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FEB 02 2023

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J.S.C.**

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IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF WOODCLIFF
LAKE FOR A JUDGMENT OF
COMPLIANCE AND REPOSE

Plaintiff / Petitioner

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-6221-15

Civil Action

MOUNT LAUREL
**PRELIMINARY ORDER OF
COMPLIANCE**

THIS MATTER comes before the Court upon the Declaratory Judgment Complaint of plaintiff Borough of Woodcliff Lake (the "Borough"), seeking a determination that the Borough has complied with its Mount Laurel obligation in accordance with the procedures set forth in In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), and

THE COURT HAVING conducted a fairness hearing on January 24, 2023 as to an Amended Settlement Agreement, dated December 14, 2022, between the Borough and Fair Share Housing Center ("FSHC"); and such hearing having been conducted in accordance with the requirements of Morris County Fair Housing Council v. Boonton Tp., 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. Bor. of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996), with Anthony S. Bocchi, Esq., and Ryan P. Duffy, Esq., attorneys for the Borough; Joshua Bauers, Esq.,

and Ashley Lee, Esq., attorneys for FSHC; Elizabeth Leheny, AICP, PP, planner for the Borough; and court-appointed Special Master Francis J. Banisch, III, appearing at the fairness hearing; and

THE COURT HAVING received and credited the testimony of Elizabeth Leheny, AICP, PP, planner for the Borough, who was qualified as an expert witness, and the testimony of the court-appointed Special Master Francis J. Banisch, III; and

THE COURT HAVING received into evidence the following documents offered by the Borough:

- P-1: Order filed December 14, 2022 tentatively scheduling Fairness Hearing for January 20, 2022
- P-2: Jeffrey A. Zenn, Esq. Affidavit of Notice For Fairness Hearing
- P-3: Fair Share Housing Amended Settlement Agreement
- P-4: 188 Broadway Memorandum of Understanding
- P-5: Resolution No. 22-273, December 6, 2022, Authorizing Execution of Memorandum of Understanding in 188 Broadway to settle litigation
- P-6 BCUW Ground Lease Agreement
- P-7 Ordinance No. 22-15, December 22, 2022, approving and authorizing a long term lease with BCUW/Madeline Housing to develop the North Broadway property
- P-8 Resolution No. 22-272, December 6, 2022, Authorizing Execution of the Fair Share Housing Amended Settlement Agreement
- P-9 Bergstein Objection Letter; and

THE COURT HAVING considered the Special Master's Report, evaluating the fairness of the Amended Settlement Agreement and the Special Master having concluded in his Report that the Amended Settlement Agreement is fair and reasonable to the region's low and moderate income households and having further recommended in his Report that the Court approve the Amended Settlement Agreement; and

THE COURT HAVING considered the participation of FSHC, a public interest organization representing the affordable housing rights of New Jersey's lower income households, the methodology by which the number of affordable units was derived, and efforts and contributions by the Borough in the terms of the Amended Settlement Agreement; and

IT IS ON THIS 2nd day of February, 2023, **HEREBY ORDERED AND ADJUDGED:**

1. The Court determines and finds upon the testimony presented and the documents admitted into evidence at the fairness hearing, and in accordance with the requirements of Morris County Fair Housing Council v. Boonton Tp., 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. Bor. of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996), that:
 - a. The Borough properly afforded notice of the fairness hearing in accordance with the governing law;
 - b. The Borough's Rehabilitation Share is 19 units;
 - c. The Borough's Prior Round Obligation, as originally determined by the Council on Affordable Housing for the period of 1987-1999, is 170 units;

- d. The Borough's Prospective Need Obligation for the period of 1999-2025, in accordance with the directives of Mount Laurel IV and the recommendations of the Special Master, is 386 units;
- e. The Borough's Third Round realistic development potential (RDP) has been calculated at 43 units and shall be satisfied as set forth in the Amended Settlement Agreement;
- f. The Amended Settlement Agreement addresses the satisfaction of the Borough's constitutional affordable housing obligation and creates a realistic opportunity for the satisfaction of the Borough's constitutional affordable housing obligation;
- g. The Amended Settlement Agreement, as proposed, provides a substantial amount of affordable housing and satisfies the settlement criteria provided for under East/West Venture v. Bor. of Fort Lee, 289 N.J. Super 311 (App. Div. 1996);
- h. The Amended Settlement Agreement is hereby approved as being fair, reasonable, appropriate, and adequate to protect the interests of low and moderate income households;
- i. The Borough shall prepare and adopt an amended Housing Element and Fair Share Plan, Spending Plan, and Ordinances necessary to implement the Amended Settlement Agreement, as well as conditions identified in the Special Master's Report, within 120 days of the date hereof;
- j. The Borough is granted a Preliminary Judgment of Compliance and Repose, in an effort to implement Mount Laurel IV, 221 N.J. 1 (2015) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super 359 (Law Div. 1984), affd o.b., 209 N.J. Super. 108 (App. Div. 1986).

2. Final approval of the Borough's Housing Element and Fair Share Plan, Spending Plan, and grant of compliance and repose shall be determined following a Final Compliance Hearing, *to be held May 24, 2023 at 2 p.m.* and
3. The Borough is entitled to continued immunity and the accompanying protection from Mount Laurel exclusionary zoning and/or builders' remedy lawsuits as provided by the Fair Housing Act and in accordance with Mount Laurel IV and this Court's Order until the Court's determination following the Final Compliance Hearing; and
4. The Court provides a copy of this Order to all counsel of record on this date via eCourts Civil. Borough is directed to serve a copy of this Order within 7 days of the date hereof on all parties not served electronically.

Christine Farrington
Hon. Christine A. Farrington, J.S.C., *ret'd, t/c*