

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.