

RESOLUTION #17-49

**RESOLUTION AUTHORIZING THE EXECUTION
OF A SETTLEMENT AGREEMENT**

WHEREAS, the City of Woodbury filed the action captioned, *In the Matter of the Application of the City of Woodbury*, in the Superior Court of New Jersey, Law Division, Gloucester County, bearing Docket No. GLO- L -911-15; and

WHEREAS, the action sought a declaration of the City's compliance with the *Mount Laurel* doctrine and Fair Housing Act of 1985, *N.J.S.A. 52:27D-301, et sec.*; and

WHEREAS, a settlement was reached in the form of the Agreement attached hereto in full and final settlement conditioned on approval of the City of Woodbury; and

WHEREAS, the settlement agreement was presented to the Court upon notice to affected parties and following a fairness and compliance hearing on January 5, 2017, the Court approved the settlement agreement and granted the City a Final Judgment of Compliance and Repose conditioned upon the City's approval and execution of the Settlement Agreement; and

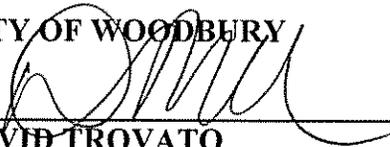
WHEREAS, the City of Woodbury has determined that it is the best interest of the City to authorize the settlement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Woodbury that the City Administrator and/or Mayor are hereby authorized to execute the Settlement Agreement attached hereto.

ADOPTED at a regular meeting of the Mayor and City Council of the City of Woodbury on January 24, 2017.

CITY OF WOODBURY

By:



DAVID TROVATO
President of Council

ATTEST:



ROY A. DUFFIELD, Clerk

Recorded vote:

Ayes (9): Tierney, Swanson, McIlvaine, Johnson, Fleming, Parker, Reddin, Carter, Trovato
Nays, Absent, Abstentions: none

ANGELINI, VINIAR & FREEDMAN, LLP
 By: James P. Pierson, Esquire
 Attorney Id. No. 047411988
 70 Euclid Street
 Woodbury, New Jersey 08096
 (856) 853-8500
 Attorney for Plaintiff/Petitioner, City of Woodbury

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
IN THE MATTER OF THE APPLICATION	:	GLOUCESTER COUNTY
OF THE CITY OF WOODBURY, a	:	
municipal corporation of the State of New	:	DOCKET NO. L-911-15
Jersey,	:	
	:	
Plaintiff/Petitioner	:	<u>Civil Action</u>
	:	(Mount Laurel)
	:	

SETTLEMENT AGREEMENT

This Settlement Agreement memorializes the terms of an agreement reached between the City of Woodbury”), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

The City of Woodbury filed the above-captioned matter on December 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 accordance with In re N.J.A.C. 5:96 and 5:97, *supra*. FSHC has appeared in the action and the City through its attorney and professionals have had numerous conferences with the Court, reviewed numerous iterations of various reports with respect to the City’s obligations and compliance and conducted settlement discussions and exchanged numerous versions of draft agreements and plans. Judge McDonald issued the City a stay until January 15, 2017.

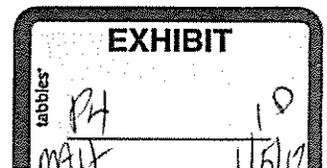
Through that process, the City and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The information in this settlement was recreated using the July 2015 David N. Kinsey report.

The City and FSHC hereby agree to the following terms:

1. FSHC agrees that the City, through the adoption of a fair share plan, consistent with this agreement, which shall be adopted pursuant to paragraph 21 of this Agreement, and the



implementation of that plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301, *et seq.* for the Prior Round (1987-1999) and Third Round (1999-2025).

- 2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
- 3. FSHC and The City of Woodbury hereby agree that the City of Woodbury will meet its obligations based primarily on the Kinsey July 2015 Report as modified through negotiations amongst the parties' professionals and forgo the adjusted needs presented in the May 2016 Kinsey Report. Based on the Kinsey July 2015 Report, Woodbury's affordable housing obligations are as follows:

Rehabilitation Share (Present Need) (per Kinsey Report ¹)	36
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	0
Third Round Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	168

- 4. As noted above, the City had a Prior Round prospective need of 0 units and so, no mechanisms are needed.
- 5. As the City of Woodbury continues to be proactive in maintaining and creating affordable housing, the City has implemented or will implement the following mechanisms to address its Third Round present need of 36 units and prospective need of 168 units.
- 6. Colonial Manor – In 2011 and 2012 Colonial Manor gutted and updated all 199 of their Senior Housing Units advertised and marketed through the UHAC per the HAGC's Equal Housing Opportunity Policy.
- 7. GG Green Property – In 2014 RPM created 55 new senior affordable units advertised and marketed through a variety of media, including local print media (SJ Times), press releases generated through the City Economic Development Office utilizing the City's print media contacts and Facebook.
- 8. Of the 254 Colonial Manor and GG Green Senior Housing units, the City is entitled to utilize 25% or 51 units. Nine (9) units will be used towards its present need and 42 units towards its prospective need obligations.
- 9. Lakeside Apartments – In 2011, utilizing financing in part supported through City Approved Payments in Lieu of Taxes all 96 very low income family units were renovated. The City will use 27 of these units towards its present need and the balance of 69 units towards its prospective need.

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, April 16, 2015, revised July 2015.

10. Lakeside Apartment Bonus: Pursuant to N.J.A.C. 5:93 the City is entitled to a one for one bonus credit per family rented unit up to 25% of the maximum prospective need obligation, i.e., 42 bonus credits.
11. Supportive Living – The City of Woodbury is entitled to Supportive Living Credits for 37 supportive units constructed and operating in the City of Woodbury.
12. Habitat for Humanity – Between 2010 and 2016, Habitat for Humanity of Gloucester County has built five (5) new affordability controlled homes on property donated by the City of Woodbury and the City of Woodbury has donated four (4) additional lots to Habitat for Humanity to construct affordability controlled homes pursuant to statutorily authorized low-moderate income affordability deed restrictions. The City is entitled to credit for all 9 units toward its present and prospective need obligations.
13. As set forth in paragraphs 6 through 9, the City of Woodbury has met its present need of 36 units which have been constructed. As set forth in paragraphs 9 through 12, the City of Woodbury has 194 credits applicable to its prospective need of 168 units of which 190 have been built meeting and exceeding the City's prospective need.
14. For the sake of economic utility and to avoid unnecessary litigation or efforts and expenditure of scarce resources, this agreement does not attempt to itemize or analyze any additional credits that may be available to the City to meet its Third Round present or prospective needs nor limit the use of any present or future available credits towards any future Round obligation pursuant to the applicable law at the time, which credits the City reserves the right to seek at a future time and FSHC reserves the right to address at that time.
15. The City agrees to require 13% of all units referenced in this plan, with the exception of units that have been constructed as of 2008, to be very low income units, with half of the very low income units being available to families. The municipality complies with this requirement.
16. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93 (i.e. one bonus credit per family rental unit up to the 25 percent maximum).
17. At least 50 percent of the units in each of the Third Round Prospective Need sites shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
18. The City agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligations for more than 25% of units developed or planned to meet its fair share obligation.
19. Annually, the City shall provide to all Fair Share Housing service providers, that are not associated with the Housing Authority of Gloucester County, an Affirmative Marketing Policy Guide to assist them in setting UHAC standards of advertising, promotion and selection of tenants. Currently that includes: Lakeside, Woodside, Habitat for Humanity of Gloucester County and the GG Green building c/o RPM Development.
20. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing

Affordability Controls, N.J.A.C. 5:80-26.1, *et. seq.* or any successor regulation, and all other applicable law. The City as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

21. As an essential term of this settlement, within ninety (90) days of Court Approval of this Settlement Agreement, the City shall finally adopt a HEFSP consistent with this Agreement and the implementing ordinances referenced in paragraph 20..
22. The parties agree that if a court of competent jurisdiction in Gloucester County, or an administrative agency responsible for implementing the Fair Housing Act, calculates an obligation for the City for the period 1999-2025 that is lower by more than twenty (20%) percent of the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the City may seek to amend the judgment in this matter. The reduction of the City's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the City prevails in reducing its prospective need for the Third Round, the City may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.
23. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the City agrees to provide annual monitoring of affordable housing activity to the Fair Share Housing Center, and all entities on the affirmative marketing list in this agreement, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by FSHC.
24. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this agreement. The City agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
 - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third anniversary of this agreement, and every third year thereafter, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

25. A condition of this agreement is that FSHC shall be granted as part of any final judgment party status in this matter and shall be deemed to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading.
26. This settlement agreement must be approved by a court prior to going into effect through a fairness hearing process, as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The City shall present its planner or other appropriate witness or witnesses at this hearing. FSHC agrees to not challenge the attached fair share plan in court during any fairness hearing in which it is reviewed. FSHC agrees that the municipality may receive the "judicial equivalent of substantive certification" in accordance with the Supreme Court's decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015).
27. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Gloucester County.
28. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
31. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
32. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
33. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
34. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

35. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
36. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
37. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE CITY:

James P. Pierson, Esquire
City Solicitor
Angelini, Viniar & Freedman, LLP
70 Euclid Street
Woodbury, NJ 08096
Phone: (856) 853-8500
Telecopier: (856) 384-1230
Email: jpierson@avflawfirm.com

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Municipal Clerk, City of Woodbury
33 Delaware Street
Woodbury, NJ 08096

ATTEST:

FAIR SHARE HOUSING CENTER

Kevin D. Walsh, Esquire
Counsel for Intervenor/Interested Party

Dated:

ATTEST:

CITY OF WOODBURY

Roy R. Duffield, City Clerk

Jessica Floyd, Mayor

Dated: