asserts that the Planning Board refused to allow SRI to supplement its snow removal plan during resolution compliance, but it allowed the Choctaw Trail Project developer to demonstrate that a fire truck could circulate the site post-approval during resolution compliance. Id. at 19. In reliance upon W.L. Goodfellows and Co. of Turnersville, Inc. v. Washington Tp. Planning Bd., 345 N.J. Super. 109 (App. Div. 2001), SRI argues that the Planning Board's conduct is an abuse of the site plan application and review process. Id. In reliance upon Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219 (1994), SRI asserts that a planning board cannot determine whether a given use should be permitted at the site because that power is reserved to the municipal governing body which adopts ordinances. Id. at 19-20. SRI argues that the Planning Board's conduct runs counter to the intent of the Mount Laurel doctrine established by the Supreme Court is violative of the rules and regulations applicable to the New Jersey Council on Affordable Housing, specifically, N.J.A.C. 5:93-10.1(a). Id. at 20.

SRI asserts that the Borough intentionally and continually failed to act in good faith in its implementation of the terms of the Settlement Agreement and therefore its temporary immunity should be revoked. Id. at 21-22. SRI requests that the court also appoint a special hearing officer to oversee any further review of the proposed development at the O'Donnell Site. Id. at 22. Additionally, SRI requests that a special hearing officer be assigned for any review of its inclusive development plan / application for the Algonquin Site to avoid potential unnecessary delays. Id. In reliance upon R. 4:59-2, In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), and Cranford Dev. Assocs., LLC v.

Twp. of Cranford, 445 N.J. Super. 220, 232-233 (App. Div. 2016), SRI argues that a special hearing officer is permitted and encouraged under these circumstances. Id. at 22-23. Additionally, SRI further asserts it is entitled to attorneys' fees and costs in relation to the subject motion and the Application to the Planning Board because the Settlement Agreement expressly states that the prevailing party on any action as to default "shall be entitled to apply for all costs and attorneys' fees associated with any such action" citing to § 27 of the Settlement Agreement. Id. at 23.

The Borough's Opposition to SRI's Motion to Enforce Litigant's Rights

The Borough argues in opposition that SRI's motion is premature because the court has not yet approved the Settlement Agreement therefore R. 1:10-3 which provides litigants with a remedy to enforce the terms of a settlement agreement that has been approved by a court order is not applicable. The Borough's Opposition Id. at 30. The Borough also argues that the Planning Board's denial of the Application cannot be deemed to be a default of the Settlement Agreement by the Borough because the Planning Board's denial of the Application was the result of SRI's actions. Id. at 31. The Borough argues that the facts under In re Fair Lawn, supra, are inapposite because the Borough here has not sought to remove the O'Donnell Site from its fair share housing plan. Id. at 32-33. In response to SRI's comparison of the hurdles that the O'Donnell Site has faced compared to the Choctaw Trail development, the Borough asserts that SRI has ignored the fact that the Choctaw Trail development had just two objectors whereas the O'Donnell Site development had seven objectors. Id. at 33. The Borough also argues that the holding and facts presented in W.L Goodfellows, supra, are also distinguishable since here, the Planning Board's engineering expert testified that without the information specifically requested from SRI, the

engineer could not render a valid opinion to the Planning Board as to whether SRI's stormwater management plan for the proposed development was even feasible. Id. at 34.

The Borough argues that the facts presented here are parallel to those under Morris County Fair Housing Council v. Boonton Twp., 228 N.J. Super. 635, 644 (Law Div. 1988), where the township's assistant engineer advised the township that he could not approve the applicant's stormwater management plan because of uncertainties and the court held that this "provided a sufficient foundation for the planning board's conclusion that it did not have sufficient information to assess the adequacy of the . . . stormwater management plan." Id. at 34-35.

The Borough further argues that Dowel, supra, is inapposite because the drainage issue involved in that case was within the exclusive jurisdiction of the New Jersey Department of Environmental Protection whereas here the stormwater management plan is within the exclusive jurisdiction of the Planning Board to review and approve. Id. at 36. The Borough asserts that the Planning Board denied preliminary site plan approval to the O'Donnell Site because: 1) the applicant failed to prove that the stormwater management and traffic circulation plans were feasible; and 2) the site plan failed to comply with all of the landscaping requirements set forth in the TIHD-1 zoning ordinance specifically sections 210-78.K, 210-82.C, 210-82.D, 210-82.E, and 210-82.F. Id. The Borough asserts that the Planning Board's denial of the Application was not arbitrary, capricious, unreasonable, or otherwise unlawful therefore the Borough cannot be deemed to be in default under the Settlement Agreement. Id. at 37.

The Borough argues that the court has no jurisdiction over the Planning Board because the Planning Board is not a party in the subject litigation. Id. The Borough asserts that the court cannot grant the relief that SRI seeks because the Planning Board is an indispensable party citing to R. 4:28-1(a). Id. The Borough argues that ¶27 of the Settlement Agreement which states that SRI may

seek an order “directing the issuance of any required local government approvals for the O’Donnell and Algonquin parcels,” is unenforceable and the court cannot confer jurisdiction over the Planning Board because the Planning Board is not an agency or department of the Borough but rather an independent statutory creation performing quasi-judicial functions, the Planning Board is not a party to this action, and the Planning Board is not a signatory on the Settlement Agreement. Id. at 38-39. Although only raised in SRI’s statement of facts and not raised in SRI’s brief, the Borough asserts that that none of the requests the Planning Board made to SRI were “unnecessary cost generative requests.” Id. at 39-45. Additionally, the Borough asserts that it did not impose “unnecessary cost generative requirements” on SRI. Id. The Borough argues that the Borough’s immunity cannot be revoked because neither the Borough nor the Planning Board has intentionally acted in bad faith. Id. at 45-46. The Borough further argues that the court should consider the pending motion from the prism of permanent immunity for the third-round housing period because the court has not yet rendered its decision on whether the Settlement Agreement is fair and reasonable to low- and moderate- income households and whether the implementing ordinances and other documents that the Borough adopted comply with the Borough’s Mount Laurel obligations. Id. at 46-47.

The Borough argues further that the Planning Board’s approval authority under the Municipal Land Use Law cannot be simply replaced by the appointment of a hearing officer because the Planning Board is an indispensable party and has not been added to this action. Id. at 47-49. The Borough also argues that SRI’s reliance on Cranford Dev. Assocs., supra, is misplaced because in that matter the planning board was a party and there was no objection of the appointment of a special hearing examiner. Id. at 49-50. Additionally, the Borough argues in

Cranford Dev. Assocs., supra, there was an established record of obstructing affordable housing projects in the subject township which had been established through several prior cases. Id. The Borough argues that this is not the case here. Id.

The Borough further argues that R. 4:59-2 does not support the relief that SRI seeks because the court has not entered an order approving the Settlement Agreement nor ordered the Borough or the Board to perform any specific act. Id.

SRI's Reply to the Borough's Opposition

In reply, SRI asserts that their motion is not premature as it is now nearly three years since the parties entered into the Settlement Agreement and SRI's property remains undeveloped and unavailable for families in search of affordable housing options in the Borough. SRI's Reply at 2. SRI argues that the parties have already asked the court to approve the Settlement Agreement. Id. at 2-3. SRI reiterates its argument that the Borough, by virtue of the Planning Board's denial of SRI's development application for the O'Donnell Site, has breached the Settlement Agreement because the clear and unambiguous language of the Settlement Agreement states that the "Planning Board's failure to approve" SRI's application for the O'Donnell Site constitutes a breach. Id. at 3-6. SRI further reiterates that the court should direct the Planning Board to grant the Application subject to reasonable conditions of approval as contemplated by ¶27 of the Settlement Agreement. Id. at 6-8. SRI reasserts that the Borough has intentionally and consistently acted in bad faith and therefore its temporary immunity should be revoked. Id. at 8-9. SRI argues that the Borough has not offered any justification as to why SRI was held to a higher standard than the developer of the Choctaw Trail Project. Id. at 10.

FSHC's Brief in Support of SRI's Motion to Enforce Litigant's Rights

In support of SRI's motion, FSHC argues that the court must take strong actions to ensure that needed and delayed affordable homes are approved and constructed in the Borough. FSHC's Brief at 1. FSHC asserts that the court should revoke the Borough's immunity because it has not complied with its constitutional Mount Laurel obligations. Id. at 2-6. Citing to the holdings in In re Twp. of S. Brunswick, 448 N.J. Super. 441 (Law Div. 2016) and the recent unreported decision in IMO the Application of Englewood Cliffs, Docket No. BER-L-6119-15, (August 27, 2019), FSHC asserts that trial courts across New Jersey have held that immunity is no longer justified and should be revoked when a municipality, like the Borough, demonstrates that it does not intend to comply with its fair share obligations and takes repeated steps to frustrate the actual development of affordable housing. Id. at 5-6. FSHC asserts that the Borough's conduct here warrants the same result because the Settlement Agreement was entered into over two and a half years ago and the Borough has delayed and ultimately denied the O'Donnell Site development since. Id. FSHC asserts that although the Borough has approved other developments in its affordable housing plan and allowed them to move forward, that alone does not provide the Borough with a free pass to delay and ultimately deny the O'Donnell Site development. Id. at 6. FSHC asserts that the court should revoke the Borough's immunity because it has breached the terms of the Settlement Agreement. Id. at 6-7. FSHC argues that the Settlement Agreement clearly binds the Borough to the conduct of the Planning Board in the same manner that certification from the Council on Affordable Housing (the "COAH") would in the past. FSHC relies on N.J.A.C. 5:93-10.1(a) which provides that "failure [of the Planning Board] to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification." Id.

Additionally, FSHC argues that the Settlement Agreement specifically contemplates the remedies for noncompliance. Id. at 7.

Finally, FSHC argues that the court should appoint a Mount Laurel implementation monitor to oversee the project and perform further necessary review. In reliance upon R. 4:59-2, Mount Laurel IV, supra, IMO the Application of Englewood Cliffs, supra, and the court's decision in IMO the Application of Emerson, supra, FSHC argues that the court should take strong action to ensure that affordable housing is built by appointing a judicial officer to bring the parties into compliance.

The Borough's Reply Brief to FSHC's Brief

In reply to the brief filed by FSHC, the Borough argues that the court should not revoke the Borough's immunity because more affordable housing units have been approved for construction than the Borough's entire realistic development potential obligation. The Borough's Reply Brief to FSHC's Brief at 2. The Borough argues that FSHC's assertion that the Borough's immunity should be revoked because of the unfulfilled eight affordable unit obligation from the O'Donnell Site is misguided because the Borough's realistic development potential of 131 units will be met entirely from the Planning Board's approval of the Choctaw Trail and 25 E. Allendale sites. Id. at 2-3. The Borough emphasizes that the 131-unit realistic development potential will be met without either of SRI's two sites, the O'Donnell Site and the Algonquin Site. Id. at 3-4. The Borough asserts that FSHC's reliance on In re Twp. of S. Brunswick and IMO Application of Englewood Cliffs is misguided because the cases are inapposite and neither of the cases support the revocation of immunity here. Id. at 4-6. The Borough reiterates its argument raised in its opposition to SRI's motion and asserts that the Borough has not breached the Settlement

Agreement. Id. at 6. Additionally, the Borough argues that FSHC's reliance on the rules of the COAH is misplaced. Id. at 7. The Borough asserts that COAH rules do not provide for the revocation of certification where a planning board denies an application for development involving affordable housing. Id. Instead, the Borough argues that N.J.A.C. 5:93-10.1 is merely directed at expediting the application process and does not require an approval of an inclusionary development. Id.

The Borough also argues that the appointment of a Mount Laurel implementation monitor is not warranted in this matter. Id. at 11. In reliance upon the holdings in Morris County Fair Housing Council and Field v. Franklin, 190 N.J. Super. 326 (App. Div. 1983), the Borough asserts that the Planning Board did not act unreasonably by denying site plan approval for the O'Donnell Site since SRI failed to provide sufficient information concerning fundamental aspects of the development plan. Id. at 12. The Borough asserts that FSHC's reliance on R. 4:59-2 and cited caselaw does not support the request for the appointment of a Mount Laurel implementation monitor. Id. at 13-19. The Borough asserts that this case is not parallel to IMO Borough of Emerson, Docket No. BER-L-6300-15 where the court appointed an implementation monitor. Id. at 19. The Borough notes that in the instant case it has adopted the ordinances required under the Settlement Agreement and there has not been a judgment of compliance and repose entered. Id. The Borough reiterates that the dispute here is not that the Borough's compliance plan does not satisfy its constitutional obligation under Mount Laurel, but instead the dispute here is merely over the Planning Board's denial of SRI's Application for the O'Donnell Site.

Analysis and Determination of the Court

When reviewing the facts and circumstances presented, the court here recognizes that the Borough first filed its complaint in this matter over seven years ago. The New Jersey Supreme Court in S. Burlington Cnty. NAACP v. Mount Laurel, 92 N.J. 158, 199 (1983) held that

[w]e have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals. We intend by this decision to strengthen it, clarify it, and make it easier for public officials, including judges, to apply it.

The court also recognizes that the New Jersey Rules of Court are to "be construed and applied to secure a just determination." R. 1:1-2. That admonition has particular force when it comes to assisting a litigant in securing vindication of rights. In fact, the Court in Mount Laurel IV clearly stated that

[t]he focus being on the vindication of litigants' rights, relief sought pursuant to R. 1:10-3 does not necessarily require establishing that the violator of an order acted with intention to disobey. Indeed, courts have recognized that "demonstration of a mens rea, willful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt, but irrelevant in a proceeding designed simply to enforce a judgment on a litigant's behalf." Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1975) (emphasis added); see also N.J. Dep't of Health v. Roselle, 34 N.J. 331, 347 (1961) ("The Appellate Division correctly held that upon a litigant's application for enforcement of an injunctive order, relief should not be refused merely because the violation was not willful.") . . .

The Court Rules overall evince an intent toward flexibility when the enforcement of rights is at stake. If 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 the 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. See also Roselin v. Roselin, 208 N.J. Super. 612, 618, (App. Div.) (citing R. 4:59-2(a) when noting alternatives available to trial court for enforcing party's rights), certif. denied, 105 N.J. 550 (1986).

[In re N.J.A.C. 5:96 & 5:97, 221 N.J. at 17.]

The court is certainly concerned by the apparent failure of the timely development of affordable housing at the O'Donnell Site. The Settlement Agreement at issue was executed over three years ago in February 2020. Under the terms of the Settlement Agreement, the Borough was clearly obligated to assist in the development of the O'Donnell Site, amongst others, to assure the timely development of affordable housing units and timely compliance with the Borough's Constitutional obligations under the Mount Laurel doctrine. The O'Donnell Site represents an opportunity to develop eight affordable units. The court notes that the Borough's realistic development potential of 131 units as proposed under the Settlement Agreement can be met entirely from the Planning Board's approval of the Choctaw Trail and 25 E. Allendale developments. Regardless, the court does not look to excuse the parties of their obligations or duties under the Settlement Agreement, which has not yet been approved or authorized by the court. However, based upon the facts and arguments presented, the court finds that the Borough has not "abuse[d] the process" warranting the action requested by SRI and FSHC at this time.

The court finds that FSHC's reliance on In re Twp. of S. Brunswick in support of a revocation of immunity is misplaced and without merit. The court does not find any evidence suggesting that the Borough has acted with "systematic abuses of the declaratory judgment process" analogous to the actions of the Township of South Brunswick. In re Twp. of S. Brunswick, 448 N.J. Super. at 466. Additionally, the court finds that FSHC's reliance on the recent, unpublished decision in IMO the Application of Englewood Cliffs, supra, to support the requested revocation of temporary immunity is also misplaced. The facts and circumstances presented in that Law Division matter is clearly distinguishable. In that matter, the municipality was deemed to have acted in bad faith by failing to amend its ordinances to become constitutionally compliant. See Exhibit A to FSHC Brief, IMO the Application of Englewood Cliffs. Here, the record reveals

that the Borough has adopted zoning ordinance amendments in furtherance of Mount Laurel compliance. The Borough has also taken substantial steps to ensure that its realistic development potential will be met as evidenced by the approval of the Choctaw Trail and 25 E. Allendale developments. Based upon the totality of the information presented, the court finds that revocation of the Borough's immunity motion papers is not appropriate at this time. The court further finds that the Borough's actions, or inaction, when reviewed in the broad scope of all of the facts and circumstances presented, does not rise to the level requiring revocation of temporary immunity.

Although there has been a delay in implementation of the Settlement Agreement, what is not clear at this time is whether the Borough's actions, or inactions, are solely responsible for the delay at this stage. SRI and FHSC have not provided sufficient information proving that the Borough has not adequately proceeded with fulfillment of the terms and obligations under the Settlement Agreement. The information presented does not provide the court with evidence meriting the granting of the relief sought by the movants at this time. The court does not find evidence that the Borough, or its agents, obstructed SRI's application before the Planning Board. Although the Settlement Agreement places certain obligations upon the Borough, these obligations do not wholly relieve SRI of its duties to present a complete and feasible application before the Planning Board and Borough in connection with the proposed development of the O'Donnell Site.

Furthermore, it is undisputed that the Settlement Agreement which forms the basis of SRI's motion has not been approved by the court at this time. The court also notes that there has not been an adjudication of the action, or inaction concerning SRI's application before the Planning Board, which is not a party in this matter. SRI's assertions concerning the Borough's compliance with the terms of the Settlement Agreement are based not upon a clear dispute of a recalcitrant

municipality, but rather upon the not yet adjudicated allegations that the Planning Board's actions concerning SRI's application for development.

The court finds no credible evidence to support the claim that the Planning Board abused its discretion in denying approval for the O'Donnell Site at this time. Instead, it appears from the record presented that SRI failed to provide requested, credible information concerning stormwater management and traffic circulation. See ¶ 12(a)-(b) of Resolution No. 22-28. The court finds that SRI has not demonstrated that the Planning Board acted arbitrarily, capriciously, or unreasonably warranting revocation of the Borough's immunity. See Field v. Franklin, 190 N.J. Super. 326, 332-333 (App. Div. 1983); Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219, 232-233 (1994). While the court recognizes the frustration of the movant which seeks approval to construct several market rate housing units along with eight affordable units on the O'Donnell Site, the record simply does not support a finding of systematic abuses by the Borough or its agents undertaken to frustrate or otherwise inhibit the development of affordable housing at SRI's property or throughout the Borough based upon the facts presented. The court does not find a basis to support a determination that the Borough is non-compliant with its constitutional obligation warranting revocation of immunity. The court also finds no basis to appoint a Mount Laurel Implementation Monitor at this time. The court has not been provided with evidence to sustain the claims of SRI or FSHC in this regard.

Accordingly, SRI's motion to enforce litigant's rights is **DENIED**.