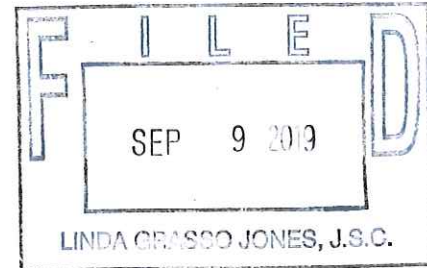


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Borough of Red Bank
Attorney Identification No. 020801988



IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
RED BANK FOR A DETERMINATION
OF MOUNT LAUREL COMPLIANCE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO.: **MON-L- 2540-15**
Civil Case
(*Mount Laurel*)

**FINAL THIRD ROUND JUDGMENT OF
COMPLIANCE AND REPOSE**

THIS MATTER, having come before the Court by McManimon Scotland & Baumann, LLC (Leslie G. London, Esq. appearing), attorneys for Petitioner Borough of Red Bank (the "Borough"), via a Declaratory Judgment Complaint to have the Court determine the Borough's fair share affordable housing obligation, to permit the Borough time to adopt a compliance plan and for temporary immunity from builder's remedy litigation pending the Declaratory Judgment action in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 2015 ("Mt. Laurel IV"); and the Court having appointed Frank J. Banisch, III, PP, AICP, as the Special Court Master; and Fair Share Housing Center ("FSHC") (Josh Bauers, Esq. appearing) having participated in the Declaratory Judgment action as an interested party; and the Borough and Fair Share Housing Center having entered into an Amended Settlement Agreement dated March 13, 2019 (the "Settlement Agreement"); and the Court having scheduled a Fairness and Preliminary Compliance Hearing (the "Fairness Hearing") on May 29, 2019 to consider approval of the Amended Settlement Agreement, and to determine whether the 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 the Special Court Master, Frank Banisch, PP, AICP having issued a report to the Court dated May 22, 2019 recommending that the Court approve the Amended Settlement Agreement subject to certain terms and conditions; and the Court having conducted a Fairness Hearing on May 29, 2019 and having considered the testimony of Peter Van den Kooy, PP, AICP and the Special Court Master; and the Court having found and determined pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996) and in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), *affd o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the Settlement Agreement and on the basis of the testimony taken during the Fairness Hearing conducted on May 29, 2019, entered an Order Approving Amended Settlement Agreement and Fixing Date for Rescheduled Final Hearing for Third Round Judgment of Compliance and Repose dated July 19, 2019, approving the Amended Settlement Agreement and finding it is fair, reasonable and adequately protects the interests of very low, low and moderate-income households and the mechanisms by which the Borough will meet its Prior and Third Round affordable housing obligation subject to the conditions imposed by the Special Master's Report dated May 22, 2019; and the Court having conducted a Final Compliance Hearing on August 22, 2019 and having considered the submissions of the Borough regarding public notice and in response to the conditions imposed in the Special Master's Report dated May 22, 2019, the subsequent Final Report of the Special Court Master dated August 14, 2019, a copy of which is attached hereto as Exhibit A, and the testimony of the Special Court Master; and it appearing to

the Court that the Borough has satisfied the conditions imposed by the July 19, 2019 Order Approving Amended Settlement Agreement and Fixing Date for Rescheduled Final Hearing for Third Round Judgment of Compliance and Repose, including but not limited to the adoption of a Housing Element and Fair Share Plan, the adoption of an Affordable Housing Ordinance, and affordable housing development overlay zoning amendments; and for the reasons set forth on the record on August 22, 2019; and for good cause having been shown;

IT IS on this 9th day of ~~August~~ ^{September}, 2019;

ORDERED, as follows:

1. The Borough has provided sufficient notice of the Final Compliance Hearing to the public and all interested parties; and
2. The Borough's Housing Element and Fair Share Plan is hereby approved, and the Borough is granted a Final Third Round Judgment of Compliance and Repose pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., applicable Council on Affordable Housing ("COAH") substantive regulations, and the Mt. Laurel case law, including Mt. Laurel IV; and
3. The Borough's Judgment of Compliance and Repose shall remain in effect for ten (10) years, commencing on July 1, 2015 and ending on July 1, 2025 during which time the Borough shall have complete immunity and repose from any and all Mt. Laurel lawsuits, including "builder remedy" lawsuits, "constitutional compliance actions", and any other lawsuit brought under Mt. Laurel principles except for actions brought to enforce the terms of this Order or the Settlement Agreement; and
4. The Borough's Rehabilitation obligation is 129, the Borough's Prior Round Obligation (1987-1999) is 427 and the Borough's Gap + Prospective Need Obligation (1999 – 2025) is 313.

5. The Borough is entitled to a Vacant Land Adjustment with a Realistic Development Potential ("RDP") of 92 units for both the Prior Round and Third Round. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstances occurs either with the RDP or the remaining portion of its allocation of the Round 3 regional need, the Borough shall have the express right to address the issue without any negative impact on its immunity from all Mt. Laurel lawsuits or from any related litigation claiming that the RDP should be increased in accordance with the terms of the Settlement Agreement.
6. The Borough's unmet need for both the Prior and Third Round is 478 units which has been addressed through the adoption of affordable housing development overlay zoning amendments.
7. Counsel for the Borough shall provide copies of this Order to all counsel of record, the Special Court Master and the Service List within seven (7) days of the date hereof.
8. The Court retains jurisdiction over this matter solely for purposes of enforcement of this Judgment of Compliance and Repose and the Amended Settlement Agreement by and between the Borough and Fair Share Housing Center dated March 13, 2019.



Linda Grasso Jones, J.S.C.

EXHIBIT A
REPORT OF SPECIAL COURT MASTER DATED AUGUST 14, 2019

B A N I S C H
A S S O C I A T E S , I N C .

Planning and Design

August 14, 2019

(via e-mail and regular mail)

The Honorable Linda Grasso Jones, J.S.C.
Monmouth County Superior Court
71 Monument Park
Freehold, New Jersey 07728

Subject: In the matter of the of the Borough of Red Bank, County of Monmouth
Docket No. MON-L-2540-15

Dear Judge Jones:

In my May 22, 2019 report to the Honorable Jamie Perri, I recommended that the Court approve the Settlement Agreement between the Borough of Red Bank and Fair Share Housing Center. I also advised that Red Bank would be eligible for a Judgment of Compliance and Repose, when the conditions found in my report and the May 22, 2019 Settlement Agreement were satisfied.

1. The proposals contained in Tables 1 and 2 and the applicable terms of the executed Settlement with FSHC shall be referenced in the Housing Element and Fair Share Plan.

The Housing Element and Fair Share Plan adopted on April 15, 2019 references all the terms of the executed settlement.

The HE/FSP shall be prepared according to the requirements of the Fair Housing Act (FHA), which identifies the "Essential components of the municipality's housing element" at N.J.S.A. 52:27D-310.

The HE/FSP was prepared in accordance with the FHA.

2. The Fair Share Plan document should include any proposed Ordinances and Resolutions needed to implement the Plan, including zoning amendments, an Affordable Housing Ordinance, a Development Fee Ordinance, an Affirmative Marketing Plan, a Rehabilitation Program description and Manual, a Spending Plan, resolutions appointing an Administrative Agent and a Municipal Affordable Housing Liaison, a resolution adopting the Housing Element and Fair Share Plan (Planning Board) and a resolution endorsing the Housing Element and Fair Share Plan (Governing Body).

The following documents have been adopted to address this requirement:

- Resolution 2019-12 adopting the Housing Element and Fair Share Plan, adopted April 15, 2019

111 Main Street, Flemington, NJ 08822

908-782-0835/908-782-7636(fax) banisch@banisch.com

- Resolution 19-128 Borough Council endorsing the Housing Element and Fair Share Plan, adopted May 8, 2019
- Ordinance 2019-18, Affordable Housing Ordinance, adopted April 24, 2019
- Ordinance 2019-18, Affordable Housing Ordinance, which includes the Mandatory Set-Aside Ordinance, April 24, 2019
- Resolution 19-131, Affirmative Marketing Plan approval resolution and Affirmative Marketing Plan, adopted May 8, 2019
- Resolution 18-277, appointing and Affordable Housing Administrative Agent and designating a Municipal Housing Liaison, adopted February 26, 2019
- Resolution 19-129, adopting the Spending Plan, adopted May 8, 2019 (*See comments below and Spending Plan*)
- Resolution 19-130, intent to bond in event of shortfall, adopted May 8, 2019
- Chapter 205. Affordable Housing, Article III Mandatory Affordable Housing Fees
- Ordinance 2019-19 removing the Affordable Housing Overlay District One in compliance with the settlement agreement, adopted April 24, 2019
- Affordable Housing Plan forms worksheet for mandatory set-aside
- Resolution 19-132, Operating Manual for rehabilitation program, adopted May 8, 2019
- Resolution 19-133, First-Time Homebuyer Program Manual, adopted May 9, 2019
- Certifications for existing units including Supportive and Special needs survey for Collaborative Support Programs of NJ and Mortgage notes/deeds for affordable housing sites

3. *The Spending Plan must be prepared, submitted to the Special Master for review and comment, adopted by the Planning Board as part of the Plan and by the Borough Council as a separate action and submitted to the Court for approval before the Borough will be permitted to expend any funds from its Affordable Housing Trust Fund.*

The May 2019 Spending Plan was adopted through Resolution 19-129. The majority of programmed funds will be utilized for the rehabilitation program, affordability assistance and a first-time homebuyer program. The Spending Plan conforms with minimum requirements for affordability assistance (30% of fees) and the plan will limit administrative expenses to 20% of the total of development fees collected through July 2025.

I note that \$69,361.95 has been expended for administrative costs through December 31, 2018, representing 29% of the funds generated. The Borough should assure that no more funds are used for administrative expenses until the collection of fees renders the Administrative share below the 20% cap. Going forward from that point, the Borough must adhere to the 20% cap, as outlined in the Spending Plan.

4. *All proposed inclusionary and 100 percent affordable housing development zoning amendments must be prepared, reviewed by the Special Master, and adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.*

- Ordinance 2019-18, Affordable Housing Ordinance, was adopted on April 24, 2019.

5. *The Borough will need to prepare and adopt an Affordable Housing Ordinance that reflects all provisions of the settlement agreement as well as applicable UHAC and COAH Rules.*

- Ordinance 2019-18, Affordable Housing Ordinance, includes the Mandatory Set-Aside Ordinance.

In addition, an Affirmative Marketing Plan Resolution consistent with the terms of the settlement agreement must be prepared and adopted.

- Resolution 19-131, Affirmative Marketing Plan approval resolution and Affirmative Marketing Plan, adopted May 8, 2019.

6. *If it has not done so already, the Borough will need to contract with one or more Administrative Agents.*

- Resolution 18-277, appoints an Affordable Housing Administrative Agent.

7. *If it has not done so already, the Borough will need to create the position of Municipal Housing Liaison.*

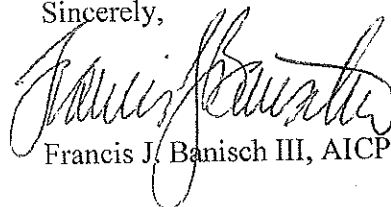
- Resolution 18-277 includes designation of the Municipal Housing Liaison.

8. *In addition to the above referenced conditions in my May 22, 2019 report, the Borough was directed to submit a crediting chart to be attached to the Order approving the Judgment of Compliance and Repose.*

- The Borough has submitted the attached crediting charts, identified as Prior Round Calculation and Third Round Calculation and dated July 15, 2019.

Based upon the above, I recommend that the Borough be granted a final judgment of compliance and repose. The monitoring and reporting requirements identified in the Settlement Agreement will remain continuing conditions of the Court's approval.

Sincerely,



Francis J. Banisch III, AICP, PP

cc via email: Adam Gordon, Esq.
Leslie London, Esq.
Julia Bordelon, PP, AICP
Supreme Court service list

SUPREME COURT/MT. LAUREL SERVICE LIST

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Prior Round Calculation

Borough of Red Bank

Date: July 15, 2019

Red Bank Obligations Summary: Prior Round					
	Obligation (RDP)	Affordable Units	Bonus Credits	Total Credits	Notes
	Status				
		427			
Prior Round Compliance Mechanism					
Family For Sale					
1 RW River's Edge	Existing	2	0	2	
2 Bergen Square	Existing	10	0	10	
	Subtotal	12	0	12	
Family Rental					
3 Locust Landing	Existing	6	0	6	640 units total, Middletown receives credit for 34
4 MW @ Red Bank, LLC (Westside Lofts)	Existing	10	0	10	
5 Popkin	Approved	2	0	2	
6 Denholtz	Under Construction	9	0	9	
Oakland Square (RE Monmouth/RB)					
7 West	Existing	12	0	12	
8 Tudor Village Apartments	Approved	1	0	1	
	Subtotal	40	0	40	
Age Restricted Rental					
9 River Street School	Existing	51	0	51	5162 units total, Middletown receives credit for 11
10 Wesleyan Arms	Existing	60	0	60	
	Subtotal	111	0	111	
	Subtotal of all	163	0	163	
	Total (Credits + Bonus)	163			
	Obligation (RDP)	0			
	Surplus (Total Credits - RDP Obligation)	163			
	Remaining Unmet Need Obligation (Total Credits - Unmet Need Obligation)	264			

CME Associates

Date: July 15, 2019

Borough of Red Bank

Third Round Calculation

Red Bank Obligations Summary: Third Round					
	Obligation (RDP)	92			
	Obligation (Unmet Need)	221			
	Limitation Type (RDP)	Limit	Provided		Notes
	Min. Rentals	23	36		N.J.A.C. 5:93-5.15(a): 0.25(RDP) = 0.25(92) = 23
	Min. Family Rental	12	33		Per settlement agreement
	Max. Age Restricted Units	23	0		Per settlement agreement
	Min. Family Units	46	73		Per settlement agreement
Third Round Compliance Mechanism					
	Status	Affordable Units	Bonus Credits	Total Credits	Notes
Family For Sale					
1 Cedar Crossing	Existing	36	0	36	
2 Azalea Gardens (Ray Rap)	Under Construction	2	0	2	
3 Brownstones (Yellowbrook/Mumford)	Under Construction	2	0	2	
	Subtotal	40	0	40	
Family Rental					
4 VNA Redevelopment Site	Proposed	28	23	51	
5 Riverwalk Commons	Under Construction	2	0	2	
6 Fortune Square	Built	3	0	3	
7 West Front Street Partners, LLC	Built	0	0	0	Payment-in-Lieu
	Subtotal	33	23	56	
Supportive/Special Needs Housing					
8 Collaborative Support Programs of NJ	Built	3	0	3	
	Subtotal	3	0	3	
	Subtotal of all	76	23	99	
	Total (Credits + Bonus)	99	-	-	
	Obligation (RDP)	92	-	-	
	Surplus (Total Credits - RDP Obligation)	7	-	-	
	Remaining Unmet Need Obligation (Total Unmet Need Obligation - Surplus)	214	-	-	

CME Associates