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Millburn Township Approves Settlement Agreement On State-Mandated Affordable Housing

MILLBURN, N.J., August 18th – The Millburn Township Committee has approved a settlement agreement that will allow the township to satisfy its state-mandated affordable housing obligation through the year 2025. The 5-to-0 vote on a resolution to formally ratify the settlement agreement came last night during the Township Committee’s regularly scheduled meeting at Millburn Town Hall.

The settlement agreement resolves and responds to a directive from the New Jersey Superior Court that required Millburn to develop and submit a plan to address its affordable housing obligations.

“Affordable housing is mandated by the State of New Jersey, enforced by the courts and essentially required by the state constitution,” said Millburn Mayor Tara B. Prupis. “Municipalities all around New Jersey, including many here in Essex County, have been dealing with state-mandated affordable housing for years. Once reviewed and approved by the court, this settlement agreement will allow Millburn, at long last, to meet its past and current affordable housing obligations, spanning the period of 1987 to 2025.”

Just in July, Millburn was given an aggressive, court-ordered deadline to settle this matter, or face significant consequences. Throughout the negotiations process, the court prohibited Millburn and other involved parties from discussing the settlement publicly.

The process behind affordable housing in New Jersey – methodologies, calculations, orders and timelines – is sanctioned, enforced and driven by the courts. The main parties involved include the State of New Jersey; a court-recognized affordable housing advocate (the non-profit Fair Share Housing Center); court-appointed Special Masters, who preside over specific affordable housing disputes in the courts; developers, who seek opportunities to build new inclusionary housing developments; and municipalities.

Municipalities are required to meet court-sanctioned affordable housing “obligations,” which include specific numbers of affordable housing units that a municipality must provide a realistic opportunity for developers to build. Once affordable housing obligations are determined through the courts, municipalities may choose to mediate with involved parties to lower the overall obligation, or towns may choose to fight the obligation and overall matter through litigation. To date, no municipality has ever won in court when opposing state-mandated affordable housing obligations in New Jersey. Municipalities that have fought and lost through the courts have suffered significant consequences, including loss of control over local development matters.

Millburn Deputy Mayor Richard Wasserman, who co-chaired a steering committee on state-mandated affordable housing with Committeewoman Maggee Miggins, said: “For the past 38 years, Millburn, for one reason or another, failed to address and meet its state-mandated obligations on affordable housing. As such, the court and other parties, through pending legal actions brought against Millburn, recently presented this Township Committee with the following choices: 1) further litigate the matter and risk losing control of township functions, like planning and zoning, that regulate development; or 2) negotiate the best possible outcome and settle, thereby allowing Millburn to retain control over all development, including state-mandated affordable housing, while satisfying its court-ordered affordable housing obligations.”

“In that regard and given the choices before us,” Wasserman said, “this Township Committee has worked hard to secure the best possible outcome for Millburn in the form of this settlement agreement. Collectively, our priority as a Township Committee has been focused on keeping density as low as possible in Millburn with an eye toward minimizing the impact on our infrastructure, public safety services and schools.”

The settlement agreement sets Millburn’s overall state-mandated affordable housing obligation, inclusive of past and current obligations from 1987 through 2025, at 1,376 units. Municipalities can meet their affordable housing obligation by:

- providing realistic opportunities for developers to build new affordable housing units;
- applying credits toward the obligation (for example, for existing and approved affordable housing units, including group homes);
- through adjustments to the obligation (for example, when and where there is a lack of developable land in a municipality);
- identifying and rezoning sites for future development of affordable housing; and
- partnering with developers on 100 percent affordable housing projects.

The township will work toward satisfying its state-mandated affordable housing obligation in a number of ways. For example, Millburn will apply credits to its obligation for the following projects, which have been approved and/or are under construction:

- The Upton, 1 Fineran Way, Short Hills. This 3.6-acre parcel, currently owned and operated by Roseland Properties, includes 193 total residential units, 30 of which are affordable housing units. These are the first affordable housing units offered in Millburn Township. This site is approved and under construction.
- 85 Woodland Avenue, Millburn. This 1.5-acre parcel, owned by the Silverman Group, is slated to include 62 total residential units, 12 of which will be affordable housing. This site plan was approved and granted in May 2021. The site will also include 10,000 square feet of medical office space.
- 397 Millburn Avenue, Millburn, the site of a former Wells Fargo branch. This 1.5-acre parcel, currently owned by Beahive Associates, calls for 53 total residential units, 8 of which will be affordable housing. The site, as designed, will also include 3,000 square feet of retail space.

Moving forward, Millburn will work with affordable housing developers to advance the following projects:

- 249 Millburn Avenue, Millburn, the site of the former Annie Sez retail store. On this 2.2-acre parcel of land, currently owned by 249 Millburn Ave. LLC, a total of 150 residential units are proposed, 30 of which will be affordable housing.
- 345 Essex Street, Millburn, the current location of the township's department of public works. Proposed plans for a portion of this 4.6-acre parcel call for a total of 75 residential units, all of which will be affordable housing.
- On John F. Kennedy Parkway (Block 5302, Lot 5), Millburn, a 25-acre parcel with five to six acres of developable land. Currently owned by New Jersey American Water and under contract with Woodmont Properties, plans call for a total of 195 residential units, 39 of which will be affordable. The site requires approval by the state's Watershed Property Review Board.

The settlement agreement also required the township to identify additional sites for potential future development through overlay zoning, enabling the township to demonstrate how it will provide an opportunity for the construction of affordable housing

in the years ahead. These sites, which have required, or will require rezoning to allow for residential development, are listed in detail in the settlement agreement and a PowerPoint presentation summarizing the settlement, as shared at last night's Township Committee Meeting and now posted on the township's website.

Those who qualify for affordable housing units must meet criteria set by the state, based on income and the number of people living in a household. Developers typically set aside 20 percent of the total housing units they build as affordable housing units, while selling or renting 80 percent of the housing units at market rates. Municipalities can also manage density concerns by way of planning for more affordable housing units at select locations. Various methodologies and considerations, such as overlay zoning and considerations over vacant land, are also used by municipal governments to achieve their state-mandated affordable housing obligations.

The state's mandate on affordable housing traces back to a landmark legal case in 1975, NAACP vs. Mount Laurel, N.J., which addressed exclusionary zoning practices. In that case, the New Jersey Supreme Court ruled that municipalities must take affirmative measures to satisfy regional affordable housing needs. Over the years, subsequent state legislation and court cases have reinforced the Mount Laurel ruling. As such, New Jersey municipalities are under strict court order to provide opportunities for the development of affordable housing, or face the risk of losing control of municipal planning and zoning to the courts and losing protection from legal action from real estate developers seeking greater building opportunities.

"In addition to serving as your elected officials, Millburn is the place we call home," Mayor Prupis said. "We are taxpayers, fellow citizens, neighbors, business owners and civic leaders, all with a vested interest in the future of Millburn. We share the many concerns expressed by our residents, friends and neighbors over this matter. As such, the Millburn Township Committee will continue working hard to ensure that all state-mandated affordable housing developments slated for Millburn under the settlement are constructed, over the ensuing years ahead, with the best interests of the town and its residents in mind."

For more information about the state-mandated affordable housing issue in Millburn, please visit: <https://www.twp.millburn.nj.us/AffordableHousingInformation>. Frequently asked questions and general information about affordable housing can be found at: <https://www.twp.millburn.nj.us/AffordableHousingFAQ>.