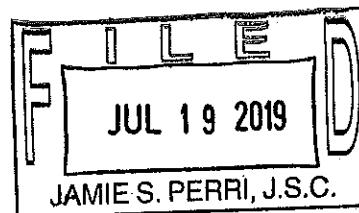


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**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
RED BANK FOR A DETERMINATION  
OF MOUNT LAUREL COMPLIANCE**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO.: MON-L- 2540-15

Civil Case

*(Mount Laurel)*

**ORDER APPROVING AMENDED  
SETTLEMENT AGREEMENT AND  
FIXING DATE FOR RESCHEDULED  
FINAL HEARING FOR  
THIRD ROUND JUDGMENT  
OF COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by McManimon Scotland & Baumann, LLC, Leslie G. London, Esq. appearing on behalf of declaratory plaintiff, Borough of Red Bank (hereinafter "the Borough" or "Red Bank") via Declaratory Judgment 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"); and the Court having appointed Frank J. Banisch, III, AICP, PP, as the Special Mount Laurel Court Master (hereinafter the "Court Master"); and Fair Share Housing Center ("FSHC") having participated in the Borough's DJ Action as an "interested party" and not as a formal Intervenor but the parties having agreed that FSHC will be deemed an intervenor as part of settling the matter, and the Borough's professionals and FSHC having agreed upon a form of Amended Settlement

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Agreement (Exhibit P-4) and together with all exhibits thereto, 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 March 13, 2019 (Exhibit P-5) authorizing the Mayor of Red Bank to execute the FSHC Settlement Agreement, which he subsequently did on March 13, 2019 ; and that at this point in the process resulting from the Mount Laurel IV decision, it is appropriate for FSHC and the Borough to have arrived at a settlement regarding the Borough's third round present and prospective need, instead of doing so through plenary adjudication of the third round present and prospective need and prior round need; and the Court having set the date of May 29, 2019 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 interests of low and moderate-income households; and the Borough having provided proper public and actual notice of the Fairness Hearing (Exhibits P-1 and P-2); and no written objections to the Settlement having been received; and counsel for the Borough having prepared an Affidavit of Public Notice of Leslie G. London, Esq., to document that proper notice of the Fairness Hearing had been given (Attachment A); and the Fairness Hearing having been held on May 29, 2019, during which Exhibits P-1 to P-5 were marked into evidence; and the Court having considered the testimony of Peter Van den Kooy, PP, AICP, and the Court Master taken during the Fairness Hearing, as well as the comments of counsel; and the Court having 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 19 day of July, 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, 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 FSHC Settlement Agreement (Exhibit P-4), and on the basis of the testimony taken during the Fairness Hearing conducted on May 29, 2019 , that the Settlement between FSHC and the Borough is fair, reasonable and adequately protects the interest of low and moderate-income households, and the Court hereby approves the FSHC Settlement Agreement which includes the Borough's preliminary compliance mechanisms (Exhibit P-4).

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 129, the Borough's Prior Round Obligation (1987-1999) is 427 and the Borough's Gap + Prospective Need Obligation (1999-2025) is 313.

4. The Borough's rehabilitation obligation will be addressed through the Borough's Rehabilitation Program, which will be reactivated as part of the FSHC Settlement Agreement either through an in-house program or contracting with a qualified outside entity, with that decision to be made during the compliance phase of this matter.

5. The Borough has a Prior Round prospective need of 427 units. COAH granted Prior Round substantive certification to the Borough with a realistic development potential (RDP) of zero (0) units and 427 units of unmet need. The Borough has satisfied 163 units of

unmet need through the following mechanisms.

Project	Affordable Units/Credits	Unit/Credit Type	Status
Locust Landing Block 84/Lot 70.02	6	Family Rental	Built
MW @ Red Bank, LLC (Westside Lofts) Blocks 35; 37; 38; 62/Lots 7, 6.01, 7, 8.01, 10, 10.01; 1; 8	10	Family Rental Apartments and Duplexes	Built
Popkin Block 36/Lot 8, 23.01-23.06	2	Family Rental Apartments	Site Plan Approval 1/3/19
Denholtz Block 63/Lot 1.01, 3, 4, 8, 9, 10, 10.01	9	Family Rental Apartments	Site Plan Approval 11/5/18
Oakland Square (RB Monmouth/RB West) Block 42/Lot 19.01	12	Family Rental/Community Residence	Built
Tudor Village Apartments, LLC Block 103/Lot 13.20	1	Rental Apartments	Site Plan Approval 2/4/16
River Street School Block 74/Lot 5.02	51	Age-Restricted Rental	Built
Wesleyan Arms Block 33/Lot 6.01	60	Age-Restricted Rental	Built
RW Rivers Edge Blocks 82; 83/Lots 17; 5, 6.01, 6.02	2	Family-for-Sale Townhomes	Built
Bergen Square Block 75.01/Lot 82.01	10	Family-for-Sale Townhomes	Built
<b>Total Prior Round Credits</b>	<b>163</b>	-	-
<b>RDP Obligation</b>	<b>0</b>	-	-
<b>Unmet Need Obligation (Prior Round - RDP)</b>	<b>427</b>	-	-
<b>Remaining Unmet Need</b>	<b>264</b>	-	-

6. The Borough has a Third Round realistic development potential (RDP) of 92 units, with an unmet need of 221 units. The RDP will be satisfied as follows, with 7 credits in

excess of RDP being applied to the unmet need:

<b>1999-2025 Third Round Obligation</b>			
55 West Front Street/West Front Street Partners, LLC Block 30/Lot 10.01	-	Payment-in-lieu	Site Plan Approval 3/20/17
Collaborative Support Programs of NJ Block 23/Lot 2	3	Supportive/Special Needs	1998
VNA Redevelopment Site Block 3/Lots 2.01, 4.01, 6, 7.01, 9.01	28	Family Rental	Proposed
Riverwalk Commons Block 29/Lot 5.01	2	Family Rental	Under Construction
Fortune Square Block 75.01/Lot 86	3	Family Rental	Built
Brownstones (Yellowbrook/Mumford) Block 75.03/Lots 46, 47, 48.01, 53, 54.01, 56	2	Family Apartments For- Sale/Rental TBD	Under Construction
Cedar Crossing Blocks 75.01; 75.03/Lots 83, 84, 85; 50.01, 69	36	Family-for-Sale Townhomes	Built
Azalea Gardens (Ray Rap) Block 58/Lots 1, 2, 3, 4, 5, 6	2	Family-for-Sale Single- Family Homes	Under Construction
<b>Bonus Credits</b>	<b>23</b>	-	-
<b>Total Credits</b>	<b>99</b>	-	-
<b>RDP Obligation</b>	<b>92</b>	-	-
<b>Unmet Need Units</b>	<b>7</b>	-	-
<b>Unmet Need Obligation* (Third Round - RDP)</b>	<b>221</b>	-	-
<b>Remaining Unmet Need</b>	<b>214-</b>	-	-

7. The remaining unmet need of 214, and the remaining Prior Round unmet need of 264, shall be addressed through the following mechanisms in paragraphs 7 through 9 of this Order:

The Borough shall maintain the underlying zoning in the areas covered by the AH-1 Overlay Zone, Train Station Overlay Zone, and Design District Overlay Zone permitting residential development at least the densities specified in those zones in the Borough zoning code current as

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of the date of execution of the FSHC Settlement Agreement provided that the set-aside provisions shall be revised to be in accordance with the other terms of the Agreement.

8. The Borough shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments as follows:

Total number of Rental of Sale Units	Minimum Percentage of Affordable Units
10 and under	none
11-25	10%
26-150	15%
151-215	17.5%
216 and over	20%

Developers of 10 units and under will be required to pay the Borough's development fee.

Developers of 11 units and above will be required to provide at least 70% of the units required, on site and will have the option to satisfy the remaining obligation with either (a) off-site affordable units OR (b) a Payment In Lieu of such units in accordance with N.J.A.C. 5:93-8.10(c) and N.J.A.C 5:97-6.4(c)3, provided that the Borough will only accept a Payment in Lieu if at the time of application the applicant can demonstrate that the Payment in Lieu will create an equivalent number of new construction or gut rehabilitation affordable units to those that would have been provided on site, which off-site or payment in lieu units, when combined with the on-site units, shall be consistent with the bedroom distribution, very-low-/low-/moderate-income split and all other terms of the FSHC Settlement Agreement. Off-site affordable units or units to be produced through a Payment in Lieu will be subject to the same phasing requirements in N.J.A.C. 5:93-5.6(d) as on-site units. All applicants for a development of 11 units and above in the Borough will be required to include an Affordable Housing Plan, the form of which shall be

finalized by the Borough with the approval of FSHC prior to the Final Compliance Hearing in this matter, as a stand alone document with their applications for any form of land use approval that details how these requirements will be met, and such plan, as may be modified during the land use review process consistent with the terms of the FSHC Settlement Agreement, shall be part of all approvals of development of 11 units or more in the Borough beginning with the date of the adoption of the ordinance.

9. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of eleven or more. The form of the ordinance shall be finalized prior to Final Judgment being issued in this matter through collaboration between FSHC, the Special Master, and representatives of the Borough. The ordinance, beginning with the date of its adoption, shall supersede both the existing 20 percent set-aside ordinance adopted in response to COAH's Second Round substantive certification in §490-153 and the existing 11 percent growth-share ordinance adopted in response to COAH's Third Round rules in Chapter 205, Article II.

10. The Borough will provide a realistic opportunity for the development of affordable housing for the VNA Redevelopment Site through executing a redevelopment agreement with the redeveloper of that site within the time frames set forth in the FSHC Settlement Agreement which provides for a minimum of 189 total units including on-site family rental affordable units totaling 28, or 15 percent of the total number of units built on the site, whichever is greater, and otherwise in compliance with the terms of the FSHC Settlement Agreement. The mandatory affordable housing set aside ordinance shall not apply to the VNA Redevelopment Site which shall instead be governed by the aforementioned terms. The Borough

shall also maintain existing inclusionary zoning on the sites and zones previously specified.

11. On or before August 8, 2019, the Borough shall file with the Court a duly-adopted and endorsed Housing Element and Fair Share Plan, including a Spending Plan, reflecting all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-4), along with all adopted implementing ordinances, resolutions and exhibits addressing all of the conditions of Pages 7-8 of the Court Master's May 22, 2019 Report, after first providing copies of all documents filed with the Court to the Court Master and FSHC for review and comment.

12. The date for the Rescheduled Final Compliance Hearing, which is being carried from July 17, 2019, which was the initial date scheduled for the Final Compliance Hearing, shall be on August 22, 2019 at 1:30 p.m., before the Honorable Linda Jones, J.S.C., at the Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey, for consideration and approval of the Borough's Housing Element and Fair Share Plan. Th

13. Notice for the Final Compliance Hearing initially scheduled for July 17, 2019 was published by the Borough in a newspaper of general circulation in Monmouth County, Ocean County and Mercer County, and actual notice of the Compliance Hearing was also mailed to the Borough's Service List, as set forth in the Affidavit of Publication and Affidavit of Service of Leslie G. London, Esq. (Attachments B and C).

14. The Public Notice for the Final Compliance Hearing, initially scheduled for July 17, 2019, provided for objections to be filed with the Court and with the Borough prior to the July 17, 2019 Hearing date and none were received.

15. The Court Master shall submit his report to the Court no later than August 15, 2019, opining whether the Borough's Housing Element and Fair Share Plan creates a realistic

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opportunity to satisfy the Borough's fair share of the regional need for, housing affordable to low and moderate-income housing.

16. Upon such a finding, the Court shall issue a Final Judgment of Compliance and repose; which once entered, will provide the Borough and its Planning Board immunity from all Mount Laurel lawsuits through July 1, 2025, except actions to enforce the terms of the FSHC Amended Settlement Agreement. A Final Judgment of Compliance and Repose may be issued 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.

17. 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.

18. 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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Jamie S. Perri, J.S.C.

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EXHIBITS MARKED INTO EVIDENCE AT HEARING

P1 Legal Affidavit of Publication – Star Ledger  
P2 Legal Affidavit of Publication – Asbury Park Press  
P3 CV Peter Van Den Kooy, PP, AICP  
P4 March 13, 2019 Amended Settlement Agreement  
P5 Borough of Red Bank

ATTACHMENTS TO ORDER

Attachment A – Affidavit of Publication of Notice of May 29, 2019 Fairness Hearing  
Attachment B - Affidavit of Publication of Order Fixing Date for Final Compliance Hearing and  
Notice of Final Compliance Hearing  
Attachment C - Affidavit of Service of Order Fixing Date for Final Compliance Hearing and  
Notice of Final Compliance Hearing