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Attorneys for Plaintiff
Roselle Park VP, LLC

ROSELLE PARK VP, LLC

Plaintiff,

v.

BOROUGH OF ROSELLE PARK, the
PLANNING BOARD OF THE
BOROUGH OF ROSELLE PARK, and
the BOROUGH COUNCIL OF THE
BOROUGH OF ROSELLE PARK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
DOCKET No: UNN-L-338-07

Civil Action

**STATEMENT OF UNDISPUTED
MATERIAL FACTS REGARDING ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT FOR COUNTS TWO AND
THREE**

Pursuant to Rule 4:46-2(a), Roselle Park VP, LLC ("Plaintiff"), respectfully submits that there is no genuine dispute as to the following material facts:

1. Plaintiff is a joint venture and has contractual rights to develop property, which is generally known as 404-450 West Westfield Avenue and is designated as Block 213, Lot 1 and Block 314, Lot 1 according to the Borough's tax map (collectively, the "Property"). See Certification of Ron Ladell dated July 3, 2007 ("Ladell Cert.") at ¶4.
2. The Non-Managing Member of the Plaintiff is 450 West Westfield Realty, LLC, which is the owner of the Property, and Israel Braunstein is a principal of 450 West Westfield Realty, LLC. Id. at ¶5.

3. The Managing Member of Plaintiff is AvalonBay Communities, Inc. (“AvalonBay”), which develops, owns and maintains rental apartment projects in ten states, including New Jersey. Id. at ¶1. AvalonBay does not develop for sale developments. Id. at ¶3. Plaintiff intends to develop an inclusionary rental apartment complex on the Property. Id. at ¶2.

4. Mr. Ronald S. Ladell is a Vice-President of AvalonBay. Id. at ¶1.

Presuit Negotiations

5. About three years ago, Mr. Ladell first met with the Mayor of Roselle Park, Joseph DeIorio (“Mayor”) to explain the developments built, owned and managed by AvalonBay. Id. at ¶6. Mr. Ladell explained to the Mayor that AvalonBay exclusively builds rental apartment projects. Id.

6. On or about August 9, 2006, Mr. Ladell and Mr. Braunstein met with the Mayor to discuss the redevelopment of the Property. Id. at ¶7. They explained that they would like to build an inclusionary, rental apartment project on the Property and needed the Borough to adopt an appropriate redevelopment plan or to rezone the Property in order to do so. Id. At that meeting, the Mayor did not indicate that he had any objections to such a redevelopment project or a rezoning. Id. The Mayor said that the redevelopment plan or rezoning would have to wait until after the November 2006 election. Id.

7. At the November 2006 election, the Mayor won re-election as the Mayor of Roselle Park. Id. at ¶8.

8. On December 13, 2006, Mr. Ladell and Mr. Braunstein again met with the Mayor. Id. at ¶9 Chuck Latini, the municipal planning consultant, participated in the meeting via telephone. Id. At this meeting, Mr. Ladell and Mr. Braunstein once again stated their desire for an appropriate redevelopment plan or a rezoning in order to build an inclusionary, rental apartment building on the Property. Id. The Mayor said that he had no objection to the rezoning of the site but that he did not want a rental apartment project to be built. Id. He referred to rental apartments as “slums.” Id. In response, Mr. Ladell assured the Mayor that AvalonBay only builds quality, luxury rental apartments and offered to take the Mayor and some other municipal officials on a bus tour of other AvalonBay communities throughout New Jersey. Id. The Mayor said that he could be persuaded to permit an inclusionary rental project and would attend such a bus tour. Id.

9. On December 14, 2006, the Mayor called Mr. Ladell and said that he would rather leave the site as it is rather than have it redeveloped with an inclusionary, rental apartment project. Id. at ¶10 The Mayor affirmed that he would attend the bus tour of the AvalonBay projects as he previously agreed to do. Id.

10. For the following few weeks, Mr. Ladell and Mr. Braunstein left messages for the Mayor to schedule the bus tour. Id. at ¶11 The Mayor never responded to any of these messages. Id.

11. On January 19, 2006, Mr. Ladell called Mr. Latini. Mr. Latini said that the Mayor refused to reconsider his opposition to the proposed inclusionary rental apartment project. Id. at ¶12 Mr. Latini said that he did not have an objection to AvalonBay’s proposal from a planning perspective and that Mr. Latini believed that

Plaintiff's proposed project made sense for the Borough and was a perfect fit for the Borough's needs. Id.

12. It was clear that the Borough of Roselle Park was unwilling to adopt an appropriate redevelopment plan or to rezone the Property to permit an inclusionary, rental apartment project and, in January 2007, Plaintiff filed this lawsuit seeking a builder's remedy for the Property. Id. at ¶13.

Redevelopment Plan

13. On April 20, 2006, the Borough of Roselle Park's ("Borough") governing body authorized the Borough's Planning Board to conduct a preliminary investigation into whether the Property was an area in need of redevelopment. See Certification of Robert A. Kasuba, Esq., dated July 3, 2007 ("Kasuba Cert.") at Ex. B, ¶6. On September 18, 2006, the Planning Board recommended that the Property was an area in need of redevelopment. Id. at Ex. B, ¶11.

14. The Borough of Roselle Park adopted the Romerovski Site Redevelopment Plan ("Redevelopment Plan") on March 1, 2007. Id. at Ex. B, ¶27.

15. The Redevelopment Plan "supersedes the use, bulk and design provisions of the Borough Land Development Regulations." Id. at Ex. A, p.14.

16. The uses permitted under the Redevelopment Plan for the Property are "condominium or cooperatively owned residential." Id. at Ex. A, p. 17.

17. A rental apartment complex is not permitted by the Redevelopment Plan. See id. at Ex. A, p.17.