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FILED

MAR 04 2021

GREGG A. PADOVANO, J.S.C.

IN THE MATTER OF THE
APPLICATION OF THE
TOWNSHIP OF WYCKOFF'S
HOUSING ELEMENT AND
FAIR SHARE PLAN,

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6224-15

CIVIL ACTION
(Mount Laurel)

FINAL JUDGMENT OF
COMPLIANCE AND REPOSE

THIS MATTER having been opened to the Court by Robert E. Landel, Esq., attorney for Plaintiff/Petitioner, Township of Wyckoff ("Township" or "Wyckoff"), in the presence of Joshua D. Bauers, Esq., attorney for Fair Share Housing Center, Inc. ("FSHC"), an Interested Party and Intervenor-Defendant, and Stuart D. Liebman, Esq., attorney for Canterbury Development Corp. ("Canterbury"), an Interested Party and Intervenor-Defendant, and Special Master Frank Banisch, P.P., and on notice to all interested parties and the service list; and the Township and FSHC having signed a Settlement Agreement on or about June 13, 2018 settling the instant litigation between the Township and FSHC (the "FSHC Settlement Agreement"); and the Township and Canterbury having signed a Settlement Agreement on or about August 7, 2018 settling the instant litigation between the Township and Canterbury (the "Canterbury Settlement Agreement"); and the FSHC Settlement Agreement was approved by the Court in a Fairness Hearing conducted on July 18, 2018 in accordance with the requirements of Morris County Fair Housing Council v. Boonton

Township, 197 N.J. Super. 359, 364 (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, 328 (App. Div. 1996); and whereas the FSHC Settlement Agreement also provides that after a Compliance Hearing the Court may enter a Judgment of Compliance and Repose with immunity as set forth in the Conditional Order of Compliance finding the FSHC Settlement Agreement is fair and reasonable and adequately protects the interests of low- and moderate-income households within the Township's housing region based upon the criteria set forth in East/West Venture; and the Court having held a Compliance Hearing on January 25, 2021 and having heard the testimony of Special Master Frank Banisch, P.P. as well as the Township's professional planner, Elizabeth McManus, PP, AICP, LEED AP, and having found that:

1. The FSHC Settlement Agreement continues to be fair and reasonable to low- and moderate-income households on whose behalf the affordable units proposed by the settlement are to be made available.
2. The Township's implementation of its affordable housing plan is constitutionally compliant and consistent with the FSHC Settlement Agreement.
3. The Township has complied with all conditions and requirements set forth in the Special Master's Report, dated January 24, 2021, and Conditional Order of Compliance of July 23, 2018.
4. The Township's compliance actions and mechanisms, consisting of its Housing Element and Fair Share Plan adopted by the Planning Board in October 2018 and endorsed by the Township Committee by way of Resolution dated November 5, 2018 as well as various implementing ordinances and resolutions reviewed and approved by the Special Master, create the realistic opportunity to achieve the Township of Wyckoff's Affordable Housing obligations under

the Mount Laurel doctrine; and the Court having determined to enter a Declaratory Judgment of Compliance and Repose and an approval of the Township's Affordable Housing Trust Fund Spending Plan as hereinafter set forth.

IT IS THEREFORE, on this 4TH day of MARCH 2021,

ADJUDGED, DECLARED, AND ORDERED AS FOLLOWS:

1. Judgment is hereby declared in favor of Plaintiff/Petitioner, Township of Wyckoff, for a Declaratory Judgment of Compliance and Repose pursuant to the East/West Venture and the Mount Laurel line of cases.
2. The Court hereby declares the land use regulations and affirmative mechanisms in the Township of Wyckoff's Settlement Agreement with Fair Share Housing Center and the implementing ordinances and resolutions associated therewith comply with the Township's constitutional obligation with respect to affordable housing under the Mount Laurel doctrine.
3. The Township, through the adoption of the 2018 Third Round Housing Element and Fair Share Plan ("HE/FSP") and the implementation of that Plan and the FSHC Settlement Agreement, has satisfied its obligations under the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq. for the Prior Rounds (1987-1999) and the Third Round (1999-2025), inclusive of any "gap period" that may exist therein.
4. The Township has implemented the agreed-upon compliance mechanisms to address its Third Round obligations as set forth in the FSHC Settlement Agreement, the 2018 Third Round HE/FSP and implementing ordinances and resolutions.
5. The Township is granted repose and immunity from exclusionary zoning litigation by this Judgment of Compliance and Repose for the period through July 2, 2025.

6. The Township is authorized to impose and collect development fees and to maintain those fees in the Township's Affordable Housing Trust Fund and Spending Plan as set forth in the 2018 Third Round HE/FSP and approved by the Township Committee by Resolution dated December 15, 2020.

7. The Court declares the Township of Wyckoff to be in compliance with its obligation to have provided and to provide a realistic opportunity for the development of housing affordable to low- and moderate-income households as defined in what are commonly known as the Mount Laurel cases and in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.*, as amended. Entry of this Judgment of Compliance and Repose will bar any claim that the Township of Wyckoff is failing to provide a sufficient realistic opportunity for the development of housing for low- and moderate-income households through July 2, 2025, except to enforce the terms of the FSHC Settlement Agreement and this Order.

8. If a decision of a Superior Court of New Jersey (Bergen 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 Fair Housing Act, or an action by the New Jersey Legislature would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in the FSHC Settlement Agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan consistent with the FSHC Settlement Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to the FSHC Settlement Agreement,

taking all steps necessary to support the development of any one hundred (100%) percent affordable developments referenced in the FSHC Settlement Agreement; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established in the FSHC Settlement Agreement. The reduction of the Township's obligation below that established in the FSHC Settlement Agreement does not provide a basis for seeking leave to amend the FSHC Settlement Agreement or seeking leave to amend an order or judgment pursuant to Rule 4:50-1. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

9. On the first anniversary of the execution of the FSHC Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the Township through posting on the Township website, with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Township and/or Council on Affordable Housing, or any other forms endorsed by the Special Master and FSHC.

10. The Fair Housing Act includes two (2) provisions regarding action to be taken by the Township during the period of protection provided in the FSHC Settlement Agreement. The Township agrees to comply with those provisions as follows:

A. For the midpoint realistic opportunity review as required pursuant to N.J.S.A. 52:27D-313, within sixty (60) days from the date of this order, the Township will post on its Township website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should

be revised or supplemented. Such posting shall invite any interested party to submit comments to the Township, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

B. For the review of very low-income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third (3rd) anniversary of the FSHC Settlement Agreement, and every third (3rd) year thereafter, the Township will post on its Township website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low-income requirements, including the family very low-income requirements referenced in the FSHC Settlement Agreement. Such posting shall invite any interested party to submit comments to the Township and Fair Share Housing Center on the issue of whether the Township has complied with its very low-income housing obligation under the terms of the FSHC Settlement Agreement.

11. Income limits for all units that are part of the Township's Housing Element and Fair Share Plan and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within thirty (30) days of the publication of determinations of median income by HUD as follows:

A. Regional income limits shall be established for the region that the Township is located within based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a

family of four (4) is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four (4). The income limit for a moderate-income unit for a household of four (4) shall be eighty (80%) percent of the regional weighted average median income for a family of four (4). The income for a low-income unit for a household of four (4) shall be fifty (50%) percent of the HUD determination of the regional weighted average median income for a family of four (4). The income limit for a very low-income unit for a household of four (4) shall be thirty (30%) percent of the regional weighted average median income for a family of four (4). These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

B. The income limits are the result of applying the percentages set forth in paragraph A above to HUD's determination of median income and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

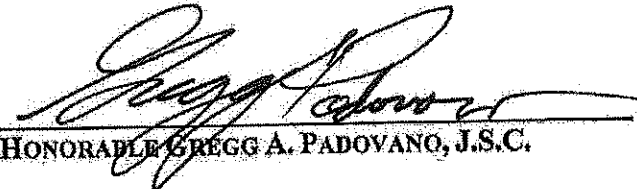
C. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph A above over the previous year's income limits and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

12. In establishing sale prices and rents of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

A. The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to paragraph 11 above. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

B. The rent levels of very low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine (9%) percent in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

13. A copy of this Final Judgment of Compliance and Repose shall be served upon all parties included on the Township Service List within 10 days of the date hereof.


HONORABLE GREGG A. PADOVANO, J.S.C.