

TOWNSHIP OF WYCKOFF
COUNTY OF BERGEN
STATE OF NEW JERSEY
RESOLUTION #18-301

INTRODUCED: Rubenstein SECONDED: Shanley

MEETING DATE: November 5, 2018

REFERENCE: RESOLUTION OF THE TOWNSHIP OF WYCKOFF, COUNTY OF BERGEN, ENDORSING THE 2018 THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN AND AUTHORIZING ITS SUBMISSION TO THE SUPERIOR COURT, BERGEN COUNTY, IN SUPPORT OF THE TOWNSHIP'S REQUEST FOR A THIRD ROUND JUDGMENT OF COMPLIANCE AND REPOSE

VOTE: BOONSTRA MADIGAN RUBENSTEIN SHANLEY SCANLAN

WHEREAS, the New Jersey Fair Housing Act of 1985 (N.J.S.A. 52:27D-301, *et seq.*) had established the Council on Affordable Housing ("COAH") as the State agency to create Rules and Regulations for determining municipal low and moderate income affordable housing obligations and for the development and administration of low- and moderate-income housing within municipalities, and also to provide a venue for approval (by way of the grant of "substantive certification") of municipal housing elements and fair share plans that were found to comply with COAH's Rules; and,

WHEREAS, the first round of COAH's Rules covered the six (6) year time period from 1987 to 1993, and the second round of COAH's Rules covered the entire cumulative twelve year period from 1987 to 1999 (now referred to collectively as the "prior round"); and,

WHEREAS, the first version of COAH's third round Rules was originally adopted on December 20, 2004 to cover the period from January, 2000, to December, 2013, but that set of Rules was challenged and subsequently invalidated by the Appellate Division; and,

WHEREAS, in 2008, COAH adopted two more iterations of its third round Rules, each covering the period from July 1, 2000, to July 1, 2018, but the last iteration of the Rules was also challenged, and, on October 8, 2010, the Appellate Division invalidated said Rules; and,

WHEREAS, the Planning Board had adopted and the Township Committee had endorsed two previous versions of a Third Round Housing Element and Fair Share Plan, one in December of 2005 and one in December of 2008, each prepared to comply with COAH's third round Rules in effect at that time; and,

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WHEREAS, on September 26, 2013, the New Jersey Supreme Court upheld the Appellate Division's 2010 decision in In Re Adoption of 5:96 and 5:97 by New Jersey Committee on Affordable Housing, 215 N.J. 578 (2013) and ordered COAH to prepare and adopt new Rules, which, in the end, COAH failed to do; and,

WHEREAS, on March 10, 2015, in response to a Motion in Aid of Litigants' Rights filed by Fair Share Housing Center, the Supreme Court removed COAH's responsibility for reviewing and approving municipal housing elements and fair share plans and transferred that responsibility to the Superior Court judges in each vicinage; and,

WHEREAS, to protect municipalities such as Wyckoff, that had voluntarily submitted to the COAH process, from builders' remedy lawsuits, the Supreme Court provided an opportunity (and a period of temporary immunity) during which any municipality that had either participated in the COAH process during the third round but had not yet been certified, or that had been certified by COAH as to compliance with its third round fair share obligation, a window of opportunity to file a Declaratory Judgment action in Superior Court, seeking the Court's approval of either the municipality's previously adopted third round Housing Element and Fair Share Plan or a modification thereof and granting Fair Share Housing Center ("FSHC"), as the moving party before the Supreme Court, interested party status in all such Declaratory Judgment actions; and,

WHEREAS, Wyckoff Township filed such a Declaratory Judgment action in the Bergen County Superior Court in July of 2015, and through that litigation reached settlements with FSHC and with a Defendant/Intervenor, Canterbury Development, Inc. ("Canterbury"), as to the magnitude of the Township's third round fair share obligation and how that obligation should be fulfilled, including how the Canterbury property should be developed in furtherance of such obligations; and,

WHEREAS, the settlements were approved by the Court following a Fairness and Preliminary Compliance Hearing held on July 18, 2018 by way of an Order entered on July 23, 2018; and,

WHEREAS, to implement the settlements that were approved by the Court, Wyckoff is required to prepare and adopt a new Third Round Housing Element and Fair Share Plan, together with all implementing ordinances and resolutions, to be reviewed by the Court-appointed Special Master and approved by the Court; and,

WHEREAS, the Planning Board of the Township of Wyckoff has adopted a 2018 Third Round Housing Element and Fair Share Plan as an element of the Wyckoff Township Master Plan pursuant to N.J.S.A. 40:55D-28; and,

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WHEREAS, said 2018 Third Round Housing Element and Fair Share Plan sets forth a plan for addressing the Township's agreed upon *and Court-approved* third round fair share obligation in conformance with the terms of the settlement agreements with FSHC and Canterbury as well as all requirements of the Uniform Housing Affordability Controls ("UHAC", N.J.A.C. 5:80-26.1, et seq.), the Fair Housing Act amendments of 2008, and those of COAH's Rules that have been upheld by the Courts; and,

NOW THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Wyckoff as follows:

1. The Township Committee hereby endorses the document entitled 2018 Third Round Housing Element and Fair Share Plan as adopted by the Planning Board on October 15, 2018, and pledges to implement its recommendations through the adoption of appropriate ordinances and resolutions.

2. The Township Committee hereby authorizes the eventual submission of the adopted 2018 Third Round Housing Element and Fair Share Plan to the Superior Court, Bergen County, in support of its request for a Judgment of Compliance and Repose.

3. This resolution shall take effect immediately.

CERTIFICATION

I, JOYCE C. SANTIMAURO, MUNICIPAL CLERK OF THE TOWNSHIP OF WYCKOFF, CERTIFY THE ABOVE TO BE A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COMMITTEE ON NOVEMBER 5, 2018.



JOYCE C. SANTIMAURO
MUNICIPAL CLERK