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

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THIS MATTER having come before the Court by way of a declaratory judgment action which was filed by plaintiff Borough of Watchung ("Borough") on July 2, 2015 in accordance with In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) (Mount Laurel IV); and the Court having conducted a Fairness and Preliminary Compliance Hearing on a proposed settlement of the declaratory judgment action on August 9, 2018 in accordance with East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311, 328-329 (App. Div. 1996), and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff'd 209 N.J. Super. 108 (App. Div. 1986); and the Court having subsequently entered an order on September 19, 2018 ("September 19, 2018 Order") which approved

the settlement as fair and reasonable to low and moderate income households; and the September 19, 2018 Order also approved and determined the Borough's Third Round present need (rehabilitation) obligation, Prior Round obligation, and Third Round affordable housing obligation; and the September 19, 2018 Order also preliminarily approved the Borough's Mount Laurel compliance plan; and the Court having conducted a compliance hearing for the purpose of reviewing the Borough's Mount Laurel compliance plan to determine whether it complies with the Borough's affordable housing obligations as approved and determined by the September 19, 2018 Order; and the compliance hearing having taken place on August 28, 2019; and the compliance hearing was conducted on notice and in the presence of Albert E. Cruz, Esq., attorney for the Borough, Adam M. Gordon, Esq., attorney for the intervenor Fair Share Housing Center, Inc., a public interest organization representing the housing rights of New Jersey's poor ("FSHC"), and the Court having considered during the compliance hearing the testimony of the Court's Special Master Francis P. Banisch, PP, AICP; and the Court also having considered during the compliance hearing Exhibit C-1 (Special Master Banisch's August 22, 2019 report); and the Court also considered Exhibit P-1 (Proof of Service of Notice of Compliance Hearing) which was entered into evidence at

the commencement of the compliance hearing; and the Court determined after considering and relying on the evidence set forth above and for the reasons set forth on the record on August 28, 2019 that a Final Judgment of Compliance and Repose with continued immunity should be entered;

**IT IS THEREFORE ON THIS 5th DAY OF August , 2019 HEREBY ADJUDGED, DECLARED AND ORDERED AS FOLLOWS:**

1. Final Judgment of Compliance and Repose. It is adjudged and declared that a Final Judgment of Compliance and Repose is entered in favor of the Borough in this declaratory judgment action.

2. Present Need (Rehabilitation) Obligation. It is adjudged and declared that the Borough's present need (rehabilitation) obligation is four (4) units based on the Court finding that the structural conditions survey completed on behalf of the Borough indicates the presence of four (4) deficient units. It is further adjudged and declared that the Borough's plan to implement a municipal housing rehabilitation program, as set forth in the Borough's 2019 Housing Element and Fair Share Plan, which will be funded through the Borough's Affordable Housing Trust Fund and as described in the Borough's Spending Plan, satisfies the Borough's four (4) unit present need (rehabilitation) obligation.

3. Prior Round Obligation. It is adjudged and declared that the compliance mechanisms set forth in the Settlement Agreement last signed June 7, 2018, and the 2019 Housing Element and Fair Share Plan, including the bonus credits, satisfy the Borough's Prior Round obligation of 206 units, which was adjusted as a result of a vacant land analysis to a realistic development potential of 169 units, and that the Borough has provided mechanisms to address the resulting Prior Round unmet need as referenced in the Settlement Agreement last signed June 7, 2018, and the 2019 Housing Element and Fair Share Plan.

4. Third Round (1999-2025) Gap and Prospective Need Obligation. It is adjudged and declared that the compliance mechanisms set forth in the Settlement Agreement last signed June 7, 2018, and the 2019 Housing Element and Fair Share Plan, including the bonus credits, satisfy the Borough's Third Round (1999-2025) gap and prospective need obligation of 396 units, which was adjusted as a result of a vacant land analysis to a realistic development potential of 53 units, and that the Borough has provided mechanisms to address the resulting Third Round unmet need as referenced in the Settlement Agreement last signed June 7, 2018, and the 2019 Housing Element and Fair Share Plan.

5. 2019 Housing Element and Fair Share Plan as well as all Implementing Ordinances and Resolutions. It is adjudged and declared that the 2019 Housing Element and Fair Share Plan adopted by the Planning Board and endorsed by the Borough, as well as all the Ordinances, Resolutions and other documents that were adopted by the Planning Board and the Borough to implement the 2019 Housing Element and Fair Share Plan, satisfy the Borough's Mount Laurel constitutional obligations as referenced in paragraphs 2, 3, and 4 of this Order under the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and under the Mount Laurel line of cases, specifically, Mount Laurel IV, 221 N.J. 1 (2015), and Mount Laurel V, 227 N.J. 508 (2017).

6. Amended Development Fee Ordinance. It is adjudged and declared that the Borough's Amended Development Fee Ordinance is approved as adopted and the Borough is authorized to impose and collect development fees and to maintain those fees in the Borough's Affordable Housing Trust Fund and to spend those fees in accordance with the Borough's Spending Plan. The authorization to impose and collect development fees and to maintain those fees in the Borough's Affordable Housing Trust Fund is retroactive to July 2, 2015, the date the Borough filed this declaratory judgment action.

7. Spending Plan. It is adjudged and declared that the Spending Plan adopted by the Borough is approved.

8. Affirmative Marketing Plan. It is adjudged and declared that the Borough's Affirmative Marketing Plan adopted by the Borough is approved.

9. Income, Sale Price, and Rent Limits. Paragraphs 4 and 5 addressing income, sale price and rent limits, of the September 19, 2018 Order are incorporated herein by reference.

10. Modification of Bedroom Mix Required by the Uniform Housing Affordability Controls for the Inclusionary Development to be Constructed by Watchung Associates, LLC. It is adjudged and declared that for the inclusionary development to be constructed by Watchung Associates, LLC, with four (4) low and moderate income units, that the bedroom mix required by the Uniform Housing Affordability Controls is modified as follows: one (1) moderate income unit with one (1) bedroom; one (1) very low income unit and one (1) moderate income unit with two (2) bedrooms each and one (1) low income unit with three (3) bedrooms, and the development shall otherwise comply with UHAC.

11. Change in Law. It is hereby adjudged and declared that if a decision of the Superior Court of New Jersey having jurisdiction in Somerset County, the Appellate Division of the Superior Court of New Jersey, the New Jersey Supreme Court, or a

determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total Third Round gap and prospective need obligation set forth in this Judgment and if that calculation is memorialized in a final judgment that becomes non-appealable, the Borough may seek to amend this Judgment to reduce its Third Round gap and prospective need obligation. Notwithstanding any such reduction, the Borough shall be obligated to implement the mechanisms referenced in this Judgment, including by leaving in place any site specific zoning adopted or relied upon in connection with the 2019 Housing Element and Fair Share Plan approved pursuant to this Judgment, taking all steps necessary to support fulfilling the fair share obligations as established in this Judgment. The reduction of the Borough's obligation below that established in this Judgment does not provide a basis for seeking leave to amend this Judgment or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Third Round gap and prospective need obligation, the Borough may carry over any resulting extra

credits to future rounds in conformance with the then-applicable law.

12. Continued Immunity. The immunity previously granted to the Borough from any and all exclusionary zoning lawsuits, other than actions brought to enforce the court's orders or the terms of the Settlement Agreement, is hereby continued through July 1, 2025.

13. Service of Final Judgment of Compliance and Repose. Counsel for the Borough shall provide all parties on the Supreme Court Service List and the Municipal Service List with a copy of this Judgment within five (5) days of receipt by counsel for the Borough of this Judgment.

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

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

The Court's findings of fact and  
conclusions of law were placed  
on the record in open Court on  
August 28, 2019

**See attached Statement of Reasons**  
**dated** \_\_\_\_\_



IN THE MATTER OF THE  
APPLICATION OF BOROUGH OF  
WATCHUNG, A Municipal Corporation  
of the State of New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY  
DOCKET NO. SMOM-L-902-15

CIVIL ACTION  
(Mount Laurel)

**I. Parties and Counsel**

Borough of Watchung, represented by Albert T. Cruz, Esq. of the Law Firm of DiFrancesco Bateman

Fair Share Housing Council, represented by Adam Gordon, Esq.

Interested Party/Proposed Intervenor, BNE-Watchung, LLC, represented by Kate Coffey, Esq. of the Law Firm of Day Pitney, LLP

Frank J. Banisch, III, AICP, PP, appeared and testified as to Court Appointed Special Master.

**2. Court's Analysis and Decision**

In this matter before the Court, the Borough of Watchung has applied for and claims to be eligible for a Judgment of Compliance and Repose. At the request of the Court, the Court Appointed Special Master, Frank J. Banisch of Banisch and Associates provided a report concerning the issue dated August 22, 2019. The Court marked Mr. Banisch's report into evidence as C-1 as part of the Compliance Hearing. In addition, the Court also considered Mr. Banisch's sworn testimony at the Compliance Hearing as part of its consideration and analysis.

On August 28, 2019 the Court held a public hearing concerning the request. The Borough duly provided Notice of the Public Hearing. (See P-1 in Evidence) Initially the Court found that the Notice is duly compliant with the requirements of law.

Mr. Banisch, the Court Appointed Special Master, reviewed each and every document that was provided to him by the Borough in support of their claim that the Borough has "complied" with all of the terms and conditions that the Court established at the Fairness Hearing in this matter that would be necessary to be fulfilled before a Judgment of Compliance and Repose would be awarded

by the Court.

After his review of the applicable documents, Mr. Banisch recommended "approval" and the issuance of a Judgment of Compliance and Repose. In his report he analyzed each of the conditions established by the Court at the Fairness Hearing and then he analyzed the documentation that provided in order to determine if the Borough complied with the conditions. He noted the following:

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

On April 16, 2019 the Watchung Planning Board adopted a Housing Element and Fair Share Plan based on the settlement agreement (PB-19-R5). The Watchung Borough Council endorsed the adopted Plan on May 2, 2019 (Resolution No. 2019-R7).

*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.*

Mr. Banisch concluded that the HE/FSP has been prepared as required by law and regulation.

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 were submitted to address these requirements:

- Ordinance OR18/17 - Amending the Accessory Apartment Program adopted on December 6, 2018
- Ordinance OR 18/18 - Route 22 Affordable Housing Overlay District adopted on December 6, 2018
- Ordinance OR 18/19 - Mandatory Set Aside Ordinance adopted on December 6, 2018, amended through Ordinance 19/04 adopted April 4, 2019
- Ordinance OR 18/20 - Adopting a Redevelopment Plan for Block 74.02, Lots 19.01 and 19.02 and Block 73.04, Lots 5 and 10 (Bonnie Burn Road Redevelopment Area) adopted on December 6, 2018 amended through Ordinance 19/05 adopted April 4, 2019

- Ordinance OR/09 - Creating the Somerset Street/Watchung Avenue Affordable Housing Overlay District adopted on June 6, 2019
- Ordinance OR19/10 - Repealing the O-C Office Business/Conference Center Overlay District adopted on June 6, 2019
- Ordinance OR19/12 - Amending the Zoning Districts and Zoning Map adopted on June 6, 2019
- Ordinance OR19/13 - Amending the Development Fees Ordinance adopted on June 6, 2019
- Ordinance OR19/11, Repealing and Adopting the Affordable Housing Ordinance, adopted June 6, 2019
- Resolution R15, establishing an Affirmative Housing Marketing Plan, adopted May 16, 2019
- Resolution R16 endorses and adopts the March 2019 Spending Plan, adopted May 16, 2019
- Resolution R17 endorses and adopts the Housing Rehabilitation Program Policies and Procedures Operating Manual, The Accessory Apartment Program Policies and Procedures Manual, the Affordability Assistance Policies and Procedures Manual, and the Affordable Housing Administrative Agent Policies and Procedures Manual. All documents included in the Appendix of the adopted Housing Element and Fair Share Plan.
- Resolution Appointment of Municipal Housing Liaison, adopted September 8, 2011
- Resolution R:03/07/19, Appointing an Administrative Agent, adopted March 7, 2019

Mr. Banisch opined that the condition had been satisfied

*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.*

Watchung adopted the Spending Plan on May 16, 2019. Mr. Banisch opined that the Spending Plan addressed the statutory and regulatory requirements related to limitations on the use of development fee revenues from the Affordable Housing Trust Fund.

*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.*

Mr. Banisch reported that the following compliance ordinances have been adopted as required:

- Ordinance OR18/17 - Amending the Accessory Apartment Program adopted on December 6, 2018
- Ordinance OR 18/18 - Route 22 Affordable Housing Overlay District adopted on December 6, 2018
- Ordinance OR 18/19 - Mandatory Set Aside Ordinance adopted on December 6, 2018, amended through Ordinance 19/04 adopted April 4, 2019.
- Ordinance OR 18/20 - Adopting a Redevelopment Plan for Block 74.02, Lots 19.01 and 19.02 and Block 73.04, Lots 5 and 10 (Bonnie Burn Road Redevelopment Area) adopted on December 6, 2018 amended through Ordinance 19/05 adopted April 4, 2019.
- Ordinance OR/09 - Creating the Somerset Street/Watchung Avenue Affordable Housing Overlay District adopted on June 6, 2019

Mr. Banisch offered that those Compliance Ordinances satisfied the condition.

*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 OR19/11, Repealing and Adopting the Affordable Housing Ordinance, adopted June 6, 2019

Mr. Banisch stated that the OR19/11 satisfied that requirement.

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

- Resolution R:03/07/19, Appointing an Administrative Agent, adopted March 7, 2019

The condition is satisfied.

*7. If it has not done so already, the Borough will need to create the position of Municipal Housing Liaison by Ordinance and fill that position by Resolution of the Governing Body.*

- Resolution Appointment of Municipal Housing Liaison, adopted September 8, 2011

Mr. Banisch opined that the condition was satisfied.

The Court notes that there was no opposition to the Borough's request.

The Court has reviewed and considered Mr. Banisch's report, his testimony and the opinions and recommendations that he has made to the Court. The Court has also conducted its own

independent review of the documents which were provided by the Borough and marked into evidence before the Court as Exhibits P-1 and C-1. The Court finds that the Borough's actions indicate that it has complied with the conditions set by the Court at the Fairness Hearing in this matter and as such the Court warrants the issuance of the requested relief. As such, the court holds that the Borough be granted a Final Judgment of Compliance and Repose in accordance with the Order to be executed by the Court simultaneous with the issuance of this opinion.