

BOROUGH OF NEW MILFORD

PUBLIC NOTICE OF PROPOSED SETTLEMENT AND FAIRNESS HEARING

PLEASE TAKE NOTICE that a hearing will be held on March 9, 2017, before the Honorable William C. Meehan, Superior Court of New Jersey, at 10:30 a.m. at the Justice Center located at 10 Main Street, Hackensack, New Jersey, to consider proposed settlement agreements which have been submitted to the Court In the Matter of the Application of the Borough of New Milford, Docket No. BER-5681-15. If the Court approves these settlement agreements and subsequently determines that the Borough has complied with the terms of the agreements, the Court may in its discretion enter a Final Judgment of Compliance in favor of the Borough of New Milford.

Entry of a Final Judgment of Compliance would declare the Borough of New Milford in compliance with its obligations to provide realistic opportunities for housing affordable to low and moderate income households under the New Jersey Constitution and the New Jersey Fair Housing Act of 1985. Entry of a Judgment of Compliance may bar through July 7, 2025 any claim that the Borough of New Milford is failing to provide sufficient realistic housing opportunities for low and moderate income households.

The proposed settlement agreements would resolve three lawsuits: In the Matter of the Application of the Borough of New Milford, Docket No. BER-5681-15; New Milford Redevelopment Associates, LLC v. Borough of New Milford et al, Docket No. BER-L-9726-13, and New Milford Redevelopment Associates, LLC v. Zoning Board of Adjustment of the Borough of New Milford, Docket No. BER-L-5465-14. In the lawsuit captioned In the Matter of the Application of the Borough of New Milford, the Borough of New Milford (Borough) sought a declaration determining it is in full compliance with its constitutional affordable housing obligations and protection against exclusionary zoning litigation through July 7, 2025. New Milford Redevelopment Associates, LLC (NMRA) intervened in that lawsuit as a defendant and Fair Share Housing Center, Inc (FSHC) appeared as an interested party. Both denied that the Borough is in compliance with its constitutional housing obligations. In the lawsuit captioned: New Milford Redevelopment Associates, LLC v. Borough of New Milford et al, NMRA claimed that the Borough is in violation of its constitutional and statutory affordable housing obligations and sought a site-specific builder's remedy. The Borough denied that claim. In the lawsuit captioned New Milford Redevelopment Associates, LLC v. Zoning Board of Adjustment of the Borough of New Milford, NMRA claimed that Zoning Board unlawfully denied its application for a variance and site plan approval. The Zoning Board denied that claim.

The Borough, NMRA and FSHC have agreed to settlement of the litigation captioned In the Matter of the Application of the Borough of New Milford on the following terms:

1. The Borough's present need obligation is 53 low and moderate income housing units, its prior round prospective need obligation is 23 low and moderate income housing units, and its third round prospective need obligation is 288 low and moderate income housing units. The Borough has only limited resources of vacant developable land. Its "realistic development potential is 27 units.

2. The Borough will meet its present need obligation by participating in Bergen County housing rehabilitation programs and creating its own housing rehabilitation program.

3. The Borough will meet a portion of its prior round and third round prospective need obligations by the following actions:

a. Credit against its housing obligation for three previously established group homes.

b. Credit against its housing obligation for four low and moderate income housing units in a previously approved 38-unit multifamily housing development at 1070 River Road.

c. Adoption of a Mixed Use Planned Unit Development (MUPUD) Ordinance encompassing the so-called "Madison Avenue Site" consisting of approximately 13.6 acres at the corner of Main Street and River Road in New Milford, sometimes formerly referred to as "the United Water Site" and the so-called "River Road Site" consisting of approximately 4.4 acres with street addresses of 810-20 River Road, New Milford. Adoption of this ordinance will create realistic housing opportunities for the construction of 27 low and moderate income rental housing units on the River Road Site.

d. Additional "bonus" credits against its housing obligation for the construction of rental housing.

4. The Borough will address the remainder of its prospective need housing obligation, referred to as the municipality's "unmet need," by amending its zoning ordinance to capture future redevelopment opportunities for low and moderate income housing;

a. Any development of 5 or more units that occurs above six units per acre in the municipality as a result of a variance or rezoning shall be required to provide a minimum affordable housing set-aside of 20 percent, except that the minimum set-aside shall be 15 percent where affordable rental units are provided.

b. In the Business Zone on lots one acre in area or larger dwellings may be permitted in a building containing one or more permitted nonresidential uses on the first floor or in residential only buildings, if a set-aside of affordable housing is provided. The maximum residential density will be 14 dwelling units per acre when low- and moderate- income dwelling units are provided. The minimum affordable housing set-aside shall be 20 percent of the dwelling units in the development, except that the minimum set-aside shall be 15 percent where affordable rental units are provided.

5. The Madison Avenue Site will be subdivided into two parcels. The MUPUD Ordinance will rezone a 9.5-acre parcel on Main Street to permit construction of a supermarket and a bank. It will rezone a 4.15-acre parcel adjacent to the New Milford High School for public recreation uses, including parking. The rezoning of the Madison Avenue Site will enable the supermarket uses on the River Road Site to be relocated to the Madison Avenue Site. The MUPUD Ordinance will permit redevelopment of the River Road Site for 135 multi-family residential units, of which 20 percent will be set aside for rental to low and moderate income households.

6. The settlement agreement between NMRA and the Borough provides, among other things, that upon entry of a final nonappealable judgment of compliance, NMRA will voluntarily dismiss with prejudice the remaining lawsuits.

7. The settlement agreement between NMRA and the Borough also provides that, in connection with development of the Madison Avenue site under the MUPUD ordinance, the developer will enter into a developer agreement with the Borough that includes a recreation component. The developer agreement will provide that NMRA will transfer to the Borough the 4.15 acre subdivided parcel of the Madison Avenue Site, will grade a portion of that site for a recreation field and, up to a specified cost, prepare the substrate of the site for that field, will contribute \$750,000 toward construction of recreation facilities on the site, will provide for extra stormwater management facilities on the site, and will contribute \$50,000 toward restoration and maintenance of the recreation facilities.

8. The settlement agreement between NMRA and the Borough also provides that NMRA will pay \$4,000 to FSHC in partial reimbursement to FSHC of its expenses in connection with its participation in the litigation.

9. The Borough will adopt a Housing Element and Fair Share Plan and ordinances implementing the settlement agreements.

The full text of the proposed settlement agreements and exhibits may be examined and copied during regular business hours at the office of the Borough Clerk of the Borough of New Milford, 930 River Road, New Milford, NJ 07646 or may be requested from counsel listed below. Any interested party, including any low or moderate income person residing in the housing region, any organization representing the interests of low and moderate income persons, any owner of property in the Borough of New Milford, or any organization representing the interests of owners of property in the Borough, may file objections to the proposed settlement agreement and may present evidence in support of such objections. Objections must be filed in writing, together with copies of any supporting affidavits or documents, on or before February 22, 2017 with the Honorable William C. Meehan, Superior Court, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey 07601-7699, with duplicate copies served by mail and e-mail to the following:

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This notice is intended to inform all interested parties of the existence of the proposed settlement agreements and the possible consequences of Court approval of the settlement agreements and the entry of a Judgment of Compliance based upon those agreements. It does not indicate any view by the Court as to the merits of the lawsuit, the fairness, reasonableness or adequacy of the proposed settlement, or whether the Court will approve the settlement.