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Hon. Maryann L. Nergaard, J.S.C.
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February 5, 2019

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Re: IMO Application of the Township of Chatham
Docket No. MRS-L-1659-15

Dear Judge Nergaard,

Enclosed please find my report to the Court entitled “Master’s Report for a *Mount Laurel* Fairness and Compliance Hearing, Township of Chatham, Morris County, New Jersey.” I am submitting this report in anticipation of the hearing in the above-captioned case which is scheduled for Friday, February 22, 2019 at 9:00 AM.

In the interim I would be pleased to respond to any questions Your Honor or counsel may have on my report. I look forward to testifying in support of the proposed settlement on the 22nd.

Sincerely,

Philip B. Caton, PP, FAICP

Philip Caton, FAICP
John Hatch, FAIA
George Hibbs, AIA
Brian Slauch, AICP
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cc: Albert E. Cruz, Esq.
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**MASTER'S REPORT
FOR A *MOUNT LAUREL* FAIRNESS AND
COMPLIANCE HEARING
TOWNSHIP OF CHATHAM
MORRIS COUNTY, NEW JERSEY**

*IMO Application of the Township of Chatham
Docket No. MRS-L-1659-15*

February 5, 2019

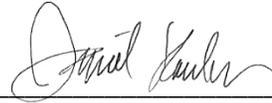
Prepared for:

**The Honorable Maryann L. Nergaard, J.S.C.
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1.0 INTRODUCTION

This report has been prepared in light of the upcoming Fairness and Compliance Hearing before Your Honor on February 22, 2019 In the Matter of the Application of the Chatham Township, County of Morris, Docket No. MRS-L-1659-15. The purpose for the hearing is for the Court to determine whether the terms of a Settlement Agreement (hereinafter “Agreement”) between the Township of Chatham (hereinafter “Chatham” or “the Township”) and Fair Share Housing Center (hereinafter “FSHC”) is fair to the interests of low- and moderate-income households. I am submitting this report in my capacity as Special Master appointed by Your Honor to assist the Court in the above-captioned litigation.

Public notice of the upcoming hearing was published in accordance with established *Mount Laurel* case law. The notice properly summarized the salient points of the Settlement Agreement, directed any interested members of the public to the Chatham Township municipal building, Office of the Township Clerk, where they could review the Agreement and Plan, described the purpose of the Court hearing on February 22, 2019 and invited written comments on the Agreement or Plan to be filed no later than February 12, 2019. I have not received any comments as a result of the public notice.

2.0 THE CONTEXT FOR REVIEW

Before addressing the documents that have been submitted for the Court’s consideration, I would like to acknowledge the parties’ efforts in achieving settlement. Settlement of *Mount Laurel* litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the adjudication of a dispute.

Among the most prominent advantages to settlement is that it creates a more civil atmosphere for further interactions between the parties. Cooperative working relationships increase the likelihood that the Township, FSHC, developers and residents of Chatham who are committed to affordable housing will be able to resolve differences during the coming years without resorting to Court action. Settlements typically facilitate the local compliance process and thereby expedite the delivery or rehabilitation of affordable housing.

The Agreement will be evaluated according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). These cases require agreements in *Mount Laurel* litigation to be subject to a “Fairness Hearing.” The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process conducted by then-Assignment Judge Peter Ciolino in East/West Venture v. Borough of Fort Lee, a case in which I was privileged to serve as Special Master.

In its 1996 decision, the Appellate Court ruled that a settlement between a builder Plaintiff and municipal Defendant in a *Mount Laurel* case may be approved by the Trial Court after a hearing which establishes that the settlement “adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built” 286 N.J. Super. 311, 329 (App.

Div. 1996). The Appellate Court provided specific factors for Trial Courts to consider in making fairness determinations. These factors, adjusted as necessary for application in a settlement such as this (between a public interest advocate and a municipality) will be detailed in a subsequent section of this report.

Notwithstanding the uncertainty which continues to prevail in the statewide affordable housing realm, I have utilized the “Second Round” regulations of the NJ Council on Affordable Housing (hereinafter “COAH”) (*N.J.A.C. 5:93*) to the greatest extent practicable in the course of this review for the Court. This approach encourages uniformity in the interpretation of the *Mount Laurel* doctrine and is consistent with both legislative and judicial directives. The Fair Housing Act (P.L. 1985, c. 222) states,

“The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation.” (N.J.S.A. 52:27D-302(c))

Furthermore, the New Jersey Supreme Court, in its decision in *The Hills Development Co. v. Town of Bernards*, 103 NJ 1 (1986) (commonly known as *Mount Laurel III*) upheld the constitutionality of the Fair Housing Act, and stated,

“Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity [COAH].” (103 N.J. at 25)

In that decision, the Supreme Court also stated that to the extent that *Mount Laurel* cases remained before the courts,

“...any such proceedings before a court should conform wherever possible to the decisions, criteria and guidelines of the Council.” (103 N.J. at 63)

On March 10, 2015 the N.J. Supreme Court delivered a unanimous decision *In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing* 221 N.J. 1 (2015) (also known as “*Mount Laurel IV*”). This decision acknowledged COAH’s inability or unwillingness to adopt constitutional rules for the so-called “Third Round” of municipal affordable housing compliance. In the absence of regulatory guidance from COAH or legislative action, the decision instructs the Trial Courts to evaluate the constitutionality of municipal Fair Share Plans.

While the Court invalidated COAH’s last two attempts to promulgate Third Round rules, the Second Round rules (*N.J.A.C. 5:93*) are still largely intact. In fact, these rules have been relied upon by the Trial Courts in numerous compliance and fairness hearings during the “gaps” in COAH’s rule-making since the Second Round ended in 1999. Furthermore, in the *Mount Laurel IV* decision the Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions. The parties to the Agreement have been guided by these instructions and I will rely on COAH’s Second Round rules and established Court precedent to evaluate the Agreement before the

Court. This will promote the uniformity of approach which is clearly indicated in the Supreme Court's decisions.

This matter comes before the Court by way of Chatham's Declaratory Judgment motion which sought – among other relief – a judicial determination that the Township's Housing Element and Fair Share Plan, as it may be amended and supplemented, satisfies its fair share of the regional need for low- and moderate-income housing pursuant to the *Mount Laurel* doctrine. Chatham sought and was granted immunity by the Court from exclusionary zoning lawsuits while it was preparing its compliance plan and negotiating the terms of the Settlement Agreement. The immunity remains in effect.

3.0 BACKGROUND

Chatham's participation in the COAH process began with its submission of a Housing Element and Fair Share Plan in December of 2005 to address COAH's first set of Third Round rules at *N.J.A.C.* 5:94 and 5:95. COAH does not appear to have reviewed the 2005 Plan before those rules were invalidated. To comply with the second iteration of the Third Round rules, at *N.J.A.C.* 5:96 and 5:97, the Township adopted an amended Third Round Housing Element and Fair Share Plan. COAH's table of municipalities participating in the COAH process at the time indicates that Chatham petitioned COAH on December 31, 2008, and that the petition was deemed complete by COAH on May 18, 2009. The table also indicates that COAH received objections to the plan during the comment period that ended on July 5, 2009. COAH did not grant the Township substantive certification prior to the Courts invalidating COAH's Growth Share methodology.

Chatham filed In the Matter of the Application of Chatham, County of Morris, Docket No. MRS-L-1659-15, on July 7, 2015, seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, *N.J.S.A.* 52:27D-301 et seq. In March of 2016 Chatham adopted a revised Housing Element and Fair Share Plan reflecting the Township's planning at that time. This revised plan acknowledged the 83-unit Prior Round obligation while basing its Third Round Present and Prospective Need obligations – 56 units and 229 units, respectively – on Econsult's report of December 30, 2015. The plan also claimed that its Third Round obligation should be adjusted based on its belief that the Census data used by Econsult is inaccurate. This adjustment would have reduced the Present Need obligation from 56 units to 15 units, and the Prospective Need from 229 units to 104 units. The Township also claimed that it was eligible for a 20% reduction in its Prior Round obligation – from 83 units to 67 units – through a compliance reduction pursuant to *N.J.A.C.* 5:93-3.6(a).

On January 18, 2017, the New Jersey Supreme Court decided In re Declaratory Judgment Actions Filed by Various Municipalities, 227 *N.J.* 508, 531 (2017). The Court held that “in determining municipal fair share obligations for the Third Round, the trial courts must employ an expanded definition of present need.” Following that decision, the Township and FSHC agreed to fully and finally settle the litigation and to present their Settlement Agreement to the trial court.

4.0 THE SETTLEMENT AGREEMENT

The Settlement Agreement has been executed by Mayor Curt Ritter for the Township and Kevin Walsh for FSHC on December 13, 2018. The Agreement sets forth the extent of Chatham's Prior and Third Round fair share obligations and describes the compliance plan components by which Chatham proposes to address those obligations. Since the Agreement addresses both the Second and Third Round low- and moderate-income housing need, part of the obligation has already been achieved while other housing plan components will be undertaken between now and July 1, 2025 (the end of the Third Round).

The parties to the Agreement have agreed upon the following fair share obligations for the Township for the period from 1987 through July 1, 2025:

- Present Need (Rehabilitation Component): 63 units
- Prior Round (1987 – 1999) Obligation: 83 units
- Third Round (1999 – 2025) Obligation: 387 units

The Agreement reduces the Township's Third Round Present Need and new construction obligations in two ways:

1. The Township performed a housing conditions survey, as permitted by the Second Round rules at *N.J.A.C. 5:93-2.2(b)* and Appendix C, which involved an on-the-ground investigation of the actual physical condition of the Township's housing stock. The survey concluded that only six (6) units in the Township meet COAH's criteria for physical deficiency. As a result, the Township's rehabilitation obligation is reduced from 63 units to six (6) units.
2. The Township carried out an analysis of its available land for inclusionary development, according to the rules at *N.J.A.C. 5:93-4.2*. The analysis concluded that the Township only has enough developable land for a Realistic Development Potential ("RDP") of 200 units. The Township's Third Round obligation is, therefore, adjusted to include a 200-unit RDP and a 187-unit Unmet Need ($387 - 200 = 187$).

The Agreement protects Chatham from having to address during the Third Round an obligation greater than what is contained in the agreement in the event that future law, policy, or judicial action results in a larger Third Round fair share obligation. It also provides that Chatham may seek to amend its Third Round obligation, should a forthcoming and binding legal determination result in the calculation of a Third Round obligation more than 20% less than the 387-unit Third Round need obligation established in the Agreement. Should this reduction occur, the Township is still obligated to implement its Fair Share Plan via all of the mechanisms set forth in the Settlement Agreement (Section 17). Any such reduction in the Township's obligation would only affect the Unmet Need portion of its Third Round obligation, as the RDP is set by the vacant land analysis.

Section 22 of the Settlement Agreement contains a request from the parties to the Court to address the fairness of the Settlement Agreement over two separate hearings. The first hearing is to focus on the fairness of the present and prospective need obligations, the RDP, and the compliance mechanisms addressing the RDP and Unmet Need contemplated in the Settlement Agreement, with the exception of a 74-unit municipally sponsored development that is further discussed in Section 5.0 of this report. The second hearing is to focus on the fairness of the municipally sponsored development. The parties request that the first hearing be held in February of 2019 and that the second hearing be held in July 2019. Following the first hearing, the Township requests that FSHC sign a Stipulation of Dismissal with Prejudice and Without Costs in the matter at Docket No. MRS-L-000235-18.

5.0 CHATHAM TOWNSHIP'S COMPLIANCE EFFORTS

This report and the upcoming Fairness/Compliance Hearing focus on the Settlement Agreement between FSHC and the Township and the means for the Township to address its Prior and Third Round obligations.

The Township plans to address this obligation as follows:

PRESENT NEED (REHABILITATION COMPONENT): 6 UNITS

The Township agrees to address its Present Need/Rehabilitation obligation, in accordance with N.J.A.C. 5:93-3.4. The Settlement Agreement does not indicate whether the Township will meet this obligation through participation in the County's Morris County Housing Rehabilitation Program or by funding a local program. The parties have agreed that the Township will not need to create a local rehabilitation program to address the rental portion of the Present Need requirement. ***The Township should specify how it intends to address its Present Need.***

PRIOR ROUND OBLIGATION: 83 UNITS

The Township proposes to satisfy its 83-unit Prior Round obligation with 75 family sale units at a site known as Vernon Grove Condominium at Chatham Glen, and six (6) bedrooms (units) and six (6) rental bonuses from a group home. The Settlement Agreement includes documentation from 1986 demonstrating that the Vernon Grove site was controlled for affordability for 30 years. The Agreement also states that the Township will provide evidence of the creditworthiness of the six (6) bedroom group home during the compliance phase of this matter. ***In order for the group home bedrooms to be eligible for rental bonuses, in accordance with N.J.A.C. 5:93-5.8, the Township needs to show that the group home had affordability controls for 30 years, has operated continuously for 30 years, or was subject to a control period in excess of 10 years as a result of a funding agreement. The crediting submission should include a special needs survey form.***

THIRD ROUND NEED: 387 UNITS

The Township has a 387-unit Third Round obligation, which is reduced through a lack of land adjustment, per *N.J.A.C. 5:93-4.2*, to a 200-unit RDP with a 187-unit Unmet Need. The Township intends to address its RDP with 228 units, credits and rental bonuses from Regional Contribution Agreement credits, extensions of expiring controls, and proposed inclusionary and municipally sponsored projects. The Township’s compliance mechanisms are summarized in the table below:

RDP Compliance Mechanisms	Type	Rental	Sales	RCAs	Bonuses	Total Units
Regional Contribution Agreement	RCA Credits	-	-	8	-	8
Vernon Grove Extension of Controls	Extension of Expiring Controls	-	72		-	72
Inclusionary Zoning	Family Rentals	24	-		24	48
Municipally Sponsored Development	Family Rentals	74	-		26	100
TOTAL		98	72	8	50	228

The Settlement Agreement provides the following additional information about these mechanisms and the Township’s responsibilities with regard to demonstrating that the existing and proposed units are creditworthy:

- **Regional Contribution Agreement:** The Settlement Agreement states that COAH approved a Regional Contribution Agreement to fund eight (8) units in the City of Newark on November 6, 1996. *The Township should provide the RCA agreement as well as evidence that funds were transferred to the City of Newark as provided for in that agreement.*
- **Vernon Grove Extensions of Expiring Controls:** The Settlement Agreement includes documentation showing that the affordability controls at the Vernon Grove site were extended for 30 years starting on September 24, 2016 and that Your Honor approved the extensions of controls through an Order dated May 4, 2018. No further action is required to demonstrate creditworthiness.
- **Inclusionary Zoning:** Chatham adopted an Ordinance on December 14, 2017 (Ord. 2017-15) that provides for the construction of 54 market rate units on Block 66, Lot 1 as well as 24 affordable units either on-site or off-site. The 24 units would represent a 31% set-aside from the 78 total units proposed to be created. Four (4) of the 24 units will be affordable to very-low income units, which represents 16.7% of the affordable units proposed. The Settlement Agreement requires the Township to take the following actions to confirm the creditworthiness of this project:
 - At least 30 days prior to the compliance hearing in this matter, the Township will provide an agreement with the developer (“Developer’s Agreement”). The Developer’s

Agreement will show the location of the proposed affordable units, and state that the Developer has received an adequate compensatory benefit for providing the affordable units and that the developer waives any claims that the project is the result of a taking or inverse condemnation.

- Prior to the Fairness Hearing at which the fairness of the project is evaluated, the Township will provide a letter from the Developer that outlines and endorses the rents for the affordable units.
- The Developer must agree to ensure that the affordable units are completed before the market rate units by submitting a building permit application for the affordable units before obtaining a Certificate of Occupancy for the market rate units, by completing the foundation for the affordable unit site by the time 40% of the market rate units are completed, and by obtaining a Certificate of Occupancy for the affordable units by the time 70% of the market rate units are completed.
- **Municipally Sponsored Site:** The Township proposes to create 74 affordable family rental units on a site that the Township will identify no later than 30 days prior to the second Fairness Hearing in or around July 2019 and “acquire or otherwise obtain including through a tax foreclosure” such site prior to that hearing as well. The Agreement acknowledges that the Township will not be eligible for a final judgment in this matter unless these two requirements have been met and the Township is able to provide an agreement with a developer to create these units. However, the developer’s agreement may be provided subsequent to a hearing on the Township’s compliance even if it is before the entry of a final judgment. In accordance with *N.J.A.C. 5:93-5.5*, the Township’s responsibility to demonstrate the realistic probability of the municipally sponsored site being completed includes providing a pro-forma and evidence of funding sought or awarded for the project, as well as a compliance schedule that provides for construction beginning by June 30, 2021. If the Township expects that it will pursue low-income housing tax credits for the project from NJ HMFA, the Township should indicate whether it believes that the site scores well enough to be competitive based on the most current Qualified Allocation Plan.

The Township also has an Unmet Need of 187 units, which it agrees to satisfy with the following:

- A mandatory set-aside ordinance, within 150 days of the entry of an Order approving the Settlement Agreement, which requires a 20% set-aside on any development having a density of six (6) or more dwelling units per acre.
- An overlay zone permitting inclusionary development on Block 128, Lot 9 (a 3.2-acre parcel current developed with an office building) at a density of 12 units per acre with a 15% set-aside if for-rent or 20% set-aside if for-sale.
- Thirty-two (32) surplus units from the RDP and Prior Round.

Chatham must demonstrate how undeveloped components of the Third Round compliance mechanisms provide a realistic opportunity for the provision of affordable housing in accordance with applicable law and the terms of the Settlement Agreement. ***This will include addressing the availability, approvability, developability, and suitability of the sites proposed for zoning in accordance with N.J.A.C.***

5:93-5:3, agreements with developers, zoning amendments, and any other related documents as exhibits to its Fair Share Plan. In the case of the 24-unit inclusionary development, the documentation should demonstrate a commitment from the developer to create the affordable rental units so that the Township can receive rental bonuses from the units.

The Township agrees to require 13% of all units in this plan, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval as of that date, to be very-low income units, with half of the very-low income units available to families. Pursuant to the Settlement Agreement, Chatham has agreed to post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including the family very-low income requirement referenced above, within 30 days of the third anniversary of this Settlement Agreement, and every third year thereafter.

6.0 FAIRNESS ANALYSIS

The Settlement Agreement must be subjected to the fairness analysis embodied in the East/West Venture case referenced above. Before doing so, it is worth noting, as the Court did in Morris County Fair Housing Council v. Boonton Township 197 N.J. Super, that “...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents.” FSHC was heavily involved in all aspects of this case including the Township’s fair share allocation and the Township’s compliance plan. FSHC is the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households. Consequently, FSHC’s endorsement of the Settlement Agreement is a compelling indication that it believes the Agreement to be fair and reasonable.

Under the *East/West Venture* case the Court established criteria for evaluating the fairness of settlements between municipalities and builder plaintiffs in exclusionary zoning cases. By contrast, this Settlement involves a municipality and a public interest organization. Consequently, the *East/West Venture* fairness criteria must be adapted to serve the instant matter.

Under *East/West Venture* the first step is to evaluate the number and rationale for the affordable housing units to be provided by the developer(s). However, the fairness of the Chatham/FSHC Agreement must be viewed from both a Township-wide perspective as well as evaluating the proposals for development of inclusionary projects.

Evaluation of the Township’s fair share obligation must begin with Chatham’s fair share allocation under alternative methodologies. FSHC commissioned Dr. David Kinsey to prepare a fair share methodology which would calculate the regional need for the 1999 – 2025 period and allocate that housing need to the constituent municipalities in each housing region. Dr. Kinsey’s report of May 2016 allocates Chatham a Third Round Present Need of 63 units, a Prior Round Need of 83 units and a Third Round fair share of 567 units, comprised of a gap obligation of 249 units and prospective need of 318 units.

A consortium of 288 municipalities retained Econsult Solutions Inc. (hereinafter “Econsult”) to prepare a fair share methodology. Chatham was a member of the consortium and designated Econsult as its expert. Econsult produced a series of expert reports and included an allocation mechanism for each municipality. According to Econsult’s most recent report, released in April of 2017, Chatham was allocated a Present Need of 59 units, a Prior Round Need of 83 units, a Gap Present Need of 147 units, and a Third Round Prospective Need of 253 units.

On March 8, 2018, Judge Mary Jacobson, J.S.C. ruled on a constitutional fair share obligation and methodology for Mercer County. Econsult released an updated report on March 28, 2018 applying Judge Jacobson’s methodology to all municipalities in the state. Using Judge Jacobson’s methodology, Chatham was allocated a Present Need of 59 units, a Prior Round of 83 units, and a total Third Round need of 373 units consisting of a 169-unit gap period obligation and a 204-unit Third Round Prospective Need obligation.

The results of all three methodologies are set forth in the table below and compared with the proposed Agreement:

OBLIGATION	FSHC MAY '16	ECONSULT APRIL '17	ECONSULT MARCH '18	SETTLEMENT AGREEMENT
PRESENT NEED	63	59	59	63
PRIOR ROUND	83	83	83	83
TOTAL THIRD ROUND	645	400	373	387
<i>GAP</i>	<i>327¹</i>	<i>147</i>	<i>169</i>	<i>387</i>
<i>PROSPECTIVE NEED</i>	<i>318</i>	<i>253</i>	<i>204</i>	

¹ From Kinsey’s April 2017 report.

In the absence of any consensus on the methodology and in light of the considerable spread in the calculations presented by the experts for the respective parties I find the fair share resolution set forth in the Settlement Agreement to be fair and reasonable to the region’s low- and moderate-income households. This opinion is supported by the following:

- The 63-unit Present Need obligation, which comes from Dr. Kinsey’s May 2016 report, is only four (4) units greater than the 59 units calculated by Econsult. The Settlement Agreement recommends, with my endorsement, the reduction of the obligation to six (6) units based on a housing conditions survey conducted by the Township based on the Second Round rules and witnessed by a planner from my office. Township has not specified how it will address the six (6) units; however, residents of the Township have access to a County-wide program.
- The parties have both accepted COAH’s Prior Round obligation of 83 units; this is in accordance with *Mount Laurel IV* “...prior unfulfilled housing obligations should be the starting

point for a determination of a municipality's fair share responsibility;" In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1, 30 (2015) ("*Mount Laurel IV*");

- The settlement at 387 units for Chatham's Third Round Prospective Need is midway between the 373-unit Third Round obligation calculated by Econsult in April of 2017 and the 400-unit Third Round obligation calculated using the Judge Jacobson methodology.
- It should be noted that the specific fair share number in this case is of lesser import than the municipal compliance plan's prospects for successfully delivering affordable housing. The Settlement Agreement commits Chatham to address its Prior and Third Round obligations with 315 affordable units and inclusionary overlay zoning both Township wide and on specific sites.

Second, under the *East/West Venture* fairness analysis any other contributions being made by the developer (read "municipality" for this case) must be considered, along with any other components which contribute to the municipality's satisfaction of its *Mount Laurel* obligation.

The Settlement Agreement carries a series of features which advance the goal of meeting the housing needs of low- and moderate-income households, as follows:

1. The Township agrees to prepare and adopt a Housing Element and Fair Share Plan, an associated Spending Plan, and implementing ordinances within 150 days of the Court's approval of the Settlement Agreement. With regard to the Spending Plan, the Agreement requires that "any funds deemed 'committed' by the Court" must be expended within four years of the issuance of a final judgment. ***The Township must provide copies of its amended Housing Element and Fair Share Plan, Spending Plan, and all ordinances required by the Settlement Agreement.***
2. At least half of all housing units addressing the Third Round Prospective Need shall be affordable to low- and very low-income households, with 13% of the affordable housing units being reserved for very low-income households. The remainder of the affordable units shall be affordable to moderate-income households. The Settlement Agreement indicates that four (4) units in the proposed inclusionary development will be affordable to very-low income family households. The Township is also required to codify the 13% very-low income distribution in its municipal ordinance by way of adopting or amending its municipal fair share ordinance. ***The Township should confirm that 13% of the 74 units at the proposed municipally sponsored project (equaling 10 units) will be affordable to very-low income households.*** Additionally, the Township-wide mandatory set-aside ordinance and site-specific inclusionary overlay zoning ordinance should cite the section of the required amended fair share / affordable housing ordinance that codifies this requirement.
3. At least 25% of the Township's Third Round Prospective Need shall be met through rental units, at least half of which will be rental units available to families. Chatham has satisfied this requirement by including 98 family rental units, which exceeds the Third Round Prospective Need minimum family rental requirement of 25 Third Round family rental units in its Fair

Share Plan. The Township will verify the rental obligation is satisfied within its Fair Share Plan.

4. At least half of the units addressing the Third Round Prospective Need in total must be available to families, including half of the very-low income units. The proposed compliance plan satisfies this requirement.
5. No more than 25% of the affordable units addressing the Township's Prior Round and Third Round obligation shall be age-restricted and the Township agrees not to request a waiver of that requirement. This requirement is satisfied as the Township's proposed compliance plan does not include any age-restricted units.
6. Rental bonuses shall be calculated in accordance with COAH's Second Round rules *N.J.A.C. 5:93 – 5.15 (d)* and shall not exceed the rental obligation. The rental bonus calculations in the Settlement Agreement comply with this requirement.
7. All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of #2 above in which those rules have been superseded by an amendment to the Fair Housing Act.
8. All new construction units shall be adaptable in conformance with P.L.2005, c.350/*N.J.S.A. 52:27D-311a and -311b* and all other applicable law.
9. The Township shall update its affirmative marketing plan to include FSHC and other organizations named in the Settlement Agreement in its list of community and regional organizations, and both the Township and any other developers or administrative agencies conducting affirmative marketing shall provide notice to those organizations of any available units. ***The Housing Element and Fair Share Plan shall include an updated affirmative marketing plan.***
10. Within 150 days of the Court's approval of this Settlement Agreement, Chatham shall introduce and adopt an ordinance providing for the amendment to the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.
11. On the first anniversary of the execution of the Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Township agrees to provide a status report of all affordable housing activity (including rehabilitation) and trust fund activity within the municipality.
12. The Township shall submit its midpoint realistic opportunity review on or before July 1, 2020, as required pursuant to *N.J.S.A. 52:27D-313*. This midpoint review permits any interested party, such as FSHC in this case, to request by motion a Court hearing regarding whether any sites in the Township's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced. While this review is statutorily sanctioned, in

the event a Court finds that an affordable housing site or other compliance mechanism should be replaced I recommend that the Township be given the opportunity to supplement its Fair Share Plan to correct any deficiency while being protected by immunity from builder remedy litigation. This municipal opportunity to remedy a defect is certainly warranted since the plan which is being amended will have been approved by the Court.

13. Within 30 days of every third anniversary of the agreement the Township will publish on its website and submit to FSHC a status report regarding its satisfaction of the very low-income requirement pursuant to *N.J.S.A. 52:27D – 329.1*.
14. The Township will pay \$15,000 to FSHC for attorney fees within 45 days of the court's approval of the Settlement Agreement at a fairness hearing.

All of the housing compliance requirements cited above contribute to Chatham's satisfaction of its *Mount Laurel* obligation. Moreover, the very act of settling this litigation with a public interest non-profit housing advocate advances *Mount Laurel* compliance.

7.0 CONCLUSION

As directed by the Court, I have evaluated the Agreements by and between the Township of Chatham and Fair Share Housing Center based on the authority, procedures and standards set forth in *Morris County Fair Housing Council v. Boonton Twp.* 197 N.J. Super. 359, 369-71 (Law Div. 1984) and *East/West Venture v. Bor. of Fort Lee.* 286 N.J. Super. 311 (App. Div. 1996). I find that the Settlement Agreements provide a framework for compliance which is worthy of Court approval.

It should be noted that the FSHC/Chatham Settlement Agreement encompasses both an agreement on the magnitude of the Township's Second and Third Round fair share obligations, as well as a preliminary plan through which the parties anticipate the Township will meet its obligation. Should the Court approve the Settlement Agreement the Township still has to perfect the Settlement and re-apply to the Court for final approval and a grant of repose at a Compliance Hearing. Additionally, per the Settlement Agreement, a finding by the Court that the Agreement as a whole is fair to the interests of low- and moderate-income households at the first Fairness Hearing will be considered a preliminary approval of all of the compliance mechanisms in the Township's Plan with the exception of the municipally sponsored project, which the parties request be evaluated at a second Fairness Hearing in or around July 2019.

The FSHC/Chatham Settlement Agreement cites most of the actions which the parties must take to qualify for final Court approval. The most important documents will be the Township's responsibility: the Housing Element of the Master Plan and a Fair Share Plan which includes a Spending Plan for any Affordable Housing Trust Funds. The Housing Element must be duly adopted by the Planning Board and endorsed by the Township's governing body, and the zoning amendments to implement the Fair Share Plan must be adopted by the governing body and effective upon approval by the Court.

I recommend the Court set a time limit of 150 days (consistent with Section 16 of the FSHC/Chatham Agreement) within which the Township will identify the site (s) for the 74 unit municipally-sponsored project and will introduce an ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinances to implement the terms of the FSHC/Chatham Settlement Agreement, and to complete the remaining actions/documents necessary for final judicial approval. The Compliance Hearing can then be scheduled and noticed to the public.

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