

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

EVERYBODY COUNTS, INC.,)	
a Center for Independent Living, et al.,)	
)	CIVIL NO. 2:98 CV 97 JM-1
Plaintiffs,)	
)	CLASS ACTION
v.)	
)	
NORTHWEST INDIANA REGIONAL)	
PLANNING COMMISSION, et al.,)	
)	
Defendants.)	

**PLAINTIFF’S WITHDRAWAL OF ITS
MOTION TO COMPEL COMPLIANCE WITH THE CONSENT DECREE**

Plaintiff Everybody Counts, Inc. (“EC”), by and through its attorneys, Jenner & Block LLP, respectfully withdraws its Motion to Compel Compliance with the Consent Decree. The parties have reached a resolution with respect to the above-referenced matter. The Settlement Agreement and Mutual Release is attached as Exhibit 1. Therefore, EC hereby withdraws its Motion to Compel Compliance with the Consent Decree.

Respectfully submitted,

By: /s/ Steven M. Siros
Attorney for Everybody Counts, Inc.

Dated: May 30, 2014
Steven M. Siros
IL #6256930
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 923-2717
(312) 840-7717 (Fax)
E-mail: ssiros@jenner.com

EXHIBIT 1

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (the "Agreement") is made and entered by and between Everybody Counts ("EC"), on the one part, and Northern Indiana Regional Planning Commission. ("NIRPC"), on the other part. EC and NIRPC will be referred to individually as a "Party," and jointly as the "Parties."

EC and NIRPC, through their respective counsel, engaged in good faith negotiations in an effort to amicably resolve the disputes set forth in Plaintiff's Motion for an Order to Compel Compliance with the Consent Decree. The Parties now desire to settle on the terms set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, it is hereby agreed between the Parties hereto as follows:

AGREEMENT

1. Public Participation Plan ("PPP").

a. On or before June 11, 2014, EC will provide specific comments and/or revisions to the draft of the PPP that was attached to EC's motion filed with the court on December 2, 2013.

b. On or before June 25, 2014, NIRPC will provide EC, through Counsel, a written response to EC's comments to the PPP. NIRPC's response will identify which comments provided by EC that NIRPC will adopt. NIRPC's response will also identify which of EC's comments that NIRPC is not willing to accept, and include a rationale for the rejection of that comment.

c. On or before July 16, 2014, NIRPC and EC will have an in-person meeting to discuss the comments and NIRPC's responses. The Parties' counsel will also be present.

d. On or before July 30, 2014, EC will provide NIRPC written comments in response to NIRPC's written responses and the meeting.

e. On or before August 20, 2014, NIRPC will take those comments and finalize the PPP to the extent NIRPC deems such changes appropriate. To the extent NIRPC chooses not to adopt EC recommendations, NIRPC will provide a rationale for that decision.

2. **2014 Public Meeting.** NIRPC agrees to hold a public meeting to solicit comments on public transportation services in Northwest Indiana. This public meeting will be held in compliance with the parameters set forth in the NIRPC Consent Decree. Specifically:

a. The public meeting shall take place between October 15 2014 and October 30, 2014 at Wicker Park, 8557 Indianapolis Boulevard, Highland, Indiana. The public meeting shall be held from 1-3:30 pm and from 5-7:30 pm.

b. Notification Materials.

i. On or before June 18, 2014, NIRPC shall provide EC's counsel with a draft copy of the following materials:

(1) The draft notice of the October 15, 2014 public meeting;

- (2) Drafts of the public service announcements and press releases concerning the October 15, 2014 public meeting.
 - (3) Draft of informational brochure (single-page document that briefly describes the public meeting) to be posted and/or disseminated to the mailing list set forth below.
 - ii. On or before July 2, 2014, Everybody Counts shall provide NIRPC's counsel with comments on the draft materials described in Paragraph 2(b).
 - iii. On or before July 16, 2014, NIRPC shall provide Everybody Counts' counsel with the final versions of the materials described in Paragraph 2(b) and a brief rationale for any comments from EC that NIRPC elected not to accept.
- c. Mailing List.
 - i. On or before June 25, 2014, NIRPC shall provide Everybody Counts with the following:
 - (1) A copy of NIRPC's updated mailing list that identifies public and/or private groups, organizations, agencies and governmental entities to whom NIRPC intends that the notice of public meeting shall be distributed.
 - ii. On or before July 16, 2014, EC shall identify any additional entities and/or organizations to whom NIRPC shall provide notice of its October 15, 2014 public meeting. Any supplementation of the NIRPC mailing list would need to include mailing addresses or other means of contact for these entities/organizations and/or specifically identify alternative mailing lists; NIRPC shall incorporate any such alternative mailing lists, to the extent technically feasible, into its existing mailing list.
- d. Notification. NIRPC agrees that it shall:

- i. NIRPC will make written requests to its subgrantee operators and other transit systems (with a copy to EC's counsel) to forward the public notice and informational brochure to all known Demand Response and Certified Complimentary Paratransit Riders on or before September 15, 2014.
 - ii. NIRPC will remind its subgrantee operators of the need to distribute public notices in alternate formats.
 - iii. NIRPC shall distribute public service announcements and press releases to EC, local television, radio, and newspapers on or before September 15, 2014 and then again on October, 1, 2014..
 - iv. NIRPC shall disseminate the public notice and informational brochures regarding the meeting to the NIRPC mailing list described in Paragraph 2(c) above on or before September 15, 2014.
- e. Public Meeting.
- i. NIRPC shall fund and hold the meeting and provide materials, including but not limited to interpreters and materials in alternate formats. This includes modified formats for persons with visual impairments, with cognitive disabilities, and in Spanish for persons for whom English is a second language. NIRPC shall ensure that it has at least five copies of all meeting materials in the following alternative formats available at the meeting: large print; audio tapes and Braille.
 - ii. The following format shall be utilized at the public meeting:
 - (1) Before commencing the public meeting, at each session, NIRPC shall provide a brief statement concerning the role that NIRPC plays with respect to public transportation, a brief overview of the geographical areas served by each of NIRPC's subgrantees, and a brief overview of the

differences between fixed route, paratransit, and demand-response.

- (2) The public meeting shall be facilitated by an agreed upon objective third party, which facilitator shall be selected on or before July 15, 2014—each party shall identify three proposed facilitators for review and to the extent that an agreement cannot be reached, the mediator shall select a facilitator from the identified facilitators;
 - (3) As a general rule, comments shall be limited to three minutes unless the person making the comments requires additional time as a reasonable accommodation with respect to a particular disability;
 - (4) Persons wishing to make multiple comments may do so once all interested persons have had at least one opportunity to provide comments.
- iii. Comments from members of the public made in written sign language, or verbal format and/or written comments from members of the public shall be accepted by NIRPC at the public meeting.
 - iv. To the extent that auxiliary aids and services are required, requests must be made at least 48 hours in advance of the public meeting. The notice of the public meeting shall clearly indicate that requests for auxiliary aids and services must be made at least 48 hours in advance of the open meeting and describe the procedure for making such a request.
 - v. The meeting shall be recorded by videotape and by a court stenographer. NIRPC shall state in writing and verbally during the public meeting that the transcript and the video will be available through the NIRPC website. NIRPC shall post the meeting transcript on its website and the video shall be made available through the NIRPC website until at least January 15, 2015.
 - vi. NIRPC will notify Commissioners that the transcript and videotape of the public meeting are both available through the NIRPC website and shall have copies of the transcript

available at the next scheduled meeting of the Commissioners following the meeting. The public meeting will also be identified as an item on the agenda.

- vii. NIRPC will encourage its subgrantees to provide demand response services for those persons wishing to attend the public meeting to the extent allowed by Federal regulations. Encouragement of NIRPC subgrantees will involve providing written notification to its subgrantee demand response providers to provide advance notice of the public meeting and the need for demand response transportation services;

3. Dispute Resolution.

- a. In the event that a dispute arises with respect to implementation of this Agreement, the Parties shall work cooperatively to resolve the disputes for a period of five (5) days. In the event that the Parties cannot resolve the dispute at the end of that time, either party may provide written notice of initiation of dispute resolution pursuant to this paragraph.
- b. Pursuant to Northern District of Indiana Local Rule 16-6,, the dispute shall be submitted to binding mediation. The mediation shall be held pursuant to the Indiana Rules of Alternative Dispute Resolution.
- c. The parties shall jointly choose a mediator from the Commission Registry of Mediators' registry within two (2) days. In the event a mediator is not selected by agreement, the Court will designate three (3) registered mediators from the Commission's registry. Alternately, each side shall strike the name of one mediator with Everybody Counts making the first strike. The mediator remaining after the striking process will be deemed the selected mediator. The mediation shall be scheduled within five (5) days of having selected the mediator.
- d. To the extent a dispute arises, the losing party shall bear the costs of the mediator. All parties, their attorneys, and other necessary individuals who have settlement authority shall be present at each mediation conference to facilitate settlement of a dispute.
- e. In the event that the Parties cannot reach an agreement at the mediation session, then within five (5) days of the mediation

session, the mediator shall issue a decision that shall be binding upon the Parties.

4. Release of Claims. In exchange for the covenants and promises set forth in this Agreement, which the Parties each agree are adequate consideration, each Party, on its own behalf and on behalf of its past and present officers, directors, agents, employees, shareholders, attorneys, insurers, administrators, spouses, heirs, estates, successors, and assigns, fully and forever releases the other Party and all of their past and present directors, officers, agents, employees, shareholders, attorneys, insurers, administrators, spouses, heirs, estates, successors, and assigns, from any and all claims, counterclaims, liabilities, obligations, demands, setoffs, defenses, suits, debts, actions, and causes of action, pursuant to federal or state statute, common law, or otherwise (collectively, "Claims"), arising from NIRPC's obligations under the Consent Decree. EC agrees that it will withdraw its Motion for an Order to Compel Compliance with the Consent Decree.

5. Representation and Covenant Not To Sue. The Parties hereby represent and agree that neither of the Parties will file or pursue, any claims, charges, suits, complaints, grievances, or other actions which assert, arise out of, or are in any way related to the Claims released under this Agreement.

6. No Admissions. Nothing in this Agreement shall be construed as an admission of liability by any Party. This Agreement is a compromise sought by the Parties to resolve their disputes and minimize the expense associated with litigation.

7. Authority. The Parties represent and warrant that they have the capacity to act on their own behalf and on behalf of all who might claim through them to bind them to the terms and conditions of this Agreement. The Parties further warrant and represent that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released.

8. No Representations. The Parties represent that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. The Parties have not relied upon any representations or statements which are not specifically set forth in this Agreement.

9. Voluntary and Knowing. This Agreement is executed voluntarily and without any duress or undue influence on the Parties. The Parties acknowledge that:

- a. They have read this Agreement;
- b. They have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice; and

c. They are fully aware of the legal and binding effect of this Agreement and sign the same of their own free will.

10. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

11. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Indiana. Any action brought to enforce the terms of the Agreement shall be filed in and the Parties agree to the jurisdiction and venue of federal or state court in Hammond, Indiana, for resolving any claims or actions arising from this Agreement or its interpretation.

12. Counterparts. This Agreement may be executed in counterparts and by facsimile or pdf, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

13. Construction.

a. The language and terms of this Agreement are to be understood in their ordinary sense (except where otherwise defined herein) and are not to be interpreted in a technical manner so as to unfairly deprive any party of substantive rights.

b. The text of this Agreement is the product of negotiation among both Parties and is not to be construed as having been prepared by one Party or the other.

14. No Oral Modification. Any modification of any provision of this Agreement, to be effective, must be in writing and signed by both Parties.

15. Severability. In the event any provision of this Agreement is found to be illegal or unenforceable, such illegality or unenforceability shall not prevent enforcement of all other provisions and the Parties shall replace any such provision with a legal and enforceable provision that is consistent with the intent thereof.

16. Binding Effect. Except as otherwise expressly provided herein, the provisions of this Agreement, including the rights, benefits, covenants, liabilities, and obligations of the Parties hereto, shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the Parties hereto.

17. Good Faith Compliance. Each party hereto agrees to cooperate in good faith and to do all things necessary to effectuate this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Mutual Release on the respective dates set forth below.

EVERYBODY COUNTS, INC.

NORTHERN INDIANA REGIONAL
PLANNING COMMISSION

Signature: Steve M. Snow

Signature: Henry L. Ellulbert

Title: Its Attorney
Date: May 30, 2014

Title: Attorney
Date: May 30, 2014

CERTIFICATE OF SERVICE

I, Steven M. Siros, an attorney, hereby certify that on this 30th day of May, 2014, I electronically filed the foregoing Withdrawal of Its Motion to Compel Compliance with the Consent Decree with the Clerk of the Court using the CM/ECF system. which sent notification of such filing to the following:

David J. Beach

Robert F. Parker

Thomas M. Fisher

Robert F. Peters

Sarah E. Harrington

Jessica Dunsay Silver

David L. Hollenbeck

Jeffrey S. Wrage

Wanda E. Jones

Heather M. Wyatt

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Christopher Anthony
1123 West 52nd Drive
Merrillville, IN 46410

Edward A. Voci
624 Lathrop Avenue
River Forest, IL 60305-1837

Melva Iris Flores
36 Huber Boulevard
Hobart, IN 46342

Emas Bennett
2456 W. 64th Place
Merrillville, IN 46410

Gordon Sunny
7923 Marshall Place
Merrillville, IN 46410

Greg Mitro
6519 Woodrock Drive
Fort Wayne, IN 46835

Luis Roman
4836 Birch Avenue
Hammond, In 46327

/s/ Steven M. Siros

Steven M. Siros