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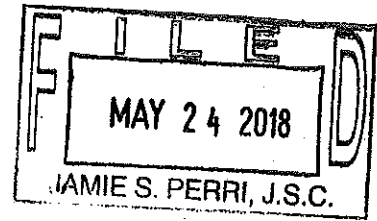
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**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
ATLANTIC HIGHLANDS,  
COUNTY OF MONMOUTH**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.: MON-L-2520-15

CIVIL ACTION – *MOUNT LAUREL***ORDER OF FAIRNESS AND  
PRELIMINARY COMPLIANCE**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Borough of Atlantic Highlands (hereinafter “the Borough” or “Atlantic Highlands”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”), which is still in full force and effect; and the Court having appointed Francis J. Banisch, III, P.P., A.I.C.P. as the Special Mount Laurel Court Master (hereinafter the “Court Master”); and FSHC having participated in the Borough’s DJ Action as an “interested party”; and FSHC’s expert, David Kinsey, PhD, P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all

municipalities in the state; and the Borough's professionals and Adam Gordon, Esq., of FSHC having entered into mediation supervised by the Court Master to try to agree on the magnitude of the Borough's fair share obligations, and how the Borough would comply with same; and the Borough's professionals and FSHC having agreed upon a form of Settlement Agreement (attached hereto as Exhibit P-1 and referred to hereinafter as the "FSHC Settlement Agreement"), which was executed by Adam Gordon, Esq., on behalf of FSHC; and the Borough Council having adopted a resolution on January 24, 2018 (attached hereto as Exhibit P-2) authorizing the Mayor of Atlantic Highlands Borough to execute the FSHC Settlement Agreement, which she subsequently did; and that at this point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for FSHC and the Borough to enter into a settlement regarding the Borough's Rehabilitation, Prior Round, Gap and Prospective Need obligations, instead of doing so through plenary adjudication of same; and the Court having set a date of May 8, 2018 for a Fairness Hearing to entertain approval of the settlement between FSHC and the Borough, and to determine whether said settlement is fair, reasonable and adequately protects the interest of very low, low and moderate income households; and the Borough having provided proper public and actual notice of the Fairness Hearing; and objections to the settlement having been received; and counsel for the Borough having prepared an Affidavit of Public Notice, attached hereto as Exhibit P-3, to document that proper notice of the Fairness Hearing had been given; and the Fairness Hearing having been held on May 8, 2018, during which Borough Exhibits P-1 to P-24 and Objector Exhibits O-1 to O-9, which are attached hereto, were marked into evidence; and the Court having considered the testimony taken during the Fairness Hearing, as well as the comments of counsel and the issues and concerns raised by the objectors; and the Court Master having recommended approval of the FSHC Settlement Agreement to the Court on the record during the Fairness Hearing, having found it to be in full compliance; and the Court having also

reviewed all of the documents submitted into evidence during the Fairness Hearing; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 24<sup>th</sup> day of May, 2018, as follows:

1. The Court finds and determines pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement, and on the basis of the testimony taken during a Fairness Hearing conducted on May 8, 2018; that the settlement between FSHC and the Borough is fair, reasonable and adequately protects the interest of very low, low and moderate income households, and the Court hereby approves the FSHC Settlement Agreement, which is attached hereto as Exhibit P-1.

2. The Court finds that the Borough's proposed affordable housing strategy as set forth within the FSHC Settlement Agreement is facially constitutionally compliant and provides a fair and reasonable opportunity for the Borough to meet its obligation under Mount Laurel IV, subject to the Borough's compliance with the conditions set forth hereinafter.

3. As a result of the Settlement between the Borough and FSHC, the Borough's Rehabilitation Obligation is 51, the Borough's Prior Round Obligation (1987-1999) is 86 and the Borough's Gap + Prospective Need Obligation (1999-2025) is 207.

4. The Borough has prepared a vacant land analysis, and, as a result of that analysis, the Borough, FSHC and the Court Master have agreed that the Borough is entitled to a Vacant Land Adjustment ("VLA"), such that it has a Gap (1999-2015) + Prospective Need (2015-2025) Realistic Development Potential ("RDP") of 42, and a remaining "unmet need" of 251.

5. The Borough will address its 51-unit Rehabilitation Obligation by working with Monmouth County, or by hiring a separate entity, to rehabilitate units within the Borough.

6. The Borough will satisfy its combined Prior Round, Gap + Prospective Need (1999-2025) RDP of 42 as follows:

- a) Springpoint Living Project: Ten (10) age restricted affordable units from the constructed and occupied 57-unit Springpoint Living age restricted project located at 202 First Avenue (Block 103, Lot 1.01).
- b) 95 First Avenue Project: One (1) family rental affordable unit from the four (4) unit constructed and occupied 95 First Avenue (Block 114, Lot 2) inclusionary project.
- c) Memorial Parkway Habitat For Humanity Project: One (1) family for-sale affordable unit and one (1) family rental affordable unit from the constructed and occupied 82-84 Memorial Parkway (Block 82, Lot 4) Habitat for Humanity duplex project.
- d) 35 First Avenue/2 Hennessey Blvd. Project: Five (5) family rental affordable units from the constructed and occupied 22-unit 35 First Avenue/2 Hennessey Blvd. project (Block 117, Lots 8.01 and 8.02).
- e) Leonard Avenue Habitat For Humanity Project: Two (2) family for-sale units and two (2) family rental affordable units from the proposed Habitat for Humanity 21 Leonard Avenue project (Block 136, Lot 1). This configuration of the project represents a minor modification to the terms of the settlement agreement which provided for four (4) family rental affordable units. The Court recognizes that counsel for both the Borough and FSHC agreed on the record to this minor modification which resulted in part from the consideration by the Borough of objections raised, and approves this modification as part of its approval of the settlement agreement.
- f) 60-64 First Avenue Project: Two (2) family rental affordable units from the 10-unit Atlantic Highlands Associates, II, LLC 60-64 First Avenue (Block 97, Lot 14) inclusionary project, which has been approved by the Planning Board and grading and civil engineering work is under way.
- g) 44-48 First Avenue Project: Three (3) affordable family rental units from the 13-unit 44-48 First Avenue project (Block 97, Lot 17), which has been approved by the Planning Board and grading and civil engineering work is under way.
- h) 158 First Avenue Project: Four (4) affordable family rental units from the proposed 18-unit 158 First Avenue (Block 101, Lot 4.02) P&C 2, LLC project, which has been approved by the Planning Board.
- i) 11 rental bonus credits.

7. The Borough will address its combined remaining Prior Round, Gap + Prospective Need (1999-2025) “unmet need” of 251 as follows:

- a) Springpoint Living Project: 47 age restricted affordable units from the constructed and occupied 57-unit Springpoint Living age restricted project located at 202 First Avenue (Block 103, Lot 1.01).
- b) Continuation Of Existing Zoning: The Borough will continue its existing zoning in the CBD, HBD, LI, and R-TH, which allows for multi-family and/or mixed-use development in those zones.
- c) Modification Of The Borough's OR Zone: The Borough will amend its Schedule of Uses in its Zoning Code for the OR Zone to allow for multi-family development as a conditional use.
- d) Modification of the Borough's Current Set-Aside Ordinance: The Borough's current Set-Aside Ordinance, which already applies to the CBD, HBD, LI and R-TH zones, and requires a twenty percent (20%) affordable housing set-aside, will be amended to include the OR-Zone, and will also be amended to require proper bedroom mixes and income distribution.
- e) Mandatory Set-Aside Ordinance ("MSO"): The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance ("MSO"), which will require that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or its Boards that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of twenty percent (20%). The MSO will not apply to the CDB, HBD, LI, R-TH and OR zones.

8. All other terms and conditions in the FSHC Settlement Agreement (Exhibit P-1) shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

9. Based up the testimony and evidence presented during the Fairness Hearing on May 8, 2018, Borough Ordinance 16-2006 (Exhibit P-8), which was adopted by the Borough on September 20, 2006 to rezone the 21 Leonard Avenue (Block 136, Lot 1) and other sites in the Borough for affordable housing purposes in accordance with the Borough's 2005 Housing Element and Fair Share Plan (Exhibit P-5), remains valid and the proposed four (4) unit affordable housing project on the 21 Leonard Avenue site is preliminarily declared suitable.

10. Within 120 days of the entry of this order, the Borough and its Planning Board shall (a) prepare, adopt and endorse a Housing Element and Fair Share Plan, which shall include a Spending Plan, and shall reflect all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), and will also satisfy the conditions listed in the Court Master's May 1,

2018 report (Exhibit P-4) on Pages 8-10; and shall (b) submit the adopted and endorsed Housing Element and Fair Share Plan, with all required supplementary documentation, to the Court, the Court Master and interested parties for final review and recommendation by the Court Master and for approval by the Court. Within 15 days of the completion of these tasks, the Court will schedule a Compliance Hearing for the Court to consider approval of the Borough's Housing Element and Fair Share Plan and the issuance of a Judgment of Compliance and Repose, which will provide the Borough and its Planning Board immunity from all Mount Laurel lawsuits through July 2, 2025. A Final Judgment of Compliance and Repose may issue without further hearing should the Court Master file a certification of compliance that all conditions of the settlement have been met and no written objection to the Court Master's certification is received.

11. The temporary immunity from Mount Laurel lawsuits that is currently in place for the Borough and its Planning Board will remain in place until one month after the date the final Compliance Hearing is held.

12. Counsel for the Borough shall provide copies of this Order to all counsel of record and to the Court Master within seven (7) days of receipt.



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**HONORABLE JAMIE S. PERRI, J.S.C.**