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FILED

JAN 14 2019

CLERK OF SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

IN THE MATTER OF THE
APPLICATION OF TOWNSHIP OF
EAST WINDSOR,

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. L-1522-15

Civil Action
(*Mt. Laurel*)

**FINAL JUDGEMENT OF
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Petitioner Township of East Windsor (the "Township") seeking the Court's approval of the Township's adopted Third Round Housing Element and Fair Share Plan ("HEFSP") and of the Township's adopted ordinances and resolutions implementing the HEFSP, subject to the conditions set forth herein, all pursuant to N.J.S.A. 52:27D-313 and In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"), and the entry of a Final Third Round Judgment of Compliance and Repose confirming the Township's compliance with its fair share housing obligations under the Mount Laurel doctrine and the Fair Housing Act ("FHA"); and the Court having conducted a Compliance Hearing on November 30, 2018 upon adequate notice to the public and the protected class in accordance with R. 4:32-2 and Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359 (Law Div. 1984) *aff'd o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and

The Court having considered (a) the July 17, 2018 report of Court Special Master Elizabeth C. McKenzie, AICP, P.P., and her testimony during the Township's Fairness Hearing on July 19, 2017, (b) the November 30, 2018 report of Court Special Master Michael P. Bolan, AICP, P.P., and his testimony during the Township's Compliance Hearing on November 30, 2018, (c) the testimony of the Township's Planning Consultant Edward Snieckus, Jr., P.P., LLA, ASLA, (d) and arguments of counsel; and

The Court having found the following facts:

1. Pursuant to the Township's settlement agreement with Fair Share Housing Center, Inc. dated May 16, 2017 and the amendment thereto dated July 12, 2017 (the "Settlement Agreement"), the Township has a total fair share obligation through July 1, 2025, as follows:

Rehabilitation Share: 107 units;

Prior Round Obligation (1987-1999): 345 units;

Third Round Obligation (1999-2025): 736 units.

2. The Township's Planning Board approved the Housing Element of the HEFSP on December 4, 2017.

3. The Township Council endorsed the Housing Element of the HEFSP and adopted the Fair Share Plan of the HEFSP on January 23, 2018.

4. The Township Council adopted all necessary resolutions, as indicated in Special Master Bolan's November 30, 2018 report, and the following ordinances in order to implement the HEFSP:

a. Ordinance No. 2017-01, adopted March 7, 2017, concerning the OTR East Windsor Investors property.

b. Ordinance No. 2017-09, adopted May 2, 2017, concerning the Windsor Castle

Associates property.

c. Ordinance No. 2017-16, adopted December 5, 2017, concerning the regulation of very low, low and moderate income units in the Township; the collection, maintenance and expenditure of development fees by the Township; and the establishment of an Affordable Housing Liaison to serve the Township.

d. Ordinance No. 2018-10, adopted December 4, 2018, concerning the Blackstone/Zaitz property and incorporating the recommendations made by Special Master Michael Bolan in his November 30, 2018 report.

e. Ordinance No. 2018-11, adopted December 4, 2018, concerning the Community Investment Strategies ("CIS") property and 100% affordable development and incorporating the recommendations made by Special Master Michael Bolan in his November 30, 2018 report.

5. Special Master Michael Bolan testified that he has reviewed the Township's HEFSP and accompanying implementing ordinances and resolutions, as set forth in his November 30, 2018 report, and believes that the HEFSP will create sufficient realistic opportunities for the provision of low and moderate income, including very low income, housing to satisfy the agreed-upon municipal fair share obligation provided that the Township adopts ordinances 2018-10 and 2018-11 with the revisions identified in Special Master Bolan's November 30, 2018 report. In his report, the Special Master recommended that the Court approve the HEFSP and grant the Township a Final Judgment of Compliance and Repose upon the Township's clarification of the status of the CIS project and the definition of dwelling net density, as used in Ordinance 2018-10 concerning the Blackpoint/Zaitz property.

6. At the November 30, 2018 Compliance Hearing, the Township's Planning

Consultant, Edward Snieckus, Jr., P.P., LLA, ASLA, testified that the HEFSP and implementing ordinances have been or shortly will be adopted by the Township with all necessary modifications, and clarified that the property for the CIS project has already been acquired by the Township. Upon a request for clarification of the definition of the term “dwelling net density” as used in Ordinance 2018-10, Mr. Snieckus indicated that the term has the same meaning as that which is defined in Chapter 20, entitled “Zoning”, of the Revised General Ordinances of the Township of East Windsor, 1970, in Section 20-3.0223b. Mr. Snieckus further indicated that the term, as defined, allows the inclusion of the entirety of the area of the Blackstone/Zaitz property within the property lines of the development, including land that cannot be developed such as environmentally constrained lands and land containing stormwater management facilities. The Court finds that the ordinance will be interpreted in accordance with this definition as part of its basis for approving the plan and ordinances as set forth in this Order.

7. Based upon the November 30, 2018 report of the Special Master, which is incorporated herein by reference as the findings of the Court, and based upon the testimony of Special Master Bolan and Township Planning Consultant Snieckus, the Court finds that the Township’s Third Round HEFSP creates sufficient opportunities for the provision of low- and moderate- income housing through July 1, 2025, consistent with the FHA and the Mt. Laurel doctrine, and that the Township is entitled to a Judgment of Compliance and Repose through July 1, 2025; and

8. For the reasons set forth on the record and for good cause shown, the Court has determined that a Judgment of Compliance and Repose as to the Township’s cumulative Prior Round and Third Round fair share obligation through July 1, 2025 should be entered.

NOW, THEREFORE, it is on this 14th day of January, 2019, **ORDERED AND ADJUDGED** as follows:

A. The Township of East Windsor has a judicially-approved fair share housing obligation through July 1, 2025 consisting of (a) 107 units as its Rehabilitation Share, (b) 345 units as its Prior Round (1987-1999) Obligation, and (c) 736 units as its Third Round (1999-2025) Obligation.

B. The Township's Third Round HEFSP, and implementing ordinances and resolutions, will create a sufficient realistic opportunity for the provision of low- and moderate-income housing to satisfy the Township's judicially approved fair share obligations through July 1, 2025 consistent with the FHA and the constitutional doctrines enunciated in the Mount Laurel cases.

C. The Township is entitled to immunity from builder's remedy litigation commencing as of the date of this Order through July 1, 2025.

D. Upon an unappealable final judgment of the calculation of the Township's fair share obligation, the Township may apply to the Court for a reduction of its fair share obligation pursuant to the terms of Paragraph 15 of the Settlement Agreement.

E. The appointment and services of Special Master Elizabeth McKenzie are hereby terminated. The Court and the parties thank Ms. McKenzie for her efforts and assistance in this matter. Special Master Michael Bolan shall be retained to perform the continuing monitoring functions in accordance with the Settlement Agreement.

F. Court Orders entered in this matter remain in continuing effect and all parties shall bear their own costs.

G. A copy of this Order shall be served upon all counsel of record and the

Township's service list within seven (7) days of the posting of this Order on e-Courts, and shall be posted on the Township's website.


Hon. Mary C. Jacobson, A.J.S.C.