

FILED

JUL 10 2018

CHRISTINE A. FARRINGTON,
J.S.C.

Prepared by the Court

In the Matter of the Application of the
Township of Mahwah,
Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-6281-15

Civil Action

PRELIMINARY JUDGMENT OF
COMPLIANCE AND REPOSE

This matter came before the court on July 10, 2018 for a hearing to determine the fairness of a settlement agreement (“Fairness Hearing”) between the Township of Mahwah and Fair Share Housing Center (FSHC) and Intervenors Crossroads Developer Associates and Garden Crossroads. The scope of the hearing also included a preliminary determination of the sufficiency of Mahwah’s Third Round Housing Element and Fair Share Plan. The court’s function at a Fairness Hearing is to determine whether the settlement between the Township of Mahwah, FSHC and Crossroad Developers Associates and Garden Crossroads, LLC and John Merrill is fair to the protected class in the context of meeting Mahwah’s constitutional requirement to provide affordable housing. According to New Jersey’s Constitution, municipalities must provide opportunities for the development of affordable housing for low and moderate income households, and that is the perspective from which the court must determine fairness, i.e. from the perspective of people with low and moderate income, and their opportunity to have affordable housing.

Present for the hearing were Michael P. Bolan, court appointed Special Master, Brian Chewcaskie, Esq., and Nylema Nabbie, Esq., Gittleman, Muhlstock and

Chewcaskie, LLP appearing on behalf of the Township and Joshua D. Bauers, on behalf of Fair Share Housing Commission. Also appearing were Robert Kasuba, Esq., Bisgaier Hoff, on behalf of Interveners, Crossroads Developer Associates and Garden Crossroads, LLC, and objector, Mahwah Town Center Redevelopers, LLC by their counsel, Bryan D. Plocker, Esq., Hutt and Shimanowitz, presenting testimony of their planner, J. Creigh Rahenkamp, NJPP.

Marked for identification and ultimately into evidence without objection were the following:

P-1 Crossroads Project Settlement Agreement

P-2 Letter dated May 14, 2018 memorializing Settlement between the Township and FSHC

P-3 Settlement Agreement Between the Township of Mahwah, John A. Merrill and Gary Montroy

P-4 Mahwah Township Resolution #257-18 dated May 31, 2018

P-5 Mahwah Township Resolution #163-18 dated March 12, 2018

P-6 Mahwah Township Resolution #258-18 dated May 31, 2018

P-7 Affidavit of Service of Nylema Nabbie, Esq.

P-8 Affidavit of Service of Carol Janelli

P-9 Notice of Motion to Approve the Township of Mahwah's Amended Spending Plan

P-10 Certification of Darlene A. Green, PP, AICP dated June 5, 2018

P-11 Certification of Tom Toronto dated June 5, 2018

P-12 2018 Affordable Housing Trust Fund Spending Plan, Township of Mahwah

P-13 Case Management Order of June 19, 20189

P-14 Letter from Nylema Nabbie, Esq., to all parties advising of adjourned date

P-15 Map of Affordable Housing Sites prepared by Maser Consulting

P-16 Map of Vacant Lands prepared by Maser Consulting

O-1 Review of Proposed Settlement Agreement Mahwah Township by J. Creigh Rahenkamp, NJPP

C-1 Report of Michael P. Bolan, AICP, PP

The Township of Mahwah by and through its attorney, Mr. Chewcaskie called Darlene A. Green, PP/AICP and the Township Planner to explain the basis for Mahwah's proposed Third Round Housing Element and Fair Share Plan. Ms. Green has a Bachelor of Arts in Architecture from Lehigh University and a Masters from Rutgers University in City and Regional Planning. Ms. Green is a senior associate planner with Maser Consulting, P.A. Ms. Green is licensed planner in State of New Jersey. Ms. Green has been a planner since 2007 and Mahwah's Planner since 2014. She has prepared or overseen 13 housing plans. In addition to the Township of Mahwah, Ms. Green plans for Demarest, Hillsdale, Northvale, and other towns in Bergen County. The court accepted Ms. Green as an expert in planning and affordable housing. Ms. Green testified regarding the Fair Share Agreement. Pursuant to the terms of the Agreement, the Township's obligations include a rehabilitation share of 7 units, prior round obligation of 350 and third round, including gap period present need and prospective of 830. Rehabilitation and third round numbers were generated by David N. Kinsey, Ph.D., PP, FAICP, New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated using the New Jersey COAH Prior Round (1987-1999) Methodology, July

2016. The Agreement stipulates that the Township does not accept the basis of the methodology nor the calculations proffered by Dr. Kinsey. Ms. Green testified and the Agreement provides the Township will meet its rehabilitation share with two homes completed by the Bergen County Home Improvement Program (BCHIP) in 2012, an additional two the Township intends to complete with assistance from BCHIP and three rehabilitations to be accomplished with at least \$30,000 from its affordable housing trust fund. The Prior Round Obligation of 350 units have been met with the units included in the Table of Prior Round Credits on Page 3 of the Agreement and P-15. The Township pursuant to the Agreement, and with consent of FSHC, is receiving credits for group homes. The Township has roughly 850 units of credit which have either been build or will be built. Under terms of settlement the gap need cannot be adjusted upward, but can be adjusted downward if there is a binding court determination in Region 1, or legislative action which reduces the number by 10%

Significant to the court's decision is the Township's participation in the Highlands Area which participation imposes further restrictions and conditions on development in the designated area. A significant portion of the Township in preservation area. The Fair Housing act requires a community in Highlands to have 20% set aside, which requirement the Township has agreed to codify in Township ordinances.

Ms. Green testified that Maser Consulting prepared a vacant land adjustment in 2015 to comply with the six month deadline set by the Supreme Court. P-16 is the vacant land inventory completed November 9, 2015. This first generation of vacant land analysis and was prepared under prior round rules. The Realistic Development Potential (RDP) was determined to be 37 units.

Thereafter, Ms. Green testified she participated in mediation sessions with the Special Master, and was directed by Mr. Bolan to add the Crossroads site as well as 440 Franklin Turnpike. Those additions added 163 units to the vacant land analysis. Ultimately, the RDP was calculated to be 250 units. The Township will satisfy its Third Round RDP of 250 as set forth in the Third Round RDP Table on page 3 of the Agreement.

Ms. Green testified that the Third Round Obligation of 830, minus the completed, on-the-ground credits allocated to the RDP and Unmet Need (585) resulted in a remaining unmet need of 245. Those units are addressed as set forth in the Third Round Unmet Need Table on Page 4 of the Agreement.

Ms. Green testified the RDP was calculated using the vacant properties, deducting environmental constrained areas, and then multiplying by 8 units per acre, followed by a calculation of the 20% set aside. Ms. Green admitted the rules permit higher and lower densities. She testified 8 units per acre density has been accepted in other municipalities where she serves as planner.

Ms. Green testified that the Mahwah MTCR site is proposed to be overlay zone for mixed uses. A total of 49 residential units would be permitted on the site generating 10 affordable residential units. The rezoning allocated 14 units to the acre and 30,000 square feet of non-residential space. Historically the Township had maximum of 14 units per acre. Ms. Green was not aware of any sites within the Township which had been developed with more than 14 units per acre.

Ms. Green testified that with regard to Crossroads, the Township was working on rezoning and amending the Master Plan amendment, to permit maximum of 800 residential units with 15% set aside.

One Fyke Road is also known as the Merrill property. Merrill would be rezoned for maximum of 42 units with a 20% set aside. The Merrill property is in the Highlands area.

Ms. Green testified that she is familiar with the tests set forth in the E.W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 336 (App. Div. 1996) (quoting N.J.S.A. 52:27D-311). In her opinion the settlement meets the requirements set forth in that case.

Mr. Plocker inquired on cross examination, the dates of construction of Society Hill I and II, Ramapo Brae, Norfolk, Franklin Heights and West Bergen Mental Health. It was established that all were constructed in or before 1995. Ms. Green testified that Madeline Rental and Senior units obtained their certificate of occupancy in 2016.

In response to questioning by Mr. Plocker, Ms. Green testified that Mahwah MTCR is not the contract purchaser for the entire tract on which their proposed project was to be built. She testified that fact figured into the Township's deliberations. Ms. Green noted that the site was not included in the RDP because it is not vacant. She stated no analysis was done specific to the MTCR site in setting the 14 unit per acre density. Ms. Green noted a chief difficulty of the site is the inability to accommodate on site the required number of parking spaces.

Ms. Green responded to questions regarding the Township's efforts to extend existing controls on affordable house. She testified the control expire at different times, and some have already expired. She testified the Township is engaging in outreach to

extend the controls on 20 additional units, having extended controls on 12 units to date. The Township would pay for the extension of controls by way of incentives.

Ms. Green testified the actual number for unmet need is 193.

Ms. Green testified that it is her understanding that group homes are eligible for credits. She further stated that she had dealt with New Concepts in other municipalities where she was planner and those units were accepted for credits.

Mr. Plocker called Creigh Rahenkamp, PP on behalf of the objector. Mr. Rahenkamp's report was marked into evidence as O-1 with an amended page 9. Mr. Rahenkamp holds a B.S. in Economics from the University of Pennsylvania and has done graduate work at the universities of Michigan, Wisconsin, Princeton, Temple and Georgetown. He has been a licensed planner in New Jersey since 1995. The court accepted him as an expert in planning and affordable housing without objection.

Mr. Rahenkamp testified that his client's property is 3.12 acres, adjacent to a train station and historically has had mixed uses, including retail. The property is located in the B-10 zone which permits commercial uses. He noted the proposed zoning ordinance would allow 30,000 square feet of commercial space and 40 residential units of which 4 would be affordable. Mr. Rahenkamp testified that the proposed development would fit within the same bulk requirements of the zone. It was his opinion that that the density of 14 units per acre was inappropriate in the location as train station locale densities are typically 30-40 units per acre. He further opined that the Township was engaging in "Magic Compliance" by setting the RDP low, and then generating credits by land which was "ignored." He testified that carry-overs should not be included in the RDP if previously constructed, as its not part of the statutory or regulatory framework. He stated

credits need to be applied in the era in which they occurred. He further opined that special needs housing could not be a compliance mechanism. Mr. Rahenkamp concluded that the unmet need was 208 units, but whether the court accepted his number or the Township's, the Settlement Agreement should not be approved because the unmet need must be addressed and is not forgiven. Mr. Rahenkamp testified MTCR and the Fyke property should be included in the vacant land adjustment and in doing so the RDP would increase. He further testified that the Township erred in using net as opposed to gross analysis of the VLA. As a result of the unmet need, and his perceived deficiencies in the Township's calculation, he opined that the Settlement Agreement was not fair to the protected class. On cross examination, Mr. Rahenkamp admitted that if his client was unable to assemble to total land package shown in the development plan the plan would change. He further admitted the proposed parking was not in compliance with B-10 zone requirements and the proposed parking included street parking which was prohibited on Franklin Turnpike. He admitted that his client did not seek to be included in the Settlement Agreement until December 2017, two years after the declaratory judgment action had been commenced. (The parties stipulated MTCR went into contract on 3.52 acres in Block 82, lots 1, 3, 17, 26, 29, and 30 on December 8, 2017)

Mr. Rahenkamp admitted that the VLA is a snapshot in time and was prepared prior to MTCR's participation and so the reason MTCR was not included therein.

With regard to the train station, Mr. Rahenkamp admitted NJ Transit does not own any land in the vicinity of the Mahwah Township train station, and there was no parking for the station. He admitted that transit villages is a planning concept which

generally includes mixed use, higher density, proximity to the train and significant commuter parking.

On cross examination it was unclear to the court whether Mr. Rahenkamp knew or acknowledged that part of MTCR's property was in a Highlands riparian and open water areas. Mr. Rahenkamp could not name any municipality with developments near train stations with densities of 30 units per acre.

He admitted on cross examination that MTCR was proposing 200 units on 3 ½ acres which would result in a density of 66. He admitted there were no developments in Mahwah which had densities higher than 15 units per acre.

The court appointed Master, Michael P. Bolan, AICP, PP testified. He has been practicing in New Jersey for almost 40 years. He graduated from the University of Virginia in 1972, B.A. Environmental Science, and holds a M.A. in Geography from Rutgers University, 1977. Mr. Bolan is a licensed professional planner in New Jersey, a member of the American Institute of Certified Planners and the American Planning Association. He is the court appointed master in twelve Bergen County municipalities as well as numerous others throughout the state. For the past thirty years he has been a private consultant providing planning services to municipalities, other public clients and the private sector.

Mr. Bolan testified he applied the East /West Venture criteria, because although in that case the plaintiff was a builder as opposed to a Township, the case provides a good framework to determine whether the interests of the protected class are adequately protected.

Mr. Bolan opined the Agreements provide for a substantial amount of affordable housing and meets criteria in East /West Venture.

Applying the five point test he found: 1. *The number of units being developed:* In this case, there are no affordable units being constructed by FSHC as the intervener/defendant. However, a result of the Settlement Agreement(s) is the plaintiff Township's adoption of zoning and other mechanisms to provide for affordable housing, and the Township's compliance with the constitutional obligation to provide its fair share of the regional need for low and moderate income housing. In addition, there is still some uncertainty concerning the methodology that might ultimately be used to establish affordable housing obligations, as the March 8, 2018 opinion concerning the fair share methodology from the Honorable Mary C. Jacobson, the Mercer County Assignment Judge, applies in a different Vicinage. Given that this Court's approval of a settlement is not an adjudication of the fair share obligation, the number of affordable housing units addressed in the settlement is reasonable and substantial. Mr. Bolan opined Township followed the former rules for vacant land adjustment and followed the prior round methodology as directed by the Supreme Court.

2. *The methodology by which the number of affordable units provided is derived.* The adjustment for insufficient vacant developable land was undertaken in accordance with COAH's Prior Round Rules, at N.J.A.C. 5:93-4.1 and 4.2. The methodology utilized in the Kinsey Report to calculate Third Round new construction obligations was designed to follow the Prior Round methodology used by COAH in 1994 to determine cumulative 1987-1999 fair share obligations as closely as possible, as directed by the Supreme Court in Mt. Laurel IV. Currently, there is no statewide agreed to methodology, and the FSHC

methodology has been utilized in over 200 settlements throughout the State. The FSHC has agreed to reductions from its published allocations of up to 40% in other vicinages, as opposed to the 35% incorporated here. Mr. Bolan concluded the methodology by which the number of affordable units provided is derived is valid and realistic.

3. ***Other contributions by the developer.*** This prong of the East/West Venture test originally applied to a plaintiff/developer. In this case the plaintiff/Township has agreed to the following:

- agreement to adopt a compliant Housing Element and Fair Share Plan and all implementing ordinances;
- agreement to adopt a mandatory set-aside ordinance;
- agreement to adopt inclusionary zoning;
- agreement to utilize a Township-owned property for affordable housing;
- agreement that 13% of affordable units shall be for very low income households;
- agreement that at least 25% of the Third Round Prospective Need shall be rental units;
- agreement that at least 50% of rental units shall be available to families;
- agreement that at least 50% of all affordable units addressing the Third Round Prospective Need shall be available to families;
- agreement to an age-restricted cap of 25% of affordable units;
- agreement that at least 50% of units shall be available to very low income and low income households;
- agreement to comply with the requirements of UHAC;
- agreement to adopt a spending plan; and,

- agreement to pay \$20,000 to FSHC for attorneys fees and costs
4. *Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.* The Township further agrees to take the steps necessary to amend and implement its Housing Element and Fair Share Plan in accordance with the terms of the settlement agreement and the zoning contemplated by the Agreement. The Township has agreed to adopt inclusionary housing zones and to utilize a Township-owned property for affordable housing. The Township has further agreed to adopt an affordable housing set-aside ordinance. The Township has provided funding to write down the cost of affordable units, and is proposing additional funding to write down the cost of low income units.
5. *Other factors that may be relevant to the fairness of the settlement.* The Agreement provides for a continuing monitoring program throughout its ten-year duration, including annual and triennial reporting requirements. This program will ensure that the interests of lower income households in the future will be advanced through the Court's approval. Mr. Bolan noted the Township has been a consistently good provider of affordable housing throughout the years, as evidenced by the 585 completed credits for the Third Round Obligation and the 350 completed credits for the Prior Round outlined in the FSHC Settlement Agreement. Mr. Bolan testified and stated in his report that in his experience no municipality has provided more credits towards its unmet need. The process of obtaining the Court's approval of the Settlement Agreements, the scrutiny these documents have received as a result of the intervention by FSHC and a property owner, and the conditions contained in this report requiring the Township to adopt a

HEFSP and certain ordinance amendments will allow the Township to move forward in the satisfaction of its constitutional obligation. Lastly, the Court's approval of the settlement is subject to a final compliance hearing.

Mr. Bolan recommended that the Court approve the Settlement Agreements and grant the Township a preliminary Judgment of Compliance and Repose. He opined the Agreements are designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time. His recommendation was conditioned upon compliance with the following conditions to be addressed within 120 days of the Court's Order, except as noted for the Crossroads ordinance, after which a final compliance hearing will be held:

1. The Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan consistent with the terms of this Agreement.
2. On or before August 26, 2018, the Mayor and Council shall adopt zoning ordinance amendments for the Crossroads site, in accordance with the terms of the March 2018 Settlement Agreement, permitting a maximum of 800 units, of which a maximum of 216 units will be age-restricted, and requiring a 15% set-aside for affordable units, all of which will be rental units.
3. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 21, Lots 21, 22 and 23 (commonly known as 1 Fyke Road) to permit a maximum

of 14 units per disturbed/impervious acre with a maximum of 42 total residential units with a 20% set-aside for affordable housing.

4. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 82, Lots 1, 3 through 17, 26, 29 and 30 (Mahwah Town Center) to permit mixed-use development, including nonresidential uses and multi-family residential units at a maximum density of 14 units per acre, with a 20% set-aside for affordable housing.

5. The Township shall subdivide Block 56, Lot 74 (70 Island Road) for a municipally sponsored 15 unit 100% affordable development for family and/or special needs housing.

6. The Mayor and Council shall adopt the mandatory set-aside ordinance outlined in Paragraph 10 of the Agreement, in a form satisfactory to the FSHC and Special Master.

7. The Township shall address the requirements of N.J.A.C. 5:93-5.5 concerning municipally sponsored construction for the Madeline Corporation age-restricted project and the 70 Island Road site.

8. The Township should provide documentation concerning the units on which affordability controls have been extended. The Township should also provide a certified statement from the building inspector that the units meet all code standards.

9. The Township should provide documentation concerning the West Bergen Mental Healthcare and the two New Concepts for Living alternative living arrangements indicating that they are eligible for credit.

10. The Mayor and Council shall adopt an updated Affordable Housing Ordinance(s) incorporating all of the provisions of the Settlement Agreement, applicable provisions of UHAC and COAH rules, and any other provisions that result from the adopted Housing Element and Fair Share Plan.

11. The Mayor and Council shall endorse the Spending Plan.

12. The Mayor and Council shall prepare an Affirmative Marketing Plan incorporating the revisions outlined in the Agreement, and shall adopt a Resolution adopting the Township's Affirmative Marketing Plan.

13. The Township should provide additional information as to the Bergen County Home Improvement Program for rehabilitated units and the administrative procedures for the Township rehabilitation program.

14. The Mayor and Council shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

15. The Mayor and Council shall appoint, if it has not already done so, a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting.

The monitoring and reporting requirements identified in Paragraphs 19, 20 and 21 of the FSHC Settlement Agreement shall be continuing conditions of the Court's approval.

The court notes that the proper procedure for a fairness hearing has been followed in this matter to make sure that the interests of low and moderate income households have been safeguarded. See Morris Cty. Fair Hous. Council v. Booton Twp., 197 N.J. Super. 359, 371 (Law Div. 1984). Adequate public notice of the hearing was mailed to appropriate persons and published. All parties having an interest in the matter appeared on the adjourned date.

The courts notes that a municipality's affordable housing obligation is comprised of three components: 1) present need (rehabilitation); 2) prior round (1987-1999); and 3) third round prospective need which runs from July 1, 1999 to June 30, 2025. "A municipality may provide its fair share of affordable units by 'means of any technique or combination of techniques' which satisfy its Mount Laurel obligation." E.W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 336 (App. Div. 1996) (quoting N.J.S.A. 52:27D-311).

The Special Master's report and testimony notes that the parties to the Settlement Agreement have agreed the Borough's Present Need (rehabilitation share) Obligation is 7

units, the Prior Round Obligation is 350 and the Prospective Need is 830. These obligations were determined based upon a report prepared by David Kinsey, PP/Ph.D. on behalf of FSHC. Ms. Green provided testimony at the Fairness Hearing regarding the methods Mahwah is using to fully satisfy the present need and prior round obligations. She also testified that Mahwah has demonstrated that sufficient vacant land is not available to allow for development of all 234 third round units and that the realistic development potential for the Borough is 35 affordable units. Special Master Bolan agreed with the findings of Ms. Green.

The court is not here to act as the legislature or municipal planner and substitute its plan for where affordable housing units should be built for that of the municipality. See Morris Cty. Fair Hous. Council, supra, at 370. “[A] trial judge may approve a settlement [regarding a municipality’s Mount Laurel obligation]” after a ‘fairness’ hearing to the extent the judge is satisfied that the settlement adequately protects the interests of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built.” E.W. Venture, supra at 328. The court must also consider whether the proposed settlement will result in the expedited construction of a significant number of low income housing units, Morris Cty. Fair Hous. Council, supra at 327. If the agreement is found to be fair, and the Borough fulfills its compliance obligations, then the court will order a judgment of repose.

The court holds, based upon the report and testimony of the Special Master, the testimony of the Township’s Planner, Darlene Green, the endorsement of the Settlement Agreement by Mr. Bauers on behalf of FSHC, and the exhibits marked into evidence, that the settlement agreement between the Township of Mahwah and Fair Share Housing

Center Settlement is fair to the protected class of low and moderate income persons. The court has considered the testimony of the objector and report and testimony of its expert, J. Creigh Rahenkamp. The court questions whether MTCR has standing to object, as it is not the contract purchaser of all the lots necessary to construct its proposed project. Mr. Rahenkamp admitted that the proposed project could not be constructed as represented if part of the assemblage failed. The court finds MTCR came to the table too late with too little. The court rejects MTCR's arguments urging the court refuse to approve the Settlement Agreements because it used the wrong methodology, failed to include MTCR in the VLA or included group homes as credits.

The court finds the Settlement Agreement provides for rezoning and other mechanisms which provide a realistic opportunity for achievement of the 35-unit RDP.

The Settlement Agreement between Mahwah and Fair Share Housing Center is fair because it will fully address the Borough's constitutional obligation to create a realistic opportunity for the construction of its fair share of affordable housing. The endorsement of the Settlement Agreement by the Special Master and FSHC speaks for itself. In coming to the conclusion that the Settlement Agreement is fair, the court has considered the criteria set forth in East/West Venture v. Borough of Fort Lee, *supra*, and agrees with and adopts the findings of the Special Master.

The Court approves the Settlement Agreements and grants the Township a preliminary Judgment of Compliance and Repose, as the Agreements are designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time. The recommended approval of the Township's Application for a Determination of Mount Laurel compliance is subject to the

following conditions, all of which should be addressed within 120 days of the Court's Order, except as noted for the Crossroads ordinance, after which a final compliance hearing will be held:

1. The Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan consistent with the terms of this Agreement.

2. On or before August 26, 2018, the Mayor and Council shall adopt zoning ordinance amendments for the Crossroads site, in accordance with the terms of the March 2018 Settlement Agreement, permitting a maximum of 800 units, of which a maximum of 216 units will be age-restricted, and requiring a 15% set-aside for affordable units, all of which will be rental units.

3. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 21, Lots 21, 22 and 23 (commonly known as 1 Fyke Road) to permit a maximum of 14 units per disturbed/impervious acre with a maximum of 42 total residential units with a 20% set-aside for affordable housing.

4. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 82, Lots 1, 3 through 17, 26, 29 and 30 (Mahwah Town Center(MTCR)) to permit mixed-use development, including nonresidential uses and multi-family residential units at a maximum density of 14 units per acre, with a 20% set-aside for affordable housing.

5. The Township shall subdivide Block 56, Lot 74 (70 Island Road) for a municipally sponsored 15 unit 100% affordable development for family and/or special needs housing.

6. The Mayor and Council shall adopt the mandatory set-aside ordinance outlined in Paragraph 10 of the Agreement, in a form satisfactory to the FSHC and Special Master.

7. The Township shall address the requirements of N.J.A.C. 5:93-5.5 concerning municipally sponsored construction for the Madeline Corporation age-restricted project and the 70 Island Road site.

8. The Township should provide documentation concerning the units on which affordability controls have been extended. The Township should also provide a certified statement from the building inspector that the units meet all code standards.

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10. The Mayor and Council shall adopt an updated Affordable Housing Ordinance(s) incorporating all of the provisions of the Settlement Agreement, applicable provisions of UHAC and COAH rules, and any other provisions that result from the adopted Housing Element and Fair Share Plan.

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14. The Mayor and Council shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

15. The Mayor and Council shall appoint, if it has not already done so, a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting.

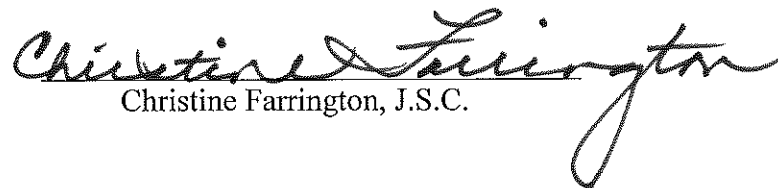
The monitoring and reporting requirements identified in Paragraphs 19, 20 and 21 of the FSHC Settlement Agreement shall be continuing conditions of the Court's approval.

If the Township of Mahwah fulfills the conditions of the settlement agreement, including the list of documents which need to be prepared and adopted by the Borough within 120 days of the court's order as set forth in the Settlement Agreement and the Special Master's report, the court will determine whether there has been compliance and make the appropriate determinations either by court order or a compliance hearing. See E.W. Venture v. Borough of Fort Lee, *supra*, at 328. At the time of the compliance hearing or entry of the compliance order, the court will determine if any of the enactments of the plan, ordinances and resolutions are ultra vires. *Id.* At 329.

The court extends immunity to November 12, 2018.

July 12, 2018

Opposed


Christine Farrington, J.S.C.