

## **In Unusual Move, Developer Is Awarded Attorneys' Fees and Costs Over Town's Settlement Breach**

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In a win for developers, a New Jersey judge has taken the unusual step of awarding attorneys' fees and costs for breach of a court-approved settlement over a proposed inclusive residential development.

Somerset County Superior Court Judge Kevin M. Shanahan, P.J.Cv., held that Hillsborough Township violated the settlement when its planning board failed to approve a site plan for 96 units, including 23 affordable-housing units.

Municipalities should not "be permitted to repeatedly violate a Court Order and flout its affordable housing obligations under the Constitution without sanction," the judge wrote in his June 7 decision.

He ordered Hillsborough to introduce, at its next regularly scheduled Township Committee meeting, a zoning ordinance amendment to make the application by developer Campus Associates LLC fully conforming.

Campus' lead counsel, Marc Policastro, chair of the Environmental Group at Giordano, Halleran & Ciesla in Red Bank, said: "The decision is a clear signal to municipalities—don't mess with settlements."

"To the extent that municipalities are recalcitrant, they are not just going to get a slap on the wrist. Public policy is paramount," added Policastro, who was assisted by Giordano shareholders Paul Schneider and Matthew Fiorovanti, and associate Linda Lee.

The fees and costs remain to be determined and will cover legal fees and costs on the planning board application and two motions to enforce litigants' rights. The total will also include fees and costs for professionals such as engineers and architects, Policastro said.

In May 2019, the Township and Campus agreed that the development plan could proceed and would be made conforming through a zoning ordinance amendment. The court approved the agreement in September 2019. However, the zoning ordinance was not adopted, and in November 2019, Campus filed a motion to enforce litigant's rights to compel the ordinance adoption.

Finding, on December 13, 2019 that the Township had anticipatorily breached the agreement, the court directed the Township to introduce the ordinance in January 2020 and adopt it by February 15, 2020.

The adoption took place in August 2020, and Campus submitted an application for preliminary and final major site plan approval.

The planning board denied the application at its meeting on February 25, 2021, stating, among other reasons, that a 150-foot stream buffer was needed. Campus maintained it complied with a 50-foot buffer required by the Department of Environmental Protection. In addition, the planning board wanted Campus to perform a drainage study on the adequacy of a proposed stormwater runoff pipe.

On March 4, 2021, Campus notified the Township it was in default of the settlement agreement. Campus contended that the Township did not adopt the first ordinance until the court had compelled it to do so and Campus had filed its initial motion for relief to litigants. Campus further asserted that the Township failed to adopt the additional ordinance amendment to make the Campus development fully conforming.

Campus stated it was compelled to file a second motion to enforce litigants' rights because of the Township's "continued defiance" of court-approved settlement agreements with it and the Fair Share Housing Center.

[Linda M. Lee](#), [Michael P. Castore](#), and [Steven J. Corodemus](#) contributed to this article.

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