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| ADONI PROPERTY GROUP, LLC,<br><br>Plaintiff-Respondent,<br><br>v.<br><br>TOWNSHIP OF MIDDLETOWN<br>and MAYOR AND COUNCIL OF<br>THE TOWNSHIP OF<br>MIDDLETOWN,<br><br>Defendants-Respondents, | SUPERIOR COURT OF NEW<br>JERSEY<br>APPELLATE DIVISION<br>DOCKET NO. A-000445-24<br><br>ON APPEAL FROM:<br>SUPERIOR COURT OF NEW<br>JERSEY, LAW DIVISION,<br>MONMOUTH COUNTY<br><br>DOCKET NO.: MON-L-1260-23<br><br>SAT BELOW: Hon. Linda Grasso<br>Jones, J.S.C. |
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**BRIEF OF INTERVENOR-APPELLANT  
TOWNSHIP OF HOLMDEL**

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## **PRELIMINARY STATEMENT**

This is a second appeal in the Township of Holmdel’s (“Holmdel’s”) effort to intervene into a Builder’s Remedy litigation that has been brought against neighboring Defendant Township of Middletown to develop high-density housing upon its border. After two past intervention applications were denied, this Court affirmed the Law Division on the basis that these applications were premature, and it made clear that the affirmance was without prejudice to Holmdel asserting a third motion to intervene. Holmdel followed this Court’s guidance and filed a third motion to intervene, but it was inexplicably denied by the Law Division based upon two incorrect applications of the “liberal” standard governing intervention as of right, which is subject to *de novo* review by this Court.

First, the Law Division incorrectly concluded that Holmdel’s interests were protected without intervention. The Court’s analysis failed to adequately consider that a Builder’s Remedy requires Plaintiff to demonstrate that the proposed development constitutes “sound land use planning,” and that Holmdel’s traffic concerns – supported by expert testimony – implicate that very standard. The Court also failed to credit that there are multiple past decisions in which neighboring municipalities have intervened without legal objection, and

no cases standing for the proposition that a neighboring municipality should not be granted intervention. Perhaps recognizing this reality, the Law Division attempted to distinguish the cited case, claiming that the municipal concerns in the case law were more specific than Holmdel's general concern, even though they both involved similar issues regarding infrastructure. Finally, the trial court improperly considered the Municipal Land Use Law as imposing a mere right for the neighboring municipality to be notified of an application, when in fact the law provides that a neighboring municipality has "automatic standing" to challenge an application that requires it be noticed. It follows that Holmdel should have standing to intervene in litigation that would pierce a zoning ordinance that the Legislature made subject to its notice and standing.

Second, the trial court incorrectly concluded that Holmdel's interests are adequately represented by Plaintiff and Middletown. Holmdel explains that it stands to suffer financial impacts from the increased traffic accidents on its roadway in its jurisdiction as its expert forecasts, without the tax revenue that Middletown stands to realize from the development. Holmdel also does not have the same litigation incentives as Middletown, as it does not have an affordable housing obligation that it must address across its municipality. The Law Division cited an intervention case involving a municipality and developer working together on a condemnation, which is distinguishable.

For the foregoing reasons, and particularly when evaluated under a *de novo* review and pursuant to the liberal standard governing intervention, the Law Division erred in denying Holmdel’s intervention warranting reversal.

### **PROCEDURAL HISTORY**<sup>1</sup>

On April 21, 2023, Plaintiff Adoni Property Group LLC filed a complaint in Superior Court seeking a Builder’s Remedy against Defendant Township of Middletown. (Ia1). On June 9, 2023, Holmdel filed its first motion to intervene. (Ia27). On July 21, 2023, the Honorable Linda Grasso Jones, J.S.C. (Judge Jones) entered an order denying Holmdel’s motion to intervene. (Ia29-30). However, the motion was denied “without prejudice to Holmdel’s right to make an application to intervene in the second phase of this matter.” (Ia29). In an oral statement of reasons, the Court advised as follows:

If we go through the first aspect and either of the parties reach an agreement on what I call the numbers, but on that first stage, what I’m putting into the form of order is that the application is denied without prejudice to Holmdel’s right to make an application in the second phase of this proceeding. So what that means is, you get through the first phase and either Fair Share

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<sup>1</sup> “1T” refers to the transcript of the Law Division oral argument and oral opinion of July 21, 2023.

“2T” refers to the transcript of the Law Division oral argument and oral opinion of December 1, 2023.

“3T” refers to the transcript of the Law Division oral argument on September 27, 2024.

Housing Center and Middletown and Adoni -- you know, to the extent that Adoni's agreement is at least necessary, but an agreement's reached in terms of the numbers, well, then when you're moving on to the second phase, Holmdel can make an application. I'm not saying it's going to be granted, but at that point in time Holmdel can make the application and show why Holmdel has an interest either as a matter of intervention as of right or permissive intervention to be part of the second phase, and the second phase is, hey, should housing -- Mount Laurel inclusive housing be permitted on those two sites.

So with reference to that motion, the motion's denied, but there will be some language in there that gives you the opportunity, Mr. Collins, to reapply at a later stage.

[(1T28:13-29:10)].

On October 6, 2023, Plaintiff filed a motion for summary judgment. (Ia31-32). The motion sought a declaration, reflected in the proposed order, that the "zoning regulations applicable to the R-45 zoning district [are] violative of the Township of Middletown's constitutional affordable housing obligations and is hereby declared invalid" and directing that "Middletown shall adopt ordinances complying with the Mount Laurel doctrine, including the implementation of the builder's remedy proposed by Plaintiff, pursuant to timeframes to be established by further Order of this Court." (Ia34).

In light of this motion, Holmdel filed a second motion to intervene consistent with the trial court's first order, contending that the issue of site

suitability was brought before the Court.<sup>2</sup> (Ia36-37). On December 1, 2023, after hearing oral argument, the trial court again denied Holmdel's motion. In her oral decision, Judge Jones maintained that there is no case law supporting Holmdel's intervention and denied relief:

And I have not had brought to my attention a single case where a municipality has successfully intervened in a builder's remedy or a declaratory judgement action having to do with one municipality where a neighboring municipality has successfully intervened on the basis of we're really close. They're going to be driving on our roads. It's going to impact us.

[(2T18:11-18)]

When the application was in front of me before, I indicated I'm open to revisiting the issue. But I would expect to see an argument that shows me, you know, other towns have successfully done this. The Supreme Court has said yes when another – a neigh – when a neighboring municipality is close by, or you know, within the 200 feet that they should be allowed to intervene.

I don't have a problem with reexamining an argument based upon information that's provided. Um. And I've done it in this case. But I see nothing that says to me that Holmdel is in a different position because people leaving these proposed developments would end up driving on at some point Holmdel's roads. I don't provide (sic) that – see that or any other factual

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<sup>2</sup> In the alternative, Holmdel also moved for reconsideration of the June 9, 2023 order (Pa36). This alternative motion was timely as reconsideration of an interlocutory order can be sought at any time. Rusak v. Ryan Automotive, LLC, 418 N.J. Super. 107 (App. Div. 2011); see Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:49–2 (2024).



information that's asserted providing a basis for allowing Holmdel to intervene.

[(2T19:11-20:2)]

And individuals do have the opportunity to be heard in a way that they don't in other types of proceedings. So, um, with respect to this matter, I anticipate that Holmdel will have a greater opportunity to be heard than if there were like I said a settlement on a kid's personal injury case. But the concept of as an intervener, Holmdel is a party. And the concept of Holmdel having party status, I don't see a basis for it in the law. I don't see precedent for it based upon the facts presented and the law presented. So the application – the motion by Holmdel to intervene in this matter is denied.

[(2T20:22-21:8)]

On December 14, 2023, Holmdel filed a motion for leave to appeal the denial of its motion to intervene, pursuant to Rule 2:2-3(b)(10). (Ia40-Ia45). This Court granted leave to appeal on January 8, 2024. Ibid. During the pendency of the appeal, the trial court decided that Middletown did not satisfy its affordable housing obligation. The Appellate Division noted as such in its opinion, stating:

As stated, during the pendency of this appeal the trial court determined defendants were not in compliance with their Third Round obligation under the Mount Laurel doctrine and specifically as established in Mount Laurel IV. Therefore, the trial court is currently considering the suitability of plaintiff's sites proposed for the development of affordable-inclusive housing. As the prior orders denying intervention were denied

without prejudice, appellant may file a new motion for intervention, if appropriate.

[(Ia58-Ia59)]

On August 23, 2024, this Court ultimately denied the appeal because the motion to intervene was untimely. (Ia46-Ia59). The written opinion states as follows:

As the trial court stated, it had not yet determined defendants' constitutional compliance with its Mount Laurel obligations—the first step in considering whether to grant a builder's remedy. Bordentown, 471 N.J. Super. at 222. Since appellant's asserted interest only concerned increased traffic, the denial of intervention during the constitutional compliance phase did not "impede its ability to protect that interest." Exxon Mobil, 453 N.J. Super. at 286 (quoting Am. C.L. Union of N.J., Inc., 352 N.J. Super. at 67).

[(Ia56)].

At the same time, this Court's opinion made clear that the denial was without prejudice to Holmdel bringing a new motion to intervene before the trial court :  
“As the prior orders were denied without prejudice, appellant may file a new motion for intervention, if appropriate.” (Ia59).

In response to and in accordance with this Court's opinion, Holmdel filed a third motion to intervene on September 11, 2024. (Ia60-Ia61). Among other things, Holmdel contended that the motion was then timely as site suitability was before the Court. The trial court heard oral argument, (3T), and

subsequently issued a written decision once again denying Holmdel's motion to intervene. (Ia71-Ia93). The trial court held that "Holmdel's more general traffic concerns regarding a traffic intersection that is located some distance less than ½ mile from the subject property does not provide the basis for a determination that Holmdel's ability to protect its interest will be impaired." (Ia83). Judge Jones wrote that "[i]ssues involving the manner of ingress and egress and traffic patterns will not be decided by this court as a part of the builder's remedy action, but rather would be addressed on a subsequent application to be heard by the Middletown Planning Board." (Ia84).

Further, the trial court held that there is a presumption Middletown will not act to Holmdel's detriment in determining whether the sites are suitable for high density housing, stating: "it is presumed that Middletown will act in good faith and in an informed manner in its actions . . . nothing has been presented to the court indicating that Middletown has any intention of abdicating its responsibility to present evidence and argue for an appropriate density for the property." (Ia87-Ia89). Judge Jones also denied permissive intervention. (Ia90-Ia93).

Holmdel once again appeals the trial court's denial of intervention as of right to the Appellate Division, which it may appeal as of right pursuant to Rule 2:2-3(b)(10). On November 12, 2024, Holmdel filed a motion for leave to appeal

on the issue of permissive intervention. While this court granted a parallel motion during the first appellate practice, this Court denied the motion in the instant appellate practice by order dated December 23, 2024.

### **STATEMENT OF FACTS**

Plaintiff purports to be the contract purchaser of property located at 490 Red Hill Road (“Red Hill Property”) in the Middletown, which is identified as Block 1045, Lot 12 on Middletown’s Tax Map. Further, Plaintiff states it is the managing member of The Franklin at Middletown, LLC, owner of property located at 1114 Nut Swamp Road (“Nut Swamp Property”) in Middletown, identified as Block 1045, Lots 2, 3, and 4 on Middletown’s Tax Map.

The Red Hill Road property is located along Red Hill Road, which is a major thoroughfare for Holmdel residents. (Ia25). It is also designated as County Route 52. (Ia25). The centerline of Red Hill Road constitutes the border between Holmdel and Middletown. (Ia25). As such, the Red Hill Road property is literally adjacent to Holmdel’s municipal boundary. (Ia25). Vehicular access to the Red Hill Road property will traverse Red Hill Road where it forms the border between Holmdel and Middletown. (Ia25). Anyone completing a vehicular trip to and from the Red Hill Road property will necessarily pass through Holmdel to do so. (Ia25). Holmdel’s Township Administrator has certified that vehicular

access to the Red Hill property, particularly for high-density residential use, would have adverse and tangible traffic impacts in Holmdel. (Ia25).

The Nut Swamp property is located on Nut Swamp Road in Middletown. (Ia25). Nut Swamp Road does not have any outlet except onto Crawfords Corner Road, which is located less than one-half mile west of the Nut Swamp property. (Ia25). Crawfords Corner Road, also designated as County Route 52, is a major thoroughfare for Holmdel residents. (Ia25). The centerline of Crawfords Corner Road forms the border between Holmdel and Middletown. (Ia26). Accordingly, the Nut Swamp property is located in close proximity to the border between Middletown and Holmdel. (Ia26). Vehicular access to the Nut Swamp property will necessarily traverse Crawfords Corner Road, where it constitutes the border between Middletown and Holmdel. (Ia26). Any party completing a vehicular trip to and from the Nut Swamp property must necessarily cross into Holmdel to complete its trip. (Ia26). Holmdel's Township Administrator also represented that property access to the Nut Swamp property, particularly for high-density residential use, would also have adverse and tangible traffic impacts in Holmdel. (Ia26).

On September 11, 2024, Holmdel obtained a report from CME Associates, an engineering firm, detailing the traffic impacts of the proposed developments. (Ia62-Ia70). CME noted the following regarding the Nut Swamp proposal:

Based on our review of the existing conditions, Nut Swamp Road is approximately 20 feet wide. In addition, the projected volumes along Nut Swamp Road are expected to increase significantly by many factors, as there are only 2 entering trips in any peak hour and 3 exiting trips on to Nut Swamp Road in the two highest peak hours under the no-build conditions. The limited trips are primarily due to the fact that there are only 4 residential dwelling units in this low density R-45 Zoning district. However, as a result of the proposed project, the traffic is projected to increase to 49 entering trips during the PM Peak Hour and 49 exiting trips during the AM Peak Hour.

The intersection of Nut Swamp Road and Crawfords Corner Road is an unsignalized intersection. The area around Nut Swamp Road appears to have a significant amount of trees within the area that limit the available sight distance. The intersection of Nut Swamp Road and Crawfords Corner Road is on a horizontal curve. Roadway width on Crawfords Corner Road vary, but appears to be around 34-35 feet. The roadway is striped as one lane in each direction with varying shoulders. Without a specific left turn lane slot, the increased traffic brought upon by the proposed development may lead to increased congestion and an increased potential for rear-end accidents as through vehicles slow down approaching vehicles stopped along Crawfords Corner Road to make a left turn and sideswipe accidents as vehicles try to maneuver around the vehicles trying to make the left hand turn.

[(Ia64)]

The CME Report also sets forth “[c]oncerns [r]elative to [b]oth [p]roperties, including as follows:

In both developments, developer’s traffic engineer provided manual turning movement traffic counts that

were conducted on June 6, 2024, Thursday, and June 8, 2024, Saturday. We question the validity of the traffic count data as they may not capture school traffic as often times school calendars include limited or reduced schedules within the month of June at the end of the school year.

It should be noted for 1114 West Nut Swamp Road, the Applicant's Engineer generated trips utilizing land use code 215 Single Family Attached Housing for the 115 townhouses and land use code 220 for the 28 apartments. It appears that if trips are generated for the proposed 115 townhouses, the expected trip generation may be higher in the AM and PM Peak Hours.

It should be noted that New Jersey's Residential Site Improvement Standards indicate an Arterial Street means a higher-order, interregional road in the street hierarchy and that it should be excluded from residential areas. Red Hill Road is classified on the NJDOT Straight Line Diagrams as an Urban Minor Arterial. In addition, it should be noted that multifamily developments are not permitted in the R-45 zone, which both of these applications are within, as shown in the Township of Middletown's Ordinance § 540-902B, Appendix A, Schedule of Permitted Uses.

It does not appear that sufficient parking is being proposed for the 490 Red Hill Road Development which could lead to vehicular parking along Red Hill Road and create the potential for additional traffic and sight distance issues.

In addition to traffic upon the portions of Red Hill Road and Crawfords Corner Road that are in the shared jurisdiction of the Township of Holmdel and Township of Middletown, the proposed development would necessarily have a material impact upon adjoining roadways that are in the sole jurisdiction of Holmdel, including Crawfords Corner Road north of Red Hill

Road and Middletown Road west of Crawfords Corner Road. Further modeling would quantify these impacts upon Holmdel, which would result in costs to Holmdel's roadway infrastructure.

[(Ia65-Ia66)]

The CME Report concluded as follows: "Overall the potential negative traffic and parking impacts associated with the proposed residential developments located in the Township of Middletown would directly affect the Township of Holmdel and its residents and accordingly these should be addressed." (Ia66).

### **LEGAL ARGUMENT**

#### **I: THE TRIAL COURT'S ERRONEOUS CONCLUSIONS ARE SUBJECT TO DE NOVO REVIEW. (NOT RAISED BELOW)**

Holmdel's motion to intervene as of right is governed by Rule 4:33-1, and the instant appeal from same is entitled to de novo review.

As a threshold matter, our Court Rules governing intervention are to be "liberally construed." Atl. Emps. Ins. Co. v. Tots & Toddlers Pre-Sch. Day Care Ctr., Inc., 239 N.J. Super. 276, 280 (App. Div. 1990) (citation omitted). Intervention as of right is governed by Rule 4:33-1, which "simply requires the applicant to claim 'an interest' relating to the property or transaction which is the subject of the action." Ibid. "To satisfy the rule, a moving party must (1) claim an interest relating to the property or transaction which is the subject of



the transaction, (2) show [that the movant] is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene.” N.J. Dept. of Env't Prot. v. Exxon Mobile Corp., 453 N.J. Super. 272, 286 (App. Div. 2018) (alterations in original) (internal quotation marks and citations omitted).

Because Rule 4:33-1 “is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied.” Ibid. (quoting Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998)). As such, the Appellate Division reviews trial court determinations under Rule 4:33-1 on a de novo basis. Exxon Mobile Corp., 453 N.J. Super. at 285.

The Law Division’s conclusion that Holmdel failed to meet factors two and three is therefore subject to de novo review by this Court.<sup>3</sup>

**II: THE TRIAL COURT ERRED IN CONCLUDING THAT HOLMDEL’S INTERESTS ARE PROTECTED WITHOUT INTERVENTION INTO THE PENDING LITIGATION. (IA81-IA86)**

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<sup>3</sup> Holmdel need not address factors one and four, as the Law Division judge did not dispute that they were satisfied.

The trial court incorrectly concluded in its opinion that Holmdel does not have an interest in the builder's remedy litigation because "Holmdel's more general concerns with reference to the potential for off-site traffic issues at an intersection that is some distance less than ½ mile from the subject property do not provide the basis for intervention as of right in this builder's remedy action." (Ia82). This conclusion was erroneously reached because the Law Division overlooked the Builders' Remedy proofs requiring a demonstration of sound land use planning in its analysis, made an unpersuasive analogy to case law on intervention, and improperly construed the Legislature's direct import on this issue through the Municipal Land Use Law. Each aspect will be reviewed in kind.

- 1. The Law Division overlooks the Builder's Remedy proofs, which require Plaintiff to demonstrate that their proposed development constitutes "sound land use planning," which Holmdel must have a right to dispute. (Ia84)***

The Law Division did not adequately consider the proofs that Plaintiff must satisfy to obtain a Builder's Remedy, which inform the nature of the parties that have interests to warrant intervention. To this end, the opinion below did not address in the analysis section that a Builder's Remedy requires a demonstration that a proposed site for development constitutes "sound land use planning." (Ia93-Ia106). It follows that such proof must be satisfied, considering

a Builder's Remedy case asks the Superior Court to pierce the zoning ordinances duly adopted by a municipality and to order the imposition of affordable housing.

Considered in this context, Holmdel's motion to intervene contains numerous facts that are germane to the issue of whether Plaintiff's proposed development is site suitable. For example, the Red Hill Road property is on the border of Holmdel and Middletown and cannot be accessed without passing through Holmdel. (Ia74). Holmdel is extremely concerned that a high-density housing development which can only be accessed using one of Holmdel's roads will have "adverse and tangible traffic impacts in Holmdel." Ibid. The CME report attached to the motion to intervene, and appended to this brief, projects that the high volume of traffic and the curvature of the road significantly increases the likelihood of traffic accidents within the Holmdel. Ibid.

The Nut Swamp Road property also cannot be accessed without using Holmdel's Crawfords Corner Road. (Ia75). The addition of a high-density housing project at the property would, like the Red Hill Road property, lead to "tangible and adverse traffic impacts in Holmdel." Ibid. The intersection of Crawfords Corner Road and Nut Swamp Road does not feature a traffic signal or a turning lane, so the increase in traffic from a high-density housing project

would lead to an increased probability of traffic accidents within Holmdel's jurisdiction. (Ia76).

Each New Jersey municipality – including Middletown – exercises a zoning power that among other things is used to address “population densities” and allows their restriction to “contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.” N.J.S.A. 40:55D-2(e). Plaintiff's lawsuit seeks to pierce Middletown's duly adopted ordinances that protect against high densities. If the Superior Court grants Plaintiffs' requested relief, the population density along Holmdel's border will drastically increase. The number of cars using Holmdel's roads will increase alongside the population, creating traffic safety issues.

The trial court argues that these issues “will not be decided by this court as part of the builder's remedy action, but rather would be addressed on a subsequent application to be heard by the Middletown Planning Board.” (Ia75). This argument is a complete red herring. If Plaintiff obtains the relief that they seek in the instant litigation, any concerns about densities that are protected by Middletown's current ordinances will be superseded with Plaintiff having as-of-right zoning to complete its high-density housing project. Holmdel's potential objections to the Middletown Planning Board would be futile because Plaintiff's

project would have an entitlement to site plan approval under the applicable zoning that it does not currently possess under Middletown's zoning ordinances.

**2. *The trial court's analogy to case law on this issue is unavailing.* (Ia83)**

At the outset, it appears there is no reported case that directly addresses the ability of a municipality to intervene into a Builder's Remedy action against a neighboring municipality. That said, Holmdel reiterates that there are several cases that have referenced third-party municipalities intervening into Builder's Remedy suits without any litigated objection, East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) and Dynasty Building Corp. v. Borough of Upper Saddle River, 267 N.J. Super. 611 (App. Div. 1993). Importantly, Plaintiffs have never cited any case directly supporting a neighboring municipality being denied such intervention.

Recognizing this reality, Judge Jones improvidently attempted to distinguish the Dynasty Building Corp. opinion. In Dynasty, the Court granted the neighboring municipality of Ramsey's intervention motion because the proposed development would use Ramsey's sewer system. Dynasty, 267 N.J. Super. at 615. Specifically, the court allowed Ramsey's intervention with respect to the issue of site suitability. Ibid. The trial court's characterization of Holmdel's interest as "generalized" as compared to that of Upper Saddle River

is incorrect. Holmdel has an interest in this litigation as Plaintiff seeks a Builder's Remedy that would re-zone the Red Hill Road property and Nut Swamp Road property to allow for high-density residential housing. The Red Hill Road property is directly adjacent to the Holmdel border, which runs down the centerline of Red Hill Road. The Nut Swamp Road property cannot be accessed without utilizing Crawfords Corner Road, the centerline of which divides Middletown from Holmdel.

The CME report presented to the trial court further supports Holmdel's interests in the development of these properties. With respect to the Nut Swamp Road property, the CME report states as follows regarding traffic on the intersecting Crawfords Corner Road:

[Crawfords Corner Road] is striped as one lane in each direction with varying shoulders. Without a specific left turn lane slot, the increased traffic brought upon by the proposed development may lead to increased congestion and an increased potential for rear-end accidents as through vehicles slow down approaching vehicles stopped along Crawfords Corner Road to make a left turn and sideswipe accidents as vehicles try to maneuver around the vehicles trying to make the left hand turn.

[(Ia64)]

With respect to the Red Hill Road property, the CME report states as follows:

The Applicant's Engineer projects significant traffic volumes including 978 vehicles traveling southwest bound and 578 vehicles northeast bound on Red Hill Road in the AM Peak Hour and 736 vehicles traveling south westbound and 964 vehicles traveling north eastbound in the PM Peak Hour under the No-Build conditions as illustrated in the figures of their reports. Intersection Sight Distance to and from the proposed driveway is a concern as collisions may be increased due to the horizontal curvature of Red Hill Road as a direct result of the proposed development without a direct left turn lane slot. This should be evaluated.

[(Ia64-Ia65)]

The increased use of Holmdel's roads as a consequence of both projects poses specific and significant threats to the safety of Holmdel's people. In addition to the traffic and safety concerns,

the proposed development would necessarily have a material impact upon adjoining roadways that are in the sole jurisdiction of Holmdel, including Crawfords Corner Road north of Red Hill Road and Middletown Road west of Crawfords Corner Road. Further modeling would quantify these impacts upon Holmdel, which would result in cost to Holmdel's roadway infrastructure.

[(Ia66)].

There is no meaningful way to distinguish increased use of Holmdel's roads and associated safety concerns with the increased use of Ramsay's sewage system in Dynasty. In both cases, a municipality's infrastructure is certain to see increased use and suffer negative consequences as a result. Under Dynasty, the

effect on a neighboring municipality's infrastructure speaks directly to site suitability, and should therefore give that municipality standing to intervene. Dynasty, 267 N.J. Super. at 615. Given the liberal standards governing intervention, these concerns are sufficient alone on their face to support intervention.

**3. *The trial court improperly construed the Municipal Land Use Law's import. (Ia85)***

Holmdel's legal interest is further illustrated by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL"), pursuant to which Holmdel would have automatic standing if Plaintiff's requested land use relief were obtained through a zoning ordinance change instead of through the Court.

As a reminder, a Builder's Remedy is a developer's use of the Court to bring about "ordinance compliance" through an effective re-zoning to comply with affordable housing requirements. In re Bordentown, 471 N.J. Super. 196, 226 (App. Div. 2022). Under the MLUL, if Middletown adopted a zoning ordinance amendment that afforded Plaintiff with zoning to complete its requested development, Middletown would be required to provide Holmdel with legal notice of the subject zoning ordinance amendment, as Holmdel is an adjoining municipality within 200 feet of the subject property. N.J.S.A. 40:55D-15. Additionally, if Plaintiff made an application to Middletown's land use



board for its proposed project, it would be required to afford Holmdel with legal notice under N.J.S.A. 40:55D-12(d). Holmdel is statutorily defined as a “party immediately concerned” under the MLUL, N.J.S.A. 40:55D-6, and thus it would have automatic standing to challenge a re-zoning of the subject properties as an objector. *See Cox & Koenig, N.J. Zoning & Land Use Administration (2023), cmt. 18-2.2 at 252* (it is “plain[] that those receiving legal notices as ‘parties immediately concerned’ are ‘interested parties’ with objector standing”).

On this particular issue, the trial court minimized the import of the MLUL by concluding that it merely provides parties within 200 feet including neighboring municipalities of a “right to notice.” This conclusion entirely ignores New Jersey’s well-established law that parties receiving such notice may not only appear at the subject meeting, but that they have automatic standing as objectors in Superior Court relating to the same. As Holmdel seeks to serve as an objector party here, it must be granted intervention to assert its rights.

Considering Holmdel has provided a sworn certification and expert report setting forth facts and explaining why it will suffer a “tangible and adverse traffic impact” by Plaintiff’s proposed development, and the MLUL provides Holmdel with automatic standing to challenge the zoning that Plaintiff is seeking, it follows that Holmdel has a sufficient interest to intervene in this

Builder's Remedy litigation, and that the Law Division judge erred in concluding otherwise.

**III: THE TRIAL COURT ERRED IN CONCLUDING THAT HOLMDEL'S INTERESTS ARE ADEQUATELY REPRESENTED BY THE OTHER PARTIES TO THE LITIGATION BELOW. (IA86-IA90)**

The trial court incorrectly concluded that Holmdel's interests are adequately represented in this case because "to the extent that Holmdel has an interest in this issue, its interests are adequately represented by Middletown, within whose borders the properties are located." (Ia89). The trial court based its faulty conclusion by relying upon City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006), which has distinguishable facts and does not involve a Builder's Remedy litigation or an objector situation whatsoever.

In that case, the developer for a building in Asbury Park attempted to intervene in the city's condemnation proceeding for the land the building would be built upon. The developer, as the party who would ultimately bear the cost of the land, claimed that the city would not adequately negotiate for the lowest price possible because they were not paying for it. Asbury Park Towers, 388 N.J. Super. at 7.

This Court in Asbury Park Towers held that the city adequately represented the developer's interests for several reasons. The first is that there was a redevelopment agreement between the city and the developer governing the city's conduct in the condemnation proceeding. Id. at 10. Connected to the contractual obligation is the common goal among the city and the developer to develop the parcel and improve Asbury Park. Id. at 8. The Court also stated that there is a presumption that the city will "turn square corners" and "act diligently, responsibly, and honorably" in dealing with the public. Id. at 11.

The Asbury Park Towers case is readily distinguishable from the instant case. The biggest point of divergence is that there is no contract or common goal between Holmdel and Middletown. Unlike the cited case, there is no contract between the two parties that has them working together, sufficient to bar intervention. Middletown is not obligated to ensure, nor does it have an interest in ensuring, that Holmdel's roads are safe and not overused. Instead, Middletown's obligations are to its own residents, as well as its potential interests in resolving its affordable housing obligations, which are not at issue for Holmdel.

In addition, the Asbury Park Towers case does not involve a municipality's objection to their neighbor's builder's remedy action. The case deals with Asbury Park's condemnation action and the contractual relationship

between them and the developer who will be paying for the land. Given that the facts in Asbury Park Towers and in this case are vastly different, the case should not form a basis for preventing Holmdel from intervening here.

The existing parties do not adequately represent Holmdel's interests because neither is affected by the resulting impacts on Holmdel. Plaintiff clearly has interests that are not aligned with Holmdel, as it seeks to complete a high-density housing development that Holmdel is objecting to.

While less obvious, Holmdel's interests are unique compared to Middletown and not adequately represented by it. To this end, Middletown must address this litigation in the context of both the sites' suitability and its overall affordable housing obligations across Middletown, while Holmdel does not have to contend with the latter considerations. For example, Middletown could seek to settle this litigation due to overall municipal considerations, such as offsetting potential affordable housing impacts elsewhere in town, but Holmdel may still have objections to the suitability of this site on its border. Additionally, if Plaintiff's development is granted, Middletown stands to receive a tax benefit that would offset potential costs, while Holmdel would not receive any tax revenues to offset the traffic impact that is anticipated, as well as corresponding services that must be provided such as police.

Considering the liberal standard that applies, Holmdel's interests are distinct from both Plaintiff and Middletown and, contrary to the Law Division's conclusion, not adequately represented without intervention.

### **CONCLUSION**

For the foregoing reasons, the Law Division should be reversed, and Holmdel should be allowed to intervene in Plaintiff's Builder's Remedy litigation.

Respectfully submitted,

/S/ MICHAEL L. COLLINS  
**MICHAEL L. COLLINS, ESQ.**  
**NICHOLAS D. HESSION, ESQ.**

Dated: March 11, 2025

|                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>ADONI PROPERTY GROUP, LLC,</p> <p>Plaintiff-Respondent,</p> <p>v.</p> <p>TOWNSHIP OF MIDDLETOWN<br/>and MAYOR AND COUNCIL OF<br/>THE TOWNSHIP OF<br/>MIDDLETOWN,</p> <p>Defendants-Respondents.</p> | <p>SUPERIOR COURT OF NEW<br/>JERSEY<br/>APPELLATE DIVISION<br/>DOCKET NO.: A-000445-24</p> <p>ON APPEAL FROM:<br/>SUPERIOR COURT OF NEW<br/>JERSEY, LAW DIVISION,<br/>MONMOUTH COUNTY</p> <p>DOCKET NO.: MON-L-1260-23</p> <p>SAT BELOW:<br/>Hon. Linda Grasso Jones, J.S.C.</p> |
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**BRIEF OF PLAINTIFF-RESPONDENT  
ADONI PROPERTY GROUP, LLC**

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## **PRELIMINARY STATEMENT**

In this appeal, the Township of Holmdel (“Holmdel”) seeks reversal of the Law Division’s October 3, 2024 Order which denied its motion to intervene as of right pursuant to Rule 4:33-1. In the underlying litigation, Plaintiff Adoni Property Group, LLC (“Plaintiff”) filed a builder’s remedy claim against the Township of Middletown and the Mayor and Council of the Township of Middletown (collectively, “Middletown”) because Middletown has failed to provide a realistic opportunity for the development of affordable housing in violation of the Mount Laurel doctrine.

Plaintiff seeks to develop two properties that are located in Middletown which are the subject of the builder’s remedy action. The first property is located at 490 Red Hill Road (“Red Hill Property”), and the second is located at 1114 West Nut Swamp Road (“Nut Swamp Property”) (collectively, “Properties”). Each of Plaintiff’s proposed developments will provide inclusionary, multi-family housing and will contain a substantial number of low- and moderate-income units.

Holmdel has attempted to intervene in this action on three occasions, and the first two denials were previously upheld by this Court. Here, as in the two prior motions, Holmdel asserts that it should be entitled to intervene on the basis

that an adverse traffic impact will befall its residents because the Properties are located near the border of Middletown and Holmdel.

Plaintiff respectfully requests that this Court affirm. Simply, Holmdel has failed to satisfy the four-pronged standard in Rule 4:33-1 to be entitled to succeed on a motion for intervention as of right. Holmdel's concerns are not issues that will be addressed by the Law Division in this builders remedy action, and Holmdel will have many opportunities to participate in these proceedings to ensure its voice is heard, especially at the municipal level. Furthermore, were this Court to accept Holmdel's contentions as true, every person or neighboring municipality entitled to legal notice under the Municipal Land Use Law ("MLUL") would be permitted to intervene as of right automatically in a builder's remedy suit. Such a proposition would result in interminable delays and would be completely incongruous with the Mount Laurel doctrine's goal to provide affordable housing.

Finally, the Law Division correctly found that Middletown adequately represents Holmdel's interests. As is evidenced by the enormous amount of litigation that has taken place in this action, Middletown has vigorously opposed Plaintiff's proposal, and there is no evidence to support Holmdel's claims that Middletown will abdicate its responsibility to advocate for developments that comport with sound planning principles. Thus, Holmdel's arguments on appeal

should be rejected, and Plaintiff respectfully requests that the Court affirm in all respects.

## **PROCEDURAL HISTORY & COUNTERSTATEMENT OF FACTS<sup>1</sup>**

Plaintiff is the developer of two properties that are the subject of the underlying Builder's Remedy action against Middletown. The Red Hill Property is located at 490 Red Hill Road, identified as Block 1045, Lot 12 on Middletown's Tax Maps. (Ia16). The Nut Swamp Property is located at 1114 West Nut Swamp Road, identified as Block 1045, Lots 2, 3, and 4. Ibid. Both the Red Hill and Nut Swamp Properties are located in Middletown's R-45 Zone. Ibid.

Red Hill Road is a Monmouth County Road, designated as County Route 52 and makes up the boundary of Middletown and Holmdel. (Ia25). West Nut Swamp Road is a local road that leads to Crawford's Corner Road, which is also designated as County Route 52. Ibid. Although located approximately one-half mile from Crawfords Corner Road, the Nut Swamp Property does not directly abut Holmdel. (Ia73).

On October 6, 2022, Plaintiff sent a letter to Middletown advising that it wished to engage in a negotiation with an eye towards entering into an agreement to construct the proposed inclusionary developments on the Properties and advised Middletown that it was not compliant with its Third

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<sup>1</sup> The Procedural History and Counterstatement of Facts are combined because they are intertwined.

Round Mount Laurel obligation to provide a realistic opportunity for the development of affordable housing. (Ia16-17); see S. Burlington Cnty., N.A.A.C.P. v. Twp. of Mount Laurel, 92 N.J. 158, 281 (1983) (hereinafter, “Mount Laurel II”).

On April 21, 2023, Plaintiff filed the underlying builder’s remedy suit after Middletown failed to continue to engage in negotiations following two meetings. (Ia1-10). On June 9, 2023, Holmdel filed the first of its three futile attempts to intervene in the action. (Ia27). In that first motion, Holmdel argued that it is entitled to intervene as of right under the theory that it will suffer an adverse traffic impact, as both of the subject Properties are located near the border of Holmdel and Middletown. (Ia49).

On July 21, 2023, the Law Division denied Holmdel’s first attempt to intervene without prejudice, reasoning, in part, that at that point in the litigation — wherein it had yet to be confirmed that Middletown was not compliant with its Third Round Affordable Housing obligation — Holmdel did not have an interest in the litigation that would entitle it to party status. (Ia29-30, 50; 1T23:8-12).<sup>2</sup> Following a subsequent motion by Plaintiff for summary judgment,

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<sup>2</sup> 1T refers to the transcript of the Law Division oral argument and opinion dated July 21, 2023.

Holmdel filed another motion to intervene. (Ia36-37). Again, the Law Division denied the motion without prejudice, reasoning that Holmdel’s purported interest in the litigation — that it is located near the Properties and will suffer an alleged adverse traffic impact — is not enough to warrant intervention pursuant to Rule 4:33-1. (Ia38-39, 51; 2T18:10-18).

Following the entry of the Law Division’s Order denying intervention and reconsideration, Holmdel filed an appeal to this Court. (Ia40-45). On August 23, 2024, this Court affirmed the Law Division’s Orders. (Ia46-59). In liberally construing the intervention as of right standard in Rule 4:33-1, this Court found that Holmdel’s alleged adverse traffic impacts were sufficient under prong one to establish that it had an interest in the builder’s remedy litigation. (Ia56). Despite this, however, the Law Division’s decisions were affirmed because it had yet to be determined at the time Holmdel’s motions were filed whether Middletown was compliant with its Third Round Mount Laurel obligation. Ibid. As such, “[s]ince [Holmdel]’s asserted interest only concerned increased traffic, the denial of intervention during the constitutional compliance phase did not ‘impede its ability to protect that interest.’” Ibid. (quoting N.J. Dep’t of Env’t

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2T refers to the transcript of the Law Division oral argument and opinion dated December 1, 2023.

3T refers to the transcript of the Law Division oral argument dated September 27, 2024.

Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 286 (App. Div. 2018)). Notably, the Court stated that “[Holmdel] may file a new motion for intervention, if appropriate” when the site suitability phase of the litigation commences because the motions were denied without prejudice. (Ia59).

While the prior appeal was pending, the Law Division entered an Order on May 17, 2024, confirming that Middletown was not in compliance with its Third Round Affordable Housing obligation. (Ia77). As such, the underlying litigation moved from the first phase of the action into the second phase, where it will be decided whether the Nut Swamp and Red Hill Properties are suitable for affordable housing. Ibid.

Accordingly, Holmdel filed a third motion to intervene on September 11, 2024, and, in support of the motion, obtained a report prepared by CME Associates (“CME Report”). (Ia60-70). In once again denying the motion, the Law Division principally noted that allowing Holmdel to intervene will “substantially delay this third round builder’s remedy action” because Plaintiff and Middletown had been exchanging discovery and will engage in discussions with the Special Adjudicator to potentially settle the matter. (Ia71-72, 80-81).

The Law Division then reasoned that pursuant to the second prong of Rule 4:33-1, Holmdel’s interest will not be impaired because, unlike other forms of civil litigation, in a builder’s remedy suit, there is a far greater opportunity for



members of the public to participate and be heard. (Ia81-82). If a settlement is reached, a fairness hearing is scheduled whereby members of the public and neighboring municipalities are provided with notice of the hearing and are permitted to submit written opposition and expert reports, conduct cross-examination of all witnesses, and present their own factual and expert testimony. (Ia82). Furthermore, Holmdel's concerns regarding adverse traffic impacts are issues that are not relevant to determining whether a builder's remedy will be granted. Ibid. The issues in a builder's remedy "to be addressed by the court are specifically and narrowly circumscribed." Ibid.

Regarding the Nut Swamp Property, that the intersection of Nut Swamp Road and Crawfords Corner Road is less than one half of a mile from the development does not show that Holmdel's ability to protect that interest will be impaired if it is not given intervenor status. (Ia83). Regarding the Red Hill Property, that the horizontal curvature of Red Hill Road and its proximity to the proposed site driveway may lead to an increase in the potential for traffic accidents are not issues that the Court will decide in determining whether Plaintiff will succeed in its builder's remedy claim. (Ia84). Namely, Plaintiff must show that the proposed development contains a substantial amount of affordable housing, and Middletown must prove that the proposed development is clearly contrary to sound land use planning. Ibid. "Issues involving the

manner of ingress and egress and traffic patterns will not be decided . . . as a part of the builder's remedy action, but rather would be addressed on a subsequent application to . . . the Middletown Planning Board." Ibid.

In addition, the Law Division rejected Holmdel's argument that it should be permitted to intervene as of right simply because it would be entitled to legal notice under the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-12, by virtue of it being a neighboring municipality located within 200 feet of the Red Hill Property. (Ia85). "This right to notice does not allow intervention by a property owner in a public proceeding, but as in a [Mount Laurel] builder's remedy action, members of the public are provided with the opportunity to be heard. The MLUL does not provide a basis for intervention in the present matter." Ibid. The Law Division concluded:

The issues raised by Holmdel are not relevant to [Plaintiff]'s burden to show that development of the Nut Swamp and/or Red Hill Road [P]roperties would provide a substantial number of housing units for households in need of affordable housing. At the builder's remedy hearing to be held by the court, the issue of additional traffic on Holmdel's roads, traffic concerns regarding the intersection of Crawfords Corner and Nut Swamp Road, somewhat less than 1/2 mile from the Nut Swamp [P]roperty, or additional traffic generated by or the design of ingress and egress into the Red Hill Road [P]roperty is not relevant to the issue of whether the Nut Swamp or Red Hill Road properties are environmentally constrained or development is otherwise contrary to sound land use

planning. Finally, the concerns raised by Holmdel, specifically, the intersection of Monmouth County Roads Nut Swamp Road and Crawfords Corner Road in Holmdel and the traffic on Red Hill Road and method of ingress and egress into a development of the proposed Red Hill Road [P]roperty will not be decided in this builder's remedy action, and the disposition of this matter will not impair or impede Holmdel's interest in those issues.

[(Ia86).]

Next, regarding the third prong of Rule 4:33-1 — whether Holmdel's interest is adequately represented by the parties — the Law Division stated no evidence had been presented to it which would indicate that Middletown is going to abdicate its responsibility to argue for an appropriate density for the Properties. (Ia89). If Holmdel disagrees with Middletown's position in a settlement agreement or a contested hearing, Holmdel will be able to provide testimony and evidence thereto in support of its objections. (Ia89). Thus, “to the extent that Holmdel has an interest in this issue, its interests are adequately represented by Middletown, within whose borders the [P]roperties are located.” Ibid.

On October 22, 2024, Holmdel filed this appeal. (Ia94-96).<sup>3</sup>

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<sup>3</sup> At issue in this appeal is whether the Law Division erred in denying Holmdel intervention as of right pursuant to Rule 4:33-1. Holmdel filed a motion for leave to appeal the Law Division's decision with regard to permissive intervention under Rule 4:33-2; however, that motion was denied.

## **STANDARD OF REVIEW**

Rule 4:33-1 governs the standard a moving party must meet to be entitled to intervene as of right. This Court’s review of a motion to intervene pursuant to Rule 4:33-1 is de novo, and, although the standard is to be construed liberally, the party seeking intervention must satisfy all four prongs. Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998). To satisfy the requirements of Rule 4:33-1, the moving party must:

(1) claim “an interest relating to the property or transaction which is the subject of the transaction,” (2) show [that the movant] is “so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest,” (3) demonstrate that the “[movant’s] interest” is not “adequately represented by existing parties,” and (4) make a “timely” application to intervene.

[Exxon Mobil Corp., 453 N.J. Super. at 286 (quoting Am. C.L. Union of N.J., Inc. v. Cnty. of Hudson, 352 N.J. Super. 44, 67 (App. Div. 2002) (“ACLU”)).]

Ultimately, the inquiry is “whether the granting of the motion will unduly delay or prejudice the rights of the original parties.” Meehan, 317 N.J. Super. at 568 (quoting Atl. Emps. Ins. Co. v. Tots & Toddlers Pre-Sch. Day Care Ctr., Inc., 239 N.J. Super. 276, 280 (App. Div. 1990)). For the reasons set forth below, Holmdel failed to satisfy the standards necessary to be entitled to intervenor status.

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE LAW DIVISION CORRECTLY FOUND THAT HOLMDEL’S INTEREST IN THE BUILDER’S REMEDY LITIGATION WOULD NOT BE IMPAIRED OR IMPEDED WITHOUT ITS INTERVENTION.**

The Law Division did not err in concluding that Holmdel failed to satisfy the proofs required for intervention as of right pursuant to Rule 4:33-1. Under the second prong of Rule 4:33-1, Holmdel must establish that disposition of the underlying builder’s remedy action without its intervention “may as a practical matter impair or impede its ability to protect [its] interest.” Exxon Mobil Corp., 453 N.J. Super. at 286 (quoting ACLU, 352 N.J. Super. at 67).

Holmdel argues that its interest will be impaired because it must be provided the ability to protect its residents from the increased traffic that will result on County Route 52. (Ib16-17). First, Holmdel misstates what is required for Plaintiff to be successful in its builder’s remedy action. It is not Plaintiff’s burden to show that its proposal is not contrary to sound land use planning. Rather, where the developer succeeds in showing that the municipality’s zoning ordinance fails to comply with Mount Laurel, and the developer succeeds in showing that its project proposes a substantial amount of affordable housing, the developer is entitled to a builder’s remedy “unless the municipality establishes that because of environmental or other substantial planning concerns, the

plaintiff's proposal is clearly contrary to sound land use planning." Mount Laurel II, 92 N.J. at 279-80.

The Law Division correctly found that despite Holmdel's assertion that an increase in the likelihood of traffic accidents will occur, that interest would not be impaired or impeded under prong two of Rule 4:33-1. (Ia86). As was noted by this Court in the prior appeal, this litigation has moved to the site suitability phase. (Ia51-52). Addressing the ancillary concerns Holmdel purports to be protecting are not germane to a showing of whether Plaintiff will be entitled to the relief sought. (Ia86); see Mount Laurel II, 92 N.J. at 279-80.

Plaintiff maintains the burden to show that both the Red Hill and Nut Swamp proposals contain a substantial amount of affordable housing. Clearly, Holmdel's claimed interest has no bearing on whether this standard is satisfied. Our Supreme Court in Mount Laurel II explained that whether a proposed affordable housing set-aside is substantial is a fact-sensitive inquiry that the trial court decides on a case by case basis. See Mount Laurel II, 92 N.J. at 279 n.37. The Court opined that in making that determination, the trial court

should consider such factors as the size of the plaintiff's proposed project, the percentage of the project to be devoted to lower income housing (20 percent appears to us to be a reasonable minimum), what proportion of the defendant municipality's fair share allocation would be provided by the project, and the extent to which the

remaining housing in the project can be categorized as “least cost.”

[Ibid. (emphasis added).]

Thus, Holmdel’s concerns have no bearing on whether the affordable housing component of the proposed developments are “substantial,” as the affordable housing contribution will only aid Middletown in satisfying its constitutional deficiency. Holmdel’s Mount Laurel compliance is not at issue.

Further, Holmdel’s interest will not be impaired because its concerns will not tangibly affect any determination as to whether the Red Hill and Nut Swamp Properties are suitable for affordable housing. The former affordable housing regulations provided at N.J.A.C. 5:93-5.3(b)<sup>4</sup> delineated that a site is appropriate for affordable housing if it is “available, suitable, developable and approvable.” N.J.A.C. 5:93-5.3(b). A site is available if it does not have any title restraints on the development of high-density housing, suitable if it is adjacent to compatible land uses with access to appropriate streets, developable if it has access to appropriate water and sewer infrastructure, and approvable if it is developable

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<sup>4</sup> N.J.A.C. 5:93-5.3(b) expired on October 16, 2016. COAH failed to adopt amended Third Round rules after the Supreme Court affirmed this Court’s invalidation of COAH’s Third Round methodology. See In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578, 620-21 (2013). N.J.A.C. 5:93-5.3(b)’s guidance, however, is instructive in making the site suitability determination set forth in Mount Laurel II.

with affordable housing consistent with other outside agency regulations. See In re Twp. of Denville, 247 N.J. Super. 186, 200 (App. Div. 1991), certif. denied, 127 N.J. 557 (1992), rev'd on other grounds, In re Twp. of Warren, 132 N.J. 1 (1993). Furthermore, the developments must be consistent with the purposes of zoning that are illuminated in the MLUL, of which providing affordable housing is recognized as being incorporated by reference. Denville, 247 N.J. Super. at 200-01; Holmdel Builders Ass'n v. Twp. of Holmdel, 121 N.J. 550, 567 (1990); see also N.J.S.A. 40:55D-2 (stating the MLUL's purposes).

The Law Division stated that at the eventual fairness hearing that occurs after a settlement is reached, issues such as increased traffic and the nature of ingress and egress on County Route 52 are not issues that will be addressed therein. (Ia82). Moreover, Holmdel's argument that it will not be able to protect itself against a restriction on population densities is without merit. If Holmdel's argument is accepted, nearly every municipality that is located near the border of a site that is the subject of a builder's remedy action would be entitled to automatic intervention, frustrating the purpose behind the Mount Laurel doctrine and resulting in perpetual delays. See Mount Laurel II, 92 N.J. at 199.

Rather, Holmdel neglects that the more appropriate avenue for it to obtain relief is to raise its objections at the municipal proceedings that would occur following the resolution of this next phase of the litigation. Indeed, unlike other



forms of civil litigation, Holmdel will have many opportunities to raise its concerns even before the proposals reach the municipal phase. If a settlement is reached between Plaintiff and Middletown, a fairness hearing will be held before the Law Division. Holmdel would be afforded public notice of that proceeding and would be able to be an active participant at that time. As the Law Division noted, in a Mount Laurel case, members of the public are permitted to present written opposition to the affordable housing proposal with expert reports, cross-examine witnesses, and present their own expert testimony. (Ia82). Furthermore, Holmdel could also raise its traffic-related concerns at the Planning Board level. See East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 327-28 (App. Div. 1996). There, a more searching inquiry of all of the development aspects of the projects will be evaluated, and Holmdel would be entitled to appear as an interested party and raise any objections it has to those applications. Though related, a builder's remedy action and an action under the MLUL are completely separate proceedings.

In addition, Holmdel's argument that it should be permitted to intervene because it is an interested party entitled to notice of either a rezoning of the property or a development application similarly does not bear fruit. Again, this is not a prerogative writs action resulting from an appeal of a decision from the Middletown Planning Board or Zoning Board. This is a builder's remedy action.

Were this theory accepted, anyone located within 200' of a property that is the subject of a builder's remedy would be entitled to intervene as of right as a matter of course. As the Mount Laurel II Court emphasized, the purpose of a builder's remedy is to produce affordable housing, not excessive litigation, paper, and process. See East/West Venture, 286 N.J. Super. at 329; Mount Laurel II, 92 N.J. at 199 ("We have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals.").

Further, Red Hill Road and Crawfords Corner Road, designated as County Route 52, are county roads under the exclusive jurisdiction of Monmouth County.<sup>5</sup> See (Ia25). Therefore, while Holmdel's border lies within these roads, Holmdel has no authority to require that Plaintiff make any improvements or modifications to those roads. See N.J.S.A. 40:27-6.6 (stating that County Planning Boards have jurisdiction to review site plans for developments along county roads). Even assuming the proposed developments require significant

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<sup>5</sup> Because the proposed developments are along County Route 52 and will include over one acre of impervious coverage, Monmouth County Planning Board approval will be required as a condition subsequent to any approval granted by the Middletown Planning Board. N.J.S.A. 40:55D-22(b); see also N.J.S.A. 40:27-6.6 (stating that County Planning Boards have jurisdiction for site plan review over "land development along county roads or affecting county drainage facilities").

modifications to County Route 52, the determination as to the improvements to be made thereon would solely be determined by the Monmouth County Planning Board, not Holmdel.

Finally, Holmdel's argument that the Law Division erred in contrasting this matter with Dynasty Building Corporation v. Borough of Upper Saddle River is unpersuasive. 267 N.J. Super. 611 (App. Div. 1993). Contrary to Holmdel's argument, Dynasty is distinguishable from this appeal.

As the Law Division delineated, in Dynasty, Ramsey was permitted to intervene due to its interest in "the impact that development of the inclusionary site . . . and adjacent tracts . . . would have on interests of the Ramsey community, including a sewer system in which Ramsey own[ed] the primary interest." Id. at 615. That interest was manifested under a contract which required Ramsey to provide sewer service to the site and memorialized Ramsey's interest in guarding against adverse impacts on its sewer system. Id. at 614-15.

Here, the Law Division reasoned that, as it pertains to the Nut Swamp Property, "[u]nlike Ramsey . . . Holmdel's more general traffic concerns regarding a traffic intersection that is located some distance less than [one-half] mile from the subject property does not provide the basis for a determination that Holmdel's ability protect its interest will be impaired." (Ia83). Further,

while Holmdel's interest in the Red Hill Property is "a more particularized concern," issues related to ingress and egress will not be decided by the court in the underlying litigation. (Ia83-84).

Unlike in Dynasty, Holmdel does not maintain a contractual agreement with Middletown to ensure that the potential increased traffic on County Route 52 will remain as the status quo or not otherwise cause any adverse impact. Neither is that generalized interest in either Property sufficiently pointed so as to demonstrate that Holmdel's interest in protecting its roadways and citizens will be impaired without its intervention. It is apparent that in Dynasty, the proposed developments were required to connect to and utilize Ramsey's sewer system. See Dynasty Bldg. Corp., 267 N.J. Super. at 614-15. In contrast, Holmdel's conclusory concerns raised in the CME Report do not show that its interest will be impaired if it were not permitted to intervene, and Plaintiff will not be utilizing any of Holmdel's municipal services, such as connecting to its sewer system. In essence, accepting Holmdel's argument as true would mean that any municipality that either shares a border with or is located adjacent to a proposed inclusionary development would be entitled to automatically intervene under Rule 4:33-1. As previously stated, the development of multi-family housing anywhere will undoubtedly result in an increase in traffic to some degree. Holmdel has thus failed to show that its interest will be impaired under

the second prong of Rule 4:33-1 and its argument that the Law Division erred should be rejected.

## **POINT II**

### **THE LAW DIVISION CORRECTLY FOUND THAT HOLMDEL’S INTERESTS ARE ADEQUATELY REPRESENTED BY MIDDLETOWN.**

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Holmdel next argues that the trial court erred in denying Holmdel’s motion to intervene as of right because the existing parties do not adequately represent their interests. See Exxon Mobil Corp., 453 N.J. Super. at 286 (quoting ACLU, 352 N.J. Super. at 67) (stating that the proposed intervenor, in part, must “demonstrate that the ‘[movant’s] interest’ is not ‘adequately represented by existing parties’”); see City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 10-11 (App. Div. 2006). In Holmdel’s view, Middletown does not adequately represent its interest because the two municipalities do not maintain a contract that memorializes their joint desire to work together to halt Plaintiff’s proposed development. Holmdel contends that its interest in maintaining safe roadways for its own residents is enough to distinguish itself from Middletown because Middletown does not have to ensure that Holmdel’s roads are safe.

Holmdel’s argument should be rejected. Here, the only distinguishing characteristic between Middletown and Holmdel is vehicles exiting and entering the Properties may need to travel through Holmdel to reach their destination. If accepted as true, any neighboring municipality would be entitled to automatic intervention in a builder’s remedy action where the subject property is located

near the border of another town. Permitting intervention under this theory, therefore, “would be circuitous and would unnecessarily expend judicial and financial resources,” especially in light of Middletown’s persistent efforts to oppose Plaintiff’s proposed developments. Meehan, 317 N.J. Super. at 571 (quoting Warner Co. v. Sutton, 270 N.J. Super. 658, 668 (App. Div. 1994)).

As the trial court pointed out, affordable housing is most commonly comprised of multi-family developments, which undoubtedly produce some modicum of an increase in traffic, especially where, as here, the sites are currently undeveloped. See (Ia85). Holmdel’s concern that an increase in traffic accidents could occur while slightly different as to form is, in substance, the same concern that Middletown would have related to traffic ingress and egress to and from the sites. As this litigation moves towards its end, the issue of ingress and egress will be more thoroughly examined during negotiations as the development plans move towards finalization. Surely, Holmdel is a different municipality than Middletown, and Middletown does not act on behalf of Holmdel’s citizens. However, that does not change the fact that Holmdel’s role as a potential party to this litigation would be entirely duplicative, resulting in potential delays to a resolution in this matter at great cost to all parties. See Meehan, 317 N.J. Super. at 571.

Holmdel further argues that the trial court erred in relying on Asbury Towers because that case involved a condemnation action, not a builder's remedy, and Middletown and Holmdel do not maintain a contractual relationship to ensure that the Properties are suitable for affordable housing. 388 N.J. Super. at 7-11. In Asbury Towers, the developer, Asbury Partners, entered into a contract to redevelop Asbury Park's waterfront. Id. at 4. As part of the agreement, Asbury Partners was to purchase properties along the City's waterfront, and if they were unsuccessful in doing so, the City would acquire those properties by eminent domain. Id. at 4-5 "[I]n the event of litigation," their agreement further provided that the parties would "[a]ssist with and participate in a coordinated defense." Id. at 5 (second alteration in original).

Litigation in Asbury Towers ensued after the City filed a condemnation complaint against the owner of certain property that the City sought to acquire. Id. at 6. This Court affirmed the trial court's denial of Asbury Partners' motion to intervene as of right, holding that "[a]lthough it is undisputed that Asbury Partners, as the Master Developer, has a significant stake in this specific acquisition as well as in the successful implementation of the [redevelopment plan], we are satisfied that the interest of the redeveloper is adequately represented by the condemning authority in the valuation proceedings." Id. at 8. The Court reasoned that the City had "a vested interest in redeveloping its



waterfront[,] . . . demonstrated its commitment to taking whatever steps are necessary to implement the [redevelopment plan],” and vigorously opposed the challenges to the condemnation. Id. at 8-9. Furthermore, the Court noted that simply because there may be a potential settlement that may affect Asbury Partner’s financial interest in the value of the property “does not mean . . . the City is not adequately representing [that] interest,” and it is presumed that a public entity will diligently act to ensure their power and discretion are “properly exercised.” Id. at 10-11.

The Law Division’s reliance on Asbury Towers should not disturb its sound judgment. As the court noted several times, there is no caselaw which specifically addresses whether a neighboring municipality is entitled to intervene in a builder’s remedy action based solely on potential adverse traffic impacts or the idea that they are located close to the proposed development. Although Asbury Towers is not on all fours with this action, it is not so factually dissimilar that reliance on it was improper.

Like in Asbury Towers, Holmdel is concerned that Middletown does not have the same motive to ensure that “Holmdel’s roads are safe and not overused” and Middletown may place greater weight on satisfying its affordable housing obligation then negotiating a lower density to minimize traffic. (Ib24). As the Law Division reasoned, Holmdel has not presented any evidence to support its

supposition that Middletown will not act diligently in pursuing an appropriate density that provides for safe manners of ingress and egress to the sites. Like in Asbury Towers, it is presumed that Middletown will act reasonably and diligently in performing its actions on behalf of the citizenry it serves. See Miller v. Passaic Valley Water Comm'n, 259 N.J. Super. 1, 14 (App. Div. 1992). Clearly, as is evidenced by the enormous amount of litigation that has taken place in the underlying builder's remedy action, Middletown has undertaken its duty to act on behalf of its citizens with great fervor.

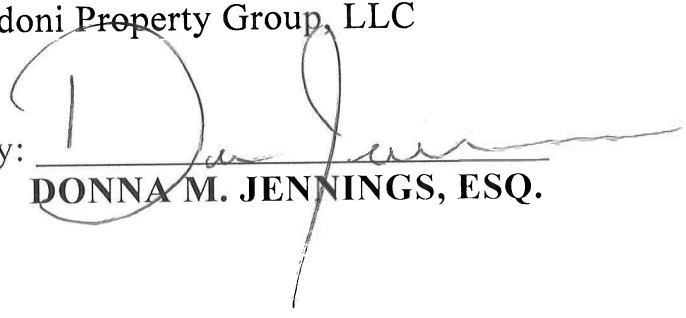
In addition, simply because Middletown could receive a tax benefit from the development of the Properties does not mean that Holmdel's interests are not adequately represented. New Jersey is made up of over 500 municipalities of various sizes. If neighboring municipalities were permitted to intervene based on multi-family affordable housing developments providing a tax benefit to the sovereign in which they are located, there would be no limitation on the number of interveners entitled to participate. Such a mundane fact is also wholly irrelevant as to whether Middletown will be able to meet its burden to show that the Red Hill and Nut Swamp proposals are clearly contrary to sound land use planning or are otherwise environmentally constrained.

### CONCLUSION

As before, the Law Division's third denial of Holmdel's attempts to intervene was not erroneous. Holmdel has failed to satisfy the four-pronged intervention as of right standard in Rule 4:33-1. There is no evidence that Holmdel's interest in adverse traffic impacts befalling its residents will be impaired because such issues will not be addressed by the Law Division in ultimately determining whether the Properties are suitable for affordable housing. In addition, in builder's remedy actions, non-parties are given much greater opportunities to participate in the action and raise their concerns. Finally, Middletown adequately represents Holmdel's interests and has vigorously opposed Plaintiff's proposals, which is evidenced by the significant amount of litigation that has taken place in the underlying action. Thus, Plaintiff respectfully requests that this Court affirm the Law Division's decision.

Respectfully submitted,

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Attorneys for Plaintiff-Respondent,  
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By: 

DONNA M. JENNINGS, ESQ.

Dated: April 10, 2025



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May 9, 2025

**VIA E-COURTS APPELLATE**

Appellate Division Clerk’s Office  
Richard J. Hughes Justice Complex  
P.O. Box 006  
Trenton, New Jersey 08625-0970

**RE: Adoni Property Group, LLC v. Township of Middletown, et al.**  
**Appellate Docket No.: A-445-24**  
**Reply Brief**

Honorable Judges of the Appellate Division:

This office represents the Township of Holmdel (“Holmdel”) in the above-captioned matter. Please accept this Reply in response to Plaintiff-Respondent Adoni Property Group, LLC’s (“Respondent”) Opposition.

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### **LEGAL ARGUMENT**

First, Respondent erroneously argues that Holmdel's interests will not be impaired because its concerns do not affect a determination as to whether the sites are suitable for development based upon an applicability of N.J.A.C. 5:93-5.3(b). Rb14. This is an erroneous citation to an expired regulation of the Council on Affordable Housing that governs whether a property is suitable for inclusion by a municipality on its own volition in a housing element and fair share plan as part of the optional compliance process under the Fair Housing Act, N.J.S.A. 52:27D-301, et seq ("FHA"). This regulation does not have any applicability to a property not selected by a municipality that files a Builder's Remedy action in Superior Court, which remains subject to the proof that the proposed location is not "clearly contrary to sound land use planning" as established in S. Burlington Cty. NAACP v. Mount Laurel, 92 N.J. 158, 279-80 (1983) ("Mount Laurel II"). This standard has no relation to the FHA or expired regulations promulgated pursuant to same.

Second, Respondent incorrectly claims that Holmdel's argument regarding "population densities" is without merit as it means it would frustrate the "purpose behind the Mount Laurel doctrine and result in perpetual delays." Rb15. That is simply not the law. The law requires Respondent to establish that

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its proposed development constitutes “sound land use planning” to obtain a Builder’s Remedy. Respondent has not cited any law that densities cannot be considered a component of this analysis, because none exists. Considering the Municipal Land Use Law has a stated purpose regarding densities, it follows that a planning analysis must take densities into account, and that Holmdel should have the opportunity to do same. It bears further noting that Holmdel’s arguments do not involve Respondent’s proposed densities themselves as much as the effect of them, namely the impact upon Holmdel’s roadways within its jurisdiction. If these issues are not justiciable in considering whether a development constitutes “sound land use planning,” it is hard to fathom what would be considered under Respondent’s proposed approach.

Third, Respondent continues to claim that the “more appropriate avenue” is for Holmdel to raise its objections at municipal proceedings. Rb15. Holmdel reiterates that this position relegates it to objecting when Respondent’s development is a *fait accompli* and when they would be entitled to as of right zoning based upon the Builder’s Remedy. Moreover, this claim about an “appropriate avenue” has no bearing on any of the intervention as of right factors, which entitle Holmdel to intervene if it satisfies them, subject to a liberal application.

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R. 4:33-1 establishes the four criteria for determining intervention as of right:

The applicant must (1) claim “an interest relating to the property or transaction which is the subject of the transaction,” (2) show he is “so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest,” (3) demonstrate that the “applicant’s interest” is not “adequately represented by existing parties,” and (4) make a “timely” application to intervene. [citations omitted].

We have construed this rule liberally and stated that “[t]he test is whether the granting of the motion will unduly delay or prejudice the rights of the original parties.” [citations omitted]. As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied. [citations omitted].

[Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998)].

Fourth, Respondent attempts to draw a poor distinction from Dynasty Building Corp. v. Borough of Upper Saddle River, 267 N.J. Super. 611 (App. Div. 1993), in which a neighboring municipality intervened into a Builder’s Remedy action. Rb19-18. Respondent promotes facts in that case about how the development could impact Ramsey’s sewer system. Rb18. Holmdel contends this is a distinction without a difference, and that impacts to a municipal sewer system and roadway system are both infrastructure implications that support there being an interest to justify intervention.

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Interestingly, Respondent also promotes a distinction from Dynasty Building that Holmdel lacks a “contractual agreement with Middletown” unlike in Dynasty, where Ramsey had one with Upper Saddle River regarding sewer. Rb19; Dynasty, 267 N.J. Super. at 614-15. But if anything, this distinction illustrates why the Asbury Park Towers case that the trial court relied upon in denying intervention constitutes reversible error.

As a reminder, the trial court substantially relied upon City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006) to deny intervention. But the operative facts in that case included that the City of Asbury Park had contracted with the developer to engage in the subject condemnation action. In this case, Holmdel does not have any contract with Middletown, which is a substantial reason why the case law is inapposite and intervention is appropriate. Perhaps recognizing this reality, Respondent argues that the trial court's reliance upon Asbury Park Towers “should not disturb its sound judgment” and is “not on all fours with this action.” Rb24.

Fifth, Respondent argues that Holmdel has “not presented any evidence” that Middletown will not act diligently in pursuing an appropriate density. Rb24-25. But this is a misinterpretation of the applicable standard. Holmdel must merely demonstrate that Middletown does not adequately represent its interests.



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See Meehan, 317 N.J. Super. at 568 (App. Div. 1998) (citations omitted) (“As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied”). This is alone satisfied by the fact that Middletown must resolve this matter in the context of its overall Mount Laurel obligations, while Holmdel does not need to do that and may merely address its concerns as a neighboring municipality, just like a neighboring property owner would do.

### CONCLUSION

For these reasons, Holmdel respectfully reiterates its request that this Court reverse the Law Division's order denying Holmdel intervention.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'mfc', with a long horizontal flourish extending to the right.

MICHAEL L. COLLINS

Cc: All Counsel of Record (via e-courts appellate)