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First Ridge Alliance, Inc. **Plaintiff,** **vs.** **Township of Verona, and Mayor and Council of the Township of Verona,** **Defendants.**	**SUPERIOR COURT** **LAW DIVISION** **MONMOUTH COUNTY** **DOCKET NO.** **CIVIL ACTION** **COMPLAINT IN LIEU OF PREROGATIVE WRITS – REQUESTS CONSOLIDATION WITH ESX-L-4773-15**

Plaintiff, First Ridge Alliance, Inc., by way of Complaint against the Defendants, Township of Verona, and Mayor and Council of the Township of Verona, says:

PARTIES

1. Plaintiff, First Ridge Alliance, Inc., ("FRA") is a non-profit corporation formed under the laws of New Jersey, with mailing address 35 Belleclaire Place, Verona, NJ 07044. FRA was formed to advocate for appropriate land use and development within Verona.

2. Defendant, Township of Verona ("Verona") is a duly constituted municipality in the County of Essex, New Jersey, with address: Town Hall, 600 Bloomfield Ave., Verona, New Jersey 07044.

3. Defendant, Mayor and Council of the Township of Verona ("Council"), is the duly constituted municipal governing body of the Township of Verona, with address: Town Hall, 600 Bloomfield Ave., Verona, New Jersey 07044.

FACTUAL AND PROCEDURAL HISTORY

4. On or about July 10, 2015, Defendant Verona, acting through Defendant Council, filed a Complaint in this court seeking a declaratory judgement ("D.J. action") as to the sufficiency of its Housing Element and Fair Share Plan (collectively, "housing plan") to meet Verona's affordable-housing obligations under the New Jersey Constitution.

5. The constitutional obligation as set forth in New Jersey's Mount Laurel jurisprudence, starting with S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151 (1975) requires every municipality in New Jersey to conform its land use ordinances and regulations, so as to provide a realistic opportunity for the construction of the municipality's fair share of the unmet regional need for housing affordable by households of low or moderate income.

6. In prior years, an administrative agency, New Jersey's Council on Affordable Housing ("COAH"), had issued formulas and rules calculating the regional housing needs and each municipality's fair share. Towns that submitted housing plans to meet their fair share would receive protection from litigation, including the dreaded "builder's remedy" litigation which permitted landowners and developers to build at higher densities, if they could establish that the town had failed to meet its constitutional obligation.

7. As of 2014, however, COAH had become non-functional, and therefore in its decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, published on March 10, 2015, the Supreme Court directed that municipalities wishing to receive protection from litigation over their housing plans must submit them to a trial court for review and approval, by way of declaratory judgment. The Court directed that the Fair Share Housing Center be permitted to intervene in any such action, to advocate both as to what the "fair share" should be, and whether the town had adopted appropriate mechanisms to meet it.

8. In reviewing a municipality's housing plan, the trial court must determine what, in fact, is the precise "fair share," and whether the planning and zoning mechanisms adopted by the municipality in attempting to meet its "fair share" comply with the applicable rules and regulations adopted by various administrative agencies under the aegis of New Jersey's Fair Housing Act, N.J.S.A. 52:27D-301 to 329. The court may appoint a Special Master to advise it, as the rules are complex.

9. The principally applicable rules include those procedural and substantive rules of the Council on Affordable Housing which survived the Supreme Court's decision of March 10, 2015, and the Uniform Housing Affordability Controls ("UHAC") of the New Jersey Housing and Mortgage Finance Agency ("HMFA"), N.J.A.C 5:80-26.1 et seq.

10. Fair Share Housing Center ("FSHC"), as well as three property owners in Verona, as described below, sought and were granted permission to intervene in Verona's D.J. action, captioned ESX-L-4773-15.

11. Over the course of the ensuing years, Verona, in fits and starts, as reflected in the pleadings in the D.J. action, took steps to conform its land use planning and zoning ordinances with the legal requisites.

12. In particular, Verona seems to have correctly come to understand, by 2018, that a settlement, at least with FSHC, and, if possible, with one or more of the landowning intervenors, would be safer than litigating. If Verona and FSHC could reach a settlement as to the "fair share," and as to the housing plan mechanisms to meet the fair share, this could be presented to the court at a fairness hearing and could thereby, if the court approved, resolve the litigation. Intervenors might be included in the settlement, or not, and they would be heard as to whether or not they considered the settlement fair, to the otherwise unrepresented, un-housed poor.

13. In the meantime, trial courts across New Jersey have been holding fairness hearings on such affordable housing settlements, or preparing for trial, in cases which did not

settle. The first court to conduct a county-wide trial as to the fair share methodology was in Mercer County, for what ultimately were captioned consolidated actions MER-L-1550-15 and MER-L-1561-15. Judge Mary C. Jacobson, the Assignment Judge for Mercer County, rendered her 217-page decision on March 8, 2018, after forty days of trial, spanning from January to June, 2017 ("Mercer County decision" or "Mercer County methodology.")

14. The Mercer County decision, while binding only on the two towns in Mercer County which, by the end of the trial, had failed to settle with FSHC—West Windsor and Princeton--has been broadly accepted as establishing a well-considered formula for calculating the "fair share" of any municipality in New Jersey.

15. Under the Mercer County methodology, Verona's fair share obligation is 238. In other words, if this court applies the Mercer County formula, then Verona must present a housing plan that will result in 238 credits, under the applicable rules.

16. There seems to be a general consensus among the litigants in Verona's D.J. action, ESX-L-4773-15, that 238 represents the number at which FSHC would settle, and the Special Master would likely recommend the court approve. Those litigants include Verona, FSHC, and three landowner-intervenors: Spectrum 360, Inc., which operates a private school at One Sunset Drive; a collection of entities collectively referred to in this litigation as "Bobcar" and also known by the name of its principals, longtime Verona landowners, Kruvant Brothers; and Poekel Properties, owner of a small site near the intersection of Bloomfield Ave. and Linn Drive.

17. In order to meet the 238 fair share "number," Verona would be entitled to use any combination of mechanisms, including bonus credits, that complied with the rules. Such mechanisms include housing projects of all-affordable units; "inclusionary projects" where zoning density is increased, in return for the developer dedicating 15%, 20%, or more, of the units as deed-restricted so as to be affordable for at least 30 years; group homes and other

supportive housing; extension of controls on units whose deed restrictions might be expiring; and bonuses.

18. In order to receive credits for mechanisms which do not depend on an "inclusionary" builder to fund them, municipalities must prove that funding is available. For example, all-affordable projects might be supported by grants or tax credits, or the town can fund them, itself. If the town chooses to do so, it must demonstrate the capacity to pay for the project.

19. For whatever reason, Verona initially pursued primarily "inclusionary" mechanisms. On October 1, 2018, the Council adopted Resolution 2018-136, which authorized the township administrator to enter into a Memorandum of Understanding with one of the landowning intervenors, Spectrum ("2018 Agreement").

20. The 2018 Agreement provided that Spectrum would be permitted to build a project of 300 units on a roughly 5-acre piece of land Spectrum owns, and at which it operates its school ("the Spectrum site"). In return, 20% of the units (i.e., 60 units) would be deed-restricted, as affordable. In addition, Verona would take steps to declare Spectrum's property an "area in need of redevelopment," which would entitle Spectrum to long-term tax abatement (a process Verona commenced on January 7, 2019, with Resolution 2019-29.) This was undertaken because Spectrum claims it needs to achieve a certain sale price for its land at this site. Spectrum would prefer to sell the property, in order to finance a relocation and expansion of the school.

21. Importantly, Spectrum has represented that if it cannot achieve the price it is seeking for the Property—whatever that may be, Spectrum has not disclosed--it will refuse to settle with Verona. Spectrum's lawyer (who also represents the would-be developer of the Spectrum site, BNE Real Estate Group), repeated this on the record at a special Council meeting held on May 15, 2019, as described, below.

22. Spectrum's position is inconsistent with its rights under the Mt. Laurel doctrine, which only requires a municipality to zone so as to create the realistic likelihood that a profit-

minded developer in a rational market will so develop the land, at any site designated to create "inclusionary" housing. Even with a builder's remedy, that is all a landowner is entitled to. A landowner proposing its land for inclusionary development is not entitled to enforce a particular price or resulting land value.

23. The 2018 Agreement was burdensome to Verona, as it would result in 240 market rate units, in addition to 60 affordable units, with attendant traffic congestion, public-school financing and other impacts, on a parcel of land currently zoned for low-density residential development in accord with the surrounding neighborhood.

24. The members of Plaintiff FRA reside in the low-density residential neighborhood immediately adjacent to the Spectrum site, known as the Afterglow neighborhood, from the name of one of the neighborhood streets. The Afterglow neighborhood currently has little traffic, other than the bus and car traffic occasioned by Spectrum's school. All of the neighborhood traffic, from whatever source, funnels down Sunset Ave., toward Bloomfield Avenue.

25. Bloomfield is a four-lane, county road, the main commercial artery for a series of towns, including Montclair, Glen Ridge, Verona, the Caldwells, and beyond. The intersection of Sunset and Bloomfield already has difficulty accommodating the existing traffic. Spectrum and its designated developer, BNE Real Estate Group ("BNE"), have represented that it would not be physically possible for the traffic from any high-density residential development on the Spectrum site to access Bloomfield Ave. directly, and that, instead, all of the traffic would have to use Sunset. Currently, only four cars are able to queue on Sunset at the signalized intersection with Bloomfield Ave., between the entrance to the Spectrum site and the intersection. At that location, Bloomfield makes a sharp curve, on a steep downgrade, around the rocky outcropping which forms the Spectrum site.

26. Shortly after negotiating the 2018 Agreement, Verona's representatives became aware of a large piece of land for sale, some distance up Bloomfield Ave., near the Poekel Properties site, where Bloomfield Ave. is straight and traffic more safely accommodated. Formerly a commercial use, this site is known as the "Cameco" site.

27. Verona commenced negotiations to purchase the Cameco site, for housing. In the meantime, Verona's Planning Board commissioned a report from Verona's municipal planner as to whether the Spectrum site could meet the legal requirements to be designated an area in need of redevelopment under New Jersey's Local Housing and Redevelopment Law ("LHRL", N.J.S.A. 40A:12A-1, et seq. The Planning Board received and reviewed the report, and on January 31, 2019, determined that the Spectrum site did not meet the legal requisites. Unless it were found to meet the area-in-need requisites, the Spectrum site cannot qualify for tax abatement.

28. On March 13, 2019, Verona purchased the Cameco site. Verona now states that it intends to build a 100-unit all-affordable project on the Cameco site. This, combined with a small inclusionary project on the Poekel Properties site, plus mechanisms such as group homes and bonuses, would meet the fair share of 238.

29. However, Verona and its Council seem to be under a mis-impression that, even if Verona commits to pay the entire cost of the Cameco site, and enables the other mechanisms, it must still settle with Spectrum, or else face trial and the risk of a "builder's remedy." This fear is unfounded. Verona is free to settle with some of the landowning intervenors, or all of them, or none of them, so long as it can produce a housing plan the court will approve.

30. For example, Bobcar/Kruvant has proposed two sites for inclusionary housing. One, at 111 Mount Prospect Ave., is likewise adjacent to the Afterglow neighborhood, but does not present the dangerous traffic situation of the Sunset/Bloomfield intersection. The other, at 25 Commerce Court, currently serves as a leaf-dump for Verona's municipal works. Verona does

not contemplate including either site in its housing plan. Instead, Verona claims to prefer to keep both the Bobcar/Kruvant sites "green," despite the fact that they are zoned residential and not included as open space in Verona's Master Plan.

31. Due to its unwarranted fear of Spectrum, and its hurry to prepare for a case management conference the court was to hold on Monday, May 20, 2019, Verona acquiesced to yet another Agreement with Spectrum ("new Agreement"). The new Agreement provides two alternatives, which have come to be known as "Plan A" (the "Project"), and "Plan B," (the "Alternative Project.") Under Plan A, BNE would build 200 units on the Spectrum site and BNE or Spectrum would make a payment of $6,250,000.00 to Verona's housing trust fund, in lieu of providing affordable housing. Verona would use the "in-lieu" money to help develop the Cameco site, which development Verona estimated to cost roughly $26,000,000.00, in addition to land costs of roughly $3,000,000.00 Verona has already paid for the site. In return, Verona would once again consider whether the Spectrum site qualifies for the tax abatement. If, for whatever reason, the Spectrum site is found, yet again, not to qualify for preferential tax treatment in order to induce its development, then "Plan B" would take effect. Under Plan B, BNE would build 300 units on the Spectrum site, but would only yield 45 units of affordable housing. There would be no in-lieu payment, and no tax abatement.

32. On May 15, 2019, at 7:30 p.m., Verona's Council held a special meeting, to discuss and adopt a Resolution authorizing the new Agreement. The meeting was required to be publicized 48 hours in advance, under New Jersey's Open Public Meetings Act ("OPMA"). The requisites of the OPMA include giving notice to a newspaper of general circulation in the community, as well as the town's paper of record. The notice was not provided within the published time requirements of either newspaper, and, as a result, the paper of record, Verona Cedar-Grove Times, did not publish the notice at all, and the general-circulation paper, the Star-Ledger published it only the day before, that is, on May 14, 2019.

33. In addition to the deficient public notice, Verona's rush to finalize the draft agreement meant that council members themselves, as they remarked at the meeting, had only received the text of the Agreement less than 48 hours before the meeting (approximately noon, on May 14). The draft Agreement was not made public until 25 hours before the start of the meeting--about 6:30 p.m., on May 14.

34. The court-appointed Special Master in the D.J. litigation had not had prior opportunity to advise the Council as to the finalized Agreement.

35. Possibly worst of all, Council voted on the Agreement not knowing whether FSHC would agree to a settlement containing Plan B's unworkable concentration of development—possibly, "unapprovable," "unsuitable," or even "undevelopable," in COAH parlance-- and not having asked whether FSHC might agree to a settlement that used only the Poekel Properties and Cameco sites, and neither Spectrum nor Bobcar/Kruvant.

36. In its haste, Council was deprived of the most important information—whether in the view of FSHC, the indispensable party to settling the current affordable housing actions all over New Jersey, Verona actually needed to settle with Spectrum, and whether FSHC would support the contemplated settlement.

37. At the May 15, 2019 meeting, FRA did not oppose Plan A, despite the difficulties it would cause for the Afterglow neighborhood. However, Plan A is premised on the questionable assumption that a site, which was refused designation as an area-in-need, a little over three months ago, would magically transform into an area genuinely in need of redevelopment. FRA would support the in-need designation, but FRA is not the only actor. With at least one other intervenor excluded from the contemplated settlement, the survival of the in-need designation cannot be counted on not to be challenged, nor to survive any challenge that might be brought.

38. That is why, according to Spectrum's lawyer (who also represents BNE), Spectrum will not settle, unless Plan B is part of the Agreement. And, he warned Council at the May 15, 2019, special meeting, if Plan B isn't approved, Spectrum will not agree to Plan A, and without Plan A, Spectrum will challenge Verona's immunity, "tomorrow."

39. Knowledgeable Mt. Laurel counsel would caution Verona that a site which the landowner refuses to make available for inclusionary housing unless it can realize an above-market price, supported by a discretionary tax abatement, may not actually be "available." Under COAH's rules, this would doom the site, and would put paid to the landowner's threats of litigation.

40. Each member of the Council said he supported Plan A, since they believed Verona apparently had to settle with Spectrum, but didn't think Plan B was a good idea. Verona's Mayor expressed anger at what he called the last-minute introduction of Plan B and surprise ultimatum by Spectrum. He was vehemently opposed to Plan B.

41. Nevertheless, four out of five Council members, including the Mayor, voted regretfully to approve the Resolution authorizing the Agreement, both Plan A and Plan B, because, they said, otherwise Verona would lose its immunity from builder's remedy litigation. The Resolution, 2019-101, has not yet been published, as of the date of this filing.

FIRST COUNT – MAYOR AND COUNCIL'S ADOPTION OF THE RESOLUTION WAS ARBITRARY, UNREASONABLE, AND CAPRICIOUS, WITHOUT ADEQUATE BASIS IN LAW OR FACT

41. Plaintiff reincorporates all of the preceding paragraphs as if set forth again in full.

42. The adoption of Resolution 2019-101 was arbitrary, capricious and unreasonable. It was without adequate factual or legal basis.

43. Mayor and Council failed to consider Verona's ability to settle its litigation without an agreement from either Spectrum or Bobcar/Kruvant. This is a critical issue of both law and fact, as to which, misapprehension underlay the entire justification for the Resolution.

44. Mayor and Council received no information or expert advice as to any of the planning aspects and impacts of the Spectrum site: traffic, impervious coverage, buffering, stormwater management, noise, light, solid waste management, etc. They received no expert reports or any other information as to adequacy of sewer service, or of water pressure.

45. Mayor and Council received no written information as to the amount of the tax abatement, or other fiscal impacts of the new Agreement. Testimony on this point was limited to a hurried, informal, oral presentation. Neither Council nor the public were able to review any written figures.

46. Mayor and Council received no detailed information as to the projected cost of the Cameco settlement, and how that cost could be met. This would be a critical component of any fairness hearing.

47. On issue after issue, raised by the public, Mayor and Council said, "we're looking into that." No further information was provided.

48. Mayor and Council seem to have received no legal advice as to the true degree of Verona's exposure to a builder's remedy, which is likely minimal, after Verona has recently spent approximately $3,000,000.00 of public funds to purchase a tract for sufficient housing to

be constructed, enabling Verona to meet the Mercer County methodology "number" of 238 credits.

49. Instead, Mayor and Council listened to a "parade of horribles" from the township administrator, who is not an attorney.

50. WHEREFORE, Plaintiff asks that the Court:

a. Find that the approval of Resolution 2019-101 was arbitrary, unreasonable, and capricious, without adequate basis in law or fact; and

b. Reverse the approval and void the Resolution; and

c. Grant such other relief as the Court deems appropriate.

SECOND COUNT –PROPER NOTICE OF THE MAY 15, 2019 SPECIAL MEETING WAS NOT GIVEN

51. Plaintiffs reincorporate all of the preceding paragraphs as if set forth again in full.

52. As described, the public notice of the May 14, 2019 meeting failed to meet the requisites of the O.P.M.A.

53. Notice was provided to the newspapers too late for publication at all, in one instance, and too late for publication 48 hours in advance, in the other.

54. The draft Agreement purported to be authorized by Resolution 2019-101 was not provided to the public until late in the evening (about 6:30 p.m.) of the day preceding the special meeting. It was provided to Council only a few hours before that.

55. Upon information and belief, the draft Agreement was altered yet again, after the Resolution was adopted. This would require review and re-adoption by Council.

56. No evidence of any emergency was presented, nor did any emergency exist. Spectrum's threat to recommence litigation if the Agreement were not authorized that very day was empty, given that the parties were due to appear at a case management conference on May 20 (the following Monday) and receive instruction from the court at that time.

56. WHEREFORE, Plaintiff asks that the Court:

a. Find that Verona, and Mayor and Council, violated the Open Public Meetings Act; and

b. Impose appropriate and warranted penalties thereunder, including voiding of actions taken by Defendants Verona and Mayor and Council, in violation of the O.P.M.A.; and

c. Grant such other relief as the Court deems appropriate.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, Anne L. H. Studholme is hereby designated as trial counsel.

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the within matter is the subject of a declaratory judgment action pending in Essex County Superior Court before Judge Gardner, captioned ESX-L-4773-15. **Plaintiff requests that this Complaint in lieu of Prerogative Writs be consolidated with that matter.**

CERTIFICATION PURSUANT TO RULE 4:69-4

I certify that the Transcript of the May 15, 2019 special meeting will be ordered as soon as possible. The meeting concluded only two business days before this filing was made. In addition to the meeting Transcript, a copy of the adopted Resolution and the Agreement authorized thereby will be provided.

POST, POLAK, P.A.
Attorneys for Plaintiff First Ridge Alliance

By: *Anne L. H. Studholme*
Anne L. H. Studholme

Dated: May 20, 2019