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IN THE MATTER OF THE BOROUGH OF WATCHUNG FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET COUNTY DOCKET NO.: SOM-L-902-15 (MOUNT LAUREL) *Civil Action* **ORDER ON FAIRNESS AND PRELIMINARY COMPLIANCE HEARING**

THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Borough of Watchung ("Borough"), Albert E. Cruz, Esq., appearing, in the presence of Joshua D. Bauers, Esq., attorney for Interested Party, Fair Share Housing Center, Inc. ("FSHC"), by way of Fairness and Preliminary Compliance Hearing held on August 9, 2018 pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") and Morris County Fair Housing

Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984); and the Court having considered the report dated August 6, 2018 and the testimony of the Court-appointed Special Master, Francis J. Banisch III, PP, AICP, the testimony of the Borough's Planner, Marcia R. Shiffman, PP, AICP, LLA, and the Court having considered the Settlement Agreement entered into between the Borough and FSHC last signed June 7, 2018; and the Court having considered the testimony and presentations of the Borough, the Special Master, FSHC at the time of the hearing; and good cause having been shown;

IT IS on this 19th day of September, 2018, **ORDERED** that:

1. The Court finds that: (a) the Settlement Agreement has apparent merit; (b) notice was given to all members of the protected class and others who have an interest in the settlement; (c) a hearing was conducted on the Settlement Agreement where those affected had sufficient time to prepare; and (d) the Settlement Agreement is fair and reasonable to members of the protected class, low and moderate income persons.

2. The Court further finds that the Settlement Agreement between the Borough and FSHC is fair and adequately protects the interests of low and moderate income persons within the Borough's housing region based upon the criteria set forth in

East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel litigation; and

3. The Court preliminarily finds that the Borough's Planner's testimony regarding the steps to implement the Settlement Agreement is facially constitutionally compliant and provides a fair and reasonable opportunity of at least 180 days from the date of this Order for the Borough to meet its obligation under Mount Laurel IV, including satisfaction of the list of conditions set forth in the Court's Special Master's report of August 6, 2018, attached as Exhibit A, and subject to the Court's approval by way of a Final Compliance Hearing to be held after the one-hundred and eighty (180) day period as hereinafter set forth; and

4. Income limits for all units that are part of the Borough's Housing Element and Fair Share Plan and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls ("UHAC") pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within sixty (60) days of the publication of determinations of median income by the United States of America Department of Housing and Urban Development ("HUD") as follows:

(a) Regional income limits shall be established for the region that the Borough is located within based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four (4) is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four (4). The income limit for a moderate-income unit for a household of four (4) shall be eighty (80%) percent of the regional weighted average median income for a family of four (4). The income limit for a low-income unit for a household of four (4) shall be fifty (50%) percent of the HUD determination of the regional weighted average median income for a family of four (4). The income limit for a very low income unit for a household of four (4) shall be thirty (30%) percent of the regional weighted average median income for a family of four (4). These income limits shall be adjusted by household size based on multipliers used by

HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

(b) The income limits attached as Exhibit B are the result of applying the percentages set forth in paragraph 4(a) above to HUD's determination of median income for FY 2018, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph 4(a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

5. In establishing sale prices and rents of affordable housing units, the Borough Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

(a) The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to paragraph 4 above. In no event shall the maximum resale price established by the Borough Administrative Agent be lower than the last recorded purchase price.

(b) The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine (9%) percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

6. A Final Compliance Hearing is hereby scheduled after one-hundred and eighty (180) days from the date of this Order, by which time the Borough shall have complied with the above-referenced conditions, shall have submitted to the Special Master for review and comment the Borough's Housing Element and Fair Share Plan and all Resolutions and Ordinances required to implement the Housing Element and Fair Share Plan, and shall have provided for the Borough Planning Board to finalize and

adopt the Housing Element and Fair Share Plan and the Borough Council to endorse same and to adopt all necessary effectuating Resolutions and Ordinances; and

7. Prior to or at the Final Compliance Hearing, the designated Redeveloper for Block 74.02, Lots 19.01, 19.02 and Block 73.04, Lots 5 and 10, ("Property"), as shown on the Borough Tax Map, shall file a motion before this Court to remove that deed restriction contained in that Developer's Mount Laurel Agreement, dated August 25, 1988, entered into by Elizabeth Medical Associates, P.A., Pension Trust; Burnheade Associates; Gaetano Avagliano; Richard and Lawrence Zirinsky ("Developers"); Crestwood Coalition for Proper Planning in Watchung; Watchung Coalition and the Borough recorded on October 13, 1988 in the Somerset County Clerk's Office in Book 1705, beginning at page 96, as amended, restricting the development of the Property.

8. The temporary immunity previously granted to the Borough herein is hereby extended until the entry of a Final Judgement of Compliance and Repose in this matter; and

9. The Borough is relieved from any further obligation to contribute to the costs of the Special Methodology Master, Richard Reading; and

10. A copy of this Order shall be served upon all parties on the service list in this matter within five (5) days of the Borough's receipt thereof.

/S/ THOMAS C. MILLER, P.J.Cv.

HONORABLE THOMAS C. MILLER, P.J.Civ.

Opposed ____

Unopposed X