

Township of South Brunswick
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FILED

December 10, 2024

Hon. Michael V. Cresitello, Jr., P.J.Cv.

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-L-4433-17 (**consolidated**)

Civil Action

(Mt. Laurel Builder’s Remedy)

**AMENDED FINAL THIRD ROUND
JUDGMENT OF COMPLIANCE,
ORDER OF REPOSE, AND ORDER
APPROVING THIRD ROUND/
FOURTH ROUND FAIR SHARE
OBLIGATIONS AND SETTLEMENT
AGREEMENT BETWEEN TOWNSHIP
OF SOUTH BRUNSWICK AND FAIR
SHARE HOUSING CENTER, INC.**

K. HOVNANIAN SHORE
ACQUISITIONS, LLC,

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK
and the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

DOCKET NO. MID-L-1194-17

Civil Action

PPF INDUSTRIAL – ROUTE 130/EXIT 8A, LLC, a limited liability company organized under the laws of the State of Delaware,

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4094-17

Civil Action

SOUTH BRUNSWICK CENTER, LLC.,

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4432-17

Civil Action

STANTON GIRARD, LLC.,

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4433-17

Civil Action

WINDSOR ASSOCIATES, a New Jersey Partnership,
Plaintiff,
vs.
TOWNSHIP OF SOUTH BRUNSWICK
and the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4434-17

Civil Action

AVALON BAY COMMUNITIES, INC.,
Plaintiff,
vs.
TOWNSHIP OF SOUTH BRUNSWICK
and the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4435-17

Civil Action

AMERICAN PROPERTIES AT SOUTH
BRUNSWICK, LLC,
Plaintiff,
vs.
TOWNSHIP OF SOUTH BRUNSWICK,
TOWNSHIP COUNCIL OF THE
TOWNSHIP OF SOUTH BRUNSWICK
AND the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-4437-17

Civil Action

TG ACQUISITIONS, LLC, a New Jersey Limited Liability Company,

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK, a New Jersey Municipal Corporation and PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-5012-17

Civil Action

WINDSOR ASSOCIATES, a New Jersey Partnership,

Plaintiff,

vs.

PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-7418-17

Civil Action

TOLL BROTHERS, INC., (now New Village Associates, et al)

Plaintiff,

vs.

TOWNSHIP OF SOUTH BRUNSWICK and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX
COUNTY

DOCKET NO. MID-L-0563-18

Civil Action

RIDGE ROAD PROPERTIES, LLC Plaintiff, vs. TOWNSHIP OF SOUTH BRUNSWICK, a New Jersey Municipal Corporation and PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.
PRINCETON 2021 AND ORCHARDS 2021, as successor in interest to RICHARDSON FRESH PONDS, LLC & PRINCETON ORCHARDS ASSOCIATES, LLC Plaintiffs, vs. TOWNSHIP OF SOUTH BRUNSWICK, Defendant.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION – MIDDLESEX
 COUNTY

DOCKET NO. MID-L-2510-19

Civil Action

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION – MIDDLESEX
 COUNTY

DOCKET NO. MID-L-4436-17

Civil Action

THIS MATTER comes before the Court in furtherance of the settlement negotiations between the Township of South Brunswick (the “Township”), the Township of South Brunswick Planning Board (the “Planning Board” or “Board”) and Fair Share Housing Center, Inc. (“FSHC”), and the Settlement Agreement, dated September 12, 2024, resulting therefrom as fully executed by the Township and FSHC on September 18, 2024 (the “Township FSHC Settlement Agreement”), settling the litigation emanating from the Township’s filing of its 2015 Declaratory Judgment Complaint seeking a determination that the Township’s Third Round Present Need is 109, the Prior Round obligation is 841, the Third Round ‘Gap’ and Prospective Need is 1,450, and the Fourth Round Prospective Need is 1,070 and seeking a determination that the Township continues to comply with its cumulative Third-Round Mount Laurel obligation,

initially approved as reflected in the Court’s entry of the Township’s Final Judgment of Repose (“JOR”), dated July 6, 2021, in accordance with the procedures set forth in the case In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), with said litigation consolidated in the Superior Court of New Jersey, Law Division, Middlesex County, and bearing docket no. MID-L-4433-17 (the “Litigation”); and

THE COURT HAVING conducted a Fairness and Compliance Hearing on Wednesday, November 13, 2024 at the Superior Court of New Jersey, Law Division, Middlesex County, 56 Paterson Street, New Brunswick, New Jersey 08903 (the “Hearing”), in accordance with and as required by applicable law to entertain approval of the Township FSHC Settlement Agreement, and to determine whether the Township FSHC Settlement Agreement is reasonable and adequately protects the interests of low and moderate-income households, in accordance with the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286, 289 N.J. Super. 311 (App. Div. 1996) and in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff’d o.b., 209 N.J. Super. 108 (App. Div. 1986), and also to determine whether the Township’s plan entitled “2024 Amendment to the 2020 Amended Third Round Housing Element and Fair Share Plan” (the “Plan” or “Amended Third Round Plan”), as endorsed by the Township and adopted by the Planning Board in furtherance of and as required by the express terms and conditions of the Township FSHC Settlement Agreement, provides for a realistic opportunity for the development of the Township’s Third Round Fair Share of very low, low- and moderate-income housing in the Township; and

THE COURT HAVING jurisdiction to conduct the Hearing as the Township provided

proper legal public and actual notice of the Hearing (the “Notice of Hearing” or the “Notice”), with the Notice requiring deadlines for any interested person or party to file written objections to the Township FSHC Settlement Agreement and the Plan, and with Francis M. Womack, Esq. appearing on behalf of the Township; Thomas J. Molica, Jr., Vogel, Chait, Collins, and Schneider, P.C., appearing on behalf of the Planning Board; Joshua Bauers, Esq. appearing on behalf of FSHC; Elizabeth Hampton, Esq., appearing on behalf of Intervenors Princeton 2021, LLC and Orchard 2021, LLC (“P&O”) and U.S. Home d/b/a Lennar (“Lennar”); Thomas F. Carroll, III, Esq. of Hill Wallack, LLP, appearing on behalf of Intervenor PPF Industrial-Route 130/Exit 8A, LLC (“PPF”); (P&O and PPF collectively referred to as the “Settled Parties”); Kenneth D. McPherson, Jr., Esq. of Waters, McPherson, McNeill, P.C., appearing on behalf of Intervenor South Brunswick Center, LLC (“SBC”); Richard Hoff, Esq. of Bisgaier Hoff, appearing on behalf of Intervenor Pulte (as successor to Avalon Bay); John Sarto, Esq. of Giordano Halleran & Ciesla, appearing on behalf of Intervenor American Properties at South Brunswick, LLC (“American Properties”); Bryan D. Plocker, Esq. of Hutt Shimanowitz & Plocker, P.C., appearing on behalf of Intervenor Windsor Associates (“Windsor”) (collectively SBC, Pulte, American Properties, Windsor and Lennar referred to as the “SHO Parties”); and with Bryan D. Plocker, Esq. also appearing on behalf of Monmouth Mobile Home Park Land Development (“MMHP”) and Jaynar Construction (“Jaynar”); Joshua Zielinski, Esq. of O’Toole Scrivo, P.C., appearing on behalf of Intervenor Ridge Road Properties, LLC (“RRP”), (collectively, the “Settled Parties, the SHO Parties, MMHP, Jaynar and RRP”), and with Special Adjudicator Christine Nazzaro-Cofone, PP, AICP ("Special Adjudicator") appearing; and

THE COURT HAVING the Township submit into evidence the following documents at the Hearing: Exhibit P-1: the Plan; Exhibit P-2: the Township FSHC Settlement Agreement;

Exhibit P-3: the Notice of Hearing with proofs of service and publication appended thereto; Exhibit P-4: the Report of the Special Adjudicator dated November 8, 2024 (the “Special Adjudicator Report”); and

THE COURT HAVING received and considered the expert testimony of Mary Beth Lonergan, PP, AICP, the Township municipal and affordable housing planner and a licensed expert in the fields of professional land use planning and affordable housing planning, attesting to and explaining the Township FSHC Settlement Agreement and the Plan, attesting to their respective validity and compliance with all applicable law, together with the testimony of the Special Adjudicator, also a licensed expert in the fields of professional land use planning and affordable housing planning, attesting to the findings and conclusions set forth in the Special Adjudicator Report and the validity of the Township FSHC Settlement Agreement and the Plan, and their compliance with applicable law, and with no written objections or other submissions made by any interested person or party, including and not limited to the Settled Parties, the SHO Parties, MMHP, Jaynar and RRP, and with no oral objections made by the Settled Parties, the SHO Parties, MMHP, Jaynar and RRP at the Hearing, and with no oral objections or any other comments made by any other interested parties or persons at the Hearing, as same did not appear; and

THE COURT HAVING reviewed and considered all of the Exhibits (P1 through P4), and all of the expert testimony submitted during the Hearing in support of the Township FSHC Settlement Agreement and the Plan, and heard closing statements of all counsel appearing at the Hearing in support of the Township FSHC Settlement Agreement and the Plan;

IT IS on this 10th of ~~November~~ ^{December}, 2024, **HEREBY ORDERED AND ADJUDGED**

AS FOLLOWS:

1. The Township properly afforded Notice of the Hearing in accordance with governing law and as confirmed by the Court on the record at the Hearing after its review of Exhibit P-3, and said Notice is acceptable in form and content.

2. Pursuant to the judicial standards prescribed by the New Jersey Superior Court, Appellate Division in East/West Venture v. Bor. of Fort Lee, 286,289 N.J. Super. 311 (App. Div. 1996) and in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), affd o.b., 209 N.J. Super. 108 (App. Div. 1986), and through its analysis of the Township FSHC Settlement Agreement (Exhibit P-2), and analysis of the expert testimony given during the Hearing, that the Township FSHC Settlement Agreement is fair, reasonable, and adequately protects the interest of low and moderate-income households.

3. Furthermore, with the Court having reviewed the Plan adopted by the Planning Board by Resolution dated October 23, 2024, endorsed by the Township by Resolution dated November 6, 2024, and required by the Township FSHC Settlement Agreement, and having considered the testimony, evidence and statements presented by the Parties, Ms. Lonergan, and the Special Adjudicator at the Hearing in support of the Plan, and for the reasons set forth by the Court on the record at the Hearing, the Court finds and declares that the Township has satisfied its fair share obligation by and through the adoption and endorsement of the Plan (including the Township's adopted Mandatory Affordable Housing Set Aside Ordinance), which Plan satisfies its Third Round Present Need, its Prior Round obligation as set forth in the Plan and as depicted in the chart depicted on page 9 of the Plan and its Third Round New Construction obligation as set forth in the Plan and as depicted in the chart depicted on page 12 of the Plan. As such, the Court finds that the Plan is constitutionally compliant and creates a realistic opportunity for the Township's cumulative Third Round fair share affordable housing obligations and is therefore

approved, and an **AMENDED FINAL JUDGMENT OF COMPLIANCE AND ORDER OF REPOSE** is hereby entered for the Township of South Brunswick and continues, as previously determined in the July 6, 2021 Final JOR, through July 6, 2025, pursuant to N.J.S.A. 52:27D-313 of the FHA, Mount Laurel IV, and applicable regulations of the Council on Affordable Housing (“COAH”).

4. As set forth in the Plan and in the Township FSHC Settlement Agreement, and as attested to during the Hearing, the Court finds and concludes that the Township’s Fourth Round New Construction Obligation is hereby established to consist of 1,070 units, including a 70-unit non-profit development program, that the Township’s Fourth Round Present Need Obligation shall be determined as part of its Fourth Round Plan, and that the Court shall continue to have exclusive jurisdiction over the Township’s Fourth Round housing element and fair share plan (the “Fourth Round Plan”) that it is required to adopt pursuant to the terms of the Township FSHC Settlement Agreement, with a fairness hearing and compliance hearing for the Fourth Round Plan to be scheduled pursuant to the terms of the Township FSHC Settlement Agreement.

5. The Township’s immunity from Builder’s Remedy claims and/or suits shall be confirmed and continued in full force and effect through July 6, 2025 as per the Final JOR dated July 6, 2021, in order to protect the Township from any additional builder’s remedy challenges beyond those that have been filed as of November 27, 2019. Said immunity is subject to full compliance with the Plan, the Township FSHC Settlement Agreement, and all prior Court Orders to the extent not modified by the Township FSHC Settlement Agreement and the within Amended Final Third Round Judgment.

6. The within Amended Final Third Round Judgment is a Final Judgment pursuant to R. 4:42-1 and for purposes of filing an appeal from final judgments pursuant to R. 2:2-3(a).

7. On February 15, 2025, and every anniversary thereafter, the Township shall address the unit monitoring and trust fund reporting requirements of N.J.S.A. 52:27D-329.2(a)(3), N.J.S.A. 52:27D-329.4(b)(2), and N.J.S.A. 40:55D-8.4(c)(4).

8. Within seven (7) days of the Entry of this Amended Final Judgment, the Township, Planning Board, FSHC and SBC shall withdraw with prejudice their respective Petitions and Cross-Petitions pending in the New Jersey Supreme Court, in the matter docketed as Docket No. 088501.

9. Within seven (7) days of the Entry of this Amended Final Judgment, FSHC, American Properties, P&O, and Lennar shall all withdraw with prejudice their respective motions to enforce litigant's rights pending before the Court in the Litigation.

10. The Court's posting of this Amended Final Judgment on eCourts shall constitute service upon all counsel of record. The Court has provided a copy of the entered Amended Final Judgment to the Special Adjudicator via email. The Township shall serve any other interested parties or pro se litigants on eCourts, via regular and certified mail within seven (7) days of the posting of this Amended Final Judgment on eCourts, as required.

/s/ Michael V. Cresitello, Jr.
Hon. Michael V. Cresitello, Jr., P.J.Cv.

Opposed (SBC only)

As to the request by SBC to add an additional sentence at the end of paragraph 4 regarding public notice, the Court finds same to be unnecessary as the Township is constrained by law to comply with the public notice requirements of all applicable statutes, rules, regulations and/or codes.