

Draft

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Attorney for Plaintiff, White Beeches Golf
& Country Club, Inc.

WHITE BEECHES GOLF & COUNTRY CLUB, INC., a New Jersey Corporation

Plaintiff,

v.

THE BOROUGH OF ORADELL,
municipal corporation of the State of N.J.

Defendant.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: BERGEN COUNTY
: CIVIL PART

: DOCKET NO.: BER L 8502-18

: CIVIL ACTION

: **STIPULATION AND SETTLEMENT**
: **AGREEMENT**

This Stipulation and Settlement Agreement made as of January____, 2021 by and between White Beeches Golf and Country Club (hereinafter White Beeches) and the Borough of Oradell (hereinafter Oradell).

Whereas, White Beeches is and for some time has been the owner of approximately 77 acres of property within Oradell previously shown as Block 1401, Lot 1 on the tax assessment map of the Borough.

Whereas, on or about February 28, 2018 White Beeches applied to the Planning Board of the Borough of Oradell for a minor subdivision to section off and create a separate lot or parcel of

property comprised of approximately 1.5 acres, hereinafter referred to as the subject property. The purpose of said minor subdivision was to enable plaintiff to sell or develop the subject property, which was no longer needed for golf and country club purposes; and

Whereas, after conducting a public hearing on the matter on September 2 and October 9, 2018 in accordance with the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., on November 5, 2018 the Planning Board adopted a written resolution approving White Beeches' application for a minor subdivision. As a result of said subdivision the subject property was designated as Block 140, Lot 1.02 and the remaining portion of the White Beeches property was designated as Block 1401, Lot 1.01; and

Whereas on October 9, 2018 the Mayor and Council of the Borough of Oradell approved and adopted ordinance number 18-13 entitled "An Ordinance to Amend Chapter 240 of the Oradell Borough Code Entitled 'Land Development' and the Oradell Zoning Map as they pertain to Block 1401, Lot 1;" and

Whereas on or about November 27, 2018, White Beeches filed a lawsuit against the Borough of Oradell challenging the adoption of said ordinance; and

Whereas said lawsuit was styled as an action in lieu of prerogative writs entitled "White Beeches Golf and Country Club, Inc., a New Jersey Corporation v. the Borough of Oradell, a Municipal Corporation of the State of New Jersey" and filed in the Superior Court of New Jersey, Law Division Bergen County, Civil Part under Docket number BER- L- 8502-18; and

Whereas by said lawsuit White Beeches contended, inter alia, that the effect of said zoning ordinance amendment, as applied to the subject property, was to unconstitutionally restrict and limit the use of the property to "recreational use" and to thereby render said property inutile; and

Whereas Oradell filed an answer in the matter essentially denying the allegations of the complaint and amended complaint filed by White Beeches; and

Whereas since the filing of this lawsuit, the parties have been engaged in litigation managed by the Court; and

Whereas recognizing the uncertainty of litigation and realizing the significant costs attributable thereto, the parties have engaged in settlement negotiations resulting in a settlement of the case on the terms set forth herein; and

Whereas the terms and provisions of this Stipulation and Settlement Agreement have been approved by the Fair Share Housing Center, Inc. in the form of an Amendment to the June 18, 2018 Settlement Agreement reached between the Borough of Oradell and the Fair Share Housing Center, Inc. in connection with Mt. Laurel litigation that had been filed.

NOW THEREFORE: In consideration of the mutual promises and covenants contained herein and fully intending to be legally bound, the parties hereby stipulate and agree as follows:

1. AMENDATORY LEGISLATIVE ACTION. Within sixty (60) days of the date hereof, Oradell shall introduce on first reading, conduct a public hearing upon, adopt and publish an amendatory zoning ordinance, which ordinance shall have the purpose and effect of rezoning the subject property. Said amendatory zoning ordinance shall remove any previous restriction on the development of subject property for recreational use only but shall permit the development of said Block 140, Lot 1.02 for single family residential dwellings on certain specified terms and conditions pertaining to bulk or dimensional requirements. With respect to the bulk or dimensional standards applicable to the subject property, said amendatory zoning ordinance shall provide that the bulk schedule applicable to properties in the R-2 zone shall apply to any and all lots to be

created by a major subdivision application except as to lot width, which shall be required to have a minimum width of seventy-five (75) feet.

2. POTENTIAL SUBDIVISION:

A. Annexed hereto as **EXHIBIT A** is a plat entitled "Subdivision Sketch" prepared by Hubschman Engineering, PA, proposing a three-lot major subdivision of the subject property. The parties acknowledge and agree that this plat, which was exchanged by the parties in the context of settlement negotiations, is merely an illustration depicting an example of the type of major subdivision which may be applied for with respect to the subject property and is not to be deemed part of the actual major subdivision application to be filed.

B. Unless an action in lieu of prerogative writs is filed challenging the adoption of the amendatory ordinance referred to in Paragraph 1, White Beeches may apply for preliminary major subdivision approval for the subject property (as defined by N.J.S.A. 40:55D-48 & 49), provided said application is filed no later than fourteen (14) months following the date of publication of said ordinance amendment.

C. Oradell acknowledges that if a preliminary major subdivision application is filed whereby the proposed lots fully comply with the bulk or dimensional requirements of the R-2 zone, with the exception of lot width which may be a minimum of seventy-five (75) feet, said subdivision application shall be deemed to be variance free and should be approved by the Oradell Planning Board. Oradell further agrees to recommend to the Board that approval of the application for preliminary major subdivision is required to implement this settlement.

D. (1) The parties agree that in filing and presenting said preliminary major subdivision application, White Beeches shall not be required to perform any on-site improvements or the paving of Valerie Place to the entrance to the subdivided lots, provided however that such

improvements shall be the obligation of the applicant for final major subdivision approval as referred to in subparagraph (2) below.

(2) The parties further agree that any subsequent application for final major subdivision of the subject property (as defined by N.J.S.A. 40:55D-52) shall include a commitment by the applicant: (a) to perform and complete all on-site improvements required for the development of the subdivided lots as provided for by developers agreement, and (b) to pave or replace the existing paving on Valerie Place to the entrance to the subdivided lots, subject to compliance with the standards set forth in the Borough Code and the approval of the Borough Engineer.

(3) Upon the grant of preliminary major subdivision approval, pursuant to N.J.S.A. 40:55D-49, White Beeches shall have the vested rights as conferred therein for a period of three years from the date on which the resolution of preliminary approval is adopted.

(4) Upon the grant of final major subdivision approval, pursuant to N.J.S.A 40:55 D-52a, the developer shall have the same vested rights as conferred by N.J.S.A. 40:55D-49 for a period of two years from the date on which the resolution of final approval is adopted.

E. In the event that, notwithstanding the Borough's recommendation to it that the application for preliminary major subdivision be approved, the Board determines to deny the application, then this Stipulation and Settlement Agreement shall become null and void and the parties shall return to the status quo ante. Under these circumstances, White Beeches reserves the right, but is under no obligation, to file suit against the Board challenging such denial.

F. In the event an action in lieu of prerogative writs is filed upon which an Order of Judgment dismissing the complaint is entered in favor of Oradell and against the plaintiff, said preliminary major subdivision application shall be filed within one year following the expiration

of the forty-five-day period for an appeal from said judgment. In the event that a non-appealable judgment of said Court is entered invalidating and setting aside said ordinance amendment, then this Stipulation and Settlement Agreement shall become null and void and the parties shall return to the status quo ante.

G. The parties agree to request the Court to retain jurisdiction following the filing of this Stipulation and Settlement Agreement and the entry of an Order of Dismissal.

3. NO ADMISSION OF LIABILITY: As the purpose of this Stipulation and Settlement Agreement is to resolve a dispute between the parties in an amicable manner, the making and execution thereof does not in any way constitute an admission of liability on the part of either party.

4. ATTORNEYS FEES AND COSTS: Each party agrees to pay and shall pay its own attorneys' fees and costs in connection with this litigation and the making and execution of this Stipulation and Settlement Agreement and waives and relinquishes any claim for attorneys' fees and costs which it may have against the other party, other than with respect to an action to enforce this Stipulation and Settlement Agreement as referred to below.

5. STIPULATION OF DISMISSAL WITH PREJUDICE AND WITHOUT COSTS:
In order to conclude this matter on the Court's docket, the parties shall file a Stipulation of Dismissal with Prejudice and without Costs, in the form annexed hereto as **EXHIBIT B**. Said Stipulation of Dismissal shall be filed following implementation of the terms of this settlement, namely: adoption and publication of the amendatory zoning ordinance referred to in Paragraph 1 hereof.

6. ENFORCEMENT OF THIS AGREEMENT: If any provision of this Stipulation and Settlement Agreement is held to be invalid or unenforceable, it shall be considered as if the

invalid and/or unenforceable portion did not exist, with all remaining portions considered valid and enforceable. No breach of any provision thereof may be waived unless in a signed writing executed by the parties. A waiver of a breach of any provision hereof shall not be deemed to be a waiver of any breach of any other provision hereof.

7. ENTIRE AGREEMENT: This Stipulation and Settlement Agreement is an integrated agreement and contains the entire agreement by and between the parties hereto. No representations, warranties or promises have been made or relied upon by any signatory party other than as set forth herein. This Stipulation and Settlement Agreement supersedes and cancels all previous negotiations, agreements, communications, commitments, and writings in connection herewith.

8. BINDING EFFECT: This Stipulation and Settlement Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

9. ATTORNEYS' FEES AND COSTS AS TO DISPUTES: In any dispute between the parties arising out of or related to any party's default of its obligations under this Stipulation and Settlement Agreement, requiring the other party to file a motion to enforce settlement or other legal proceeding, the prevailing party in such dispute shall be entitled to recover reimbursement of its legal fees and costs incurred in connection with the enforcement of this Stipulation and Settlement Agreement.

10. JURISDICTION, CHOICE OF LAW: This agreement and its terms shall be construed, governed by, and administered in accordance with the laws of the State of New Jersey, without application of conflict of laws principles. For purposes of enforcing the terms of this agreement, the parties hereby each submit to the jurisdiction of the Superior Court of New Jersey, with venue being in Bergen County to enforce the terms of this agreement.

11. COUNTERPARTS: This agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which together shall be one and the same instrument. Facsimile or electronic signatures to this agreement shall be deemed the same as original signatures

12. EXECUTION OF OTHER DOCUMENTS: The obligations of the parties hereto require that their good faith and best efforts be employed by them in effectuating and fulfilling the obligations contemplated hereunder. In furtherance thereof, the parties agree at any time and from time to time to promptly, on receipt of notice, execute any and all documents reasonably requested by the other to carry out and further the intent of this agreement.

13. HEADINGS: Headings, titles and captions preceding the sections hereof are provided for convenience of reference and shall not be used in any way to explain or to restrict the meaning, purpose, or effect of any provision to which they refer.

IN WITNESS HEREOF, and intending to be legally bound hereby, each of the undersigned parties has executed this Stipulation and Settlement Agreement and authorized their respective attorneys to execute this document as of the date first written above. Upon full execution hereof, this Stipulation and Settlement Agreement shall be filed with the Court.

DATED:

WHITE BEECHES GOLF
AND COUNTRY CLUB, INC.

DATED:

MICHAEL I. LUBIN
ATTORNEY AT LAW, LLC

By: _____
President

By: _____
MICHAEL I. LUBIN, ESQ
Attorney for Plaintiff

Secretary

DATED:

DATED:

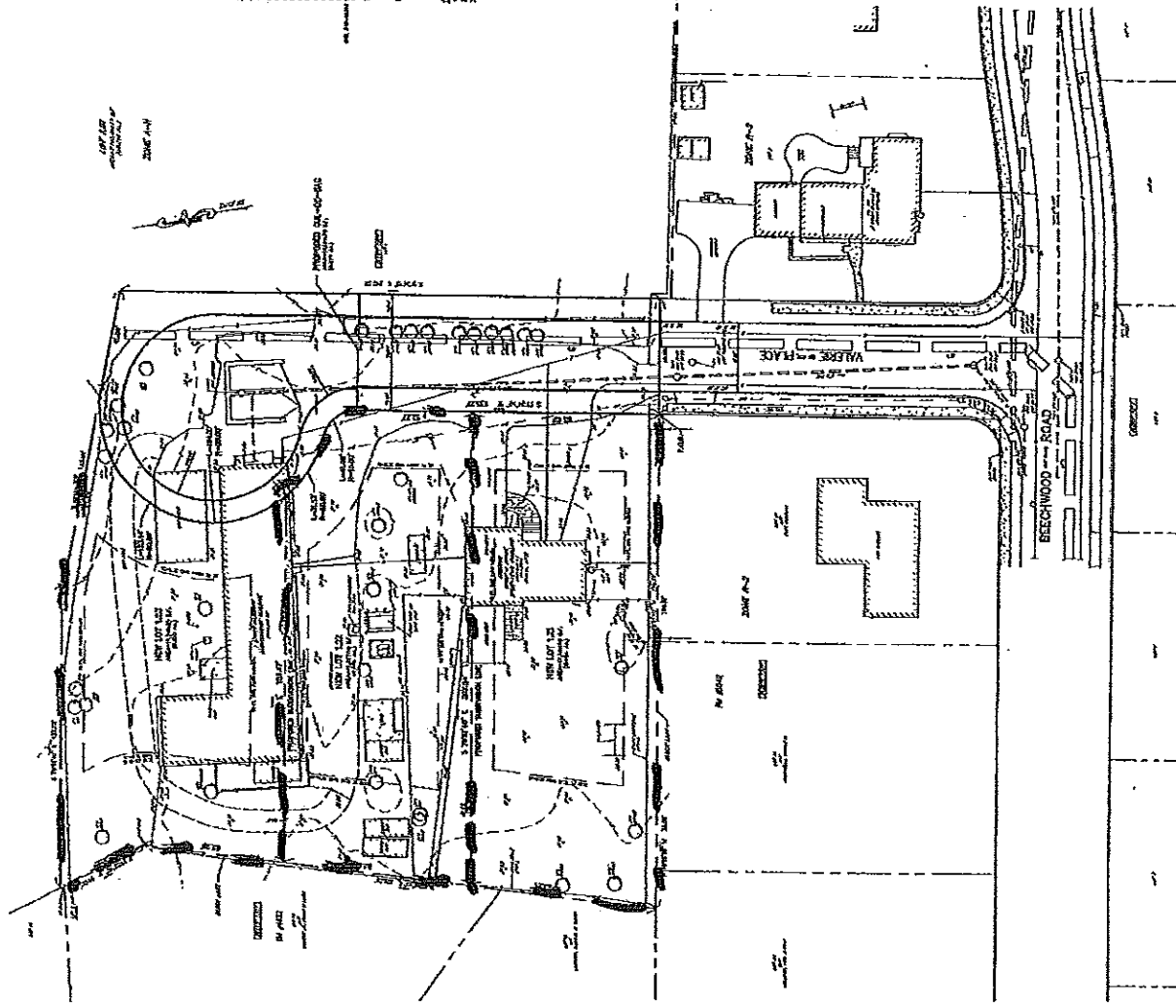
THE BOROUGH OF ORADELL

KATES, NUSSMAN, ELLIS
FARHI & EARLE, LLP

By _____
MAYOR

By: _____
MICHAEL B. KATES, ESQ.

BOROUGH CLERK



GENERAL NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

LEGEND:

- PROPOSED DRIVE
- PROPOSED SIDEWALK
- PROPOSED CURB
- PROPOSED DRIVE
- PROPOSED SIDEWALK
- PROPOSED CURB
- PROPOSED DRIVE
- PROPOSED SIDEWALK
- PROPOSED CURB

SUBMISSION SKETCH

PROJECT: WALERS PLACE, 1000 WALERS PLACE, WILKES BARRE, PA 18201

OWNER: WALERS PLACE DEVELOPMENT, INC.

DATE: 10/15/2010

SCALE: AS SHOWN

PROJECT NO: 1000

DATE: 10/15/2010

SCALE: AS SHOWN

APPROVED FOR SUBMISSION

DATE: 10/15/2010

SCALE: AS SHOWN

PROJECT NO: 1000

DATE: 10/15/2010

SCALE: AS SHOWN

APPROVED FOR CONSTRUCTION

DATE: 10/15/2010

SCALE: AS SHOWN

PROJECT NO: 1000

DATE: 10/15/2010

SCALE: AS SHOWN