

the Builder Remedy Plaintiffs and other projects and/or programs sufficient to satisfy the 1,417-unit obligation no later than March 5, 2019.

Although the Township continues to dispute the court's findings and conclusions that resulted in a declaration that the Township was proceeding in bad faith, removal of the Township's immunity from Builder's Remedy suits, determination of the Township's Third Round affordable housing obligation, available credits and the compliance mechanisms available to address that obligation, the Township recognizes its legal obligation to comply with the court's December 5, 2018, order to submit a plan that addresses the 1,417 unit obligation.

Notwithstanding submission of a plan that complies with the court's December 5, 2018, order, the Township does so under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). But for the court's December 5, 2018 order, the individual sites set forth in said plan may or may not have been included in the Township's plan. As such, the Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objections to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suits/claims as well as the process outlined in the court's October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as such suits/claims for Builder's Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights or in any way imply that the Township agrees with the plan that is being submitted under protest.

The Township has a Rehabilitation obligation of 109-units. It has completed 95 rehabilitation units; resulting in a balance of 14 units. The in-house rehabilitation program, to be administered by the Township with assistance from SBCDC, will satisfy the Township's remaining 14-unit rehabilitation obligation.

The Township has met its 937-unit Prior Round Precredited Need obligation with prior cycle credits, inclusionary housing developments, an assisted living facility, alternative living arrangements, 100% affordable housing developments, completed market-to-affordable units, and Prior Round rental bonus credits. All of the affordable units satisfying the Prior Round Precredited Need have been built except for the Dunganvin Group Home which has an executed agreement with the Township.

As required by the Court, South Brunswick will address its 1,417-unit Third Round (gap + prospective need) obligation with the ten (10) Builder Remedy sites, an inclusionary housing development, an approved assisted living facility, extensions of controls, a market-to-affordable program, a municipally-sponsored development, and the Third Round rental bonus credits.



1. DECEMBER 5, 2018 COURT ORDER

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FILED
DEC 05 2018
ARTHUR BERGMAN, J.S.C

CONSOLIDATED ACTIONS

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY—LAW DIVISION

DOCKET NO. MID-L-4433-17

Mt. Laurel
CIVIL ACTION

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF SOUTH
BRUNSWICK, COUNTY OF MIDDLESEX

**ORDER PARTIALLY GRANTING AND
PARTIALLY DENYING MOTION BY
SOUTH BRUNSWICK TOWNSHIP FOR
REVIEW AND/OR RECONSIDERATION
OF INTERLOCUTORY DECISIONS AND
OTHER RELIEF**

This matter having come before the Court on October 29, 2018 on the motion of plaintiff Township of South Brunswick for Review and/or Reconsideration of Interlocutory Decisions and Other Relief (“the Motion”), in the presence of counsel for the Township of South Brunswick and the Planning Board of the Township of South Brunswick and counsel for the various intervenors and for the plaintiffs in the pending exclusionary zoning suits against South Brunswick; and

The Court having considered the papers filed by the parties and oral arguments of counsel; and

The Court having determined for the reasons set forth in the oral opinion rendered on October 29, 2018, to deny the portion of the Motion seeking review or reconsideration of certain prior interlocutory decisions, and to grant the portion of the Motion seeking a determination of South Brunswick's calculated housing need for the period 1999 to 2025,

It is on this 5th day of December, 2018, hereby ORDERED:

1. South Brunswick's application for review or reconsideration of the Court's determination of the Township's gap period (1999-2015), present need (2015), and prospective (2015-2025) fair share obligations as set forth in the Court's written opinions dated July 21, 2016 and October 6, 2016 is DENIED.

2. South Brunswick's application for review or reconsideration of the Court's determination of the application of the so-called 1,000-unit cap as set forth in the Court's written county-wide opinion in In re Adoption of the Housing Element for the Township of Monroe, Dkt. No. MID-L-3365-15, dated October 5, 2015, reported at 444 N.J. Super. 163, and Order dated October 15, 2015, is DENIED.

3. South Brunswick's application for review or reconsideration of this Court's finding of bad faith, dissolution of immunity from builder's remedy claims, and grant of builder's remedy suits as set forth in the Court's Orders of March 9, 2016 and October 21, 2016 is DENIED.

4. South Brunswick's application for approval of credits is GRANTED IN PART. The Township may apply 124 credits against its third round housing obligations based upon extension of affordability controls for low and moderate income housing in the so-called Charlestown Place I and II development and the so-called Deans Apartments/Woodhaven development. The Township's other requests for credits are DENIED.

5. As a result of this Court's evaluation of the Motion and the pleadings filed in response to the Motion by the intervenors and builder plaintiffs, South Brunswick's calculated housing obligations are hereby established as follows:

a. South Brunswick's traditional present need ("rehabilitation") obligation is 109 units.

b. South Brunswick's third round 2015-2025 prospective need obligation is 1,533 units, but is hereby capped at 1,000 units.

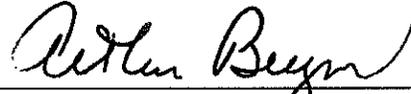
c. South Brunswick's third round gap period 1999-2015 obligation is 1,374 units. Applying 124 credits against this obligation reduces it to 1,250 units. Presumptively, this obligation is phased equally over three 10-year planning cycles. The portion of the obligation presumptively to be met in the current 2015 to 2025 cycle is 417 units.

6. Therefore, South Brunswick's net third round obligation is 1,417 units of gap period and prospective need ("new construction") obligation and 109 traditional present need ("rehabilitation") obligation.

7. South Brunswick shall submit to the Court, the Special Master, and the intervenors and plaintiffs in pending builder's remedy cases a compliant housing element and fair share plan addressing the constitutional fair share housing obligations quantified in this Order within 90 days of the date of this Order. Said housing element and fair share plan shall be supported by the documentation that would be required by COAH's second round regulations and such portions of the third round regulations as have been approved by the Appellate Division or the Supreme Court.

8. Except as expressly amended, vacated, or superseded by this Order, all prior Orders issued by the Court shall remain in full force and effect.

9. A true but uncertified copy of this Order shall be served on counsel of record for all parties, including intervenors and plaintiffs in pending builder's remedy cases, within 7 days.



Hon. Arthur Bergman, J.S.C.

This motion was opposed.



2. GOVERNING BODY RESOLUTION ENDORISING PLAN



Resolution

Endorsing Under Protest an Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan

WHEREAS, pursuant to a court order dated December 5, 2018, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, currently pending in the Superior Court of New Jersey, Law Division, under Docket No. MID-L-4433-17 (“Declaratory Judgment Action”), the Township has been ordered to provide for 1,417 units of affordable housing as its Third Round Fair Share obligation; and

WHEREAS, the Superior Court has further ordered that the Township submit to the court, Special Master, all parties to the lawsuit and plaintiffs in pending Builder’s Remedy cases, an amendment to the Township’s Housing Element and Fair Share Plan demonstrating projects and/or programs sufficient to satisfy this 1,417 unit obligation no later than March 5, 2019, extended to April 5, 2019; and

WHEREAS, the Superior Court has further directed that any such plan must include all of the sites proposed by the Builder’s Remedy intervenors in the lawsuit(s); and

WHEREAS, although the Township continues to dispute the court’s findings and conclusions that resulted in a declaration that the Township was proceeding in bad faith, removal of the Township’s immunity from Builder’s Remedy suits, determination of the Township’s Third Round affordable housing obligation, available credits and the compliance mechanisms available to address that obligation, the Township recognizes its legal obligation to comply with the court’s December 5, 2018, order to submit a plan that addresses the 1,417 unit obligation; and

WHEREAS, notwithstanding submission of a plan that complies with the court’s December 5, 2018, order, the Township does so under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). As such, the Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objections to the court’s finding of bad faith, revocation of temporary immunity, determination of the Township’s fair share obligation, the grant of Builder’s Remedy suits/claims as well as the process outlined in the court’s October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder’s Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights or in any way imply that the Township agrees with the plan that is being submitted under protest; and

WHEREAS, in order to comply with the court’s December 5, 2018, order, the Township’s

Planning Consultant, Clarke Caton Hintz, prepared an Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan which is dated March 12, 2019, which satisfies the requirements of the court's order; and

WHEREAS, the Township Council has reviewed the Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan prepared by Clarke Caton Hintz and dated March 12, 2019, and, under protest, hereby endorses said Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan in that it complies with the court's December 5, 2018, order; and

WHEREAS, it continues to be the desire of the Township Council to voluntarily comply with its obligation to provide for a realistic opportunity for the development of low and moderate income housing with a plan that includes appropriate projects, sites, programs and/or compliance mechanisms that represent sound planning and land use principles, and endorsement of the Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan by way of adoption of this resolution should in no way be construed as an affirmative decision by the Township that the submitted plan best satisfies the Township's Third Round obligation;

NOW THEREFORE BE IT RESOLVED on this 12th day of March, 2019, that the Governing Body of the Township of South Brunswick, County of Middlesex, State of New Jersey, hereby, under protest, endorses the Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan prepared by Clarke Caton Hintz and dated March 12, 2019, in that it satisfies the court's order of December 5, 2018; and

BE IT FURTHER RESOLVED that the Governing Body of the Township of South Brunswick, pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-3.4(a), submits this endorsement (under protest) of the Amendment to the Township's Third Round Housing Element and Fair Share Plan and Amendment to the Third Round Spending Plan to the New Jersey Superior Court for review and approval; and

BE IT FURTHER RESOLVED that the preparation and submission of said plan is done under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). But for the court's December 5, 2018 order, the individual sites set forth in said plan may or may not have been included in the Township's plan. As such, the Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objections to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suits/claims as well as the process outlined in the court's October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder's Remedy relief by way of further motion and/or appeal,