

MASTER'S REPORT
FOR A MOUNT LAUREL
COMPLIANCE HEARING
TOWNSHIP OF HARDING
MORRIS COUNTY, NEW JERSEY

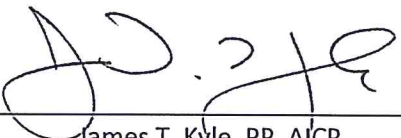
IMO Application of the Township of Harding
Docket No. MRS-L-1762-15

February 28, 2019

Prepared for:

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1.0 INTRODUCTION

This report has been prepared in light of the upcoming Compliance Hearing before Your Honor on March 1, 2019 In the Matter of the Application of the Township of Harding, County of Morris, Docket No. MRS-L-1762-15. This report reviews the compliance of Harding Township's (hereinafter "Township", or "Harding") December 17, 2018 Third Round Housing Element and Fair Share Plan ("Plan") with the substantive rules of the Council on Affordable Housing (hereinafter "COAH") (N.J.A.C. 5:93, or the "Second Round rules"). It also reviews the Township's compliance with the terms of its Settlement Agreement with Fair Share Housing Center ("FSHC"). I am submitting this report in my capacity as Special Master appointed by Your Honor to assist the Court in the above-captioned litigation in place of Elizabeth C. McKenzie, PP.

Harding filed a Complaint for Declaratory Judgment on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and in accordance with the NJ Supreme Court's March 10, 2015 decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, (2015; a.k.a. "Mount Laurel IV"). Harding and FSHC settled on the following fair share need allocations:

- 0-unit Third Round Present Need (rehabilitation share)
- 83-unit Prior Round obligation
- 176-unit Third Round obligation, with a 73-unit Durational Adjustment

Public notice of the upcoming hearing was published on January 24, 2019 in the Observer Tribune newspaper, on January 25, 2019 in the Daily Record Newspaper, was posted on the Township's website and also provided to certain interested parties, all in accordance with established Mount Laurel case law. The notice properly summarized the salient points of the Settlement Agreement, directed any interested members of the public to the Harding Township Clerk's office, where they could review the Agreement and Plan, described the purpose of the Court hearing on March 1, 2019 and invited written comments on the Agreement or Plan to be filed no later than February 20, 2019. I am not aware of any comments having been received in response to the public notice.

As discussed in detail below, this report recommends that Harding Township be granted a Conditional Third Round Judgment of Compliance and Repose, subject to the fulfillment of certain terms and conditions as outlined in Section 7.0 of this report.

2.0 THE SETTLEMENT AGREEMENT AND FAIRNESS

The Settlement Agreement was executed by Mayor Christopher M. Yates for the Township on September 21, 2018 and by Kevin Walsh for FSHC on September 27, 2018. The Agreement sets forth the extent of Harding's fair share obligation and provides a brief description of the compliance plan components by which the Township proposes to address those obligations.

On October 21, 2018, Elizabeth C. McKenzie, Court-appointed Special Master, submitted a Fairness Report in which she recommended the Court approve the Settlement Agreement and grant the Township 120 days to comply with the requirements of that Agreement and the recommendations of Ms. McKenzie's Report. Your Honor issued an order on November 14, 2018 finding the Settlement Agreement fair and adequate to protect the interests of low- and moderate-income households in Region 2 and preliminarily finding the Township's draft compliance plan constitutionally compliant.

The Settlement Agreement included the following requirements and conditions:

1. The Township agrees to prepare and adopt within 120 days an amended Housing Element and Fair Share Plan and any ordinances necessary to implement the Agreement. **Satisfied.**
2. At least half of all housing units addressing the Third Round Prospective Need shall be affordable to low and very-low income households, with 13% of the affordable housing units being reserved for very-low income households. The remainder of the affordable units shall be affordable to moderate income households. The Township will revise its ordinances to ensure that this provision is satisfied. **Satisfied.**
3. At least 25% of the Township's Third Round Prospective Need shall be met through rental units, at least half of which will be rental units available to families. **Satisfied.**
4. At least half of the units addressing the Third Round Prospective Need in total must be available to families. **Satisfied.**
5. No more than 25% of the affordable units addressing the Township's Prior Round and Third Round obligation shall be age-restricted. **Satisfied.**
6. Rental bonuses shall be calculated in accordance with COAH's Second Round rules N.J.A.C. 5:93 – 5.15 (d). **Satisfied.**
7. All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of #2 above in which case those rules have been superseded by an amendment to the Fair Housing Act. **Partially Satisfied.** More information is required, as further discussed in Section 3 of this Report.
8. The Township shall update its affirmative marketing plan to include FSHC and other named organizations in its list of community and regional organizations, and both the Township and any other developers or administrative agencies conducting affirmative marketing shall provide notice to those organizations of any available units. **Satisfied.**
9. On the first anniversary of the execution of the Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Township agrees to provide a status report of all affordable housing activity within the municipality.
10. The Township shall submit its midpoint realistic opportunity review on or before July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313. This midpoint review permits any interested party, such as FSHC, to request by motion a Court hearing regarding whether any

sites in the Township's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced. While this review is statutorily sanctioned and certainly reasonable, in the event the Court finds that an affordable housing site or other compliance mechanism should be replaced I recommend that the Township be given the opportunity to supplement its Fair Share Plan to correct any deficiency while being protected by immunity from builder remedy litigation. This municipal opportunity to remedy a defect is certainly warranted since the plan which is being amended was approved by the Court.

11. Within 30 days of every third anniversary of the Agreement the Township will publish on its website and submit to FSHC a status report regarding its satisfaction of the very-low income requirement pursuant to N.J.S.A. 52:27D - 329.1.

Ms. McKenzie's October 21, 2018 report on the fairness of the settlement agreement included the following requirements related to the Housing Element and Fair Share Plan:

1. The Housing Element will need to include:
 - a. Confirmation of the suitability of each inclusionary residential site/zone that sin i the Plan as well as consideration of any site that was proposed for inclusionary residential development but rejected along with the reasons therefore (or a statement that no such sites were proposed). **Satisfied.**
 - b. An analysis of how the Housing Element and Fair Share Plan complies with or will comply with all the terms of the executed settlement agreement. **Satisfied.**
 - c. Documentation as to the income and bedroom distributions and continued creditworthiness of all existing affordable units in the plan, including start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions. **Partially satisfied. Additional information is required as outlined in Section 3.0 of this report.**
 - d. Evidence, in accordance with N.J.A.C. 5:93-5.5 that the Township has adequate and stable funding for the two non-inclusionary affordable housing developments set forth in the agreement (The Farm and the new four-bedroom CPNJ group home), along with a pro forma of both total development costs and source of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality must provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As well, the Township must provide a construction or implementation scheduled, or timetable, for each step in the development process; including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of Court's approval of the settlement. The Township shall, in each case, identify the entity responsible for undertaking and

monitoring the construction and overall development activity for these two projects. **Satisfied.**

2. The Fair Share Plan must include all of the adopted ordinances and resolutions needed to implement the Plan, including:
 - a. All zoning amendments (or redevelopment plans, should the Township elect to do a redevelopment plan for one or more of the sites in its Plan). **Satisfied.**
 - b. An updated Affordable Housing Ordinance that includes, among other required regulations, its applicability to any 100 percent affordable and/or tax credit projects, the monitoring and reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the Fair Housing Act and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and clarity regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls) consistent with UHAC regulations. **Satisfied.**
 - c. An updated Development Fee Ordinance that reflects the Court's jurisdiction rather than COAH's. **Satisfied.**
 - d. An Affirmative Marketing Plan adopted by Resolution that contains specific directives to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with the COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting direct notification requirements set forth in the settlement agreement. **Satisfied.**
 - e. An updated and adopted Spending Plan indicating how the Township intends to allocate development fees and other funds, and detailing (in mini-manuals) how the Township proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance. **Satisfied.**
 - f. An adopted Resolution of Intent to Fund Shortfall in any municipally sponsored or 100 percent affordable developments in the Plan. **Satisfied.**
 - g. Copies of the resolution and/or contract appointing the Administrative Agent and the ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison. **Satisfied.**
 - h. A resolution from the Planning Board adopting the Housing Element and Fair Share Plan, and if a Final Judgment is sought before all the implementing ordinance and resolutions can be adopted, a resolution of the governing body endorsing the Housing Element and Fair Share Plan. **Satisfied.**

3.0 HARDING TOWNSHIP'S HOUSING ELEMENT AND FAIR SHARE PLAN

This Report and the upcoming Compliance Hearing focus on the Township's December 17, 2018 Third Round Housing Element and Fair Share Plan and its compliance with the requirements and guidelines set forth in COAH's Second Round rules (N.J.A.C. 5:93), applicable case law, the Fair Housing Act, the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq., "UHAC"), and the Settlement Agreement with FSHC.

Harding's Housing Element and Fair Share Plan was adopted by the Township Planning Board on December 17, 2018 and endorsed by the Township Committee on January 28, 2019. The Fair Housing Act at N.J.S.A. 52:27D-310 and COAH's rules prescribe the components of the municipal Housing Element of the Master Plan. The Plan meets the basic requirements of these standards. The Township plans to address its fair share obligation as follows:

Harding Township's Compliance Plan					
Program		Status	Units	Rental Bonuses	Total
Prior Round – 83 Units					
RCA	RCA with City of Orange	Complete	41	0	41
100% Affordable	The Farm at Harding	Existing	21	21	42
Total			62	21	83
Rental Minimum / Rental Bonus Maximum 25% x 83 = 21			21 rentals	21 bonuses	
Maximum Age Restricted Units 25% x 83 = 20			0 units		
Third Round – 176 Units					
RCA	RCA with City of Orange	Complete	2	0	2
Accessory Apartment Program	Accessory Apartment Program	Existing	10	0	10
100% Affordable	The Farm at Harding	Existing	3	3	6
100% Affordable	The Farm at Harding	Proposed	2	2	4
Supportive/Special Needs	Universal Institute	Existing	5	5	10
Supportive/Special Needs	CPNJ	Proposed	4	4	8
Inclusionary Development	Block 23.02, Lot 5	Proposed	16	0	16
Age-Restricted Inclusionary Development	Hurstmont/Glen Alpin Redevelopment	Proposed	40	7	47
Total			82	21	103
Durational Adjustment			73 units		
Rental Minimum / Rental Bonus Maximum 25% x 82 units and credits= 21			24 units	21 bonuses	
Maximum Age Restricted Units 25% x 176 units and credits = 44			40 units		
Very-Low Income Units 13% x post 2008 units and credits = 8 units			11 units		

As laid out in the Settlement Agreement with FSHC and in the Township's adopted Third Round Plan, the Township will address its fair share obligation with existing and proposed group homes, inclusionary development and an accessory apartment program. The Agreement establishes that the Township is eligible for a Durational Adjustment due to having inadequate public sewer and water

infrastructure to accommodate new development. The mechanisms provided in the plan do not require new sewer and water infrastructure, as they rely mostly on existing infrastructure or on-site wastewater treatment facilities.

To address the balance of its Third Round obligation, the Township agreed to adopt an affordable housing overlay ordinance that sets the conditions for inclusionary residential development to occur along the Route 202 corridor in the event that sewer and water service is expanded in the future.

The Agreement also establishes that the Township has no rehabilitation obligation (Present Need) and does not need to participate in or operate a rehabilitation program.

Rehabilitation Obligation: 0 units

The Township does not need to participate in or operate a rehabilitation program.

Prior Round Obligation: 83 units

The Township proposes to address its Prior Round with 41 of 43 credits from a previously completed RCA with the City of Orange, 21 of 24 units from The Farm at Harding 100% affordable project and 21 rental bonus credits from The Farm at Harding for a total of 83 credits. All of these mechanisms are completed.

Third Round Need: 176 units

The Township will address its Third Round obligation with 2 of 43 credits from a previously completed RCA with the City of Orange, 3 of 24 units from The Farm at Harding 100% affordable project, 2 new units to be constructed at The Farm at Harding, 5 existing supportive/special needs bedrooms at the Universal Institute project, 4 proposed supportive/special needs bedrooms at the Cerebral Palsy of North Jersey project, 16 units at the S/K Mt. Kemble inclusionary project on Block 23.02, Lot 5, 40 age-restricted rental units at the Hurstmont/Glen Alpin redevelopment project, a 10 unit accessory apartment project and a total of 21 rental bonus credits. Rental bonuses are applied for the two supportive/special needs projects totaling 9 credits, five existing and proposed rental units at The Farm at Harding 100% affordable project and 7 bonus credits for the Hurstmont/Glen Alpin redevelopment project. **While this was not specified in the Fair Share Plan, rather than the Township amending the plan I suggest these facts be set forth in any order related to Your Honor's action in this matter.**

The Farm at Harding 100% Affordable Project

This project resulted from the Township's purchase of the property in 1994 and a 2005 30-year lease agreement with the Affordable Harding Corporation with the express intent to construct 24 affordable rental apartments. The lease term commenced June 30, 2005 and runs to June 30, 2035. The units were subsequently constructed and issued certificates of occupancy on 8/11/2006. While deed restrictions were not provided for the individual units, the lease between the Township and Affordable Harding Corporation specifies an initial term of 30 years and states the units to be constructed are for low and moderate income households. Bedroom distribution information provided demonstrates the project complies with UHAC requirements and that half the units are low

income units and half are moderate income units. While I feel the lease adequately demonstrates the creditworthiness of these units, which were affirmatively marketed, **I would ask that FSHC concur on this point.**

As noted, 2 additional units will be constructed at The Farm at Harding, which was anticipated at the time the project was initially proposed and constructed. The Township has provided a construction timeline and proforma for creation of the 2 additional units, which are to be occupied by October of 2020. Both of the units proposed are two bedroom units, and one will be available to low income families and one to moderate income families. The only issue related to the creation of 2 new two bedroom units is the effect on the overall bedroom distribution of the project related to UHAC requirements. While the current 24 unit project meets the bedroom distribution requirements, the addition of 2 two bedroom units means the project will fall short of the 20% minimum three bedroom unit requirement, as 20% of 26 units is 5.2 units, requiring a total of 6 three bedroom units. **The project should either be modified to provide 1 two bedroom unit and 1 three bedroom unit or a waiver of the bedroom distribution requirements should be sought.** I would note that notice of the compliance hearing did not include any indication that a waiver of the bedroom distribution requirements would be sought. Further, the lease between the Township and Affordable Harding Corporation specifies that all units at the site will comply with all applicable regulations, including UHAC.

Universal Institute Group Home

Located on Tiger Lily Lane, this existing group home contains 5 supportive and special needs bedrooms for adults with traumatic brain injuries. The facility was established in 2001 by 195 Mt. Pleasant Avenue and is self-funded. Licensure information provided indicates the current license runs from 7/31/2017 to 7/31/2019. **I would note the Supportive and Special Needs Housing Survey provided does not indicate that a deed restriction exists, so the Township will need to provide evidence of a 30 year restriction in order to demonstrate the creditworthiness of these units.**

S/K Mt. Kemble Associates

As part of its settlement with S/K Mt. Kemble Associates, the Township has provided zoning for the creation of a 96 unit inclusionary project, with 80 for-sale townhomes and 16 affordable units, the affordable units provided as stacked flats that will either be for sale or for rent. The units will be deed restricted for a period of 30 years, and sample deed restrictions were provided and appear satisfactory. **Copies of filed deeds consistent with the samples provided must ultimately be supplied.** S/K Mt. Kemble Associates has agreed to comply with all applicable regulations, including UHAC, and will make 13% of the units available to very-low income families. They are also contributing \$1,000,000 to the Township's affordable housing trust fund, which will be used to fund other mechanisms identified in the Fair Share Plan.

Documentation provided as part of the Fair Share Plan indicates the site is suitable for the proposed development, and the concept plan demonstrates that the units can be constructed. The project does require amendment to the wastewater management plan to extend sewer infrastructure to the site.

CPNJ Group Home

Cerebral Palsy of North Jersey proposes a 4 bedroom supportive/special needs home on Block 46.01, Lot 7, located off of Mt. Kemble Avenue (Route 202). A concept plan included in the Fair Share Plan appendices indicates the project can be constructed, and discussion in the Fair Share Plan indicates the site is suitable for the proposed development. A project schedule is included and construction is anticipated to be completed in 2019. I would note that HMFA funding is necessary to complete the project, and the schedule notes that the funding commitment should have been completed in February of 2019. The Township has adopted a resolution of intent to fund any shortfall.

A sample deed restriction agreement specifying that bedrooms will be available to income qualified occupants was provided, and the deed restriction agreement extends controls for a period of 30 years. **The Township will need to provide a copy of a fully executed agreement once funding is secured and the project is certain.**

Hurstmont/Glen Alpin Age-Restricted Redevelopment

Comprised of two properties totaling approximately 29.5 acres, the site, located along Mt. Kemble Avenue and Tempe Wicke Road, is proposed to be developed with a 250 unit/bed CCRC, to include a total of 40 affordable housing units. On February 25, 2019, the Governing Body accepted the Planning Board's recommendation that the site be designated a non-condemnation "area in need of redevelopment", laying the foundation for creation of a redevelopment plan to effectuate the proposed CCRC.

Information provided in the Fair Share Plan indicates the site is suitable for the proposed development, however, no potential developer is identified and no concept plan is provided indicating the site can be developed as proposed. The Township owns the Glen Alpin site (685 Mt. Kemble Avenue, Block 34, Lot 1), but does not appear to control the Hurstmont site, (679 Mt. Kemble Avenue, Block 27, Lot 2), where according to the Fair Share Plan, all development is proposed. No formal agreement between the Township and the owner of the site to be developed is included in the material reviewed. As the redevelopment plan has not been adopted, nor does it appear that zoning has been amended for the site to permit development of the CCRC, the Township will need to provide additional documentation on this proposed mechanism to insure the 40 units can be produced. **This information, which should at a minimum include some form of agreement with the property owner and/or developer (including a commitment to develop the number of units specified) and a concept plan, will need to be provided within a reasonable amount of time to be determined, but in no case longer than 90 days unless otherwise agreed to by FSHC. In addition, the Township should provide a commitment to adopt the redevelopment plan in a timeframe that the Court and FSHC find reasonable.** Given the current status, I would suggest that FSHC weigh in on what would constitute a reasonable amount of time. The Fair Share Plan indicates that all affordable units will comply with applicable regulations, which will have to be further documented in the future.

Accessory Apartment Program

Harding Township, through ordinance amendments adopted in January of 2019, has created an accessory apartment program, which includes subsidy from the affordable housing trust fund in the amount of \$20,000 for each unit created. The ordinance permits conversion of existing space,

construction of additions, conversion of existing accessory structures or construction of new accessory structures in certain zone districts on properties greater than 5 acres in size. There is also provision for conversion of unoccupied space previously used as living quarters in any zone district in the Township into an accessory apartment. The program will be administered by the Township's Administrative Agent in accordance with the ordinance provisions and requires a deed restriction of 10 years, which meets requirements.

4.0 TRUST FUND AND SPENDING PLAN

The Governing Body, in January of 2019, adopted amendments to the Development Fee Ordinance. In reviewing the adopted ordinance, I find it to be satisfactory. The Settlement Agreement required the Township to submit a revised Spending Plan addressing revenues and expenditures through the end of the Third Round in 2025. An adopted spending plan was provided, and I find it to be satisfactory; it includes the mini-manuals set forth as a condition in Ms. McKenzie's Fairness report, which are also satisfactory. The Township has also provided a resolution that sets forth the intent to fund any shortfall in the mechanisms identified in the Fair Share Plan.

5.0 AFFORDABLE HOUSING OVERLAY ORDINANCE

As the Township is seeking a durational adjustment for 73 units of the 176 unit Third Round Obligation, a condition of the settlement agreement was adoption of overlay zoning to permit development should sewer and water become available. In January of 2019, the Governing Body adopted amendments to the Land Use Ordinance to create the AHO-1 and AHO-2 overlay zones, which permit mixed-use development at densities ranging from 6 to 10 units per acre. The ordinance requires an affordable housing setaside of 20% for projects with units for-sale and 15% for projects with rental units. As outlined in the Fair Share Plan, this approximately 49 acre area along Route 202 is anticipated to provide the opportunity for as many as 85 affordable housing units should water and sewer become available. I have reviewed the adopted ordinance amendments and find them satisfactory.

6.0 OTHER REQUIREMENTS

The Settlement Agreement with FSHC also requires the Township to adopt or update its Affordable Housing Ordinance (also known as a fair share ordinance) to properly implement the Plan, and its affirmative marketing ordinance to list specific community and regional organizations. This information was provided and after review, I find both to be satisfactory.

7.0 CONCLUSION

This report has been prepared in light of the upcoming Compliance Hearing before Your Honor on March 1, 2019. It reviews Harding Township's December 17, 2018 Housing Element and Fair Share Plan, prepared by Heyer Gruel Associates. The Township is seeking a Judgment of Repose for its Third Round Plan. The Fair Share Plan is generally consistent with the Court-approved Settlement Agreement, the Fair Housing Act, and COAH's Second Round rules.

Notwithstanding, as identified in this report, I recommend that the Court condition its determination of Compliance on the Township's satisfaction of the following items:

- Condition 1. Provide for modification of the bedroom composition of the 2 two bedroom units proposed for The Farm at Harding 100% affordable project to comply with UHAC bedroom distribution requirements. Alternatively, the Township can seek a waiver of these requirements.
- Condition 2. Provide additional documentation for the Universal Institute group home specifying a 30-year deed restriction.
- Condition 3. Provide a copy of an executed agreement with Cerebral Palsy of North Jersey, memorializing deed restriction of the property for 30 years.
- Condition 4. Provide additional information on the feasibility of the Hurstmont/Glen Alpin Age-Restricted Redevelopment in the form of a concept plan and agreement with the property owner/developer.
- Condition 5. Adopt a redevelopment plan for the Hurstmont/Glen Alpin Age-Restricted Redevelopment in a timeframe agreed to by FSHC.

These materials should be provided within a timeframe that Your Honor sees fit, with input from FSHC on a timeframe for additional information to be provided on the Hurstmont/Glen Alpin CCRC project. At such time that the Township satisfies these requirements, I will notify Your Honor and copy all parties, at which point the Township should provide the Court with a Form of Order for a Final Judgment of Compliance and Repose. In accordance with the procedures followed in similar affordable housing Declaratory Judgment settlements, that Final Judgment could then be entered by Your Honor without the need for an additional hearing. In the meantime, I recommend that immunity remain in effect.