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COLTS NECK TOWNSHIP

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In the Matter of the Declaratory Judgment Actions Filed In the County of Monmouth, State of New Jersey, Pursuant to In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. MON-L-2234-15

Civil Action
(Mount Laurel)

FINAL JUDGMENT OF COMPLIANCE AND REPOSE

THIS MATTER having been opened to the Court by Ronald L. Israel, Esq. and Thomas J. Trautner, Esq., attorneys for petitioner Township of Colts Neck (hereinafter "the Township"), appearing, and on consent of Intervenor Fair Share Housing Center, Inc. ("FSHC"), by Joshua Bauers, Esq. and Ariela Rutbeck-Goldman, Esq., and upon approval of the Court Appointed Special Adjudicator, Frank Banisch, ("Special Adjudicator"); and

THIS MATTER having previously come before the Court on a fairness and preliminary compliance hearing on June 23 and 25, 2020 and, on August 13, 2020, the Court entered an Order of Fairness and Preliminary Mount Laurel Compliance; and this matter having previously come before the Court in accordance with an order setting December 6, 2022 as the date for a Final Compliance Hearing to consider whether the Township's Amended Housing Element Fair Share Plan ("Amended HEFSP") submitted on June 15, 2022 satisfies its affordable housing responsibilities under applicable law and entitles the Township of a judgment of compliance and repose, and on November 21, 2024, the Court entered an order of judgement of fairness and conditional compliance approving the Township's Amended HEFSP subject to certain required amendments as set forth in the order and accompanying decision ("November 21, 2024 Order"); and whereas the Township had previously addressed the following requirements of the August 13, 2020 Order of Fairness and Preliminary Mount Laurel Compliance:

a. Adoption of Ordinance 2020-19 (Affordable Housing);

b. Adoption of Ordinance 2020-15 (amending the Land Development Regulations for the A-4 Mixed Housing District);

c. Adoption of Ordinance 2020-17 (amending the Land Development Ordinance for the A-6 residential district to permit multi-family residential buildings);

d. Adoption of Ordinance 2020-20 (establishing the MU-1 Mixed Use Overlay Zoning District);

e. Adoption of a Development Fee Ordinance (Section 102-15 of the Township Code);

f. Adoption of Resolution 2022-162 (authorizing Colts Neck Building Associates, LLC to appoint Piazza & Associates as the Administrator of the inclusionary development project located at Block 22, Lot 18 (f/k/a) Lots 11, 12, 13 & 14);

g. Adoption of Resolution 2019-26 (approving and endorsing Block 22, Lot 18 (f/k/a) Lots 11, 12, 13 & 14 to be included in the sewer service area element of Monmouth County's Wastewater Management Plan and Authorizing Expansion of the Suez Franchise Area);

h. Adoption of Resolution 2018-142 (approving and endorsing Block 42, Lot 4 to be included in the sewer service area element of Monmouth County's Wastewater Management Plan);

i. Adoption of Resolution 2021-172 (approving and endorsing the delivery of pubic water service by Gordon's Corner Water Company to Block 22, Lot 18 (f/k/a) Lots 11, 12, 13 & 14); and

this matter now comes before the Court in accordance with the November 21, 2024 Order setting March 7, 2025 as the date for a hearing on whether the Township complied with the requirements of the November 21, 2024 Order; and at such hearing, the Township, by Thomas J. Trautner, Jr., Esq., and FSHC, by Joshua Bauers, Esq. and Ariela Rutbeck-Goldman, Esq., appeared; and Special Adjudicator Banisch provided the Court with testimony and a report dated March 6, 2025 that the Township has satisfied the requirements of the November 21, 2024 Order; and the Court having reviewed the testimony and exhibits and representations by Special Adjudicator Banisch and counsel; and the Court having provided an opportunity for interveners and interested persons and parties to ask questions and provide comments on the matters addressed in the proceeding; and good and sufficient cause having been shown for entry of this Final Judgment; and for the

reasons placed on the record during March 7, 2025 hearing;

IT IS on this 21st day of April, 2025, **ADJUDGED, DECLARED AND ORDERED** as follows:

1. The Court declares that the Township of Colts Neck is in compliance with its Constitutional obligation to create a realistic opportunity for the development of affordable housing to very low, low, and moderate income households as defined in what is commonly referred to as the Mount Laurel Doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*, through and including all cycles or rounds up to and including any and all obligations that may have been determined to exist through July 1, 2025, as set forth in the November 21, 2024 Order.
2. The Township's affordable housing obligations were determined as follows: Rehabilitation Share of 25 units; Prior Round Obligation of 218 units; and Third Round Prospective Need of 306 units. The Township's Prospective Need includes the Gap Period Present Need.
3. Per the November 21, 2024 Order, the Township is granted a durational adjustment pursuant to N.J.A.C. 5:93-4.3 and is not eligible for a waiver under N.J.A.C. 5:93-4.3(c)(4).
4. The Township has satisfied the requirements of the November 21, 2024 Order.
5. Per the Court's November 21, 2024 Order Granting Fair Share Housing Center's Motion to Enforce Litigants Rights and Directing Modification of Colts Neck's Proposed Housing Element and Fair Share Plan and Spending Plan, the Township is obligated to committing to at least $2 million toward extending water and/or sewer service to affordable housing in the Area 1 Overlay Zone.
6. When required to permit development of a site for low and moderate income housing in accordance with N.J.A.C. 5:93-4.3, the Township shall cooperate and take the steps necessary to seek modification of any applicable access management plan with the New Jersey Department of Transportation.
7. The Township is entitled to this Final Judgment of Compliance and Repose and immunity from exclusionary zoning lawsuits, including but not limited to "builder's remedy" lawsuits, for its third round Mount Laurel affordable housing obligations, with said protections extending through and expiring on July 1, 2025.

8. The Court retains jurisdiction over this matter solely for the purposes of enforcement of this Judgment of Compliance and Repose, the Township's 2025 Housing Element and Fair Share Plan, and any applicable settlement agreements.
9. A copy of this Order shall be served on the Special Adjudicator, all counsel of record and all parties or interested participants who have registered their interest via ecourts via notice from ecourts and the attached service list within seven days of receipt by counsel for Petitioner.

/s/ Linda Grasso Jones, J.S.C.
HON. LINDA GRASSO JONES, J.S.C.

BANISCH
ASSOCIATES, INC.
Planning and Design

REPORT OF THE SPECIAL ADJUDICATOR

IN THE MATTER OF THE APPLICATION

OF THE TOWNSHIP OF COLTS NECK

DOCKET No. MON-L-2234-15

REGARDING COLTS NECK'S SATISFACTION OF

ALL REQUIREMENTS OF THE NOVEMBER 21, 2024 JUDGMENT OF

FAIRNESS AND CONDITITONAL COMPLIANCE AND REPOSE

Prepared by:

Francis J. Banisch III, PP/AICP
111 Main Street
Flemington, NJ 08822

The original document was signed and sealed on March 6, 2025 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.

Francis J. Banisch III, PP/AICP
Professional Planner #1686

Introduction

The purpose of this report is to present my review and recommendations as the Court-appointed Special Adjudicator regarding whether Colts Neck has satisfied the requirements of Your Honor's November 21, 2024 Judgment of Fairness and Conditional Compliance and Repose. That Judgment found that the adopted Housing Element and Fair Share Plan (HEFSP) submitted by Colts Neck complies with Colts Neck's Mount Laurel Third Round obligation, provided the required amendments and related materials were adopted. You also declared the March 18, 2020 settlement agreement between the Colts Neck, Fair Share Housing Center and Carole Schlumpf not to be void. Additionally, Colts Neck's request for a durational adjustment was granted without a waiver, which will require the Township to endorse any applications to DEP for wastewater treatment to serve affordable housing development.

Satisfaction of Conditions of November 21, 2024 Judgment of Fairness and Conditional Compliance and Repose

This report has reviewed the terms of the Judgment against the Township's submission. My findings are detailed below with the terms of the Judgment outlined in **bold** and numbering that corresponds to numbering in the November 21, 2024 Judgment.

3. Colts Neck must amend the proposed HEFSP, submitted to the court on June 15, 2022 to provide that Colts Neck must adopt and maintain in Area 1 the overlay zoning provided in the March 18, 2020 settlement agreement.

The Township adopted a Housing Element and Fair Share Plan on February 11, 2025, which was endorsed by the Township Committee (Resolution 2025-59). The Plan includes the Area 1 overlay zone discussion as outlined in the March 18, 2020 settlement agreement. As stated in the Plan, Area 1 includes properties in the (B-1) Business District including Block 46, Lots 13, 15, 16, 17 and Block 48, Lots 1, 2, 3, 4, 5, 6, 19, 39, 40, 41. The Plan and ordinance permit a density of eight (8) units per acre with a 20% set aside.

4. Colts Neck must amend the proposed HEFSP to provide that Colts Neck remains obligated under Exhibit B to the March 18, 2020 settlement agreement to provide the financial contribution to a sewer system in Area 1.

The adopted 2025 Housing Element and Fair Share Plan includes "Exhibit B" regarding the March 18, 2020 settlement agreement to provide contributions to a sewer system in Area 1.

6. The waiver granted to Colts Neck under the March 18, 2020 settlement agreement is vacated and Colts Neck must thus endorse all applications to the NJDEP or its agent to provide sewer capacity.

The adopted Housing Element and Fair Share Plan provides a commitment to endorse all applications to the NJDEP or its agent to provide sewer capacity.

7. Colts Neck must amend its proposed housing element and fair share housing ordinance to permit development where the NJDEP or its designated agent approves a proposal to provide infrastructure to a site for the development of affordable housing.

The adopted Plan includes acknowledgement to permit development where the NJDEP, or its agent, approves a proposal to provide infrastructure to support the creation of affordable housing.

8. Colts Neck must amend the proposed HEFSP to remove the three market to affordable units and the potential application of affordable housing trust fund monies to that program.

The market for affordable units have been removed from the HEFSP and the spending plan accordingly.

9. Colts Neck must work with a qualifying developer of comparable reputation to that of Toll Brothers to facilitate sewer service to Area 1.

The adopted plan provides a statement committing the Township to work with a qualifying developer to facilitate sewer in Area 1. The plan states the Township will:

> *"Work with a qualifying developer of comparable reputation to that of Toll Brothers to facilitate sewer service to Area 1."*

10. Colts Neck must reserve and set aside new sewer capacity, when it becomes available, for affordable housing on a priority basis.

The adopted plan provides a statement to set aside and prioritize any newly available sewer capacity to facilitate affordable housing creation.

> *"1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis."*

1. **Amend the HEFSP to include the Area 1 overlay zone.**
   The adopted, amended Housing Element and Fair Share plan includes the Area 1 overlay.

2. **Amend the HEFSP and Spending Plan to remove the market to affordable program.**
   The Township has provided an amended and adopted Spending Plan (Resolution 2025-60) eliminating funding for the market to affordable program.

3. **Revise the Spending Plan to distribute funds to mechanisms in the plan, including funds for sewer.**
   The adopted Spending Plan provides funding to the approved affordable housing mechanisms and sewer infrastructure needs.

4. **Work with a qualifying developer of comparable reputation to that of Toll Bros. to facilitate sewer service to Area 1.**
   The adopted plan provides a statement committing the Township to work with a qualifying developer to facilitate sewer in Area 1.

5. **Provide adopted versions of the Planning Board and Township Committee resolutions endorsing the amended HEFSP.**
   The Township has provided the Planning Board Resolution adopting the Housing Element and Fair Share Plan dated February 11, 2025 and the Governing Body endorsement (Resolution 2025-59).

6. **Cease use of trust funds toward administrative expenses.**
   The adopted Spending plan recognizes the Township's over expenditure of funds for administrative purposes and confirms no additional administrative fees will be drawn from the trust fund until recapture, as follows:

   "The Township recognizes it has exceeded its maximum administrative costs. In order to rectify this noncompliance, the Township commits to not expending money from the affordable housing trust fund for administration expenditures until its total administration expenditures are less than 20%."

7. **Provide a governing body resolution approving the Spending Plan.**
   The Governing Body approved the Spending plan (Resolution 2025-60).

8. **Provide an adopted version of the draft operating manual for rental affordable units.**
   The Township adopted the "Operating Manual for Rental Affordable Units" (Resolution 2025-61), and "Operating Manual for For-Sale Affordable Units" (Resolution 2025-62).

9. **Provide a signed, adopted version of the governing body resolution approving bond issuance.**
   The Township provided the adopted intent to bond ordinance (Resolution 2025-63).

10. **Provide additional information concerning the Monmouth County Rehabilitation program, including a structural conditions survey.**

The Township has provided an appendix in the adopted Plan consisting of the Monmouth County rehabilitation program "Homeowners Guide and Additional Information Guide" released by the County in February 2020. The Township elected not to prepare a structural conditions survey.

11. **Provide an ordinance designating a municipal housing liaison.**

The Township has designated the Township Planner as the municipal housing liaison (Resolution 2025-46).

12. Provide documents showing creditworthiness for the 7 assisted living units at Reflections at Colts Neck.

The appendix to the Plan includes creditworthiness information for the assisted living facility. The documentation includes the NJ Health Facilities listing for Reflection at Colt's Neck, Planning Board resolution of approval for preliminary and final major subdivision and site plan dated November 10, 1998, and CO issued January 31, 2002.

13. Provide a resolution appointing an administrative agent for affordable units other than those at CNBA.

The Township has designated the Township Planner as the Affordable Housing Agent (Resolution 2025-45).

14. Provide adopted versions of the affirmative marketing plan and resolution.

The Affirmative Marketing Plan has been provided as has the resolution adopting the Plan (Resolution 2025-44).

Satisfaction of Condition of the September 24, 2021 Order Granting Interested Party's Motion For Intervention And Relief Pursuant To Fairness Order, in Part

I will also note that Paragraph 7 of this order requires that:

> It is further ordered that the Township take steps necessary to amend the NJDOT Highway Access Management Plan to allow for the Toll Project.

I do not know whether this requirement has been addressed but now would be an appropriate time for the Township to detail such steps as may have been taken.

Summary and Recommendation

This report has been prepared to determine whether all requirements of the November 21, 2024 Judgment of Fairness and Conditional Compliance and Repose have been satisfied. Based upon the analysis undertaken herein, I find that Colts Neck Township has taken all the necessary actions to qualify for an unconditional final judgment.

I also note that the Township should document the steps taken toward securing an amendment to the State Highway Access Management Code for the former Toll property.

I trust that these findings and recommendations will assist the Court in this matter.