



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

PRINCIPALS:
Joseph H. Burgis PP, AICP
Edward Snieckus, Jr. PP, LLA, ASLA

October 3, 2022

The Honorable Stephan C. Hansbury, J.S.C.
Morris County Courthouse
Washington & Court Streets
Morristown, New Jersey 07960

Re: In the Matter of the Borough of Chatham Mount Laurel Compliance
Docket No. MRS-L-1906-15
Status Report
BA#: 3805.00

Your Honor,

Pursuant to the Order granting Chatham Borough's motion to enforce litigant's rights, I have prepared the following status report on the Borough's actions to date. The August 25, 2022 Order specifically asked that I address the following three issues:

1. The Status of the Bergen County United Way (BCUW) project.
2. The Feasibility of the Project.
3. The Timing of the Project.

The following is noted for the Court's consideration:

The Status of the Bergen County United Way (BCUW) Project.

The Borough of Chatham and its Planning Board has prepared and, in many instances, adopted and/or commenced with the adoption process of a number of documents over the past month in an effort to move the BCUW forward. The steps that the Borough and its Planning Board have recently taken is noted in the accompanying table. The Borough submitted the documents noted in the table on September 22, 2022.

Table 1: Actions by Borough of Chatham To Facilitate Construction of BC UW 15-Unit 100% Family Rental Affordable Housing Project

Item No.	Document	Dated	Description	Final/Anticipated Adoption Date
1.A	Amended and Restated Post Office Plaza Redevelopment Plan	Dated September 8, 2022	Amended and Restated Post Office Plaza (POP) Redevelopment Plan for Block 121, Part of Lot 10 and Block 121, Lot 17, prepared by Kendra Lelie PP, AICP & Robert Dare PP, MCIP of T&M Associates to allow construction of BC UW 100% affordable housing project	October 11, 2022
1.B.	Ordinance #22-10	Introduced September 12, 2022	Ordinance adopting the Amended and Restated POP Redevelopment Plan	October 11, 2022
2.	Ordinance #22-11	Introduced September 12, 2022	Ordinance reinstating prior zoning of lots eliminated from the POP Redevelopment Area, as amended and restated	October 11, 2022
3.	Ordinance #22-12	Introduced September 12, 2022	Ordinance to authorize grant for development & construction of BC UW 100% affordable housing project; to appropriate \$6 million to pay cost thereof, make down payment, authorize issuance of bonds to finance such appropriation & provide for issuance of bond anticipation notes in anticipation of issuance of such bonds.	October 11, 2022
4.	Preliminary Project Timeline & Plan, incl Floor Plans	Timeline undated; Plans dated September 7, 2022	Preliminary project timeline & concept site/floor plans for 1st & 2nd floors of proposed 15-unit BC UW building on Bowers Lane	September 16, 2022
5.	Memorandum from Robert Powell	September 15, 2022	Memo from Robert Powell, of Nassau Capital Advisors, to Jonathan Drill, Esq., assessing reasonableness of above referenced preliminary project timeline	N/A
6.	Redevelopment Agreement	September 16, 2022	Signed Redevelopment Agreement Between Chatham & BC UW	September 16, 2022
7	Borough Council Resolution authorizing Professional Services Agreement	Adopted January 3, 2022	Resolution 22-02 authorizing entry into professional services agreements	January 3, 2022
8.	Professional Services Agreement	September 13, 2022	Professional Services Agreement between Chatham & Piazza & Associates for provision of affordable housing compliance services	September 13, 2022
9	Planning Board Resolution	September 21, 2022	Approved Planning Board Consistency Review of Amended & Restated POP Redevelopment. Plan & Ord 22-10 with Borough Master Plan per NJSA 40A:12A-7(e)	September 21, 2022

10	Planning Board Resolution	September 21, 2022	Approved Planning Board Consistency Review of Ord 22-11 reinstating prior zoning of lots eliminated from Amended & Restated POP Redevelopment Plan with Borough Master Plan per NJSA 40:55D-26a	September 21, 2022
11	Planning Board Resolution	September 21, 2022	Approved Planning Board review of Ord 22-12 regarding expenditure of public funds per NJSA 40:55D-31	September 21, 2022

The actions noted in the above table indicate the Borough's planning consultant prepared a new POP Redevelopment Plan to allow for a 15 unit 100 percent affordable housing project. It is scheduled for a hearing on October 11, 2022. The Borough has introduced three ordinances regarding (a) the adoption of the amended POP Redevelopment Plan, (b) reinstatement of prior zoning of lots that are being eliminated from the POP Redevelopment Area, and (c) authorization of a \$6 million bond ordinance for the development and construction of the BC UW 100 percent affordable housing project, as determined necessary. These are all scheduled for adoption on October 11, 2022. The Borough has also recently (September 16, 2022) adopted an agreement with BC UW regarding the development of the 15-unit 100 percent affordable housing development and approved a professional services agreement (on September 13, 2022) with Piazza Associates for the provision of affordable housing compliance services.

In addition, the Borough Planning Board adopted a 'consistency review' of the amended POP Redevelopment Plan and an associated Ordinance on September 21, 2022, and also adopted a consistency review regarding the Ordinance that reinstated the prior zoning of the lots eliminated from the amended Redevelopment Plan; this was also done on September 21, 2022. Further, the Board approved the Ordinance regarding the expenditure of \$6 million of public funds for the purpose of assisting in funding the development of the 15-unit development, also on September 21, 2022.

While I raise some questions about the particulars of some of these actions, as detailed below, I believe they reflect efforts to move the BC UW project forward in a timely manner.

Feasibility of the Project

The second issue I was asked to comment on regards the feasibility of the BC UW project. BC UW is a well-known entity with respect to the development and construction of 100 percent affordable housing projects. They have constructed more than 35 such projects throughout the State over the past seventeen years, with more in various stages of planning and development.

According to their website and discussion with Tom Toronto, President of BC UW, their projects are typically funded through such programs as municipal housing trust funds, NJ Home Mortgage Finance Agency, 9% federal low income tax credits, BC UW capital, HUD/Municipal Home Program, and other

grant programs and philanthropic support. In this instance, the Borough is providing the site for development under a 45 year lease for nominal consideration, and the pro forma submitted by BC UW also anticipates reliance on an estimated \$853,301 as a Borough subsidy. Additionally, on September 12, 2022 the Borough passed on first reading a \$6 million bond ordinance for the purposes of funding any shortfall that may arise if other funding sources such as those BC UW has relied upon on other projects as noted above are not secured.

Based on the above, it appears the project is feasible. It is noted that the BC UW pro forma identifies a total development cost of \$5.87 million. While it would appear the \$6 million bond ordinance provides a cushion for any overage, the Borough should comment on where any additional funding may come from if the \$6 million is inadequate to cover any shortfall.

One issue of note: In the Redevelopment Agreement between the Borough and BC UW there is a reference at Section 8.12 Affordable Housing Requirement to N.J.A.C 19:3, 19:4 and 19:5. This reference actually pertains to the regulations of the New Jersey Meadowlands Commission. This typo requires correction. The Borough should refer to UHAC provisions here.

I would like to comment on one other related issue that arose in Court on August 25th which relates to the issue of feasibility. There was a comment suggesting BC UW was "taken off a project" in another community because they were "so busy they were unable to construct the project" for which they had been designated as developer. I spoke with Mr. Toronto of BC UW about this. He informed me they had bid on a project but wasn't selected as the developer because another firm had all necessary financing in place, while BC UW did not. He pointedly noted they have never been removed from a project for failure to perform.

Timing of the Project

The Borough has submitted a Preliminary Development Project Timeline. There are three items that I would like to highlight:

1. The Preliminary Project Timeline indicates the site plan hearing begins in January and should end in February of 2023. This seems ambitious. I would suggest a full two to three-month period be considered for this line item.
2. The construction is noted to begin in January of 2024. This also seem ambitious, given frozen ground conditions at that time of the year. On the other hand, it may be that BC UW could tighten the construction timetable somewhat to make up for a later date for the commencement of the construction.
3. COAH's rule, at 5:93-5.5(a)4, states that "the construction schedule shall provide for construction to begin within two years of substantive certification." Here, the Preliminary

Development Project Timeline calls for construction to begin by the beginning of 2024, suggesting that, whatever the date of a judgment of compliance and repose, construction will commence within the timeframe contemplated by the COAH regulations, and prior to the end of the Third Round which is June of 2025.

Additional Comment

As requested to the Court, Mr. Gianetti, Esq. has filed a document dated September 29, 2022 wherein he identified two broad areas that he requested I address in my report.

The first issue pertained to timing, where he focused on both issues of the timeline suggested by BCUW, which I commented on above, and the historic background of affordable housing events in Chatham. I was not asked by the Court to comment on this latter issue; I would, however, note for the Court's information that, while Mr. Gianetti is correct in stating that at the time of the June 2021 Amendment the Borough hadn't produced affordable housing, the 245-unit River Road project, inclusive of 37 affordable units, is under construction. Additionally, site work has commenced on an 8 unit project known as Sterling Sun on Hillside Avenue at Woods Lane which contains one affordable unit.

Mr. Gianetti also contrasted his client's 100-unit inclusionary development with the Borough's 15-unit 100 percent affordable housing project with respect to their prospective timing of construction. However, I have not undertaken a comparison nor contrasted the two projects on this issue, as the Court did not direct me to do such an analysis.

Mr. Gianetti also provided comment with respect to land use planning issues associated with his client's inclusionary development and the Borough's 15-unit 100 percent affordable project. But again, this is outside the scope of the Court's directive.

I can offer comment on these issues at the upcoming hearing on this matter if the Court desires.

Very truly yours,



Joseph H. Burgis PP, AICP

cc Jonathon Drill, Esq. Rachel Lokken, Esq. Craig Gianetti, Esq.

