

**MASTER'S REPORT
FOR A *MOUNT LAUREL* COMPLIANCE HEARING
BOROUGH OF EMERSON, BERGEN COUNTY, NEW JERSEY**

*IMO Application of the Borough of Emerson
Docket No. BER-L-6300-15*

December 14, 2018

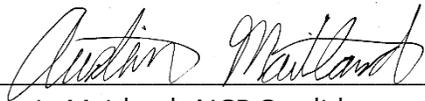
Prepared for:

**The Honorable Gregg A. Padovano, J.S.C.
Superior Court of New Jersey
Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601**

Prepared by:



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1.0 INTRODUCTION

This report has been prepared in light of the upcoming Compliance Hearing before the Hon. Gregg A. Padovano, J.S.C. on December 21, 2018 In the Matter of the Application of the Borough of Emerson, County of Bergen, Docket No. BER-L-6300-15. This report reviews the compliance of Emerson Borough's (hereinafter "Borough" or "Emerson") 2018 Third Round Housing Element and Fair Share Plan ("HEFSP", "the Plan", or "Third Round 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 Borough's compliance with the Settlement Agreement, dated November 21, 2017 and fully executed on November 28, 2017, between the Borough of Emerson and Fair Share Housing Center (hereinafter "FSHC"). I am submitting this report in my capacity as Special Master appointed by the Honorable Menelaos W. Toskos, J.S.C. (now retired) by Order of September 4, 2015 to assist the Court in the above-captioned litigation.

As discussed in detail below, this report acknowledges progress Emerson has made and recommends that Emerson Borough be granted a Third Round Judgment of Compliance and Repose, subject to the fulfillment of certain terms and conditions, including the submission of supplementary material needed to verify credit eligibility and/or to implement the Plan.

2.0 THE SETTLEMENT AGREEMENT AND FAIRNESS

Emerson filed a Complaint for Declaratory Judgment on July 8, 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*"). Emerson and FSHC settled on the following fair share need allocations:

- 20-unit Third Round Present Need (rehabilitation share)
- 74-unit Prior Round obligation (1987-1999)
- 234-unit Third Round Gap and Prospective Need obligation (1999-2025)

The Settlement Agreement was fully executed by Louis J. Lamatina, Mayor, for the Borough and Adam M. Gordon, Esq. for FSHC on November 28, 2017. The 74-unit Prior Round obligation was previously established by COAH. The 234-unit Third Round obligation represents a 30% reduction of Dr. Kinsey's May 2016 calculation of the Borough's Third Round obligation.

Emerson is essentially entirely developed and the availability of vacant land is extremely limited. As a result, the Borough remains entitled to adjust its fair share obligation in accordance with the vacant land adjustment procedure set forth in COAH's Second Round rules (N.J.A.C. 5:93-4.2). Pursuant to the Settlement Agreement, Emerson's 74-unit Prior Round was previously adjusted by the Court as a Prior Round realistic development potential ("RDP") of 20 units and the 234-unit Third Round is adjusted to an RDP of 53 units. The combined 73-unit RDP results in a total unmet need of 235 units (54-unit Prior Round unmet need and 181-unit Third Round unmet need).

Public notice of the Borough's January 24, 2018 fairness hearing (subsequently adjourned to March 23, 2018 and then to May 21, 2018) was published in accordance with established Mount Laurel case law. In response to the public notice, the Borough received objections in a letter, dated January 8, 2018, from Richard P. De Angelis, Esq. on behalf of 214 Kinderkamack, LLC ("214 Kinderkamack" or "objector") and Delores Della Volpe, Trustee ("Della Volpe" or "objector"), property owners in the Borough whose properties are located in the Block 419 redevelopment area which contributes significantly to the Borough's RDP. FSHC and the Borough filed responses to the De Angelis objections and the Borough filed a motion to compel the intervention of the objectors to ensure that any court decision in the Borough's declaratory judgment matter would also be binding in the other matter challenging the Borough's local redevelopment and housing law ("LRHL") procedures or future legal challenges.

On March 16, 2018, I submitted a *Fairness Report* in which I recommended that the Court approve the Settlement Agreement and grant the Borough 120 days to comply with the requirements of that Agreement and the recommendations of my report. My recommendation was contingent on the Court finding that the Borough has a right, through the NJ Fair Housing Act ("FHA"), to condemn the objectors' properties for an inclusionary development by a for-profit redeveloper.

In a May 21, 2018 order, the Court denied the Borough's motion to compel intervention by 214 Kinderkamack and Della Volpe but granted the Borough's motion to deem that the objectors are on notice of the fairness hearing and granted the Borough's motion to "deem that 214 and Della Volpe be bound by the Court's findings at the Fairness Hearing...to the extent that all non-parties and members of the public are so bound."

On June 15, 2018, the objectors submitted a letter continuing to object to the realistic opportunity of the Block 419 redevelopment site in the Borough's Plan and requesting the full adjudication of the redevelopment dispute prior to a final judgment of compliance and repose. On June 20, 2018, the Court held the continuation of the Borough's Fairness Hearing. On June 29, 2018, the Court issued an order declaring that "the Settlement is fair and reasonable to low and moderate income persons and that the properties located within Block 419 Redevelopment Project area are all 'necessary or useful' to provide low and moderate income housing" (see attached June 29, 2018 order).

Subsequently, the Borough provided appropriate notice for a Compliance Hearing to be held on August 23, 2018 which was adjourned to December 10, 2018 and ultimately to December 21, 2018. We are not aware of any comments or filed objections filed regarding the Borough's compliance plan.

3.0 EMERSON BOROUGH'S HOUSING ELEMENT AND FAIR SHARE PLAN

This report and the upcoming Compliance Hearing focus on the Borough's Third Round Plan and its compliance with the rules and guidelines set forth in COAH's Second Round rules, the FHA, the Uniform Housing Affordability Controls ("UHAC"), and the Borough's Settlement Agreement with FSHC.

The FHA and COAH's rules prescribe the components of the municipal Housing Element of the Master Plan. The Borough's Third Round Plan meets the basic requirements of these standards, but requires additional documentation for full compliance.

The Borough plans to address its fair share obligation as follows:

Present Need: Rehabilitation Component: 20 units

The Borough will address its Present Need/Rehabilitation obligation by reserving at least \$200,000 (at least \$10,000 in hard costs per unit) of its affordable housing trust fund to complete up to 20 rehabilitations through the Affordable Critical Home Repair Program Agreement between the Borough and Habitat for Humanity of Bergen County ("Habitat"). **The Agreement between the Borough and Habitat should be provided (Condition 1).** As discussed below, Habitat will utilize Community Action Services, an experienced rehabilitation administrative agent to operate the Borough's rehabilitation program.

The Borough is required by N.J.A.C. 5:93-5.2 to provide a rehabilitation program manual and copies of any contracts executed with an administrative agent responsible for the municipal rehabilitation program. The Borough has provided a copy of Resolution 228-18, adopted August 14, 2018, which awards the contract for affordable housing administrative agent and rehabilitation administrator to Community Action Services. Community Action Services will be responsible for administering the Habitat rehabilitation program within the Borough. The HEFSP includes a model rehabilitation manual which has been partially adapted for the Borough. **The Borough must submit a detailed rehabilitation manual, geared toward Emerson Borough, with guidelines for rehabilitating homeowner-occupied housing and renter-occupied housing, and indicate whether the rehabilitation program will be available to rental units to satisfy the rental component of the Present Need obligation. The Borough must also submit a signed agreement between the Borough and Community Action Services (Condition 2).**

Prior Round Obligation: 74 units (20-unit Prior Round RDP and 54-unit Prior Round unmet need)

The Borough proposes to satisfy its 20-unit Prior Round RDP, per a Court-approved vacant land adjustment included in the Borough's 2002 HEFSP, with a 5-credit Regional Contribution Agreement ("RCA") with Ridgefield (approved by COAH on August 6, 2003), 10 credits from the New Concepts group home, and five (5) credits from Prior Round rental bonuses. **The Borough must indicate the date of payment and amount paid to Ridgefield as part of the RCA (Condition 3).**

The Borough has provided a Supportive and Special Needs Housing Survey and affordability controls for the New Concepts group home. The survey includes the date of the facility's current license. The deed includes a reversion that establishes 30-year affordability controls and ensures that the title of the property will revert to the Borough if New Concepts ceases to operate the group home. This documentation is sufficient for establishing compliance.

As discussed below, the Borough has provided various unmet need compliance measures to assist the Borough in addressing the 54-unit Prior Round portion of the total 235-unit unmet need.

Third Round Obligation: 234 units (53-unit Third Round RDP and 181-unit Third Round unmet need)

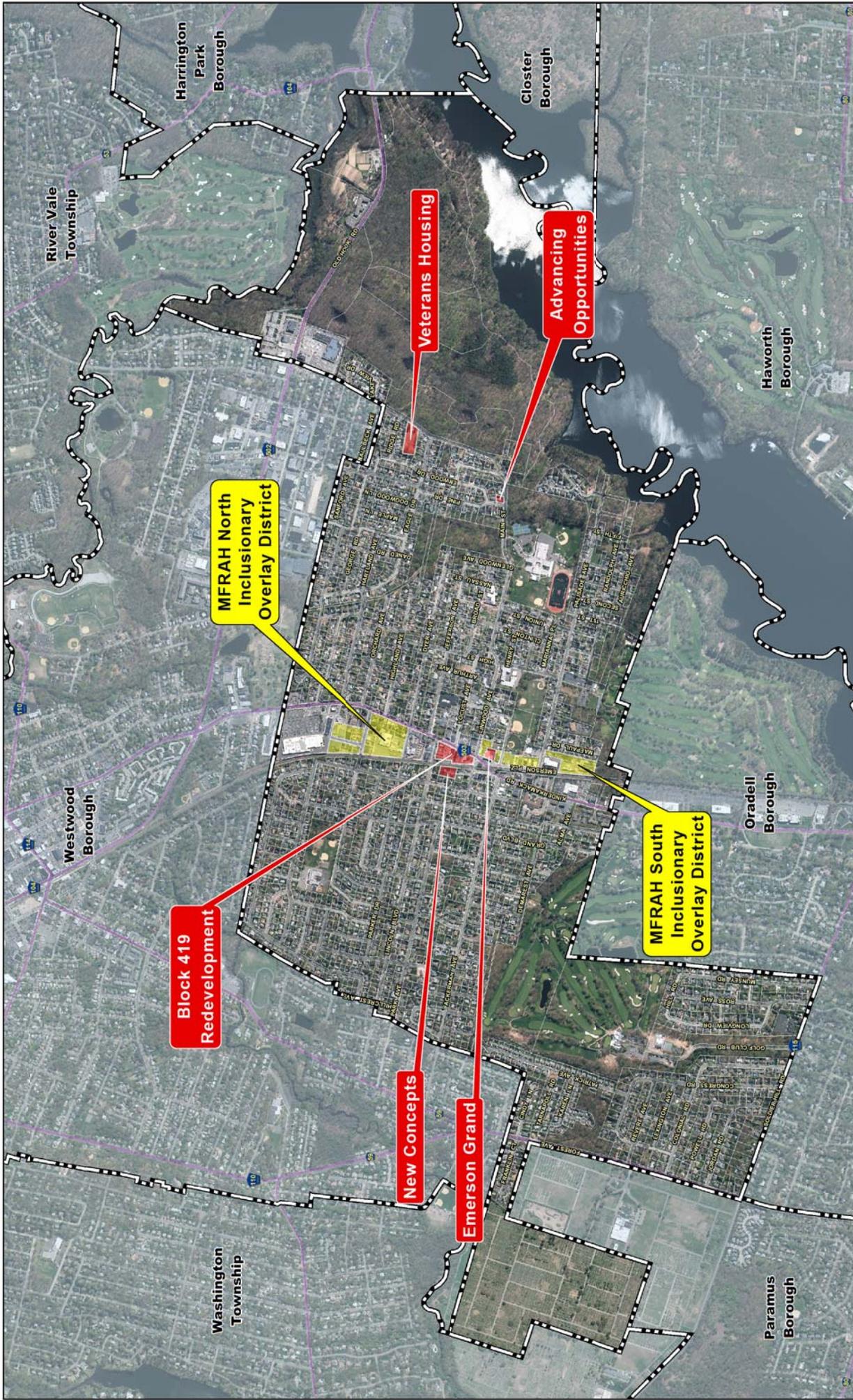
For the Third Round, the Borough prepared an updated vacant land analysis (“VLA”) to reflect an increase in development potential as a result of land use conditions and approved inclusionary and affordable housing developments. The VLA, dated November 21, 2017, considered all vacant and Borough-owned land in Emerson, as well as any sites that have been or are likely to be redeveloped with housing during the Third Round. The updated VLA produced a 53-unit Third Round RDP.

The Borough’s HEFSP proposes to fully satisfy the 53-unit Third Round RDP with 33 inclusionary rental units, 24 group home credits, and 14 Third Round rental bonuses. This Third Round compliance plan totals 57 units and 14 rental bonuses, resulting in a total of 71 credits, including 18 surplus credits that will go towards addressing the combined Prior Round and Third Round unmet need. The Third Round compliance mechanisms are outlined in the table below:

Project Name	Affordable Units/Credits	Year Approved or Constructed
Veterans’ Housing (Group Home – rental)	14	-
Block 419 Redevelopment (rental)	29	Proposed
Advanced Opportunities (Group Home – rental)	3	5/10/12
Center for Hope and Safety (Group Home – rental)	7	8/18/03
Emerson Grand (rental)	4	-
Rental Bonus Credits	14	-
TOTAL	71	-

Veteran’s Housing

The Borough is claiming 14 credits for a group home/alternative living arrangement on Main Street that provides housing for veterans. The Borough has provided a loan agreement (dated March 18, 2016) and deed restriction between the New Jersey Housing and Mortgage Finance Agency (“HMFA”) and Emerson Affordable Housing, LLC. The loan agreement stipulates a 30-year period of affordability and that all 14 group home units be reserved for low-income households in conformance with the HEFSP.



Affordable Housing Sites (RDP & Unmet Need)

LOCATION: Emerson Borough, Bergen County, NJ
DATE: January 2018

Legend

- Affordable Housing Sites Addressing the RDP
- Inclusionary Overlay Zoning Sites Addressing Unmet Need



Clarke Catton Hintz
Architecture
Planning
Landscape Architecture

Block 419 Redevelopment

Emerson is proposing to redevelop the entirety of Block 419 (Lots 1-5, 6.01, 6.02, and 7-10) in the Borough's downtown with a mixed-use multi-family inclusionary rental development. The Borough has provided a redeveloper's agreement, dated June 27, 2016, and two (2) amendments, dated October 4, 2016 and November 20, 2017, for Block 419. The second amendment of the redeveloper's agreement includes an affordable set-aside requirement of 20%, and a requirement that at least 15% of all units be affordable and provided on-site. The remaining units may be provided at another location in the Borough, through a payment-in-lieu of construction ("PIL"), or a combination of off-site units and a PIL. Pursuant to the Settlement Agreement, the redeveloper will provide 29 affordable units, including 22 on-site affordable units and seven (7) affordable units through an off-site mechanism and/or a PIL as established in the redeveloper's agreement. The Settlement Agreement also stipulates that the Borough will show, at the July 2020 midpoint review, how it will provide a realistic opportunity for the affordable units provided off-site or through a PIL. The agreement and amendments do not expressly identify age-restrictions or status as rental or for-sale with regard to the affordable units provided as part of the redevelopment. **The Borough must provide evidence that the proposed Block 419 development is to be comprised of family rental units, including the affordable units. The Township should also clarify whether or not the affordable units at the 419 Redevelopment site will be administered by Community Action Services (Condition 4).**

The Borough has submitted signed copies of two (2) separate memoranda of agreement ("MOA"), both dated October 27, 2018, between the Borough, Emerson Redevelopers Urban Renewal, LLC ("ERUR") and 214 Kinderkamack, an objector to the redevelopment of Block 419, as well as a separate MOA between the Borough, ERUR, and Della Volpe. The objectors had challenged, through an action in lieu of prerogative writ ("PW litigation"), the 2004 and 2017 designations of Block 419 under LRHL as well as the Borough's authority to take the properties by condemnation. The Borough intends to use the Block 419 redevelopment to fulfill its obligation of low and moderate income housing pursuant to the Settlement Agreement and claimed authority under the FHA to acquire the property via condemnation.

Subsequent to the filing of the PW litigation and the Court's approval of the Settlement Agreement, the Borough, ERUR, and objectors negotiated the sale of the properties from 214 Kinderkamack and Della Volpe to ERUR. The parties agreed to resolve the PW litigation and avoid any future condemnation action under either the LRHL or FHA. Separately, 214 Kinderkamack and Della Volpe entered into a Real Estate Purchase and Sale Agreement ("PSA") with ERUR contemporaneous with the execution of the MOA. The execution of the PSA is conditioned upon the objectors voluntarily dismissing the pending PW litigation, signing any consent necessary for applications required for the Block 419 redevelopment, refraining from objecting to the Block 419 redevelopment and refraining from taking a position adverse to the Borough in the declaratory judgment litigation. Therefore, the objection to the Block 419 redevelopment has been addressed. The redevelopment received site plan approval from the Emerson Land Use Board at a special meeting on December 10, 2018.

Advancing Opportunities

Advancing Opportunities owns and operates a group home located on Pine Drive in the Borough. The Borough is claiming three (3) credits for the Advancing Opportunities group home. The Borough has

provided a Supportive and Special Needs Survey for the Advancing Opportunities group home. The survey indicates five-year controls on affordability beginning May 10, 2012. According to the survey, the group home's current license is dated June 13, 2017. **The Borough must clarify the status of affordability controls and provide deed restrictions for the Advancing Opportunities group home (Condition 5).**

Center for Hope and Safety

Center for Hope and Safety provides transitional housing in a group home for victims of domestic violence. The Borough has provided a Supportive and Special Needs Survey and deed for the Center for Hope and Safety group home. The deed includes a reversion that establishes 10-year affordability controls and ensures that all U.S. Department of Housing and Urban Development ("HUD") funds will be returned to HUD in the event that the home ceases to be operated as a group home. No license has been submitted for this group home. **The Borough should confirm whether a license is or isn't required for the Center for Hope and Safety group home (Condition 6).**

Emerson Grand

Emerson Grand is a multi-family inclusionary family rental housing development located at 55 Emerson Plaza East in the Borough's downtown. The Borough is claiming four (4) credits at the Emerson Grand inclusionary development located on Block 616, Lot 16 at 55 Emerson Plaza East for four (4) family rental units. **The Borough must provide full documentation for these affordable units including, but not limited to, compliance with UHAC, such as a deed restriction, affirmative marketing efforts, proof of an experienced administrative agent, the number of bedrooms per unit, the low/moderate-income breakdown, the certificate of occupancy date, and date of approval, to confirm the eligibility of affordable units at the Emerson Grand inclusionary development (Condition 7).**

Unmet Need

Through its VLA, Emerson has reduced its 74-unit Prior Round obligation to a Prior Round RDP of 20 units and reduced its 234-unit Third Round obligation to a Third Round RDP of 53 units, resulting in a combined Prior Round and Third Round unmet need of 235 units. The Borough's HEFSP provides the following compliance mechanisms to help address the combined 235-unit unmet need through future possible affordable housing production:

- 18 surplus credits from the compliance mechanisms addressing the Third Round RDP;
- The adoption of Ordinance No. 1548-17 (adopted December 5, 2017) which established the Multi-Family Residential Affordable Housing Overlay District North ("MFRAH North") and Multi-Family Residential Affordable Housing Overlay District South ("MFRAH South"). The Borough has provided a copy of the adopted ordinance. MFRAH North permits inclusionary housing development at a density of 64 dwelling units per acre on Block 214, lots 6, 7, 8.01, 8.02, and 9; Block 213, lots 1 through 6; and Block 405, lots 1, 2, 3.01, 3.02, and 4 through 14 near the Borough's downtown. MFRAH North provides a compensatory benefit by permitting inclusionary residential development in an area currently zoned for only industrial and commercial uses. MFRAH South permits inclusionary housing development at a density of 43 dwelling units per acre on Block 616,

- lots 1, 2, 16, 17, 19-24; and Block 617.01, lots 1, 2.01, 2.02, and 8 also near the Borough's downtown. MFRAH South provides a compensatory benefit of permitting first-floor residential uses in age-restricted inclusionary developments. The existing zoning does not permit residential use on the ground floor; and
- The adoption of a Borough-wide mandatory affordable housing set-aside ordinance applicable to all multi-family housing developments containing five (5) or more units at a density of at least six (6) units per acre. A draft set-aside ordinance has been provided. The required set-aside is 15% for rental units and 20% for for-sale units. The ordinance includes language calling for an affordable housing set-aside in the case of a municipal rezoning to allow multi-family housing. However, the ordinance does not include language requiring a minimum density of six (6) dwelling units per acre. **The Borough must revise and adopt the mandatory affordable set-aside ordinance (Condition 8);** and
 - The amendment of the Borough's 2009 development fee ordinance (No. 1383) to replace references to COAH and N.J.A.C. 5:97 with references to the NJ Superior Court and N.J.A.C. 5:93. On December 4, 2018, the Borough Council passed Ordinance No. 1571-18 amending Ordinance No. 1383. I find the development fee ordinance amendment to be acceptable as adopted.

Very Low-Income Requirements

Pursuant to the 2008 amendments to the FHA, P.L. 2008, c. 46 (codified as N.J.S.A. 52:27D-329.1), municipalities must provide very low-income units equal to 13% of all affordable units approved and constructed after July 17, 2008 at 30% of the regional median income instead of the UHAC standard of 10% at 35% of the regional median income. The HEFSP indicates that the Borough is required to provide eight (8) very low-income units ($0.13 \times 57 = 7.41$, round up); however, only four (4) very low-income units have been provided as part of the existing group homes. The Plan indicates that the remaining four (4) very low-income units will be provided as part of the Block 419 redevelopment. **Documentation must be submitted confirming compliance with the very low-income requirements at the Block 419 redevelopment (Condition 9).**

Rental and Age-Restricted Housing Requirements

Pursuant to the Settlement Agreement, the Borough's fair share plan must comply with the rental housing minimum and rental bonus caps established by COAH's second round rules. According to these rules, the Borough's Prior Round minimum rental housing requirement (which equals the Borough's maximum rental bonus allowance) is equal to 25% of the 20-unit Prior Round RDP which is five (5) units. The minimum Third Round rental requirement is 14 units ($25\% \times 53 = 13.25$, rounded up). The Borough complies with these requirements, having a plan comprised of 10 Prior Round rental units, 57 Third Round rental units, and five (5) Prior Round and 14 Third Round rental bonus credits.

The Settlement Agreement between the Parties prohibits the Borough from receiving credit for age-restricted housing units exceeding 25% of all units developed or planned to meet its fair share obligation. The Third Round Plan does not include any age-restricted units at this time.

Additional Conditions:

The Settlement Agreement and March 16, 2018 Master's Report established a number of additional requirements including the following:

- The Borough shall prepare a revised Spending Plan following the Court's approval of the Settlement Agreement. The Agreement acknowledges that any funds deemed committed by the Court must be expended within four (4) years of the Court's entry of a final judgment approving the settlement. **The Borough has submitted a draft Spending Plan. We will work with the Borough and the Borough's attorney to revise and finalize the Spending Plan which will be adopted and submitted at a later date (Condition 10).**
- At least half of all housing units addressing the Third Round Fair Share 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 may be affordable to moderate-income households. **The Borough has complied with this requirement.**
- At least half of the units addressing the Third Round Fair Share must be available to families. **The Borough has complied with this requirement.**
- All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of the subject of the very low-income requirement in which case those rules have been superseded by an amendment to the FHA as discussed above. **The Borough has complied with this requirement.**
- The Borough shall update its affirmative marketing plan to include FSHC and other named organizations in its list of community and regional organizations, and both the Borough and any other developers or administrative agencies conducting affirmative marketing shall provide notice to those organizations of any available affordable units. **The Borough has complied with this requirement.**
- The Borough must submit an adopted resolution appointing an existing municipal employee as Emerson's municipal housing liaison. **The Borough has complied with this requirement.**

The Agreement also established the following requirements for the Borough to meet between now and July 2025 – the period of Third Round Repose:

- On the first anniversary of the granting of a Final Judgment of Compliance and Repose, and every anniversary thereafter through the end of the Agreement, the Borough agrees to provide annual reporting of trust fund activity. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- On the first anniversary of the execution of a Final Judgment of Compliance and Repose, and every anniversary thereafter through the end of the Agreement, the Borough agrees to provide a status report of all affordable housing activity (including rehabilitation) within the municipality.

- The Borough 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 Borough's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced.
- Within 30 days of every third anniversary of a Final Judgment of Compliance and Repose, the Borough 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.

4.0 ZONING AMENDMENTS

As required by the Settlement Agreement, the Borough has submitted the following ordinances:

- Ordinance 1571-18: The Borough adopted Ordinance 1571-18 to amend the development fee chapter of the Borough code. The ordinance replaces references to COAH and N.J.A.C. 5:97 with references to the Court and N.J.A.C. 5:93. The ordinance also updates language regarding the handling of the affordable housing trust fund. This ordinance is acceptable as adopted.
- Ordinance 1565-18: The Borough adopted Ordinance 1565-18 to repeal and replace Chapter 290 “Zoning”, Article XII “Affordable Housing Regulations” of the revised general ordinances, and to ensure compliance with all applicable COAH, FHA, and UHAC regulations. This ordinance is acceptable as adopted.
- Ordinance 1548-17: The Borough adopted Ordinance 1548-17 to amend the zoning ordinance to incorporate the MFRAH North and MFRAH South affordable housing overlay districts. This ordinance is acceptable as adopted.
- Set-aside Ordinance: The Borough has provided a draft ordinance requiring an affordable set-aside for all new multi-family residential developments with five (5) or more units. The ordinance will need revision before being adopted (see Condition 8).

5.0 CONCLUSION

This report has been prepared in light of the upcoming Compliance Hearing before Your Honor on December 21, 2018. This report reviews Emerson Borough's 2018 HEFSP and draft Spending Plan prepared by Brigette Bogart, PP, AICP, CGW, and related documents. The Borough is seeking a Final Judgment of Compliance and Repose for its Third Round Plan. The Borough's Fair Share Plan is generally consistent with the Court-approved Settlement Agreement, the Fair Housing Act, and COAH's Second Round rules with the exceptions noted herein.

I find the Borough's 2018 HEFSP to be consistent with the *Mount Laurel* doctrine and the *Mount Laurel IV* decision. I recommend that Your Honor grant the Borough a Judgment of Compliance and Repose, subject to the Borough fulfilling the conditions contained herein. I would recommend that the Borough be provided 120 days from the entry of the Court's order of repose to address the conditions. Your Honor may wish to have the Borough submit a certification as to how each condition has been addressed with any required supporting documentation. Once the Borough has satisfied all conditions, I will notify Your Honor and copy all parties, at which point the issuance of a final Judgment of Compliance and Repose would be warranted. I don't believe an additional court hearing would be required. In the meantime, I recommend that immunity remain in effect.

- Condition 1:** The Agreement between the Borough and Habitat for Humanity should be provided.
- Condition 2:** The Borough must submit a detailed rehabilitation manual, geared toward Emerson Borough, with guidelines for rehabilitating homeowner-occupied housing and renter-occupied housing, and indicate whether the rehabilitation program will be available to rental units to satisfy the rental component of the Present Need obligation. The Borough must also submit a signed agreement between the Borough and Community Action Services.
- Condition 3:** The Borough must indicate the date of payment and amount paid to Ridgefield as part of the RCA.
- Condition 4:** The Borough must provide evidence that the proposed Block 419 development is to be comprised of family rental units, including the affordable units. The Township should also clarify whether or not the affordable units at the 419 Redevelopment site will be administered by Community Action Services.
- Condition 5:** The Borough must clarify the status of affordability controls and provide deed restrictions for the Advancing Opportunities group home.
- Condition 6:** The Borough should confirm whether a license is or isn't required for the Center for Hope and Safety group home.
- Condition 7:** The Borough must provide full documentation for these affordable units including, but not limited to, compliance with UHAC, such as a deed restriction, affirmative marketing efforts, proof of an experienced administrative agent, the number of bedrooms per unit, the low/moderate-income breakdown, the certificate of occupancy date, and date of approval, to confirm the eligibility of affordable units at the Emerson Grand inclusionary development.
- Condition 8:** The Borough must revise and adopt the mandatory affordable set-aside ordinance.
- Condition 9:** Documentation must be submitted confirming compliance with the very low-income requirements at the Block 419 redevelopment.
- Condition 10:** The Borough has submitted a draft Spending Plan. We will work with the Borough and the Borough's attorney to revise and finalize the Spending Plan which will be adopted and submitted at a later date.

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
EMERSON, BERGEN COUNTY, NEW
JERSEY, FOR A DECLARATORY
JUDGMENT,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:BERGEN COUNTY

DOCKET NO.: BER-L-6300-15

CIVIL ACTION
Mount Laurel Action

FILED
JUN 29 2018

ORDER GREGG A. PADOVANO, J.S.C.

THIS MATTER comes before the court upon the Declaratory Judgment Complaint of Petitioner Borough of Emerson (“Borough” or “Petitioner”), 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, in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div.1984), aff’d o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), upon the Borough’s proposed plan to provide for affordable housing, Ronald H. Gordon, Esq. of DeCotiis FitzPatrick Cole & Giblin, LLP appearing on behalf of Petitioner, Adam Gordon, Esq. appearing on behalf of Intervenor Fair Share Housing Center (“Intervenor” or “FSHC”), Special Master Mary Beth Lonergan, AICP, PP (“Special Master”) appearing, and Richard P. DeAngelis, Esq. appearing on behalf of Objectors, 214 Kinderkamack, LLC (“214”) and Dolores Della Volpe, Trustee (“Della Volpe”) (hereinafter, collectively “Objectors”); and

THE COURT HAVING received the testimony of Petitioner’s planner, Brigitte Bogart, PP, AICP having been qualified as an expert witness, as well as the testimony of the Special Master, Mary Beth Lonergan, AICP, PP; and

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

- P-1 Affidavit of Service dated January 19, 2018.
- P-2 Affidavit of Publication – The Ridgewood News dated December 8, 2017.
- P-3 Affidavit of Publication – Bergen Record dated December 8, 2017.
- P-4 Settlement Agreement between Fair Share Housing Center and Borough of Emerson dated November 21, 2017 (“Settlement Agreement”).
- SM-1 Special Master Mary Beth Lonergan Report and Recommendations dated March 16, 2018 (“Report”); and

THE COURT HAVING received into evidence the Report of the Special Master, dated March 16, 2018 which was identified as Exhibit SM-1 (“the Report”), evaluating the fairness of the Agreement and the Special Master having concluded in her Report that the Agreement is fair and reasonable to the region’s low and moderate income households and having further recommended in her Report that the court approve the Settlement; and

THE COURT HAVING heard and considered the challenge(s) argued by Objectors to the proposed Settlement Agreement with FSHC, including Objectors’ challenge to the realistic opportunity to provide housing for persons of low and moderate income, based on Objectors’ contention that the Borough may not acquire the Objectors’ property or other properties within Block 419 for a redevelopment project (the “419 Redevelopment Project”); and

THE COURT HAVING previously determined and ordered that Objectors “be bound by the court’s finding at the Fairness Hearing is GRANTED to the extent that all non-parties and members of the public are so bound” pursuant to an order dated May 21, 2018; and

THIS COURT being designated and assigned to decide all issues related to affordable housing pursuant to the FHA, including a determination of whether Objectors’ challenges would prevent the proposed Settlement Agreement from providing a realistic opportunity for the construction of low and moderate income housing in the Borough and the court having determined, for the reasons set forth on the record, that the Borough has demonstrated its voluntary and good faith efforts to comply with its fair share obligation and for good cause

IT IS ON THIS 29th DAY OF JUNE 2018 ORDERED:

1. Petitioner properly afforded notice of the Fairness Hearing in accordance with governing law.

2. The court determines and finds, upon the testimony presented, and arguments of counsel and upon a consideration of the Settlement Agreement admitted into evidence, (collectively, “the Settlement”), and the Special Master’s Report, and in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div.1984), aff’d o.b., 209 N.J.Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), that:

- a. The Present Need Obligation, as agreed upon by the Parties based upon implementing the directives of Mount Laurel IV is 20 housing units;
- b. The Prior Round Obligation, as originally determined by COAH in 1994 for the period 1987-1999 is 74 housing units;

- c. The Prospective Need Obligation, including the “GAP Period” obligation for the period of 1999-2025, based upon a compromise reached among the Parties in view of the uncertainty of litigation and in accordance with the directives of Mount Laurel IV, and upon the recommendation of the Special Master, is 234 housing units;
- d. The Borough has prepared a Vacant Land Adjustment (VLA) which, upon the Special Master’s recommendation, is accepted by the court. The Special Master has recommended, the Parties have accepted, and the court accepts, a Realistic Development Potential (RDP) of 20 units from the Prior Round Obligation, and an RDP of 53 units for the Prospective Need Obligation for a total RDP of 73 units arising from the VLA. When the RDP of 20 units is subtracted from the Prior Round Obligation of 74 units, an Unmet Need of 54 units results. When the RDP of 53 units is subtracted from the Prospective Need Obligation of 234 units an Unmet Need of 181 units results. The total Unmet Need is 235 units;
- e. The Present Need Obligation, Prior Round Obligation and Prospective Need Obligation are collectively referred to as the Borough’s Affordable Housing Obligation;
- f. The Settlement sets forth and otherwise incorporates mechanisms to address the Affordable Housing Obligation. The court finds, upon the Special Master’s, Report, testimony and recommendation, that the Borough’s Affordable Housing Obligation, including the Unmet Need, is adequately and sufficiently addressed by the mechanisms provided for in the Settlement Agreement;
- g. The court finds, upon the Special Master’s Report, testimony and recommendation, that the Settlement creates a realistic opportunity for the satisfaction of the Borough’s Affordable Housing Obligation;
- h. The court finds, upon the Special Master’s Report, testimony and recommendation, that the Settlement is fair and reasonable to low and moderate income persons and that the properties located within Block 419 Redevelopment Project area are all “necessary or useful” to provide low and moderate income housing;

3. Entry of a Final Judgment of Compliance and Repose is subject to the Borough complying with the following conditions:

- a. The Borough shall comply with the recommendations of the Special Master as set forth in her Report including, but not limited to, undertaking any amendments to the Borough's Housing Element and Fair Share Plan and Spending Plan;
- b. The Borough shall adopt a revised Spending Plan upon the Special Master's review and comment, such that the court may determine at a final hearing that the proposed expenditure of amounts from the affordable housing trust fund in the Spending Plan is consistent with and authorized by the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and such funds are timely "committed for expenditure" as required, if at all, by N.J.S.A. 52:27D-329.2, -329.3;

4. The objection presented to the court filed by 214 and Della Volpe by correspondence dated January 8, 2018 and the court's order dated May 21, 2018 on the motion brought by the Borough of Emerson to have 214 and Della Volpe bound by the court's determination at the Fairness Hearing resulted in the following:

- a. The court held that "any party or non-party may challenge an action taken to implement a housing plan approved under a fairness hearing (citations omitted);"
- b. The court found that "this challenge must actually occur as a part of the fairness hearing;"
- c. The court found that "any ruling made as a part of the scheduled fairness hearing will be binding upon any and all non-parties;"

By letter dated June 15, 2018, counsel for 214 and Della Volpe advised the court that "aside from this letter and the previous letters and certifications submitted on behalf of the Owners on January 8, 2018, the Owners do not intend to make any other written submissions or call any witnesses in connection with the Fairness Hearing."

IT IS FURTHER ORDERED, that 214 and Della Volpe's properties (as well as all other properties located within Block 419) are "necessary or useful" to the Borough of Emerson in meeting its Affordable Housing obligations as agreed to in the Settlement Agreement with Fair Share Housing Center and as recommended in the Special Master's Report, testimony and recommendation; and

IT IS FURTHER ORDERED that the court shall conduct a Final Hearing to consider entering a Final Judgment of Compliance and Repose on August 23, 2018 at 2:00 p.m.. Petitioner shall provide public notice of the Final Hearing; and

IT IS FURTHER ORDERED that the Borough is entitled to continued immunity and the accompanying protection from Mount Laurel exclusionary zoning and/or builders' remedy lawsuits as provided under the FHA and in accordance with Mount Laurel IV and this court's order until the court's determination following the Final Compliance Hearing; and

IT IS FURTHER ORDERED that a copy of this order shall be served upon all parties within seven (7) days from counsel for the Borough's receipt; and

IT IS FURTHER ORDERED that a copy of this order shall be available for inspection by any interested party.



HON. GREGG A. PADOVANO, J.S.C.