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March 11, 2022

Via ecourts

Honorable Robert H. Gardner, J.S.C.
Superior Court of New Jersey
470 Dr. Martin Luther King, Jr. Boulevard
Chambers 404
Newark, New Jersey 07102

Re: In the Matter of the Application of the Borough of Caldwell,
Docket No. ESX-L-3999-16

Dear Judge Gardner:

Please accept this letter from Fair Share Housing Center (FSHC) in response to the Borough of Caldwell's March 8, 2022 edited Proposed Form of Order relating to FSHC's Scarce Resource Motion, which this Court granted on Friday, March 4, 2022 and the various objections that were submitted on behalf of Avalon Bay and the Township of West Caldwell.

In the objections submitted by West Caldwell and Avalon Bay they raise concerns about the language that has been inserted to modify Paragraph 4 of FSHC's Proposed Form of Order. These letters and the response received from the Caldwell make clear that there are factual unknowns, namely, relating to which development projects are covered under the proposed modification to Paragraph 4. While it is important to determine which projects are covered and which are not, FSHC submits that it is more important at this time for the court to enter the order to preserve the scarce resources and appoint a special master to oversee this process.

As discussed in detail in FSHC's brief and during argument, any party at any time can make a submission to the court or special master to seek relief from the order under the appropriate circumstances.

Thus, FSHC respectfully requests the court to enter the order without the language Caldwell has added to Paragraph 4, but retaining all the other changes, and to allow the special master to establish a process to determine which developments would be covered and which will not. The attached order incorporates all of Caldwell's proposed revisions except for the revisions to Paragraph 4 and FSHC urges the court to enter it as soon as possible.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, reading "Joshua D. Bauers". The signature is written in a cursive style with a large initial "J".

Joshua D. Bauers, Esq.
Attorney for Fair Share Housing Center

FAIR SHARE HOUSING CENTER

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**In the Matter of the Borough of
Caldwell, Essex County, New
Jersey.**

SUPERIOR COURT
Law Division
Essex County

Docket No. ESX-L-3999-16

CIVIL ACTION

**~~Proposed~~ Order Imposing Scarce
Resource Restraint, Requiring
Submission of Sewer Capacity
Analysis, and Appointing
Special Master to Oversee
Sewer Plan**

THIS MATTER having been opened to the Court by Fair Share Housing Center (hereinafter "FSHC") (Joshua D. Bauers, Esq. appearing), attorney for Defendant-Intervenor FSHC seeking an Order Imposing Scarce Resource Sewer Restraints, the Establishment of a Priority Schedule for the Available Sewer Capacity, and the Appointment of a Special Master to Oversee the Implementation of the Borough's Sewer Plan; and for the reasons set forth on the record; and for good cause shown;

IT IS, on this 14th day of March, 2022;

ORDERED that:

1. The Borough of Caldwell shall cease issuing sewer approvals at the Caldwell Wastewater Treatment Plant of any kind pursuant to the following terms;

2. The Borough, West Caldwell, Roseland, North Caldwell, Essex Fells, and Fairfield, their Planning Boards, Zoning Boards, and any other official bodies and persons, agents or employees thereof, may receive and process, hear and vote on applications for development approvals that are covered by this Order as provided under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

3. The Borough, West Caldwell, Roseland, North Caldwell, Essex Fells, and Fairfield, their Planning Boards, Zoning Boards, and any other official bodies and persons, agents or employees thereof, shall advise all applicants that any Board action or approval will not confer "vested rights" for allocation of sewer capacity in the Caldwell Sewerage Treatment Plant upon the applicant without the Court's review and approval. Only after an order has been entered releasing an application from the restraints imposed by this Order will an applicant acquire "vested rights" for sewer allocation of sewer capacity in the Caldwell Sewerage Treatment Plant. Notwithstanding the foregoing, any approval by a Board may be challenged or appealed as provided by law and this Order shall not be deemed to toll the time for such challenge.

4. The Borough and any agency of the Borough that is authorized to issue sewer service connection permits are hereby

restrained from issuing any new or expanded sewer service connection, subject to the waiver process set forth in Paragraph 6, below.

5. The Borough, West Caldwell, Roseland, North Caldwell, Essex Fells, and Fairfield, their Planning Boards, Zoning Boards, and any other official bodies and persons, agents or employees thereof, shall provide at least seven (7) days written notice to the Special Master, Fair Share Housing Center, Defendants, and all other interested parties, of any applications for development approvals that are covered by this Order, including votes involving the adoption of memorializing resolutions, within seven (7) days of such votes occurring.

6. Any party or person affected or potentially affected by the restraints imposed by this Court Order may apply, with notice to all parties and to the Special Master, for relief from this Order prior to or during the pendency of a development application. The form of application shall be a letter with appropriate supporting documentation. The Special Master shall render a decision within fifteen (15) business days of receipt of the aforesaid application. If the Special Master determines that relief from the restraints imposed herein is appropriate, she/he shall authorize the relief from the restraints in writing, with a copy to the Court and all parties, and the applicant may pursue an application for development approvals and the appropriate Board may consider and grant or deny development approvals, with vesting, in accordance with governing law. If the Special Master fails to timely decide or declines to authorize the

release, or any party or applicant objects to the decision within ten (10) days of the decision being made, the party seeking relief from the Order may move before the Court on notice to the Special Master and all interested parties for relief from the within restraints.

7. This order shall remain in full force and effect until the Borough of Caldwell satisfies its Third Round fair share obligations in their entirety and the Special Master confirms that the Caldwell Wastewater Treatment Plant has allocated sufficient capacity to the Borough of Roseland, Township of West Caldwell, Borough of North Caldwell, Borough of Essex Fells, and the Borough of Fairfield to address their Third Round Affordable Housing Obligations.

This Court shall appoint a
8. ~~The Court hereby appoints _____ as~~ Special Master for Sewer to oversee the implementation of a sewer plan to ensure the limited capacity at the Caldwell Wastewater Treatment Plant is reserved and set-aside for the construction of affordable housing in the above-mentioned municipalities. The Special Master for Sewer shall have the following responsibilities and shall engage in the following process:

- a. The Special Master shall review the court-approved Housing Element and Fair Share Plans for any municipality that utilizes the Caldwell Wastewater Treatment Plant to determine which sites, if any, have not been allocated sewer capacity;
- b. Within 30 days of this Order the Special Master shall send correspondence to any property owner, contract purchaser,

or developer included in a HEFSP that has not yet been allocated sewer capacity inquiring as to the status of the development and readiness to proceed;

- c. Within 60 days of this Order the Special Master shall establish a priority schedule for any unallocated sewer capacity and any future allocations of sewer capacity prioritizing developments based upon readiness to proceed to development and sites providing the greatest number of affordable housing units.
- d. In the event there is insufficient capacity to allow all five municipalities to address their entire Third Round affordable housing obligations the Special Master shall within 90 days of this order present a report to the court on the process necessary to make additional capacity available at the Caldwell Wastewater Treatment Plant.
- e. The Special Master shall provide the Court with an update regarding the negotiations of the draft sewer customer service contract by and between the Borough, West Caldwell, Roseland, North Caldwell, Essex Fells, and Fairfield every 30 days from the date of this Order.

FURTHER ORDERED that counsel for FSHC shall serve a copy of this Order on counsel within 7 days of the date hereof per the Rules of Court. ~~receipt hereof.~~

15/Robert H. Gardner, J.S.C.
Hon. Robert H. Gardner, J.S.C.