



Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

November 3, 2016

Albert J. Olizi, Esq.
Mattleman Weinroth & Miller PC
401 Route 70 (Marlton Pike) East
Suite 100
Cherry Hill, NJ 08034

Re: **In the Matter of the Borough of Stratford, County of Camden, Docket
No. CAM_L_2613-15**

Dear Mr. Olizi:

This letter memorializes the terms of an agreement reached between the Borough of Stratford (the Borough or "Stratford"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

Stratford filed the above-captioned matter on July 7, seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Borough participated in mediation under the direction of the Honorable Nan Famular, J.S.C. Through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of the compliance mechanisms referenced in the draft Housing Element and Fair Share Plan ("the Plan"), Exh. A, which shall be modified prior to adoption to conform to this agreement, and the implementation of the Plan, as modified, and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Stratford hereby agree that Stratford's affordable housing obligations are as follows:

| | |
|---|----|
| Rehabilitation Share (per Kinsey Report ¹) | 24 |
| Prior Round Obligation (pursuant to N.J.A.C. 5:93) | 70 |
| Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement) | 91 |

4. The Borough's efforts to meet its present need include the following: participation in the Camden County Rehabilitation Program. This is sufficient to satisfy the Borough's present need obligation of 24 units.
5. As noted above, the Borough has a Prior Round prospective need of 70 units and a Third Round prospective need of 91 units, for a total of 161 units.
6. The municipality, as calculated in Exh. A, has a realistic development potential (RDP) of 22 units. With a Third Round obligation of 91 units, this results in a vacant land adjustment, or unmet need for the Third Round, as addressed further in the following paragraph. That RDP will be satisfied through the zoning of a vacant parcel adjacent to the Woodmere Apts. that has frontage along Rt. 30 and a net 6.9 acres. The zoning shall provide 16 units/acre permitted density for rental apartments. A 20-percent set-aside for low and moderate affordable units is proposed. ($6.9 \text{ acres} \times 16 \text{ units/acre} \times .20 = 22 \text{ affordable units}$). If this site develops, as anticipated, as family rental units, the set-aside will be 15-percent and it may generate up to 5 rental bonus credits.
7. The RDP of 22, subtracted from the combined Prior Round and Third Round obligation of 161 units, results in an unmet need of 139 units, which shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:
- Laurel Mills is an existing shopping center which is largely vacant. The property was deemed an area in need of rehabilitation in March 2011 and currently has a Redevelopment Plan that does not include housing. Within 90 days of the execution of this agreement, the Borough will amend the redevelopment plan to permit inclusionary zoning for the development of for-sale family residential townhomes or senior apartments. 5.8 acres of the 7.4 acre parcel would be allocated for the residential component as part of a mixed-use environment at a density of 10 units per acre, 1.6 acres along the frontage would be retained for retail commercial development. A 20% setaside for low and moderate affordable units will be required. ($5.8 \text{ acres} \times 10 \text{ units/acre} \times .20 = 12 \text{ affordable units}$).
 - The Bradlee's site of 22 acres (20 acre net) is an existing shopping center that is largely vacant with significant rehabilitation or reconstruction needed for any potential occupants. The property was deemed an area in need of rehabilitation in March 2011 and currently has a redevelopment plan which does not include residential housing. The Borough will amend the redevelopment plan to permit inclusionary zoning for the development of rental, non-age restricted apartments

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, July 2015.

as part of a mixed-use environment under 2 potential scenarios. Option 1: being horizontal mixed use permitting 60% of the net acreage for the development of rental apartments at a max density of 18 units/acre and retaining 40% of the acreage for commercial development to be situated along the parcels frontage on the White Horse Pike (Rt. 30). (12 acres x 18 units/acre x .20 = 216/5 = 43 affordable units-Option 1). Option 2: being vertical mixed-use with a minimum of 33.33% of the FAR to be commercial development and a maximum of 66.66% of the FAR to be residential development consisting of rental apartments. The first floor must contain commercial use, the second and third floors may contain residential units. As this is the Borough's preferred mixed-use development option an increase is incorporated allowing a max of 240 residential units. (240 units max x .20 = 48 affordable units — option 2)

8. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows through the implementation of Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income
9. The Borough shall meet its Third Round Prospective Need, including RDP and unmet need, in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:
 - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round Prospective Need, including RDP and unmet need, shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the Third Round Prospective Need, including RDP and unmet need, shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round Prospective Need including RDP and unmet need, in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
10. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Camden County NAACP, the Southern Burlington County NAACP, the Latino Action Network, and the New Jersey

Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

11. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
12. All new construction units shall be adaptable in conformance with P.L.2005, c.350 and all other applicable law.
13. As an essential term of this settlement, within ninety (90) days of Court's approval of this Settlement Agreement, the Borough shall amend its Housing Element and Fair Share Plan to be consistent with this agreement and shall adopt an ordinance providing for the adoption and/or amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.
14. The parties agree that if a decision of a court of competent jurisdiction in Camden County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. In the event that there is not an adjudication of municipal fair share obligations by (1) a court of competent jurisdiction in Camden County; (2) the Superior Court Appellate Division; or (3) the New Jersey Supreme Court; or (4) an administrative agency responsible for implementing the Fair Housing Act prior to the midpoint realistic opportunity review on July 1, 2020 pursuant to N.J.S.A. 52:27D-313, the Borough may apply to the court on notice to FSHC to amend the judgment in this matter establish a new Third Round prospective need obligation. In any resulting proceeding, any party shall have the right to take whatever position it wishes with respect to the manner in which the Third Round prospective need obligation should be calculated for the Borough in accordance with then-applicable law. This is the sole basis on which the municipality may seek to amend this judgment in accordance with 4:50-1. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in

this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

15. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, in a narrative format, by providing information regarding units that have developed in the Borough and the status of sites that are addressed in this agreement. The Borough agrees additionally to advise regarding affirmative marketing efforts and to respond to reasonable inquiries from FSHC.
16. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuild sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
 - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
17. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
18. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Ventura v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees not to

challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

19. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
20. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Camden County.
21. The provisions of this agreement are not deemed to be severable. If any section of this agreement shall be adjudged by a Court to be invalid, illegal or unenforceable in any respect, the remaining provisions of this agreement shall be void and of no effect.
22. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
23. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
24. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
25. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
26. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
27. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

28. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
29. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
30. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
31. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Borough of Stratford
Attn: Borough Clerk
307 Union Avenue
Stratford, NJ 08084
Phone: (856) 783-0600
Telecopier: (856) 783-7949
E-mail: johnkeenan@stratford.org

WITH A COPY TO:

Albert J. Olizi, Jr., Esquire
Mattleman, Weinroth & Miller, P.C.
401 Route 70 East, Ste. 100
Cherry Hill, NJ 08034
Phone: (856) 429-5507
Telecopier: (856) 216-1491
E-mail: aolizi@mwm-law.com

Please sign below if these terms are acceptable.

Sincerely,

Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of Stratford, with the authorization
of the governing body and Planning Board:

Josh Keenan

Dated: Nov. 09, 2016

Washed to Albert Blinn 11/11/16