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October 12, 2022

Hon. Stephan C. Hansbury, J.S.C.
 Morris County Courthouse
 Washington & Court Streets
 P.O. Box 910, 3rd Floor
 Morristown, New Jersey 07963

Re: In Re Borough of Chatham,
Docket No.: MRS-L-1906-15

Dear Judge Hansbury:

By Order, dated August 25, 2022, Your Honor ordered Fair Share Housing Center, Inc. (“FSHC”) to “review in good faith” the Borough of Chatham’s proposal for Bergen County United Way (“BCUW”) to construct a 15-unit 100% affordable family rental development (“BCUW Proposal”) as an alternative mechanism to the inclusionary development required at Post Office Plaza pursuant to the terms of both Chatham and FSHC’s initial Settlement Agreement, dated November 7, 2016, and the First Amendment, dated June 14, 2020. The August 25, 2022 Order also instructed the Special Master, Joseph H. Burgis, to submit a report addressing the status, feasibility and timeline of the BCUW Proposal.

FSHC is in receipt of the report of the Special Master, dated October 3, 2022 (the “Report”), as well as documents provided by the Borough supplementing the BCUW Proposal. FSHC respectfully submits this letter in response to both the Special Master’s Report and the BCUW Proposal.

A. The Report of the Special Master

The court ordered the Special Master to report on the timing and feasibility of Chatham’s BCUW Proposal. In light of the Special Master’s role in Mount Laurel actions, the Report should have analyzed the timing and feasibility of the BCUW Proposal against the backdrop of Chatham’s engagement with its Third Round affordable housing obligations, not just reviewing Chatham’s latest proposal in isolation.

Affordable housing is vitally necessary in all parts of New Jersey and the law is clear that every municipality, including the Borough of Chatham, has a constitutional obligation to affirmatively and expeditiously provide for its fair share of such housing. Yet, Chatham's provision of its regional share of affordable housing has been far from expeditious. In the nearly six years since Chatham and FSHC's initial settlement of the Borough's Mount Laurel declaratory judgment action, Chatham has failed to provide a single unit of affordable housing to address its RDP of 36 units or its combined unmet need obligation of 354 units. Although residential developments are in various stages of construction since Chatham's Midpoint Review, not a single unit has been made available to lower-income persons. Moreover, FSHC has been required to intervene to protect the interests of lower-income persons against the backdrop of Chatham's frustrated compliance on multiple occasions since 2016.¹

Chatham's designation of the Post Office Plaza site to address its affordable housing obligations dates back to its original November 2016 Settlement Agreement with FSHC. Chatham's obligations at the site were then further refined by the First Amendment to the Settlement Agreement in June 2021. Paragraph 8(b)(iii) of the First Amendment expressly provides that Chatham must "use its best efforts" and "act with all continuity of purpose" to enter into a redeveloper's agreement for the inclusionary development at Post Office Plaza by June 1, 2022. Despite SV Chatham PO JV, LLC's ("SV") willingness to construct the very inclusionary development contemplated by the First Amendment,² Chatham refused to contract with SV by the June 2022 deadline. Instead, and without justification, Chatham unilaterally abandoned the

¹ First, in November 2020, after a Midpoint Review challenge initiated by AST Bradley Chatham LLC ("AST Bradley") revealed that Chatham had not produced a single unit of affordable housing to meet its Third Round obligation since its settlement with FSHC in 2016, FSHC participated in the Midpoint Review challenge to ensure that the Borough ceased delaying the provision of affordable housing by amending the River Road redevelopment plan to provide for inclusionary redevelopment. Second, FSHC was forced to file suit against Chatham to vindicate the constitutional rights of lower income New Jerseyans when, contrary to Chatham's assurances that it would amend the River Road redevelopment plan to permit an inclusionary development, Chatham had, in fact, amended the River Road redevelopment plan to exclude residential uses on parcels designated in the 2016 settlement for inclusionary development. In the instant action, once again, FSHC seeks to protect and vindicate the rights of lower-income persons against the backdrop of Chatham's frustrated compliance.

² It is worth noting that, at a September 27, 2021 Borough council meeting, Chatham's professional planner, Kendra Lelie, confirmed the minimum total units contemplated for the required inclusionary development at Post Office Plaza with a 15 percent set-aside as provided for in the redevelopment plan would be 100 units. Then, at a Borough Council meeting in March 2022, Chatham's counsel, Jonathan Drill, represented that Chatham's financial expert, Robert Powell, after reviewing SV's numbers opined that 100 units was the minimum number of units feasible for the inclusionary development.

inclusionary development long planned for Post Office Plaza for a 15-unit 100% affordable development that delays affordable housing for lower-income families until within six months of the end of the Third Round in 2025. And even that belated construction completion date results from a schedule that the Special Master is concerned is ambitious, raising serious questions about whether the development can even be completed in the Third Round.

Under the well settled law of this State, “[a]ffordable housing is a goal that is no longer merely implicit in the notion of the general welfare. It has been expressly recognized as a governmental end and codified under the FHA.” Holmdel Builders Ass’n v. Holmdel, 121 N.J. 550, 567 (1990). As such, the Report should have scrutinized any additional delay to the construction of affordable housing caused by Chatham’s abandonment of the inclusionary development required by the First Amendment and failure to enter into a redeveloper’s agreement for an inclusionary development by the June 2022 deadline. Instead of analyzing the BC UW Proposal against this backdrop, the Report reviews the BC UW Proposal in a vacuum, completely devoid of context or a sense of urgency that Chatham expeditiously provide for its affordable housing obligation. While the Special Master notes that Chatham’s timeline for the financing process will not be completed until January 2024 and that the units will not be available for occupancy until 2025, the Report does not disclose that the BC UW Proposal delays affordable housing at Post Office Plaza by at least a year compared to the timeline had Chatham moved forward with the inclusionary development.

Notably, both SV, a highly experienced developer, and the Special Master agree that Chatham’s proposed timeline is too ambitious, with the Special Master even recommending that Chatham add additional time to its timeline. The Special Master’s concern stems, in part, from Chatham’s assertion that BC UW will start construction in January 2024, which the Special Master notes “seem[s] ambitious, given the frozen ground conditions at that time of year.”³

³ The Special Master also references comments made by undersigned counsel during the August 25, 2022 hearing expressing concern about BC UW’s ability to construct the 15-unit project given (a) their notable popularity as a 100% affordable housing developer and (b) their removal from a project in a separate town. These comments relate to BC UW’s involvement with a similar 100% affordable project in the Borough of Montvale. In that case, as set forth in Montvale’s 2018 Housing Element and Fair Share Plan (“2018 HEFSP”), BC UW was included as the developer of the DePiero Property for a 32-unit 100% affordable development, and provided proformas for the development. See excerpts from Montvale’s 2018 HEFSP attached hereto as **Exhibit A**. Construction of the DePiero Property was to commence by 2019. Yet, according to Montvale’s 2020 Midpoint Review, construction of the units on that project, which should have been underway, had not yet begun by June 2020. Moreover, on June 9, 2020, the Borough contracted with a different developer to construct the housing. See Montvale’s 2020 Midpoint

Notwithstanding the obvious adversities present, the Report does not provide any recommendations for expediting the timeline, nor recommendations to address what should occur in the event of the developer's delay or any safeguards proposed to ensure that the 15-unit development is constructed as quickly as possible. Indeed, the delay to the provision of affordable housing under the BC UW Proposal are both considerable and entirely Borough-created. As such, in light of the overall objectives of the Mount Laurel doctrine, the Special Master's analysis should have identified any adverse impact that Chatham's proposal could have on the timing of the Borough's provision of affordable housing - in light of the long history of Chatham's representation to the court that the site would be used for inclusionary development.

FSHC supports the Special Master's recommendation that Chatham should be required to identify sources of additional funding should the \$6 million dollar bond prove insufficient. FSHC also supports the recommendation that references to "N.J.A.C. 19:3, 19.4 and 19:5" as well as regulations of the New Jersey Commission, in Section 8.12 of the Redeveloper's Agreement, be deleted and replaced the applicable provisions of the Uniform Housing Affordability Controls ("UHAC") governing affordability controls. This is particularly important given the provision in Section 8.12 that "[t]he Affordable Housing Requirements shall extend for the term of the Lease" and Section 2.1(b) of the BC UW Redeveloper's Agreement provides for a 45-year lease term from the date of occupancy of the 15th unit, thereafter the development reverts to Chatham's control, thus essentially ending the affordability controls at a fixed date in violation of UHAC. This raises issues similar to those raised with the initial developer selected for this project, Nouvelle LLC ("Nouvelle"), which sought to prematurely terminate the deed restrictions in violation of UHAC and the First Amendment. Indeed, the Redeveloper's Agreement does not comply with UHAC and it is unclear how these provision impact the deed restrictions for the units or what these other regulatory references are intended to achieve or are just errors given that Chatham is not in the Meadowlands.

Review Report attached hereto as **Exhibit B**. FSHC does not dispute that BC UW is a reputable developer and FSHC has supported numerous fair share plans with the developer included and seen them complete many strong affordable housing projects. That said, FSHC has consistently maintained that timing is of the essence in this case and certainly if BC UW were not required to spend the next year applying for the three competitive outside sources of funding, and just used the bond proceeds to move to forward and start construction in 2023, those concerns would be mitigated.

B. FSHC Cannot Consent to the Current BCUW Proposal as an Alternative Mechanism

The First Amendment is comprised of carefully negotiated contractually binding terms that benefit both Chatham and FSHC. Chatham and FSHC specifically negotiated and agreed to require a minimum of 15 affordable family rental units as part of an inclusionary development at Post Office Plaza to ensure that the inclusionary development complied with the agreed upon desired density. Likewise, Chatham and FSHC specifically negotiated and agreed to the provision permitting the consideration of an alternative mechanism. This provision, by its own terms, was included solely in the event that, after acting with “best efforts” and “with continuity of purpose,” Chatham had not entered into a contract with an inclusionary developer. It was not intended to provide a political escape hatch to avoid fulfilling Chatham’s obligations in the event that the Borough Council came to a single vote short of carrying through on its agreement.

Here, even though the Post Office Plaza Redevelopment Plan permits the construction of over 200 units within an inclusionary development, SV agreed to construct the bare minimum density contemplated for the inclusionary development. Importantly, SV maintains that the site plan approval process would be well underway and the construction of the inclusionary development could have commenced in early 2023, as opposed to a year later under the BCUW Proposal. If Chatham were to have entered into a redeveloper’s agreement by the June 22 deadline as required under the First Amendment, there is no reason why such a timeline would not be feasible. Indeed, if it were not for the Mayor breaking the 3-3 tie vote on SV’s proposal in favor of a 15-unit project at the May 2, 2022 council meeting, said approval process would likely already be moving forward. Indeed, it is difficult to square Chatham’s assertion that it was simply unable to reach an agreement with an inclusionary developer --using best efforts and continuity of purpose-- with the fact that half the council members voted to do so. Moreover, while the court did not appear to take issue at the August 25, 2022 hearing with Chatham’s position that it has no obligation to provide the required inclusionary development at Post Office Plaza - an area designated as an area in need of redevelopment since 2018 - because it now prefers to have 15 as opposed to 100 units of housing, this is simply not a basis to release Chatham from its binding contractual obligations.

Without question, in requiring lower-income households to wait another two years for affordable housing at Post Office Plaza that should have already been built and occupied, Chatham’s BCUW Proposal adversely impacts lower-income families. Likewise, as the Special

Master has highlighted, the redevelopers agreement does not require compliance with UHAC - the express regulatory policy of the State of New Jersey and a fundamental requirement of the First Amendment, which FSHC has required consistently in its settlement agreements. Surely, an alternative mechanism to address long overdue housing that unnecessarily delays the provision of affordable housing by a year or more, without offering additional benefits to offset the delay, and is not be properly deed restricted, is an inferior alternative to the inclusionary development contemplated by the First Amendment and proposed by SV.

Thus, for the reasons stated herein, FSHC cannot, in good conscience, consent to the BC UW Proposal as an alternative mechanism. FSHC is not persuaded that this alternative mechanism, which adds considerable delay to the construction of affordable housing at Post Office Plaza, is justified or in the best interests of the protected class FSHC represents. Moreover, if FSHC were to approve the BC UW Proposal, it would be obligated to defend the mechanism against challenges on appeal. Not only is FSHC unwilling to defend this inferior proposal, FSHC expressly reserve the right to join any third party challenges.

Indeed, Chatham's provision for affordable housing for lower-income families at Post Office Plaza is long overdue. While Chatham has reaped the benefits of its bargain with FSHC (i.e., an award of repose and immunity, AST Bradley's withdrawal of its Midpoint Review challenge, FSHC's dismissal of its 2021 Prerogative Writ), Chatham still has not complied with its long-deferred obligation to provide an inclusionary development at Post Office Plaza. Critically, Chatham has not offered any justifiable reason for abandoning the required inclusionary development, nor an alternative that provides comparable benefits to low-and moderate-income families. In short, while Chatham contractually agreed to the concept of a 100-unit inclusionary project at Post Office Plaza, it has unilaterally abandoned the required inclusionary development in clear violation of the express terms of the First Amendment. To permit Chatham to breach the terms of its agreement with FSHC in this manner sets a dangerous precedent for municipal compliance, suggesting that municipalities may make promises to comply with their contractual obligations for years and then unilaterally abandon their obligations by adopting an alternative proposal at the last minute, resetting the clock for the timeline for its provision of vital housing.

Should the Court permit the BC UW Proposal to proceed over FSHC's objections, FSHC submits that, as recommended by the Special Master, Chatham should be required to identify

sources of additional funding should the \$6 million dollar bond prove insufficient and references to “N.J.A.C. 19:3, 19.4 and 19:5” and regulations of the New Jersey Commission, in Section 8.12 of the Redeveloper’s Agreement should be deleted and replaced with applicable provisions of the UHAC governing affordability controls, which should also be required to supersede any requirements Chatham seeks to impose on ultimate reversion of the property. In addition, should the court permit the proposal, FSHC respectfully requests that the Court order Chatham to report regularly to the Court, Special Master and FSHC on the status of the application/financing process and its compliance; to utilize special meetings where doing so would expedite the hearing process; and to reserve the right to file further application to the court to enforce the Brough’s timeline.

We thank Your Honor for your time and consideration of this submission.

Respectfully,

/s/ Rachel N. Lokken
Rachel N. Lokken, Esq.

c: Craig M. Gianetti, Esq.
Jonathan E. Drill, Esq.
Joseph H. Burgis, PP, AICP

EXHIBIT A

2018 Housing Element & Fair Share Plan

Borough of Montvale

April 17, 2018

Adopted by the Planning Board: May 1, 2018

Endorsed by the Council: May 8, 2018



Housing Element & Fair Share Plan

Borough of Montvale

Bergen County, New Jersey

Prepared by:



Darlene A. Green, P.P., AICP

NJ License # 33LI00611400



The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12.

MC Project: MPP-014C

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Utility Capacity

Suez provides the Borough's water, and the Bergen County Utilities Authority (hereinafter "BCUA") processes Montvale's sewage. According to the Borough's Engineer, there are no known capacity issues with either water or sewer.⁸

Appropriate Locations for Affordable Housing

Land that is most appropriate for the construction of low- and moderate-income housing includes the following approved, proposed and anticipated projects:

1. Trailing Ridge (The Alexa) – Spring Valley Road, approved and under construction
2. School #2 – Grand Avenue East, approved and under construction
3. 99 Spring Valley Road – approved and under construction
4. 7 Franklin Avenue – application approved by the Zoning Board on April 3, 2018
5. A & P – Paragon Drive, zoned
6. Mercedes – Mercedes Drive & Glenview Road, zoned
7. Sony – 12 Van Riper Road, zoned
8. DePiero – Summit Avenue, zoned
9. 110 Summit Avenue – zoned
10. 127 Summit Avenue – zoned
11. Annie Sez – to be overlay zoned
12. Southeast B1 District (east side of train tracks) – to be overlay zoned
13. Southeast B1 District (west side of train tracks) – to be overlay zoned

All thirteen developments are described in detail in Chapter IX. Existing structures that could be appropriate for conversion to affordable housing include the condominiums in the Rolling Ridge development, which is located west of Chestnut Ridge Road. As for structures suitable for rehabilitation, according to the Settlement Agreement, there are five homes within the Borough that are in need of a major system repair (e.g. roof, electric, plumbing, etc.).

Potential Affordable Housing Developers

Seven developers have formally intervened, requested rezoning and/or submitted applications to build affordable housing within the Borough of Montvale. Each proposal is summarized below:

1. DePiero – The Borough has been working with the United Way of Bergen County to develop Block 1002, Lots 3 and 5, with 32 units of affordable housing. (Note, the Borough owns the parcels.) United Way has prepared a concept plan, pro-forma, construction schedule and Schedule 10-A Project Description.
2. Sony – Hornrock Properties, MPR, LLC, is the current owner of the former Sony, Inc. corporate headquarters, which consists of approximately seven acres in Montvale. Hornrock Properties expressed interest in constructing an inclusionary multi-family development and intervened in

⁸ Email with Chris Dour, Borough Engineer's staff member, on March 22, 2018.

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the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit. If the Borough structures a loan program to recapture money, recaptured money shall be used for another low- and moderate-income housing purpose or to repay a municipal bond issued to finance a low- and moderate-income housing activity. See Appendix H for a copy of the proposed Rehabilitation Program Manual.

Based on the above, the Borough's Rehabilitation Program would be eligible for **5 credits**.

Prior Round Mechanisms

1. DePiero

Page 32 of the 2004 COAH Compliance Report lists the DePiero property (Block 2802, Lots 2 and 3) under Unmet Need. DePiero was a part of Montvale's 1994 Judgment of Compliance and was proposed to provide 34 affordable units. The Compliance Report indicates that the Borough was going to create an overlay zone to permit multi-family inclusionary development. However, after 2004, the Borough rezoned the farm AH-8 Affordable Housing District.

As detailed in the April 2013 Amendment to the Land Use Element, no formal site plan applications for the development of an inclusionary project were ever filed by the property owner or even discussed conceptually.²³ During this same time period, six inclusionary housing projects were approved and/or built within the Borough. In 2012, the owner of the DePiero farm approached the Borough with an alternative plan. The owner proposed to dedicate Block 1002, Lot 5 (which they also owned) to the Borough. Additionally, the DePieros had an adjacent property at Block 1002, Lot 3, under contract to purchase. As part of the rezoning process of 25+/- acres of farmland for development of a lifestyle retail center, the property owners proposed to dedicate the two lots on Block 1002 to the Borough in order to facilitate the construction of 32 affordable units.

In 2012 and 2013 the Borough adopted Amendments to the Land Use Element, which detailed the proposal for the DePiero farm and the properties on Block 1002. Subsequently, on April 30, 2013, the Borough adopted Ordinance #2013-1374 creating the Affordable Housing – Planned Unit Development District or AH-PUD. The 25+/- acre farm and two properties on Block 1002 are included in the new zone. The purpose of the AH-PUD is to "provide a realistic opportunity for the provision of low- and moderate-income residential units, consistent with the purpose and intent of Montvale's adopted and substantively certified Second Round Housing Element and Fair Share Plan within the context of an affordable housing planned unit development, comprising both residential and retail development. AH-PUD regulations are intended to capitalize on the district's unique locational, physical and historical characteristics to simultaneously provide for its first and second round affordable housing obligation coupled with a lifestyle retail shopping center in which retail services more appropriate to the established character of the area in which the two sites encompassed by this Affordable Housing - Planned Unit Development District are located."²⁴

²³ April 2013 Amendment to the Land Use Element, prepared by Phillips Preiss Grygiel LLC, page 6.

²⁴ Borough Code, Section 128-5.14A.

The ordinance requires a minimum of 32 low- and moderate-income housing units to be constructed by the Borough of Montvale or by a private, public or non-profit entity designated by the Borough of Montvale. On July 15, 2014, the Planning Board approved a two-story 32-unit multi-family building on Block 1002, Lots 3 and 5. This approval was in conjunction with the approval of a Wegmans Supermarket and a lifestyle center on Block 2802, Lots 2 and 3. Condition #2 of the Resolution requires conveyance of the Block 1002 parcels to the Borough upon or prior to the issuance of the first building permit. The properties were transferred to the Borough in 2017. It is anticipated that the affordable units will be rental units. See Appendix A for additional details.

Since 2017 the Borough has been working with the United Way of Bergen County to devise a plan to construct the affordable housing units. United Way has expressed its willingness and intent to partner with the Borough on the project. The Borough is currently preparing a Transfer and Development Agreement, which will transfer the parcels to United Way. Meanwhile, United Way has prepared a concept plan, pro-forma, a construction schedule and Schedule 10-A Project Description, which are attached under Appendix I. Furthermore, the Borough has committed a maximum of \$375,000 of its Affordable Housing Trust Fund to buy down moderate-income units to low-income units. This is illustrated in the Draft Spending Plan, Appendix J.

As illustrated in the concept plan, the site could accommodate a total of 32 units. Twenty-eight of the units would be one-bedroom age-restricted and one building would be a four-bedroom group home.

The affordable housing rules require municipalities to designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. These terms are defined below:

- "Approvable site" means a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.
- "Available site" means a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.
- "Developable site" means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.
- "Suitable site" means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

The properties meet the four prongs of the rules (hereinafter "Four-Prong Test" as follows:

- Approvable site – The properties are currently zoned AH-PUD, which requires 32 low- and moderate-income housing units to be constructed on the site. The site received approvals to construct 32 affordable units in 2014. However, amended site plan approval will likely be needed to reflect United Way's concept plans.

- Available site – The properties were transferred to the Borough of Montvale in 2017 as per Condition #2 of the Resolution of Approval for the Wegmans/lifestyle center development. Therefore, there are no title issues.
- Developable site – The properties are located in water and sewer service areas.
- Suitable site – The lots are adjacent to the Garden State Parkway to the north, Greenway inclusionary condominium development to the east, farming and office uses to the south and single-family residential uses to the west. As for environmental constraints, an area of wetlands with a 50-foot buffer (hereinafter “wetlands”) is located along the eastern border of Lot 5 but a minimal amount is actually located on the site. See the map on page 45.

As demonstrated above, the DePiero site meets the four prongs of the rules and is eligible for crediting. Based on this information, DePiero is eligible to receive **32 credits**.²⁵

2. Bonnabel/Trailing Ridge/The Alexa

Located off Spring Valley Road, The Alexa is located along the New York State border. It is designated on the tax maps as Block 301, Lots 2 and 3. Lot 2 is owned by Y Not Montvale LLC. Lot 3 is owned by 160 Spring Valley Road, LLC and encompasses 8.7 acres.²⁶

The properties are zoned AH-8A multi-family inclusionary development zone. In the 2004 COAH Compliance Report the project is described as a 70-unit complex, with 14 affordable rental units. Page 19 of the Compliance Report indicates that The Alexa is eligible for 14 credits and 14 rental bonuses.

However, in November of 2007 the Applicant returned to the Board for amended site plan approval as they now controlled Lot 2. The Applicant received amended approval for a total of 80 units, of which 17 were reserved for affordable units. The Applicant received minor subdivision approval in 2008, which included as a condition that the developer provide one additional affordable unit. The requirement of 18 affordable units was memorialized via Resolution on August 19, 2008. Premier Developers, LLC is the builder and the project is presently under construction. See Appendix K for a copy of the three Resolutions related to this site. The Borough anticipates COs will start to be issued in 2018 with construction continuing into 2019.

Based on this information, The Alexa is eligible to receive **18 credits and 13 bonuses**.²⁷

3. 127 Summit Avenue

127 Summit Avenue is located south of Montvale Reserve and east of Greenway. The site (Block 1002, Lot 7) contains 28.4 acres and is owned by Reno Del Ben according to the online tax records. The site is currently zoned AH-6 Affordable Housing 6 District, which permits planned residential development at a density of 5.8 units per acre.

²⁵ All of the units are eligible for rental bonuses, but the Borough is unable to claim credit for bonuses due to the 25% bonus cap.

²⁶ http://tax1.co.monmouth.nj.us/cgi-bin/m4.cgi?district=0236&lot=023601002____00005_____M

²⁷ All of the units are eligible for rental bonuses, but the Borough can only claim credit for 13 bonuses due to the 25% bonus cap.

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X. IMPLEMENTATION SCHEDULE

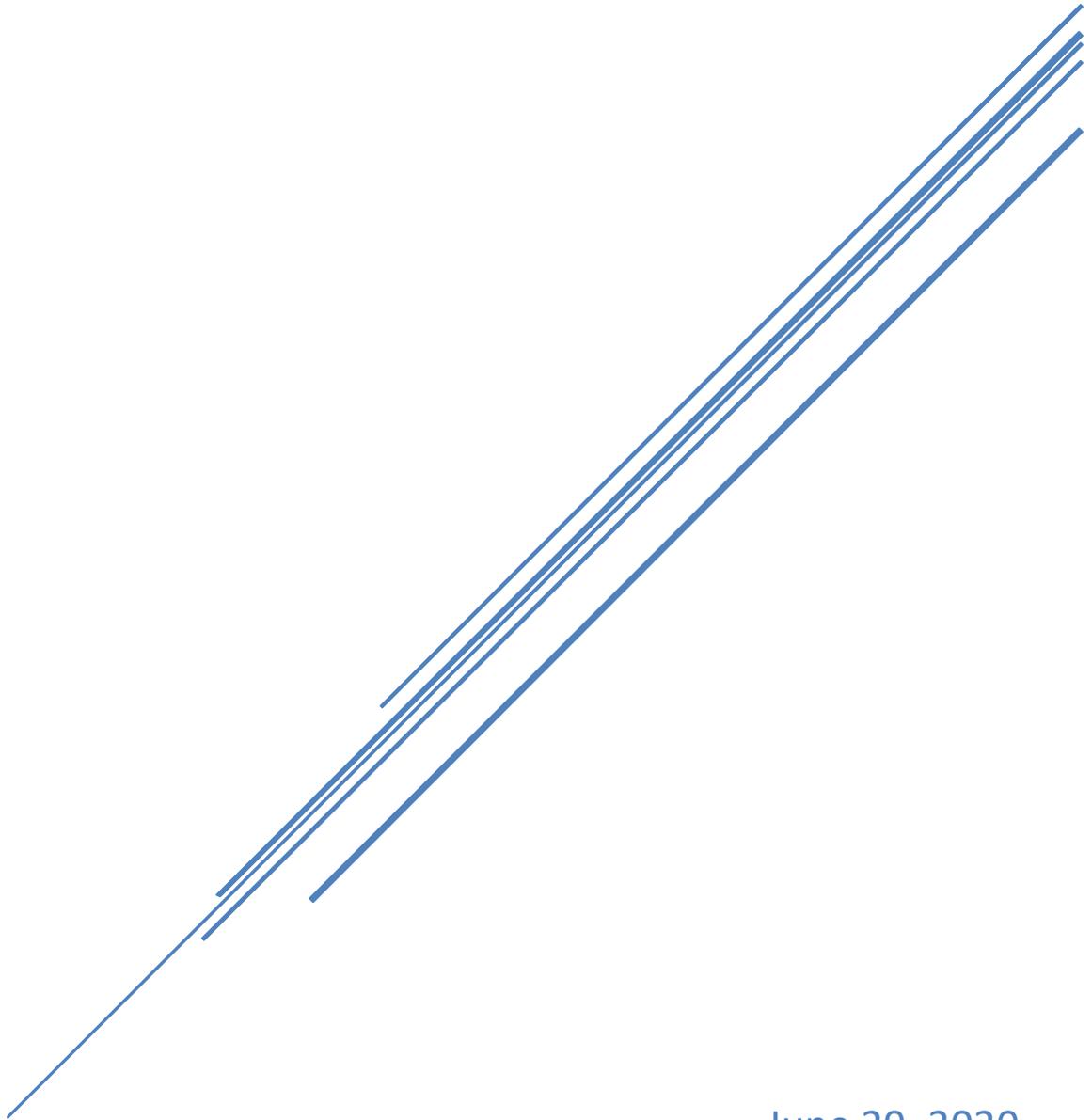
The tables below and on the following page provides an anticipated implementation schedule for the mechanisms that are under construction or proposed.

IMPLEMENTATION SCHEDULE								
Mechanism	2018	2019	2020	2021	2022	2023	2024	2025
Borough Rehabilitation Program								
DePiero								
Developer's Agreement								
Conveyance of Land								
Construction								
Occupancy				2021				
Bonnabel/Trailing Ridge								
Construction								
Occupancy		2019						
127 Summit Avenue								
Application Review								
Construction								
Occupancy							2024	
School #2								
Renovations/Construction								
Occupancy	2018							
99 Spring Valley Road								
Construction								
Occupancy	2018							
7 Franklin Avenue								
Construction								
Occupancy			2020					
110 Summit Avenue								
Application Review								
Construction								
Occupancy					2022			
A & P								
Application Review								
Construction								
Occupancy				2021				
Mercedes								
Application Review								
Construction								
Occupancy					2022			
Sony								
Application Review								
Construction								
Occupancy				2021				

EXHIBIT B

AFFORDABLE HOUSING MIDPOINT REVIEW REPORT

Borough of Montvale



June 29, 2020

PURPOSE

Paragraph 25 of the Borough of Montvale's 2017 Settlement Agreement with Fair Share Housing Center (hereinafter "FSHC") requires that the Borough comply with the statutory midpoint review requirements of the Fair Housing Act and specifically N.J.S.A. 52:27D-313, which states "...the Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public..." This Midpoint Review Report is tailored to reflect the conditions in the municipality, the Settlement Agreement with FSHC, the Settlement Agreements with the Intervenors, The S. Hekemian Group, LLC (hereinafter "Hekemian"), Hornrock Properties MPR, LLC (hereinafter "Hornrock"), and 2 Paragon Drive, LLC (hereinafter "2 Paragon"), and the Court-approved Housing Element and Fair Share Plan.

The 2017 Settlement Agreement with FSHC requires that the midpoint review be posted on the Borough website, with a copy provided to FSHC. The review acts as a status report regarding the Borough's compliance mechanisms and whether or not any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. This review includes mechanisms addressing the unmet need.

RELEVANT BACKGROUND

Montvale filed its Declaratory Judgment Action on July 6, 2015. The Borough executed a Settlement Agreement with FSHC on November 14, 2017. The Settlement Agreements with each of the Borough's three Intervenors, Hekemian, Hornrock, and 2 Paragon, were also executed on November 14, 2017. The 2017 Settlement Agreement with FSHC outlines Montvale's affordable housing obligations:

- A five-unit Rehabilitation Obligation,
- A 255-unit Prior Round Obligation, and
- A 542-unit Third Round Obligation.

However, the Borough sought and received a Vacant Land Adjustment (hereinafter "VLA") for the Prior Round from COAH in 2004 when Montvale received Substantive Certification. The Prior Round VLA produced a 188-unit Realistic Development Potential (hereinafter "RDP"). The 2017 Settlement Agreement continued to recognize the Borough's lack of vacant and developable land and included a VLA for the Third Round. The RDP for the Third Round Obligation is 181. Therefore, the Borough has an Unmet Need of 67 units for the Prior Round and 361 units for the Third Round. However, the Borough is able to satisfy the entire 255-unit Prior Round Obligation and has a 24-unit surplus that can be applied to the Third Round RDP.

On February 12, 2018, Judge Toskos entered an Order Approving Settlement Agreement Between the Borough of Montvale and Fair Share Housing Center. This Order followed the Fairness Hearing held on January 25, 2018. Thereafter, Montvale prepared and adopted the requisite compliance documents. A Compliance Hearing was held on July 18, 2018. Subsequently, Judge Toskos entered an Order of Judgment of Compliance and Repose on July 25, 2018. This Order had one condition regarding the Borough rehabilitation program. Once this condition was satisfied, Judge Farrington issued Montvale a Final Order of Judgment of Compliance and Repose (hereinafter "JOR") on October 3, 2018.

CONDITIONS OF COMPLIANCE

Montvale's JOR does not contain any conditions.

Paragraph 23 of the 2017 Settlement Agreement requires an annual "Mount Laurel" Trust Fund accounting report to be provided to FSHC, New Jersey Department of Community Affairs (hereinafter "DCA"), COAH, or Local Government Services (hereinafter "LGS") and be posted on the Borough's website. This report is not part of the midpoint review and is due annually on the anniversary of the JOR. Paragraph 24, which concerns affordable housing activity requires an annual report to be submitted on the first anniversary of the JOR, and every anniversary thereafter through July 1, 2025. Finally, paragraph 25b concerns the review of very-low income units, which is due within 30 days of the third anniversary of the JOR and every third year thereafter.

Therefore, the first anniversary monitoring was due on October 3, 2019.

It should be noted that the Borough mailed the first anniversary trust fund and affordable housing activity reports to FSHC, DCA, COAH, and LGS on or about September 26, 2019. The reports are posted on the Borough's website (<https://montvale.org/resident/affordable-housing>).

PRIOR ROUND MECHANISM REVIEW

Montvale received Substantive Certification from COAH in December of 2004, which granted a VLA to the Borough for the Prior Round Obligation. The Prior Round RDP is 188 units. However, as stated above, the Borough is able to satisfy the entire 255-unit Prior Round Obligation. It should be noted that a majority of the mechanisms allocated to the Prior Round Obligation have been constructed except for the DePiero and 127 Summit Avenue mechanisms. All mechanisms are detailed in the 2018 Housing Element and Fair Share Plan. As per the Housing Element and Fair Share Plan, a total of 215 credits and 64 bonuses are allocated to the Prior Round Obligation, which totals 279 credits. See the tables below and on the following pages for a summary of the units allocated to the Prior Round Obligation.

PRIOR ROUND MECHANISMS						
Development	Block & Lot	Description	Ordinance Adopted (Y/N)	Status	Existing Affordable Units	Proposed Affordable Units
Janovic I (Brookview Estates)	N/A	The developer provided a \$300,000 payment-in-lieu, which was then utilized to fund a 15-unit RCA with the City of Garfield. An amended RCA was executed in 2004, transferring 47 units. Montvale provided a total of \$1,175,000.	N/A	The money was transferred between 2005 and 2006.	15	

PRIOR ROUND MECHANISMS (continued)						
Development	Block & Lot	Description	Ordinance Adopted (Y/N)	Status	Existing Affordable Units	Proposed Affordable Units
Janovic II	N/A	A four-lot subdivision where the developer agreed to provide a \$50,000 payment-in-lieu, which was then utilized to fund a two-unit RCA with Cliffside Park. The RCA was executed in September of 2003.	N/A	The money was transferred between 2005 and 2006.	2	
Chamberlain	N/A	An 18-lot subdivision, which required the developer to provide a \$250,000 payment-in-lieu. The money was then used to fund an RCA in Cliffside Park, which was executed in July of 2003.	N/A	The money was transferred in 2005.	10	
K. Hovanian/ Rink/ Dill (Four Seasons)	N/A	The developer agreed to provide an \$800,000 payment-in-lieu, which was utilized to finance an RCA with the City of Garfield. An amended RCA was executed in 2004, transferring 47 units. Montvale agreed to provide a total of \$1,175,000.	N/A	The money was transferred between 2005 and 2006.	32	
Greenway (Summit Ridge)	Varies	A 59-unit condominium complex, which includes two affordable family rentals and ten affordable family for-sale units. The units received Certificates of Occupancy between 2000 and 2001.	N/A	Built & Occupied	12	
Bear Brook/ US Cable	Varies	A 33-unit condominium complex, which included five affordable family rental units. The affordable units received Certificates of Occupancy in 1998.	N/A	Built & Occupied	5	
Baldanza/ Charlestowne Court	B2408, L24	A 12-unit multi-family inclusionary development with three affordable family rental units. The units received Certificates of Occupancy in 2007.	N/A	Built & Occupied	3	

PRIOR ROUND MECHANISMS (continued)						
Development	Block & Lot	Description	Ordinance Adopted (Y/N)	Status	Existing Affordable Units	Proposed Affordable Units
Nottingham Manor	Varies	A garden apartment complex originally constructed in the 1950s. In 2004, an undeveloped portion of the property was rezoned and the developer was approved to construct 36 units, including eight affordable family rental units. The units received Certificates of Occupancy in 2007.	N/A	Built & Occupied	8	
National Institute for People with Disabilities	B1709, L1	Licensed group home for very-low income clients with five bedrooms.	N/A	Built & Occupied	5	
Axxin/ K. Hovanian/ Valley View	Varies	A 128-unit inclusionary condominium development. The units received Certificates of Occupancy between 2007 and 2009.	N/A	Built & Occupied	26	
Montvale Senior Housing/ Montvale Commons	B1601, L21.02	A 28-unit, municipally-sponsored, 100% affordable development containing 10 units reserved for individuals with special needs, which are permanent supportive housing, and 18 non-age-restricted rental units. The units were occupied in 2013.	N/A	Built & Occupied	28	
Del Ben/ Montvale Reserve	Varies	An 80-unit inclusionary multi-family development resulting from a Prior Round builder's remedy lawsuit. There are six affordable family for-sale units, which received Certificates of Occupancy between January and March of 2017 and have 30-year deed restrictions.	N/A	Built & Occupied	6	