

Filed with the Court**FEB 23 2021****Paula T. Dow, P.J.Ch.**

PREPARED BY THE COURT

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
MOORESTOWN, COUNTY OF
BURLINGTON**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BURLINGTON COUNTY

DOCKET NO.: BUR-L-1604-15

CIVIL ACTION – *MOUNT LAUREL*

**CONDITIONAL JUDGMENT OF
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Surenian, Edwards & Nolan, LLC, attorneys for declaratory plaintiff, Township of Moorestown (hereinafter “the Township” or “Moorestown”) via a Declaratory Judgment Complaint filed on July 8, 2015 to approve the Township’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), as may be amended, in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Township temporary immunity from all Mount Laurel lawsuits from the time of filing of the Township’s Declaratory Judgment action (hereinafter “DJ Action”) to the present; and the Court having appointed John Maczuga, P.P., A.I.C.P., as the Special Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”) having been granted the status of Defendant-Intervenor in this matter; and George Matteo, Esq., having filed comments on behalf of intervenor MRD Moorestown, LLC (“MRD”); and CherylLynn Walters, Esq. and Chris D’Esposito, Esq., both of the law firm of Nehmad Davis & Goldstein, PC having filed an objection on behalf of intervenor ILM Center Associates, LP (“ILM”); and Craig Gianetti, Esq., of the law firm of Day Pitney, having appeared on behalf of the Pennsylvania Real Estate Investment Trust (“PREIT”); and Meryl Gonchar, Esq., of the law firm of Sills Cummis & Gross,

having participated on behalf of intervenor Pennrose LLC; and the Township and FSHC having entered into a Settlement Agreement on March 16, 2018 (the “FSHC Settlement Agreement”); and said FSHC Settlement Agreement having set agreed-upon fair share obligations and how the Township would satisfy same; and the FSHC Settlement Agreement having been approved during a duly-noticed Fairness Hearing held on August 8, 2018, which was memorialized by a Court Order entered on August 28, 2018; and the Township and FSHC having subsequently entered into an amended Settlement Agreement (“First Amendment”) on June 10, 2019, which was approved by the Court after a duly-noticed Fairness Hearing held on June 24, 2019; and the Court having entered an order on July 19, 2019, declaring that the FSHC First Amendment is fair, reasonable, and adequately protects the interest of low- and moderate-income households; and the Township and FSHC having subsequently entered into a Second Amendment to the Settlement Agreement (“Second Amendment”) dated September 9, 2019, which was approved by the Court after a duly-noticed Fairness Hearing held on March 11, 2020; and the Court having entered an Order on April 14, 2020, declaring that the Second Amendment is fair, reasonable, and adequately protects the interest of low- and moderate-income households; and the Township and PREIT having entered into a settlement agreement on December 10, 2020 (Exhibit P-4), which was authorized by resolution dated November 30, 2020 (Exhibit P-5); and the Court having entered an Order scheduling a Joint Fairness and Compliance Hearing for December 22, 2020 for the evaluation of the Township’s settlement agreement with PREIT and the Township’s Fair Share Plan and compliance with its fair share obligation; and the Township having provided proper public and actual notice of the Joint Fairness and Compliance Hearing; and the Township’s Notice having set December 11, 2020 as the deadline for all written objections to the approval of the Township’s Fair Share Plan to be submitted to the Court, the Court Master and counsel of record; and counsel

for the Township having prepared a Notice Certification of Michael J. Edwards, Esq. (Exhibit 7), to document that proper notice of the Joint Fairness and Compliance hearing had been given; and written objections to the Township's request for a Judgment of Compliance and Repose having been received from ILM and with additional comments from MRD on December 11, 2020, and the Township having responded to the objections on December 18, 2020, and the Township's professionals having prepared an Amended Fair Share Plan (Exhibit P-1), and all supporting documentation in accordance with the FSHC Settlement Agreement and the First and Second Amendments thereto and the recommendations of the Court Master; and FSHC having submitted a December 17, 2020 letter brief commenting on the Township's compliance with its obligations and responding to the objections received; and the Court having issued an Order dated January 6, 2021 approving the PREIT Agreement and therefore resolving the Fairness Hearing component of the Joint Hearing; and the Amended Fair Share Plan having been adopted by the Township's Planning Board on December 3, 2020 (Exhibit P-2) and endorsed by the Township Council on December 14, 2020 (Exhibit P-3); and the Court Master having submitted to the Court a Report dated December 15, 2020, which recommends approval of the HEFSP and the issuance of a Judgment of Repose, subject to various conditions (Exhibit P-6); and the Court having heard testimony during a four day hearing from the Township's Planner, Brian Slauch (Exhibit P-10), the Court's Special Master, and three witnesses on behalf of ILM, James Nuckel, Leah Furey Bruder, PP, AICP (Exhibits P-8 & P-9), and Jeffrey Otteau (Exhibits P-8 & P-9); and the Court having considered the testimony and arguments of all parties and having reviewed all exhibits admitted into evidence; and good cause having been shown;

IT is hereby ordered on this 23rd day of February 2021, as follows:

1. The Court finds and determines pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Borough of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996) and in Morris Cty. Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986) and through analysis of the Township's HEFSP that, subject to the conditions in paragraphs 8-16 of this Order, the Township of Moorestown's Fair Share Plan is hereby approved and the Township is granted a conditional Judgment of Compliance and Repose as to its Rehabilitation Share, its Prior Round Obligation (1987-1999), and its Third Round Obligation (1999-2025), pursuant to the Court-approved Settlement Agreement as Amended and entered into between the Township and FSHC, the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) ("FHA"), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et. seq.) ("UHAC"), applicable Council on Affordable Housing (hereinafter "COAH") substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court's Mount Laurel IV decision.
2. The Township's Judgment of Compliance and Repose shall remain in effect for ten years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten-year period the Township shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builder's Remedy and exclusionary zoning lawsuits, other than actions brought to enforce the terms of the Settlement Agreements or the Court's orders.
3. As per the Court-approved Amended Settlement Agreement between the Township and FSHC, and as established in the Township's Fair Share Plan, the

Township's Rehabilitation Share is 19, the Township's Prior Round Obligation (1987-1999) is 606, and the Township's Third Round Obligation (1999-2025) is 1,167.

4. **Satisfaction of the Rehabilitation Obligation:** The Township has a 19-unit rehabilitation obligation. Subject to its satisfaction of Condition One of the Special Master's December 15, 2020 Report, the Township shall satisfy its obligation through participation in the Burlington County Home Improvement Loan Program and operation of a supplemental municipal rehabilitation program for renter-occupied units that shall meet the requirements of N.J.A.C. 5:97-6.2.
5. **Satisfaction of the Prior Round Obligation:** The Township has a 606-unit Prior Round obligation, which is satisfied as follows:

Prior Round – 606 Units/Credits	Units	Bonuses	Rental	Senior	Special Needs	Year Occupied
Special Needs Housing						
Family Service/Kings Hwy., Inc.	3	3	3		3	2000
Oaks Integrated Care (8 of 10)	8	8	8		8	varies
NJ Mentor/Foundation for the Challenged	4	4	4		4	2006
A.D.E.P.T. Programs Group Home	5	5	5		5	2002
Subtotal	20	20	20		20	
Municipally Sponsored 100% Affordable Housing						
Courthouse (formerly prior cycle)	8		8	8		1984
Firehouse (formerly prior cycle)	8		8	8		1985
66-68 E. Second St.	3	3	3			1992
124 E. Second Street	1	1	1			1991
203-205 W. Second Street	2	2	2			2002
411 S. Lenola Road	1	1	1			1994

Prior Round – 606 Units/Credits	Units	Bonuses	Rental	Senior	Special Needs	Year Occupied
528 Bethel Ave.	1	1	1			1993
Albany Acres	9	9	9			1987
Baylor Arms (formerly Chestertowne Village)	45	45	45			2000
Cedar Court	8					1992
Creed I	12	12	12			2000
Colonial Arms	21	21	21			2005
Lenola School	33	11	33	33		1988
Stokes Place (10 of 16)	10	1; cap	10	10		1991
Teaberry Run	24		24	24		1987
Subtotal	186	107	178	83	20	
Regional Contribution Agreement						
Beverly City	75					2000-2002
Mount Holly Township	199					2000-2002
Subtotal	274					
Subtotals	480	127	198	83	20	
Total Units and Credits	607					
Surplus Credit Toward Third Round	1					

6. **Satisfaction of the Round 3 Obligation:** The Township lacks sufficient developable land to address its Round 3 new construction obligation of 1,167 and is thus entitled to a Vacant Land Adjustment, which results in a Round 3 Realistic Development Potential or RDP of 633 units, per the Court-approved FSHC Settlement and Amendment. The RDP shall be satisfied as follows:

Third Round RDP – 633 Units/Credits	Units	Bonuses	Rental	Senior	Special Needs
Prior Round Surplus	1				
Special Needs Housing					
Community Options Group Homes (proposed)	20		20		20
Oaks Integrated Care (2 of 10)	2	2	2		2
Subtotal	22	2	22		22
Extensions of Expiring Controls					
66-68 E. Second St.	3		3		
124 E. Second Street	1		1		
528 Bethel Avenue	1		1		
Beech Street	18		18		
Clover Apartments	5		5		
Lenola School	33		33	33	
Moorestown Court	8		8	8	
Musser Court	16		16		
Stokes Place	16		16	16	
Subtotal	101		101	57	
Municipally Sponsored 100% Affordable Housing (Existing)					
428 Camden Avenue	1	1	1		
Creed II	8	8	8		4
Linden Place	26		26	26	
Subtotal	35	9	35	26	4
Municipally Sponsored 100% Affordable Housing (Proposed)					
Harper Drive (family non-age-restricted rentals)	75	75	75		
Centerton Road (21 of 81 units, special-needs)	21	21	21		21
Centerton Road (60 of 81 units, age-restricted)	60	4	60	60	
Subtotal	156	100	156	60	21
Inclusionary/Mixed-Income Development (Proposed)					

Third Round RDP – 633 Units/Credits	Units	Bonuses	Rental	Senior	Special Needs
Sbar Boulevard (family non-age-restricted rentals)	36	36	36		
MRD (family non-age-restricted rentals)	35		35		
Diocese of Trenton (family non-age-restricted for-sale/rentals)	17				
Nagle Tract (family non-age-restricted rentals)	76		76		
Land Resource Solutions (family non-age-restricted rentals)	4	4	4		
Subtotal	168	40	151		
Subtotals	483	151	465	143	47
Total Units and Credits	634				
Surplus Credit Above RDP	1				

7. **Addressing the Remaining “Unmet Need”**: The Township shall address its 534-unit unmet need as follows:

- A redevelopment plan as to the Moorestown Mall site (Block 3000, Lots 2, 3, 3.01, 3.02, 5) with a three-phased, mixed-use inclusionary development that provides for up to 1,065 residential units, including up to 213 affordable family non-age-restricted rental units (20 percent set-aside of all residential development) in accordance with the PREIT settlement agreement;
- Overlay zoning permitting the redevelopment of the Kmart Center site (Block 2900, Lot 9) from a single-use retail center to a mixed-use center, that provides for up to 390 units, including up to 78 family non-age-restricted affordable units (20 percent set-aside of all residential development);
- Subject to the Court’s ruling on ILM’s objection, overlay zoning of the Lenola Town Center site (Block 1200, Lots 5, 6) as a mixed use center permitting commercial and residential uses with construction of up to 60 multi-family residential dwellings, including up to 12 family non-age-restricted affordable units (20 percent set-aside of all residential development);
- A mandatory set-aside ordinance requiring an affordable housing set-aside (20 percent for for-sale units and 15 percent for rental units) for any new multi-family

or single family attached development, Township-wide, of five or more units over and above what would be permitted as a matter of right;

◦ A development fee ordinance for the collection of development impact fees to be used for the purposes of affordable housing and consistent with the Township's amended 2020 Spending Plan.

8. Within one-hundred-and-twenty (120) days of the entry of this Order, the Township shall satisfy the conditions contained in the Special Master's Report dated December 15, 2020. It shall provide documentation evidencing satisfaction of the conditions, including those below, to FSHC and the Special Master at least 30 days prior to the entry of a final judgment.
9. A waiver from the requirement that the Creed II facility comply with the bedroom distribution requirements under N.J.A.C. 5:80-2.6(b)(1) is approved, in accordance with Condition Three of the Special Master's Report.
10. In addition to the above conditions, Moorestown Township ("Township") and MRD Moorestown, LLC ("MRD"), an Intervenor in this action (collectively "Parties"), agree that they will enter into good faith negotiations to resolve outstanding disputes and negotiate in good faith efforts to reach a settlement relative to those disputes. The Parties agree that they will use best efforts and negotiate in good faith for a period of sixty (60) days from the date of the entry of this Order to memorialize an understanding that will govern the approval and development of the project that is the subject of MRD's intervention in the Township's DJ Action. In the event the Parties are negotiating diligently and in good faith, but an agreement is not reached within said sixty (60) day period the Parties agree to an automatic thirty (30) day extension by which to reach and finalize an agreement. In the event the Parties fail to agree to mutually

satisfactory terms of a settlement agreement, the Parties agree that upon written request, by either Party to the Court, they will return to Court and have the Court mediate or conference said issues or terms that the Parties cannot agree on. This condition shall be in addition to any other rights or remedies provided for under law, the Court's ruling, or the other terms and conditions set forth in the Courts final Order of Compliance.

11. In addition to the above conditions, the redevelopment plan implementing the PREIT settlement as to the Moorestown Mall site contemplated in Paragraph 7 of this Order shall be introduced by ordinance by the Township Council by no later than July 26, 2021. The Township Council shall adopt the redevelopment plan within no more than thirty (30) days of introduction.
12. In addition to the above conditions, the Township has committed to ensure the completion of eight (8) Community Options Inc. Group Homes units by July 1, 2021; six (6) units by July 1, 2022; and the remaining six (6) units by July 1, 2023 for a total of twenty (20) units.
13. In addition to the above conditions, within ninety (90) days of the entry of this order the Township shall: a) select a developer for the Nagle Site (Block 7401, Lot 3); b) enter into a developer's agreement with said developer; and c) provide evidence of the foregoing as well as a pro-forma and construction schedule for the Nagle Site to FSHC. Further, as to the Nagle site:
 - a. The Township shall expeditiously work with the designated developer and take all actions necessary to ensure that the developer shall submit an application for mixed-income tax credit funding in the 2021 application cycle.

- b. In the event the developer is unsuccessful in securing tax credit funding in the 2021 application cycle, the Township shall inform the Court, Court Master, and FSHC in writing within ten (10) days of becoming aware of the outcome.
- c. Pursuant to the December 9, 2020 Consent Order to Toll Compliance With the Market to Affordable and Accessory Apartment Programs Pending Tax Credit Application, in the event the developer is unsuccessful in obtaining tax credits in 2021, the Township shall either expeditiously pursue the increased set-aside of 76 affordable family rental units on the Nagle site via municipal subsidy or shall ensure that it develops as an inclusionary development with at least 45 affordable family rental units as well as its market to affordable program and accessory apartment program. The Township shall inform the Court, Court Master, and FSHC in writing within thirty (30) days of learning of an unsuccessful outcome for tax credit funding in 2021 as to which course it shall pursue. It shall then take all required action within no more than sixty (60) days to ensure that the Nagle Tract expeditiously develops with the required affordable housing. It shall provide evidence of same to the Court, Court Master, and FSHC within that sixty (60) day period.

14. Reporting and Monitoring obligations:

- a. On March 16, 2021, and every anniversary thereafter, Moorestown shall provide an annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs (“DCA”), Council on Affordable Housing (“COAH”), Division of Local Government Services (“DLGS”), or other entity designated by the State of New Jersey, with a copy

- provided to FSHC and posted on the municipal website, using forms developed for this purpose by DCA, COAH or DLGS.
- b. On March 16, 2021, and every anniversary thereafter, Moorestown shall provide an annual reporting of the status of all affordable housing activity within the municipality, using forms previously developed for this purpose by COAH (or any other form(s) endorsed by the Special Master and FSHC), by posting the completed forms on the municipal website and providing a copy to FSHC.
 - c. Within 30 days of March 16, 2021, and every third year thereafter (including March 16, 2024), Moorestown shall post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very low income requirement. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low-income housing obligation.
15. Moorestown shall not repeal, modify or amend its Affordable Housing Ordinance, or any other municipal ordinance in effect as of the date of this Judgment, or adopted subsequently to achieve a Final Judgment, that affects the use or development of the affordable housing committed to, except with the Court's approval upon notice and opportunity to be heard, including direct notice to FSHC.
16. Pursuant to the Settlement Agreements, FSHC and/or Moorestown may enforce any provision of the Settlement Agreements, and by extension this Judgment,

through a motion to enforce litigant's rights or by the filing of a separate action in the Superior Court, Burlington County.

17. The Court retains jurisdiction over this matter solely for the purposes of enforcement of this Judgment and the Settlement Agreements.
18. A copy of this Judgment shall be served on the Special Master and all counsel of record within seven (7) days of receipt by counsel for Moorestown.

/S/ Paula T. Dow

Paula T. Dow, P.J.Ch.