

2021

Amendment to the 2020 Amended Spending Plan

South Brunswick Township, Middlesex County, New Jersey

ADOPTED May 19, 2021

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INTRODUCTION

This Spending Plan is being adopted 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). It is done only to comply with the Court's order of April 26, 2021, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, Docket No. MID-L-4433-17. The Township of South Brunswick continues to assert its ongoing objection to the Court's January 28, 2020 appointment of a forensic accountant to audit the Township's affordable housing trust fund expenditures; to the findings set forth in the forensic accountant's March 17, 2020 audit report that the Township has expended affordable housing trust funds in excess of its permitted maximum; and to the Court's April 26th Order directing the Township to reimburse its trust fund in the amount of \$1,354,642.78. The Township reserves all rights it may have to contest any and all rulings by the Court 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.

South Brunswick Township adopted an amended 2020 Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (*N.J.S.A. 40:55D-1 et seq.*), the Fair Housing Act (*N.J.S.A. 52:27D-301*) and the regulations of the Council on Affordable Housing ("COAH") (*N.J.A.C. 5:93-1 et seq.*). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on March 11, 1993, and was last amended on February 20, 2020, and reviewed and approved by the Court at a Compliance Hearing on October 22, 2020. The ordinance established South Brunswick Township's affordable housing trust fund, for which this Amended Spending Plan is prepared.

South Brunswick Township first received substantive certification from COAH on August 3, 1987, petitioned COAH for Second Round substantive certification on March 6, 1995, and received Second Round certification on February 4, 1998. The Township received prior approval to maintain an affordable housing trust fund on March 11, 1993.

The Township also petitioned for Third Round substantive certification on December 16, 2005 under COAH's original Third Round rules at *N.J.A.C. 5:94 et seq.*; however, the Township's petition had not been certified by COAH prior to the issuance of the Appellate Division's January 25, 2007 decision overturning portions of COAH's methodology and regulations. On December 10, 2008, South Brunswick adopted a 2008 Third Round Housing Element and Fair Share Plan consistent with COAH's second iteration of Third Round rules. The Township submitted the 2008 Plan to COAH on December 31, 2008 as part of its second petition for Third Round substantive certification. Although COAH began to conduct a substantive review of the Township's 2008 Plan, it did not certify the Plan prior to the Appellate Court decision on October 8, 2010, invalidating COAH's Third Round growth share methodology.

The Township filed a Declaratory Judgment action in Superior Court on July 1, 2015 per Mount Laurel IV. Although the Township disputes the Court's subsequent findings, including revocation of

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immunity and granting of multiple builder remedy awards, in June 2020 the Township adopted a Spending Plan to address both Judge Bergman’s December 5, 2018 Order and Judge Cresitello’s November 27, 2019 Order requiring the submission of a compliant HE/FSP.

Also in the November 27, 2019 Order, Judge Cresitello required the Township to retain the services of a forensic accountant to identify any trust funds expended on litigation-related expenses since 2015. The forensic audit was completed and submitted to the Township and the Court, and the Township timely submitted its objections to Judge Cresitello as permitted. On April 26, 2021, Judge Cresitello ordered that within 120 days the Township must reimburse its affordable housing trust fund in the amount of \$1,354,642.78 in administrative expenses the Court found were in excess of the permitted maximum; and within 30 days the Township must adopt an amended Spending Plan that reflects this reimbursement. This amended spending plan has been prepared under protest to comply with Judge Cresitello’s April 26, 2021 Order.

As of December 31, 2020, South Brunswick Township had collected \$30,911,569.69 and expended \$22,168,564.11, resulting in a balance of \$8,743,005.58. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units in the REACH program or with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund account for the purposes of affordable housing. These funds shall be spent in accordance with *N.J.A.C. 5:93-8.16* as described in the sections that follow.

REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the Third Round, South Brunswick considered the following:

- (a) **Development fees:** **\$1,455,640.25**
1. Residential and nonresidential projects that have had development fees imposed upon them at the time of preliminary or final development approvals;
 2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
 3. Future development that is likely to occur based on historical rates of development.
- (b) **Payments in lieu (PIL):** **\$0**

Actual and committed payments in lieu (PIL) of construction from developers. The Township does not anticipate receiving any payments in lieu of construction during the Third Round.

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(c) Other funding sources: \$0

South Brunswick Township collects money from other funding sources, such as REACH program affordable unit sales and loan repayments, etc. Funds from other sources may include, but are not limited to the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, and proceeds from the sale of affordable units.

(d) Court-Ordered Reimbursement: \$1,354,642.78

Judge Cresitello's April 26, 2021 Order requires the Township to reimburse its affordable housing trust fund in the amount of \$1,354,642.78 within 120 days of the Order and to reflect such reimbursement in an amended spending plan.

(e) Projected interest: \$64,368.17

Based on current interest rate trends and projected rates of development fee revenue, South Brunswick anticipates collecting \$64,368.17 in interest through 2025.

Table SP-1 indicates the anticipated revenue to be generated from development impact fees, the Court-ordered reimbursement, and interest. South Brunswick Township projects a subtotal of \$2,874,651.20 to be collected between January 1, 2021 and June 30, 2025, including interest, to be used for affordable housing purposes. The total, after adding the money currently in the account, is projected to be \$11,617,656.78. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

Table SP-1: Source of Funds – Housing Trust Fund 2021 through June 30, 2025

Year Source of Funds		2021	2022	2023	2024	1/1-6/30 2025	Total
Approved and Pending Developments	\$8,743,005.58 Starting Balance (December 31, 2020)	\$127,962.50	-	-	-	-	\$127,962.50
Projected Residential Development		\$198,138.46	\$198,138.46	\$198,138.46	\$198,138.46	\$99,069.23	\$891,623.07
Projected Non-Residential Development		\$96,901.04	\$96,901.04	\$96,901.04	\$96,901.04	\$48,450.52	\$436,054.68
Court-Ordered Reimbursement		\$1,354,642.78	-	-	-	-	\$1,354,642.78
Interest		\$14,304.04	\$14,304.04	\$14,304.04	\$14,304.04	\$7,152.02	\$64,368.17
Total			\$1,791,948.82	\$309,343.54	\$309,343.54	\$309,343.54	\$154,671.77

While the average yearly rate of new residential construction over the past five years has been 127 units, much of the residential development anticipated by 2025 will be inclusionary development including affordable units and is thus not subject to a residential development fee. Therefore, projected residential development subject to such a fee is based on a lower estimate of 117 new homes being constructed over the next 4.5 years; this is a rate of 26 new housing units per year, with an average development fee of \$7,620.71. Projected non-residential development is based on an estimate of 16,237.50 square feet of commercial/retail and 192,656.25 square feet of warehouse/industrial construction through June 30, 2025. These square footages were multiplied by \$125 and \$80 respectively, (the per square-foot equalized assessed value for non-residential use). This estimate of \$17.44 million in new construction was then multiplied by the 2.5 percent non-residential development fee. Interest is calculated based on current interest rate trends.

ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by South Brunswick Township:

Collection of development fee revenues:

All collection of development fee revenues will be consistent with local regulations, which follow COAH administrative models for both residential and non-residential developments and in accordance with *N.J.S.A. 40:55D-8.1* through 8.7.

Distribution of development fee revenues:

The governing body reviews the request for consistency with the Spending Plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body resolution in accordance with the Court-approved Spending Plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

Rehabilitation: \$1,188,000

South Brunswick Township has a Third Round Rehabilitation obligation of 109 units. The Township has completed work on 95 rehabilitation units since April 1, 2010 and anticipates Third Round rehabilitation work of approximately \$950,000 on the two major SBCDC affordable housing complexes – Oak Woods and CIL Woods (see rehabilitation chart for “pending” rehabilitation work in Appendix 4 of the Housing Plan). Although the Township anticipates most of this funding will come from HUD or the Federal CDBG program, the Township will reserve up to \$950,000 for this scheduled rehabilitation work. In addition, to fulfill its 109-unit rehabilitation obligation, the Township will continue to operate its local rehabilitation program and rehabilitate at least 14 more units. The Township will dedicate funds from the affordable housing trust fund in the amount of \$17,000 per unit (as directed by the Court Master) for the remaining 14 units, or a minimum of \$238,000, towards its Rehabilitation Program.

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Housing Activity (N.J.A.C. 5:93-8.16(a))

South Brunswick Township will dedicate a minimum of \$3,350,000 for the creation of new affordable units in the Township, via the following programs:

- **REACH Market-to-Affordable Program: \$1,750,000**

The Township is proposing a 10-unit market-to-affordable program and will dedicate up to an average of \$175,000 per unit to account for higher market unit prices and the rise in materials costs associated with rehabilitation, or \$1,750,000 total, from the Housing Trust Fund to convert market-rate housing units into affordable housing units and rehabilitate the units to the extent required.

- **Woodhaven Extension of Controls: \$1,600,000**

The Township is proposing to execute an agreement with the owner of the Woodhaven affordable family rental property, to extend the controls on all 80 family rental units, for a per-unit expenditure of \$20,000. The original certificates of occupancy on the units were issued in September 1991.

Affordability Assistance (N.J.A.C. 5:93-8.16(c))

South Brunswick Township is required to spend a minimum of 30 percent of development fee revenue to render affordable units more affordable and at least one-third of that amount must be dedicated to very low-income households (i.e. households with incomes less than 30 percent of the regional median income) or to create very low-income units. The actual affordability assistance minimums should be calculated based on actual development fees and interest.

Table SP-2: Projected Minimum Affordability Assistance Requirement		
Actual Development Fees Collected through 12/31/20		\$23,362,230.63
Actual Interest earned through 12/31/20	+	\$2,371,038.47
Development Fees Projected 2021-6/30/25	+	\$1,455,640.25
Interest Projected 2021-6/30/25	+	\$64,368.17
Less Housing Activity Expenditures through 6/2/2008	-	\$3,542,506.93
Total	=	\$23,710,770.59
Calculate Required 30%	x 0.30 =	\$7,113,231.18
Less Affordability Assistance expenditures through 12/31/20	-	\$4,025,012.18
Projected Minimum Affordability Assistance Requirement	=	\$3,088,219.00
Projected Minimum Very Low-Income Requirement	÷ 3 =	\$1,029,406.33

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Based on fees and interest collected to date and projected revenues, Table SP-2 shows South Brunswick Township must dedicate at least \$3,088,219.00 from the affordable housing trust fund to render units more affordable, including \$1,029,406.33 to render units more affordable to households with income at 30 percent or less of regional median income. It may use a variety of vehicles to do this including, but not limited to the following:

- Emergency repair program;
- Down-payment assistance;
- Rental assistance;
- Security deposit assistance;
- Low interest loans;
- Assistance with homeowners' association or condominium fees and special assessments; and/or
- Converting low-income units to very low-income units or creating new very low-income units, etc.

The Township will work with its affordable housing providers and administrator to expand outreach to ensure the existing and new households of very low, low, and moderate income can take advantage of affordability assistance programs. Additionally, the Township will work with affordable housing providers to convert low-income units to very low-income units.

South Brunswick must dedicate at least \$3,088,219.00 towards affordability assistance. The Township has already committed a minimum of \$4,545,000 up to a maximum of \$5,997,500 toward providing affordability assistance and dedicating funds from the Affordable Housing Trust Fund for the following projects:

- **Dungarvin: \$140,000**

The Township will dedicate funds from the Affordable Housing Trust Fund to the non-profit organization Dungarvin New Jersey, Inc. for the acquisition, renovation and operation of one group home for very-low income qualified individuals with developmental disabilities. The project totals three bedrooms in one building.

- **Wilson Farm: \$2,222,500-\$3,675,000**

The Township will convey approximately 12.74 acres through a Bargain and Sale Deed to Jaynar Construction or its designee for the creation of at least 127 and up to 210 age-restricted affordable rental units. In addition to the conveyance of land, the Township will dedicate at least \$2,222,500 (\$17,500/unit x 127 units) and up to \$3,675,000 (\$17,500/unit x 210 units) from the affordable housing trust fund to provide affordability assistance to Jaynar Construction or its designee.

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- **RPM Phase I Mixed-Income: \$1,102,500**

The Township will provide affordability assistance to RPM for the creation of family affordable rental units, including very low-income family affordable rental units. The Township will dedicate at least \$1,102,500 from the affordable housing trust fund for this project.

- **RPM Phase II Family and Supportive Housing: \$1,080,000**

The Township will provide affordability assistance to RPM for the creation of 60 family and special-needs affordable rental units, including 17 very low-income affordable rental units representing 28.3 percent of the total affordable units, far above the 13 percent statutory requirement. The Township will dedicate up to \$18,000 per unit, or a total of \$1,080,000, from the affordable housing trust fund for this project.

Administrative Expenses (N.J.A.C. 5:93-8.16(e))

The Township is amending its calculation of allowable administrative expenses to implement Judge Cresitello's April 26, 2021 Order, finding that the Township had expended funds for administrative purposes above its permitted 20 percent maximum and requiring the reimbursement to the trust fund of \$1,354,642.78 in what it ruled were excess administrative expenditures.

To implement the April 26th Order, South Brunswick may use development fee revenue (not including interest and 'other' income as previously projected) for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative expense maximum is calculated on an ongoing basis based on actual development fees collected.

South Brunswick Township projects that \$331,654.78 may be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Salaries and benefits for municipal employees or consultant fees necessary to develop or implement a rehabilitation program; a new construction program; a housing element; and an affirmative marketing program;
- Income qualification of households;
- Monitoring the turnover of sale and rental units; and
- Compliance with Court-ordered monitoring requirements.
- Township Attorney, Engineer, and Planner fees related to plan preparation and implementation;
- Affirmative Marketing;

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- Income qualification of households; and
- Administration of Township’s affordable housing units.

Table SP-3: Projected Administrative Expenses		
Actual Development Fees Collected through 12/31/19		\$22,651,961.92
20% Maximum Permitted Administrative Expenses	x 0.20 =	\$4,530,392.38
Less Actual Administrative Expenditures through 12/31/19	-	\$5,885,035.16
Amount to be reimbursed per 4/26/21 Court Order	+	\$1,354,642.78
Net funds available for administrative expenses as of 1/1/2020	=	\$0
Actual Development Fees Collected 1/1/20-12/31/20		\$710,268.71
Development Fees Projected 2021-6/30/25	+	\$1,445,640.25
Total	=	\$2,155,908.96
20% Maximum Permitted Administrative Expenses	x 0.20 =	\$431,181.79
Less Administrative Expenditures 1/1/20-12/31/20	-	\$99,527.01
Projected allowed administrative expenditures 1/1/21-6/30/25	=	\$331,654.78

Table SP-3 shows the Township is permitted to expend an anticipated maximum of \$331,654.78 on administrative expenditures between January 1, 2021 and June 30, 2025. Allowable administrative expenditures are calculated on an ongoing basis based on actual development fees collected, and the Township will in no instance expend trust funds on administrative costs in excess of 20 percent of actual development fees.

EXPENDITURE SCHEDULE

South Brunswick Township intends to use Affordable Housing Trust Fund revenues for its rehabilitation program, affordability assistance including the creation of very-low income units and making existing units more affordable, the creation of new affordable units, and administration expenses. The expenditure schedule set forth in Table SP-4 shows the Township meets the requirement that trust fund revenues be expended within four years of their collection.

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Table SP-4: Projected Expenditure Schedule 2021 Through June 30, 2025

Program	Units	2021-2022	2023-2024	2025	Total
Rehabilitation		\$528,000	\$528,000	\$132,000	\$1,188,000
Affordability Assistance: \$6,748,002					
Dungarvin	3	\$140,000			\$140,000
RPM Phase I	63	\$1,102,500			\$1,102,500
RPM Phase II	60	\$1,080,000			\$1,080,000
Wilson Farm	127/ 210	\$3,675,000			\$3,675,000
Other Affordability Assistance programs		\$333,556	\$333,556	\$83,390	\$750,502
Housing Activity: \$3,350,000					
REACH	10	\$700,000	\$700,000	\$350,000	\$1,750,000
Woodhaven Extension of Controls	80	\$1,600,000			\$1,600,000
Administration		\$147,402	\$147,402	\$36,851	\$331,655
TOTAL	358 / 421	\$9,306,458	\$1,708,958	\$602,241	\$11,617,657

EXCESS OR SHORTFALL OF FUNDS

The Township has more than \$8.7 million in its trust account and has up to \$10,535,500 in anticipated/known funding commitments (\$1,188,000 rehabilitation, \$1,102,500 RPM Phase I, \$1,080,000 RPM Phase II, a maximum of \$3,675,000 for Wilson Farm, \$140,000 Dungarvin, \$1,600,000 for Woodhaven Extension of Controls and \$1,750,000 REACH). In the event there is a shortfall of funds anticipated through outside funding sources, the Township has adopted a resolution of its intent to fund any shortfall through bonding, if necessary. In the event that funds exceed projected expenditures, the Township will devote any excess funds on additional affordability assistance above the 30 percent minimum requirement. Alternatively, the Township reserves the opportunity to amend its Housing Element and Fair Share Plan, as well as this Spending Plan, to create additional affordable housing opportunities.

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SUMMARY

The Township of South Brunswick adopted an amended Spending Plan in 2020. This May 2021 amended Spending Plan is an amendment to the 2020 Spending plan, and is being adopted under protest to implement an April 26, 2021 Court ruling directing the Township to reimburse the Trust Fund \$1.35 million for exceeding the 20% administration cap and to show such reimbursement in an amended spending plan. The Township intends to spend affordable housing trust fund revenues pursuant to the extant regulations governing such funds, the Court's April 26, 2021 Order and consistent with the housing programs outlined in the Township's 2020 Amended Third Round Housing Plan Element and Fair Share Plan. South Brunswick had a balance of \$8,743,005.58 as of December 31, 2020 and anticipates an additional \$2,874,651.20 in revenues in the Third Round, including the Court-ordered reimbursement of administrative expenses, for a total of \$11,617,656.78.

The Township may expend an anticipated maximum of \$331,654.78 of trust funds on administrative costs during the period of repose, depending on actual development fees collected. While the Township is required to expend a minimum of \$3,088,219.00 on affordability assistance, the Township is proposing to spend at least \$4,545,000 up to a maximum of \$6,748,002 on affordability assistance and anticipates expending a total of \$1,188,000 on rehabilitation and \$3,350,000 on housing activity.

Table SP-5: Spending Plan Summary	
Revenues	
Balance as of December 31, 2020	\$8,743,005.58
Projected Revenue from 2021 through 6/30/25	
1. Development Fees	+ \$1,455,640.25
2. Court-Ordered Reimbursement	+ \$1,354,642.78
Interest	+ \$64,368.17
Total Projected Balance	= \$11,617,656.78
Expenditures	
Funds Used for Rehabilitation	- \$1,188,000.00
Housing Activity	- \$3,350,000.00
Affordability Assistance	- \$6,748,002.00
Administration	- \$331,654.78
Total Projected Expenditures	= \$11,617,656.78
Remaining Balance	= \$0

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