

File No. 30125-0015-JCG

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TOWER GATE ASSOCIATES,

Plaintiff,

v.

TOWNSHIP OF MANSFIELD and
PLANNING BOARD OF THE
TOWNSHIP OF MANSFIELD,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO. BUR-L-001739-18

CIVIL ACTION

**ORDER APPROVING THIRD ROUND
MOUNT LAUREL SETTLEMENT
AGREEMENT, MUNICIPAL FAIR
SHARE PLAN, AND SPENDING PLAN;
AND ENTERING CONDITIONAL
JUDGMENT COMPLIANCE AND
REPOSE**

THIS MATTER being opened to the Court by Plaintiff, Tower Gate Associates, through its attorneys Bisgaier Hoff, LLC (Richard J. Hoff, Jr., Esquire appearing), the Defendant, Township of Mansfield, through its attorneys Parker McCay P.A. (John C. Gillespie, Esquire appearing), and the Defendant, Mansfield Township Planning Board, through its attorneys Platt & Riso, P.C. (Christopher Norman, Esquire appearing), and in the presence of David J. Banisch, PP/AICP, the Court's Special Master; and the Court having conducted a Fairness Hearing on February 5, 2020 and February 10, 2020, which Hearing sought approval of:

1. A Third Round Mount Laurel Settlement Agreement dated November 18, 2019, and a First Amendment to Settlement Agreement dated December 24, 2019 by and between the Township of Mansfield, Planning Board of Mansfield Township, and Tower Gate Associates; and
 2. The Mansfield Township draft Housing Element and Fair Share Plan last dated December 24, 2019; and
 3. The Township's proposed Spending Plan for its Affordable Housing Trust Fund, as included in the draft December 24, 2019 Housing Element & Fair Share Plan; and
- The Court having reviewed the Report of Court Master David J. Banisch, PP/AICP, dated February 3, 2020, and the Court having heard the testimony of Mr. Banisch on February 10, 2020; and

The Court having verified that notice of the Hearing was properly published, posted, e-mailed, and mailed and that jurisdiction to conduct the Hearing was properly vested in the Court; and Fair Share Housing Center, Inc. ("FSHC") having advised the Court through its letter dated February 4, 2020 that FSHC did not object to the Settlement Agreement or Fair Share and Spending Plans, but actually participated in the development of the Township's Fair Share Plan, such that FSHC is satisfied with same; and

The Court having received the following Objections:

1. Correspondence dated December 6, 2019 from Robert Tallon, President of Crafts Creek Spring Hill Brook Watershed Association (and member of the Mansfield Township Environmental Commission);
2. Correspondence dated December 7, 2019 from "Friends of Crystal Lake Park" comprising 10 pages, plus exhibits;

3. Correspondence dated December 12, 2019 from Joseph Papai, 304 Third Street, Mansfield Township, New Jersey;
4. Supplemental Correspondence dated January 17, 2020 from "Friends of Crystal Lake Park";
5. Correspondence dated January 19, 2020 from "Friends of Crystal Lake Park";
6. Correspondence dated January 20, 2020 from Katie Tallon;
7. Correspondence dated January 20, 2020 from CherylLynn Walters, Esquire of Nehmad Perillo Davis & Goldstein, P.C. on behalf of the Villages at Mapleton Homeowners Association, along with attached correspondence from J. Creigh Rahenkamp, P.P. objecting to the Township's Spending Plan;
8. Correspondence dated January 29, 2020, from "Friends of Crystal Lake Park";
9. Correspondence dated January 29, 2020 from John C. Gillespie, Esquire of Parker McCay P.A. on behalf of the Township of Mansfield, responding to the January 20, 2020 correspondence from the attorney for Villages at Mapleton Homeowners Association;
10. Correspondence dated February 3, 2020 from John C. Gillespie, Esquire of Parker McCay P.A. on behalf of the Township of Mansfield, objecting to further participation in the hearing by the Villages at Mapleton Homeowners Association;
11. Correspondence dated February 4, 2020 from CherylLynn Walters, Esquire of Nehmad Perillo Davis & Goldstein, P.C. on behalf of the Villages at Mapleton Homeowners Association in response to the Township's February 3, 2020 correspondence;

12. Correspondence dated February 7, 2020 from “Friends of Crystal Lake Park” as a follow-up to the Court’s first day of Hearing on this matter on February 5, 2020 and in advance of the second Hearing date of February 10, 2020; and

The Court having heard from the following witnesses:

A. On February 5, 2020:

1. Scott McDonnell, on behalf of Tower Gate Associates, LLC (under direct examination of Richard J. Hoff, Jr., Esquire), with the Court accepting Mr. McDonnell as an expert witness qualified to offer expert testimony in the field of environmental sciences including wetlands permitting;
2. Paul Grygil, PP/AICP, on behalf of Tower Gate Associates, LLC (under direct examination of Richard J. Hoff, Jr., Esquire), with the Court accepting Mr. Grygiel as an expert witness qualified to offer expert testimony in the field of professional planner and affordable housing;
3. Frank Pinto, of 420 Island Road, Mansfield Township, NJ, both on behalf of “Friends of Crystal Lake Park” and individually;
4. Robert Tallon, both individually and on behalf of Crafts Creek Spring Hill Brook Watershed Association, a 501(c)(3) organization;
5. John O’Callaghan, of New Egypt, New Jersey;
6. Katherine Tallon of New Egypt, New Jersey;

B. On February 10, 2020:

1. Frank J. Pinto;
2. John O’Callaghan;
3. David J. Banisch, PP/AICP;

4. J. Creigh Rahenkamp (under direct examination by CherylLynn Walters, Esquire on behalf of the Villages at Mapleton Homeowners Association); and
The Court having also received and marked into evidence, the following documents:
 - J-1. November 18, 2019 Settlement Agreement between Tower Gate Associates, Township of Mansfield and Planning Board of the Township of Mansfield.
 - J-2. Amended Settlement Agreement between Tower Gate Associates, Township of Mansfield and Planning Board of the Township of Mansfield.
 - J-2(a). Concept Plan for the Tower Gate development.
 - J-3. Correspondence from Adam Gordon, Esquire on behalf of Fair Share Housing Center dated February 4, 2020.
 - C-1. The Special Master's Report of David J. Banisch, PP/AICP dated February 3, 2020.
 - D-1. Township of Mansfield Proof of Service for the December 19, 2019 initially scheduled Fairness Hearing.
 - D-2. Township of Mansfield Proof of Service for the adjourned dated to February 5, 2020 for the Fairness Hearing.
 - D-3. The December 24, 2019 Housing Element & Fair Share Plan – draft, prepared by Environmental Resolutions, Inc.
 - V-1. Curriculum Vitae of J. Creigh Rahenkamp.
 - V-2. Mr. Rahenkamp January 19, 2020 correspondence to the Court
 - V-3. Aerial photograph (courtesy of GOOGLE Maps) of the development known as “Village at Mapleton Homeowners Association;” and

The Court having considered all of the above, as well as the findings and determinations, and recommendations of the Court's Master as set forth in his Report and in his direct testimony at the Hearing, and having determined that the Settlement Agreement, Fair Share and Spending Plans are fair and reasonable to protect the interests of the Mount Laurel beneficiaries and having determined that same should all be conditionally approved; and for good cause shown;

IT IS, on this _____ day of _____, 2020,

ORDERED AND ADJUDGED as follows:

1. Tower Gate Settlement Agreement. The findings and determinations of the Court's Master both in his Report dated of February 3, 2020 and his testimony on February 10, 2020, are hereby adopted by the Court, and the Settlement Agreement under date of November 18, 2019 and the Amended Settlement Agreement dated December 24, 2019 are hereby approved, subject to the following conditions noted in the Master's Report:

- a. Tower Gate Associates and/or its successors-in-interest shall pay to the Township of Mansfield a non-residential developer's fee of 2.5% of the equalized assessed value of the proposed commercial space within the development, with one-half being paid upon the issuance of Building Permits for each of the buildings, and the balance to be paid upon the issuance of Certificates of Occupancy for each of said buildings.
- b. The affordable housing units identified in the Settlement Agreement, shall be subject to affordability controls for at least thirty (30) years following the issuance of the initial Certificate of Occupancy for the affordable housing unit, and thereafter, the municipality's decision as to when and whether to extinguish the affordability controls shall be governed by the applicable UHAC provisions.
- c. Identification of the total number of affordable housing units to be provided: 96 affordable units, and the number of very low income units to be provided 13

very low income units, which may also include the two-tiered schedule specified in the First Amendment to the Settlement Agreement (e.g., "...fifteen percent (15%) of the Dwelling Units up to a total of four hundred eighty-eight (488) (i.e., seventy-four (74) AHUs if the Inclusionary Development consists of a total of four hundred eighty-eight (488) Dwelling Units"; and thirty percent (30%) of the Dwelling Units between a development yield of 489 and 560 total Dwelling Units (i.e., twenty-two (22) additional AHUs if the Inclusionary Development consists of a total of five hundred sixty (560) Dwelling Units), shall be family rental AHUs.

- d. The Township shall add a standard for minimum plantings required in buffers adjacent to public roads (e.g., the standard identified at Section 60A(6)(A) and (B), except where such buffering would unreasonably interfere with visibility of retail development along Route 130 and which ordinance language shall be reviewed and approved by the Court Master.
- e. The Ordinance shall modify the buffer requirement such that specified buffer width shall be not less than widths indicated in the draft Ordinance was measured from the right-of-way, and as may be modified by State and County road right-of-way dedications that may be required and which such ordinance language shall be reviewed and approved by the Court Master.
- f. The developer shall report the status of all DEP approvals to the Township, which in turn shall post said information on the municipal website.
- g. The Township shall introduce, and adopt, within sixty (60) days of the date of this Order, a Zoning Ordinance substantially consistent with the Zoning Ordinance attached to the First Amendment to Settlement Agreement and the terms of this Order.

2. The Township's proposed Fair Share Plan and Spending Plan are hereby

approved, subject to the following conditions, and subject to the requirements of paragraph 3 below:

- a. The draft Housing Element/Fair Share Plan ("HE/FSP")

shall be revised to accurately characterize the source of the Township's calculated obligations, which relies upon the methodology by the Honorable Mary E. Jacobson, A.J.S.C., as published by Econsult in March 2018.

- b. A Rehabilitation Program Manual shall be submitted for review by the Special Master and approval by the Court as part of the Township's compliance obligations.
- c. The draft HE/FSP shall be revised to include a correct very low income ("V L-I") calculation, and shall specify the units to meet the compliance parameter. (The thirteen percent (13%) V L-I requirement applies to all planned affordable units, and is not limited to the compliance in the Inclusionary Projects.
- d. The HE/FSP shall be revised to include tables that designate existing and proposed affordable units and rental bonuses to satisfy the one hundred fourteen (114) unit prior Round Obligation and the two hundred sixty five (265) unit Third Round Prospective Share Obligation. This revision should include a breakdown of how the units assigned to address the Prior Round and Third Round Prospective Share, respond to regulatory compliance parameters (i.e., minimum fifty percent (50%) family units, minimum twenty-five percent (25%) rental units, minimum 12.5% family rental units, minimum thirteen percent (13%) very low income units, and identifying family rental units in the plan and rental bonuses and identifying family rental units in the Plan and rental bonuses.
- e. During the compliance phase, the Township shall provide to the Special Master, and to the Court, a Development Agreement between Mansfield Township and Pulte Homes and/or its successor-in-interest, as well as an inclusionary Zoning Ordinance to address the Pulte Homes component of the Township's overall HE/FSP. The percentage of the proposed affordable housing set-aside should be clarified and revised if necessary in the draft HE/FSP. The draft HE/FSP, the Development Agreement and Zoning Ordinance should specify the correct percentage of affordable units and identify applicable compliance parameters regarding income mix, bedroom mix, thirteen percent (13%) very low income, affirmative marketing, thirty (30) year

income controls, consistent with UHAC Section 5:80 and any other relevant information and standards required to be met.

- f. With regard to the Township's proposed inclusion of nine (9) existing units at the Bellwether Behavioral Health Group Home, in the event affordability controls cannot be documented, the Township shall be granted nine (9) bedrooms of credit so long as the facility remains in existence with periodic monitoring documenting that the Group Home exists.
- g. With regard to the Township's market to affordable component of its HE/FSP, same shall be revised to identify that a thirty (30) year deed-restriction, and mortgage lien, is required on the properties converted to affordable housing; and shall be revised to identify an implementation schedule for monitoring and reporting program progress. If not progress is made by 2023, the viability of this compliance technique should be reviewed the replaced and replaced with other compliance mechanisms if the program is not found to be viable or if no progress is made. In addition, the draft HE/FSP should be revised to identify the number of very low income units to be produced to meet the thirteen percent (13%) requirement.
- h. With regard to the Township's proposed supportive and special needs housing, the draft HE/FSP should be revised to:
 - (1) Identify that thirty (30) year deed-restrictions are required for affordable housing credits on these proposed units;
 - (2) Identify an implementation schedule, including, and reporting group home production progress, and if no progress is made by 2023, the viability of this compliance technique should be reviewed; and
 - (3) Identify the number of very low income units to be produced to meet the thirteen percent (13%) requirement.
- i. The Township's Spending Plan shall be revised to re-

classify prior development fee expenditures and administrative expenses related to re-sales at the Villages at Mapleton, to be categorized as affordability assistance, and for Table FS-8 of the HE/FSP to be revised to identify that administrative expense calculation revision accordingly, and in conformity with the Contents of a Spending Plan (N.J.A.C. 5:93-8.9) and information required in N.J.A.C. 5:93-5.1(c). The Township's proposed Spending Plan, subsumed within the HE/FSP, shall be revised at page 45, paragraph 3(a)(1) to add the following sentence at the end of the paragraph: "Units within the Villages at Mapleton may participate in the program subject to income qualification and the Manuals."

- j. Page 47, paragraph 3, entitled: "Emergency and Health/Safety Repairs", shall be revised to reflect that the Five Thousand Dollar (\$5,000.00) limitation set forth in this subparagraph, shall be a "soft per unit cap", subject to review by the Township's affordable housing administrative agent, and consistent with the Manual. In the event that repairs relate to an integrated multi-unit building, then same may be provided on a pro rata share basis, which will be set forth in the Manual.
- k. The advance of funding set forth in the Spending Plan shall be subject to a "forgiveability provision", such that, for example, should a homeowner remain in the property for a period of years after the advancement of the funds and the undertaking of the repairs, the loan will be subject to forgiveness, and eventually become a form of "grant" funding as opposed to a loan. The specifics of same shall be identified in the appropriate Manual.
- l. During the compliance phase, the Township and/or Planning Board, as the case may be, shall address the items listed in Attachment A of the Special Master's report, entitled "Required Elements of Final Affordable Housing Compliance Plan," and dated February 3, 2020.

3. The Township Planning Board is directed to prepare and approve a Third Round Housing Element and Fair Share Plan ("Compliance Plan") consistent with the Order, and in satisfaction of the Township's obligations under the Settlement Agreement and file same with

the Court for the scheduling of a Compliance Hearing upon adequate notice to the public within one hundred eighty (180) days of the date of this Order. The Compliance Hearing shall be held on **August 11, 2020 at 2:00 PM** and the Township shall abide by the same notice requirements with respect to publication, posting and mailing as the Court directed with respect to Fairness Hearing Notice requirements. Any comments or objections to the Compliance Plan must be registered with the Court at least ten (10) days prior to the Compliance Hearing and the Compliance Hearing Notice shall so state.

4. The Township of Mansfield is hereby granted a Conditional Judgment of Repose and Protection against any builders remedy suit while the Township is pursuing compliance and/or complying with, its Housing Element and Fair Share Plan.

5. Counsel for the Township shall file copies of this Order with the Court's Master, counsel for Tower Gate Associates, and all parties on the Court's Service Lists within five (5) days of entry.

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

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