

PRIME & TUVEL

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Attorney for Defendant, Township of Mansfield

TOWER GATE ASSOCIATES,

Plaintiff,

v.

TOWNSHIP OF MANSFIELD and
PLANNING BOARD OF THE
TOWNSHIP OF MANSFIELD,*Defendants.*

:
 : SUPERIOR COURT OF NEW JERSEY
 : BURLINGTON VICINAGE
 : LAW DIVISION
 :
 : DOCKET NO. BUR-L-001739-18
 :
 : CIVIL ACTION
 :
 : **FINAL ORDER OF COMPLIANCE,**
 : **APPROVAL OF SPENDING PLAN,**
 : **AND JUDGMENT OF REPOSE**
 :
 :
 :

THIS MATTER, having been presented to the Court by Timothy M. Prime, Esquire, Prime and Tuvell, attorney for Defendant Township of Mansfield (the “Township”); and Christopher Norman, Esquire, attorney for the Mansfield Planning Board (the “Planning Board”) in the presence of Emily Smith, Esquire, attorney for Interested Party Fair Share Housing Center (“FSHC”); David J. Banisch, PP/AICP, Court Appointed Special Master (“Special Master”); and Richard Hoff, Esquire, Bisgaier Hoff, attorney for Plaintiff, Tower Gate Associates; and

IT APPEARING that the New Jersey Supreme Court, in Mount Laurel II, ruled that each municipality in New Jersey has a constitutional obligation to provide its fair share of the region’s affordable housing needs; and

IT FURTHER APPEARING that, in response to Mount Laurel II, the New Jersey Legislature enacted the New Jersey Fair Housing Act, which created the Council on Affordable Housing (COAH) to supervise and implement fair share affordable housing plans in New Jersey municipalities; and

IT FURTHER APPEARING that the New Jersey Supreme Court, in Mount Laurel IV, as a result of inaction by COAH, vested jurisdiction over municipal fair share affordable housing plans in the New Jersey judiciary; and

IT FURTHER APPEARING that Mansfield Township (the “Township”) and the Township Planning Board (“Planning Board”) are the Defendants in the instant case, instituted by Plaintiff Tower Gate Associates (“Tower Gate”, being a “Builder’s Remedy” litigation, concerning the Township’s constitutional affordable housing obligation; and

IT FURTHER APPEARING that, to resolve this litigation, Tower Gate, the Township and the Planning Board entered into Settlement Agreement dated November 18, 2019, and a First Amendment to Settlement Agreement dated December 24, 2019 (collectively the “Settlement Agreement”), providing for, *inter alia*, the adoption by the Township and Planning Board of a zoning ordinance amendment establishing stipulated densities and affordable housing on the Tower Gate property; and

IT FURTHER APPEARING that as part of, and in addition to, resolving this litigation with Tower Gate, the Township and Planning Board prepared a Housing Element and Fair Share Plan, dated December 24, 2019, including a Spending Plan for the Township's affordable housing trust fund (collectively the “draft HE/FSP”), to resolve and finalize the Township’s Second and Third Round constitutional affordable housing obligation; and

IT FURTHER APPEARING that the Township’s draft HE/FSP provided for the satisfaction of the Township's Second Round affordable housing obligation of 114 affordable housing units, and its Third Round affordable housing obligation of 265 affordable housing units, together with a credit of 97 affordable housing units already provided in the Township at the Villages of Mapleton; and

IT FURTHER APPEARING that Court Master David J. Banisch, PP/AICPA (“Court Master”) reviewed the proposed Tower Gate Settlement Agreement and Mansfield Township’s draft HE/FSP and provided a written report to the Court dated February 3, 2020 recommending approval of same, with conditions; and

IT FURTHER APPEARING that Fair Share Housing Center (“FSHC”) as an Interested Party, reviewed the proposed Tower Gate Settlement Agreement and Mansfield Township’s draft HE/FSP and advised the Court by letter dated February 4, 2020 that FSHC, having participated

in the development of the Township's draft HE/FSP, did not object to the Court approval of the Settlement Agreement, and the draft HE/FSP; and

IT FURTHER APPEARING that, after the required public notice, and receipt and review of the Court Master's February 3, 2020 report, the Court conducted the required "Fairness Hearing" on February 5, 2020 and February 10, 2020, to review the terms of the Tower Gate Settlement Agreement and Mansfield's draft HE/FSP to confirm that same were fair and reasonable to low and moderate income households of the region; and to allow public comment on same; and

IT FURTHER APPEARING that the Court having considered the testimony of the Court Master on February 10, 2020 and further considering the testimony of all witnesses presented, and the Court further concluding that the Tower Gate settlement agreement and the Township draft HE/FSP were fair and reasonable to protect the interests of the Mount Laurel beneficiaries and in conformance with the Township's constitutional affordable housing obligation, the Court entered an Order dated February 18, 2020 (the "Fairness Hearing Order") conditionally approving the Tower Gate Settlement Agreement and the Township draft HE/FSP and entered a Conditional Judgment of Compliance and Repose on behalf of the Township; and

IT FURTHER APPEARING that, as required by the terms of the Fairness Order above, the Township proceeded to address the conditions set forth in paragraphs 1 (a) – g) applicable to the Tower Gate Settlement Agreement and paragraphs 2 (a) – (l) applicable to the Township draft HE/FSP, all as set forth in the Court Master's February 3, 2020 report and February 10, 2020 Fairness Hearing testimony, including:

- (a) Adoption of the Tower Gate Zoning Ordinance, Mansfield Ordinance 2020-6.
- (b) Prepared and submitted a revised HE/FSP 8/13/20.
- (c) Prepared and submitted a Mansfield Compliance Report, dated 7/20/20 and revised 9/26/20, with Exhibits addressing all conditions; and

IT FURTHER APPEARING that the Court having scheduled a Compliance Hearing to confirm the Township's conformance with all conditions of the Fairness Hearing Order and the Court Master's February 3, 2020 report and February 10, 2020 Fairness Hearing testimony; and

IT FURTHER APPEARING that, after review of the Township's compliance with the conditions of the Fairness Hearing Order and the Court Master's February 3, 2020 report and February 10, 2020 Fairness Hearing testimony, the Court Master issued an updated Compliance Report dated January 2, 2021, which included an Attachment A with a list of the remaining conditions to be satisfied by the Township in order for the Court to issue a Final Order of Compliance and Judgment of Repose Without Conditions, including but not limited to the following:

- (a) Adoption of the Pulte Zoning Ordinance, Mansfield Ordinance 2021-8.
- (b) Prepared and submitted a revised Affordable Housing Ordinance, dated April 22, 2021
- (c) Prepared and submitted a revised Development Fee Ordinance, dated April 22, 2021.;
and

IT FURTHER APPEARING that the Court having scheduled a Compliance Hearing on January 4, 2021 to confirm the Township's conformance with the conditions of the Fairness Hearing Order and the Court Master's February 3, 2020 report and February 10, 2020 Fairness Hearing testimony; and

IT FURTHER APPEARING that the Court having considered the Court Master's updated Compliance Report dated January 2, 2021, the Court ordered the Township to continue with its compliance efforts and scheduled a Compliance Hearing on May 12, 2021; and

IT FURTHER APPEARING that, after review of the Township's compliance effort with the Court Master's January 2, 2021 Compliance Report, the Court Master issued a Second Compliance Report dated May 12, 2021; and

IT FURTHER APPEARING that the Court Master's Second Compliance Report confirmed that the Township has complied with all the substantive conditions in the prior report including adoption of the Pulte zoning ordinance, preparation of an updated affordable housing ordinance, updated development fee ordinance, and updated spending plan; and

IT FURTHER APPEARING that the Second Compliance Report required satisfaction by the Township of administrative and procedural conditions including revisions to the updated HE/FSP, the updated affordable housing ordinance, updated development fee ordinance, and updated spending plan, and adoption of the final version of all documents after review and approval by the Court Master, the Court entered a Conditional Compliance Order dated May 21,

2021, providing the Township with ninety (90) days to complete the required minor revisions to the updated HE/FSP and spending plan and to adopt the final version of all ordinances, resolutions and documents required by the Court Master's Second Compliance Report, and scheduling a Compliance Hearing on August 24, 2021; and

IT FURTHER APPEARING that the Court and all parties having participated in a telephone conference on July 28, 2021, and the Court having continued the Compliance Hearing to September 8, 2021 to provide the Township with time to serve notice of the September 8, 2021 Compliance Hearing within the thirty (30) day time period; and

IT FURTHER APPEARING that the Court Master issued a Third Compliance Report dated September 7, 2021; and

IT FURTHER APPEARING that the Third Compliance Report advised the Court that the Township had completed all conditions and prerequisites to the issuance of a Final Order of Compliance and Judgment of Repose. However, the Third Compliance Report included a "ERRATA SLIP - September, 2021" ("ERRATA SLIP") containing certain granular yet substantive revisions and corrections to the Township's final, adopted Housing Element and Fair Share Plan dated June 2, 2021 ("HEFSP") that are necessary to accurately detail affordable housing obligation compliance parameters. The Third Compliance Report further recommended that an amendment to the Mansfield Township Affordable Housing Ordinance 2021-12 was necessary to adopt two subsections incorporating additional provisions in the ordinance concerning the Township's market to affordable rental rehabilitation right-down/by-down program and supportive and special needs housing program. Finally the Third Compliance Report recommended that the ERRATA SLIP should be included as an appendix to the HEFSP; (all of which are referred to in this Order as the "Final Conditions" as recommended by the Special Master); and

IT FURTHER APPEARING that the Township having provided notice by newspaper publication and certified mail to the parties hereto, the public, and all known affordable housing advocates in the region and interested parties, as set forth in the Certification of Service and Affidavit of Publication filed with the Court, the Court conducted a Final Compliance Hearing on September 8, 2021 at 2pm on the Townships application for a Final Order of Compliance, including the Township's adopted and updated Spending Plan, and Judgment of Repose; and

IT FURTHER APPEARING that there were no objections or public comments at the Compliance Hearing; however, there was a letter (the “Walders letter”) sent to the Court dated August 24, 2021, copied to the Mansfield Township Attorney and Tower Gate attorney, that was signed by Bill and Karen Walders on behalf of themselves as well as Rich and Audrey Sindora and Edwin J. Cassidy, Junior. As it was later discovered, the letter (as well as a subsequent email requesting the Zoom instructions) was sent by email to the Court to an incorrect email address njcourt.gov instead of njcourts.gov (plural) and the Court never received it, and

IT FURTHER APPEARING that, during the hearing, a copy of the letter was provided to the Court, and the Mansfield Township Attorney read the objections raised in the Walders letter into the record and, on behalf of the Township, responded to each comment, and

IT FURTHER APPEARING that the Court, after consideration of the comments in the Walders letter and the Township response, indicated that the objections in the Walders letter were similar to objections raised by the public and considered by the Court at the time of the initial Fairness Hearing in February 2020. At that time, the Court spent a considerable amount of time, over two days of hearings, carefully considering all public comments and objections to the Tower Gate settlement and the Mansfield Housing Element and Fair Share Plan, including both the Tower Gate and Pulte inclusionary affordable housing sites identified in the HE/FSP, before granting approval, subject to revisions of the various documents. The Court further noted that Fair Share Housing Center reviewed the Mansfield HEFSP at the time of the Fairness Hearing and had not objected to the Courts approval of same. Finally, the Court noted that the compliance process ensures that the Township has provided a realistic opportunity for meeting its constitutional affordable housing obligation and is different from a review of the actual development plans for both the Tower Gate and Pulte affordable housing sites that still have to be presented to the Township Planning Board. Those applications will be heard by the Township Planning Board at public hearings, after notice to all property owners within 200 feet, and all other statutory conditions, and the public will have the opportunity to review and comment on the actual plans for construction of the affordable housing projects at the two sites, and

IT FURTHER APPEARING that the Special Master having recommended to the Court that a Final Order of Compliance and Judgment of Repose be granted by the Court, notwithstanding the need for the satisfaction by the Township of the Final Conditions identified

in the Special Master's Third Compliance report, and the attorneys for Fair Share Housing, and Tower Gate, and representatives of Pulte, having agreed without objection.

IT FURTHER APPEARING that the Court, being satisfied, after reviewing the Special Master's Third Compliance Report dated September 7, 2021, that the Township's adopted and updated Housing Element and Fair Share Plan, adopted Affordable Housing Ordinance with the updated Spending Plan, and all accompanying and related documents as set forth in the Special Master's Third Compliance Report, provided that the Final Conditions identified in the Third Compliance Report are promptly completed, satisfies Mansfield Township's constitutional obligation to provide a realistic opportunity for its regional share of affordable housing; and for further good cause shown:

IT IS, on this 15th day of September, 2021, hereby **ORDERED AND ADJUDGED** as follows:

1. The Special Court Master's Final Compliance Report dated September 7, 2021, is incorporated in this Order and attached hereto as Exhibit A. As set forth in said Report, Mansfield Township has satisfied all of the conditions of the Court's original February 18, 2020 Fairness Hearing Order including the Township's adopted and updated Housing Element and Fair Share Plan, adopted Affordable Housing Ordinance with the updated Spending Plan, and all accompanying and related documents as set forth in the Special Master's Final Compliance Report, all of which are hereby approved as adopted, subject to satisfaction by the Township of the Final Conditions as set forth in paragraph 2 of this Order. As such, pursuant to the Fair Housing Act, N.J.S.A.52:27D-301, *et seq.*, applicable Council On Affordable Housing (COAH) procedural and substantive regulations, and Mount Laurel case law, including the New Jersey Supreme Court decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ["Mount Laurel IV"], Mansfield Township is hereby granted a Final Judgment of Compliance and Repose, for the Township's Present Need or Rehabilitation Obligation, the Township's Prior Round Obligation (1987-1999), as well as its Third Round Obligation, consisting of both its Gap Obligation for 1999-2015 and its Prospective Need Obligation for 2015-2025.
2. No later than October 29, 2021, the Township will complete the Final Conditions identified in the Special Masters Third Compliance Report, including adoption of the required Resolution amending the Township's adopted and approved Housing Element

and Fair Share Plan to include the "ERRATA SLIP - September, 2021" ("ERRATA SLIP") contained in the Special Masters Third Compliance Report; adoption of the required ordinance amending the adopted and approved Mansfield Township Affordable Housing Ordinance 2021-12 to adopt two subsections incorporating additional provisions concerning the Township's market to affordable rental rehabilitation right-down/by-down program and supportive and special needs housing program; and including the ERRATA SLIP as an appendix to the HEFSP. The Township shall provide copies of the adopted Resolution, Ordinance amendment and Housing Element and Fair Share Plan appendix including the ERRATA SLIP as proof of satisfaction of the Final Conditions to the Court, Special Master and all parties.

3. The Township of Mansfield is hereby granted repose from exclusionary zoning challenges and Mount Laurel litigation under the terms set forth in Southern Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983) until July 1, 2025. During this time, the Township will have immunity and repose from any and all Mount Laurel lawsuits, including "builders remedy lawsuits", "constitutional compliance actions", and any other lawsuit brought under Mount Laurel, except that the Court retains jurisdiction for any action brought to enforce the terms of this Order and/or enforcement of all of the terms and conditions of the Tower Gate Settlement Agreement, the Centex Pulte Settlement Agreement, and the final Township Housing Element and Fair Share Plan, revised June 2, 2021, including the Township's continuing obligation to comply with all required and applicable monitoring and reporting requirements.
4. The entry of this Final Order of Compliance and Judgment of Repose resolves all issues raised in the instant litigation and this Order constitutes the Final Judgment in this action.
5. The Township shall file a copy of this executed Order to the Special Master, all parties and the service list within seven days of receipt.



HONORABLE JEANNE T. COVERT, A.S.J.C.