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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
DOCKET No. UNN-L-2391-15

_____)	Civil Action
)	
IN RE: TOWN OF WESTFIELD)	(<u>Mount Laurel</u>
COMPLIANCE WITH THIRD ROUND)	Declaratory Judgment Action)
<u>MOUNT LAUREL AFFORDABLE</u>)	
HOUSING OBLIGATION)	FINAL JUDGMENT OF
)	COMPLIANCE AND REPOSE
_____)	

This matter having come before the court by way of a "fairness hearing" conducted on August 4, 2017 and October 17, 2017, and a subsequent "compliance hearing" conducted on May 21, 2018, both pursuant to and in accordance with East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311, 328-329 (App. Div. 1996), for the purpose of reviewing the Town of Westfield's compliance with its Third Round Mount Laurel affordable housing obligations via a declaratory judgment action which was filed by the Town of Westfield (the "Town") on July 2, 2015 in accordance

with In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) (Mount Laurel IV); and the Court having granted the Town and the Town of Westfield Planning Board (the "Board") temporary immunity from the time of the filing of the declaratory judgment action from any and all exclusionary zoning lawsuits, including but not limited to "builder's remedy" lawsuits, with the first order granting temporary immunity being entered on August 24, 2015 and the last order extending temporary immunity being entered on November 1, 2017; and the Court having appointed planning expert Philip B. Caton, PP, FAICP, as its special master (the "special master") by order entered on August 24, 2015; and the Town and Fair Share Housing Center ("FSHC") having engaged in settlement discussions with the aid and assistance of the special master, ultimately resulting in the entry into a settlement agreement by and between the Town and FSHC dated April 4, 2017 (the "settlement agreement"); and the Court, having conducted a fairness hearing and having found and concluded that the settlement agreement was reasonable and fair to, and adequately protected the interests of, low and moderate income persons / households, and having approved the settlement agreement as amended in certain respects by an order entered on October 26, 2017 and an amended order entered on November 1, 2017, which also scheduled the compliance hearing for April 16, 2018; and the

Court subsequently re-scheduling the compliance hearing for May 21, 2018; and the Court, after conducting the compliance hearing on May 21, 2018, having entered a Conditional Judgment of Compliance and Repose on May 31, 2018, which included a number of conditions which had to be complied with by August 10, 2018; and the Court finding that the Town has complied with all of said conditions, with the Town having submitted documentation proving such compliance to the Court and to the special master by letter submitted on August 6, 2018, and the special master having submitted a letter to the Court dated August 8, 2018 reporting his finding that all submissions are complete and consistent with the terms and conditions of the Conditional Judgment of Repose; and the Court, for good cause shown, having determined that the within Final Judgment of Compliance and Repose should therefore be entered;

THEREFORE, IT IS ON THIS ^{23rd} DAY OF AUGUST, 2018

HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The within Final Judgment of Compliance and Repose ("FJCR") is hereby entered in favor of the Town in the within declaratory judgment action. The particulars of the FJCR are set forth below.
2. It is hereby adjudged and declared that the HEFSP adopted by the Board and endorsed by the Town, as well as the

ordinances that were adopted by the Town to implement the HEFSP and which were amended in accordance with the Conditional Judgment of Compliance and Repose, satisfy the Town's Mount Laurel constitutional obligations under the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the "FHA") and under the Mount Laurel line of cases, including Mount Laurel IV, 221 N.J. 1 (2015), and In re Declaratory Judgment Actions filed by Various Municipalities, 227 N.J. 508 (2017) (Mount Laurel V).

3. It is hereby adjudged and declared that the within FJCR shall remain in effect for 10 years, beginning on July 2, 2015 and ending on July 2, 2025, and during this 10-year period the Town and all of its boards shall have repose and immunity from any and all exclusionary zoning lawsuits, including but not limited to "builder's remedy" lawsuits.

4. It is adjudged and declared that the Town's Third Round affordable housing obligations are as follows:

Rehabilitation Obligation	15
Prior Round Obligation	139
Third Round (1999-2025) Gap and Prospective Need Fair Share Obligation (subject to the Vacant Land Adjustment provided for below)	1,090

While the Town's Third Round Gap and Prospective Need Obligation is 1,090 units, it is further adjudged and declared that the Town is granted a Vacant Land Adjustment due to the scarcity of vacant land, with the Town having a realistic development potential

("RDP") of 62 units and an unmet need of 1,028 units.

5. It is adjudged and declared that the Town satisfies its 15-unit Rehabilitation Obligation as provided for in the HEFSP.

6. It is adjudged and declared that the Town has previously satisfied its 139-unit Prior Round Obligation as explained in the HEFSP.

7. It is adjudged and declared that the Town satisfies its Third Round Gap and Prospective Need Fair Share Obligation as provided for in the HEFSP. Satisfaction of this obligation is through re-zoning to meet the Town's RDP and overlay zoning and other compliance mechanisms to address the Town's unmet need.

8. It is adjudged and declared that the fact that the Town has an unmet need: (a) shall not be deemed a legal reason to warrant the grant of any rezoning, variance or other relief; (b) shall not give any property owner and/or developer the right to any rezoning, variance or other relief; (c) shall not establish any obligation on the part of the Town to grant any rezoning, variance or other relief; and (d) shall not be the basis of any rezoning, variance or other relief, including but not limited to any relief requested through litigation, including but not limited to a builder's remedy and/or an appeal of a

planning board or zoning board of adjustment denial of an application.

9. It is hereby adjudged and declared that if a decision of the Superior Court of New Jersey (Union County), the Appellate Division of the Superior Court of New Jersey, the New Jersey Supreme Court, or a determination by an administrative agency responsible for implementing the FHA, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Town for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation set forth in the within FJCR, and if that calculation is memorialized in a final judgment that becomes non-appealable, the Town may seek to amend the within FJCR to reduce its Third Round Gap and Prospective Need Fair Share Obligation accordingly. Notwithstanding any such reduction, the Town shall be obligated to: (a) implement the HEFSP, including by leaving in place any site-specific zoning adopted or relied upon in connection with the HEFSP; (b) taking all steps necessary to support the development of any 100% affordable developments referenced in the HEFSP; (c) maintaining all compliance mechanisms to address unmet need; and (d) otherwise fulfilling fully the Third Round Gap and Prospective Need Fair Share Obligation as established herein. Finally, any

reduction of the Town's Third Round Gap and Prospective Need Fair Share Obligation below 1,090 units in accordance with this ordering paragraph does not provide a basis for seeking leave to amend the within FJCR pursuant to R. 4:50-1. If the Town prevails in reducing its Third Round Gap and Prospective Need Fair Share Obligation below 1,090 units, the Town shall be entitled to carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

10. The Town's Spending Plan is hereby approved by the Court.

11. The Town's Affirmative Marketing Plan is hereby approved by the Court.

12. The settlement agreement by and between the Town and FSHC dated April 4, 2017 (the "settlement agreement"), which was submitted to the Court on April 24, 2017, was entered into evidence during the fairness hearing on August 4, 2017 as W-1, and was amended in certain respects as provided for in ordering paragraph 1 of the order approving the settlement agreement entered by the Court on November 1, 2017, is further amended as follows:

a. Paragraph 7 of the settlement agreement, the "Notes" column of the RDP satisfaction chart, is revised to change the reference to the 130 units from "Family sales" to

"Family sales or rentals (at the option of the developer)".

Additionally, the following new last sentence is added: "The 26 affordable units shall be family sales or rentals at the option of the developer."

b. Paragraph 10 of the settlement agreement, the "Notes" column, is modified to change the reference to the 130 units from "Family sales" to "Family sales or rentals (at the option of the developer)". Additionally, the following new last sentence is added: "The 26 affordable units shall be family sales or rentals at the option of the developer."

13. Counsel for the Town shall provide all parties on the Supreme Court Service List and the Municipal Service List as well as all parties who participated in the fairness hearing with a copy of this Order within five (5) days of receipt by counsel for the Towns of the within Order.


HON. KAREN M. CASSIDY, A.J.S.C.