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Our File No.: C22242

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FILED

MAR 28 2019

**MICHAEL C. GAUS, J.S.C.
SUPERIOR COURT OF NJ**

IN THE MATTER OF THE ADOPTION OF THE TOWNSHIP OF HARDING FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN.	SUPERIOR COURT OF NEW JERSEY CIVIL DIVISION: MORRIS COUNTY DOCKET NO: MRS-L-1672-15 <i>Civil Action</i> CONDITIONAL DECLARATORY PARTIAL JUDGMENT OF COMPLIANCE
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THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Plaintiff Township of Harding (Steven A. Kunzman, Esq. appearing), in the presence of Kevin D. Walsh, Esq., attorney for Intervenor, Fair Share Housing Center, Inc. (hereinafter "FSCH"), and Derek W. Orth, Esq., of Inglesino, Webster, Wyciskala, & Taylor, LLC., for Intervenor, S/K Mount Kemble Associate, LLC. ("S/K"), and the aforementioned parties having signed a Settlement Agreement on or about September 21, 2018 (inclusive of the First Amended and Restated Settlement Agreement dated February 12, 2018 between the Township and S/K, collectively referred to as the "Settlement Agreement"), settling the instant Mount Laurel IV litigation, which Settlement Agreement provides that the Settlement Agreement is subject to approval of the Court after a Fairness Hearing conducted pursuant to East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311 (App. Div. 1996); and whereas the Settlement Agreement also permits that Plaintiff may request,

at a Compliance Hearing, that the Court enter a Judgment of Compliance and Repose with immunity through July 1, 2025, in accordance with East/West Venture, *supra*, at 326, holding Mount Laurel litigation may be settled only after a finding by the Court that (1) the settlement has apparent merit; (2) notice has been given to all members of the class and others who have an interest in the settlement; (3) a hearing has been conducted on the settlement where those affected have sufficient time to prepare; and (4) the settlement is “fair and reasonable to members of the protected class;” and the Court, having determined for the reasons set forth on the record at the Fairness Hearing held on November 2, 2018, and memorialized in an Order of Fairness and Preliminary Compliance Hearing dated November 14, 2018; and the Court having further held a Compliance Hearing on March 1, 2019, and having reviewed the Report of the Special Master James T. Kyle, PP, AICP, (“Special Master”) dated February 28, 2019 annexed hereto at Exhibit A, (“Master’s Report”), and having heard testimony of the Special Master, and the Township’s Planner, Susan Gruel, P.P., the Court having found that the Settlement Agreement has apparent merit, more specifically finding that:

- (1) The Settlement Agreement is fair and reasonable to low and moderate income persons on whose behalf the affordable units proposed by the settlement are to be built and that the Plaintiff’s affordable housing plan is constitutionally compliant; and,
- (2) That the Township has satisfied its Prior Round Obligation as set forth in the Settlement Agreement, Exhibit 1 in Evidence.
- (3)
- (4) That the Township will address its Third Round Obligation as set forth in the Settlement Agreement as follows:

Housing Component	Certified Units/Credits
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Credit for surplus prior round units (includes 3 rental units at <i>The Farm at Harding</i>)	3
Credit for Supportive/Special Needs Housing established in 2001 (Universal Institute -5 bedroom group home)	5
Credit for excess RCA transfers against pre-2008 portion of Third Round Obligation	2
Municipal construction of new rental units on municipal property (<i>The Farm at Harding</i>)	2
Accessory Apartments (enactment of an ordinance to establish "affordable accessory residences")	10
Supportive/Special Needs Housing to be established by Cerebral Palsey of North Jersey	4
Private developer construction (Mt. Kemble Development)	16 ¹
Hurstmont & Glen Alpin (multi-family age restricted)	40
Rental bonus ²	21
Durational adjustment for 73 units addressed through overlay zoning along designated lots on 202 Corridor	73
TOTAL	176

- 3) That the Township shall comply with the conditions and recommendations by the Special Master as set forth in the Master's Report (C-1 in evidence).
- 4) As set forth on the record, all criteria set forth in East/West Venture have been satisfied, subject to the Township addressing the conditions cited in the Master's Report;
- 5) Plaintiff's compliance plan, consisting of its Amended Housing Element and Fair Share Plan dated December 2018 (the "2018 HEFSP"), along with various attachments, as well as the various implementing ordinances and resolutions, all such documents together referred to as the "2019 Compliance Plan," and entered into evidence as Plaintiff's Exhibit 8, which have been reviewed and approved by the Special Master, create the realistic opportunity to meet the Township of Harding's Affordable Housing Obligations

¹ If these 16 units are deed-restricted as family rentals, they would be eligible for rental bonuses, yielding a total of 32 credits.

² Includes 7 bonus credits from 21 age-restricted units at the Hurstmont Development in accordance with N.J.A.C. 5:93-5.15(d)2. Also includes bonuses for 3 family rental units at The Farm (Prior Round surplus); 2 additional family rental units at The Farm; and 9 Special Needs (proposed and existing).

under the Mount Laurel doctrine and specifically under the procedures set forth in Mount Laurel IV.

Accordingly, the Court has determined to enter a Conditional Declaratory Partial Judgment of Compliance as hereinafter set forth.

IT IS THEREFORE, ON THIS 28 DAY OF March, 2019,
ADJUDGED, **DECLARED AND ORDERED** AS FOLLOWS:

1. A Conditional Partial Judgment is hereby declared in favor of Plaintiff Township of Harding for a Declaratory Judgment of Compliance (the “ Conditional Judgment”) pursuant to East/West Venture v. Borough of Fort Lee and the Mount Laurel line of cases;
2. The Court hereby declares the land use regulations and affirmative devices in the Township of Harding’s 2019 Compliance Plan, subject to the Conditions as set forth in the Master’s Report annexed hereto and incorporated herein, will satisfy the Township’s constitutional obligation with respect to affordable housing under the Mount Laurel doctrine.
3. The Township, through the adoption of the 2018 HEFSP and the implementation of that plan in accordance with the terms of the Settlement Agreement, subject the Conditions, will satisfy its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301, *et seq.*, for the Prior Rounds (1987-1999) and Third Round (1999-2025).
4. The Township has implemented agreed-upon compliance mechanisms to address its Third Round obligations as set forth in the Settlement Agreement and has adopted necessary implementing ordinances and adopted the 2018 HEFSP.

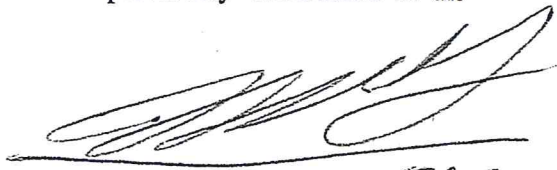
5. The Township shall satisfy the following Conditions, as set forth in the Master's Report or addressed by him at the hearing ("Conditions"):
 - a. Provide for the modification of the bedroom composition of the two (2) new units to be constructed at the Farm at Harding 100% affordable project so that one is a two (2) bedroom unit and one is a three (3) bedroom unit to be in accordance with the requirements of the UHAC Regulations, N.J.A.C 5:80-26.3.
 - b. Demonstrate that the Universal Institute group home meets the requirements for crediting under the applicable COAH rules, N.J.A.C. 5:93-1, et. seq.
 - c. Demonstrate that the Cerebral Palsy of North Jersey group home meets the requirements for crediting under the applicable COAH rules, N.J.A.C. 5:93-1, et. seq.
 - d. Adopt a redevelopment plan and enter into a redevelopment agreement for the Hurstmont /Glen Alpin Age Restricted development by October 31, 2019.
 - e. Amend the affirmative marketing plan to comply with the requirement of settlement agreement for community organizations to receive notice of available units.
6. The Township shall address the conditions set forth on the attached Master's Report on or before October 31, 2019, after which the Special Master shall submit a letter to the Court confirming compliance which shall enable the Court to enter a final unconditional judgment barring any claim that the Township of Harding is failing to provide a sufficient realistic opportunity for the development of housing for low and moderate income households through June 30, 2025. Any party, or the

special master, may request, and the court will schedule, a hearing regarding the satisfaction of these Conditions prior to the entry of final judgment.

7. The Court shall retain jurisdiction so as to ensure the implementation of the within Judgment, the Settlement Agreement, and the 2019 Compliance Plan and the program established under the 2019 Compliance Plan.
8. Plaintiff shall initiate conference calls with the Special Master, which shall include such interested parties as the Special Master deems to be necessary, every forty-five (45) to sixty (60) days from the date of this Conditional Judgment to enable the Special Master to assess the progress of the Township's compliance with the Conditions. The Special Master shall keep the Court apprised of the status after each call.
9. Plaintiff shall initiate a conference call with the Court, the Special Master, counsel for S/K, and counsel for FSHC on or before September 30, 2019 to update the Court on the status of the Hurstmont/Glen Alpin redevelopment and the satisfaction of all Conditions.
10. The Township is granted continuing immunity from exclusionary zoning litigation until November 30, 2019.
11. The Court has approved the Township's Spending Plan and the Township is hereby authorized to impose and collect development fees and to maintain those fees in the Township's Affordable Housing Trust Fund, and to commit or expend same within four (4) years of this Judgment or collection, in accordance with applicable law.

12. By this Conditional Declaratory Partial Judgment of Compliance, the Court declares the Township of Harding 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, subject to the stated Conditions.
13. If a court of competent jurisdiction in Morris County (i.e., the Law Division of Morris County, the Appellate Division of the New Jersey Superior Court, or the New Jersey Supreme Court) or an administrative agency responsible for implementing the Fair Housing Act and COAH regulations makes a decision which, if applied to the Township would reduce its obligation more than twenty (20%) percent of the total Prospective Need number agreed to in the Settlement Agreement, the Township shall be entitled, on motion, to amend the Judgment to reduce *pro rata* its fair share obligation, with reduction being applied first to deferred need and then to need through June 30, 2025. Notwithstanding any such reduction, the Township shall be obligated to complete and leave in place any site specific zone changes made in connection with the plan approved pursuant o the Settlement Agreement and otherwise continue to implement all aspects of the plan approved pursuant to the Settlement Agreement thereto. The Township may carry over any resulting extra credits to future rounds.

AND IT IS FURTHER ORDERED that a copy of this Judgment be served upon all interested parties in accordance with the procedure previously established in the Mount Laurel litigation matters.



MICHAEL G. SAKS, J.S.C.