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The Honorable Robert H. Gardner, J.S.C.
Essex County Superior Court
Historic Courthouse
470 Martin Luther King Jr., Blvd., 4th Floor
Newark, New Jersey 07102

April 28, 2021

Re: IMO the Application of the Township of Verona
Docket No: ESX-L-4773-15

Dear Judge Gardner,

Enclosed please find my Special Master's report for the upcoming Fairness Hearing for Verona Township in the above-referenced matter. Please let me know if you have any questions or if you would like to discuss.

Sincerely,

Elizabeth McManus, PP, AICP, LEED AP

c. Brian Giblin, Esq.
Derek Orth, Esq.
John Inglesino, Esq.
Josh Bauers, Esq.



SPECIAL MASTER'S REPORT
FOR A *MOUNT LAUREL* FAIRNESS HEARING
TOWNSHIP OF VERONA | ESSEX COUNTY, NEW JERSEY

IMO Application of the Township of Verona
Docket No. ESX-4773-15

April 28, 2021

Prepared for:

The Honorable Robert H. Gardner, J.S.C.
Superior Court of New Jersey
Essex County Historic Courthouse
470 Dr. Martin Luther King, Jr. Blvd.
Newark, New Jersey 07102

Prepared By:

A handwritten signature in black ink, appearing to read 'Elizabeth K. McManus', is written over a horizontal line.

Elizabeth K. McManus, PP, AICP, LEED AP

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TABLE OF CONTENTS

1.0	Introduction	1
2.0	Background	1
3.0	Context for review	2
4.0	FSHC Settlement Agreement & Fairness.....	3
5.0	Spectrum 360, LLC Settlement Agreement & Fairness.....	11
6.0	Conclusion.....	14



1.0 INTRODUCTION

This report has been prepared and submitted in my capacity as Special Master to assist the Court in the upcoming Fairness Hearing before the Honorable Robert H. Gardner, J.S.C. on April 30, 2021 In the Matter of the Application of the Township of Verona, Docket No. ESX-L-4173-15. The following Report reviews whether two settlement agreements the Township entered into are fair to the interests of low- and moderate-income households.

1. Settlement Agreement between the Township of Verona and Fair Share Housing Center (hereafter "FSHC"), executed March 10, 2021
2. First Amended and Restated Settlement Agreement between the Township of Verona and Spectrum 360, LLC (hereafter "Spectrum"), executed January 31, 2020

The notice for this hearing date, which was published in the Star Ledger, properly summarized the salient points of the Agreements, directed any interested members of the public to the Verona Clerk's office where they may review the Agreements, described the purpose of the hearing, and invited written comments on the Settlement Agreement by April 16, 2021. I am not aware of any comments or objections having been submitted.

2.0 BACKGROUND

The Township received second round substantive certification on April 4, 1995 from the Council on Affordable Housing (hereafter "COAH"). The Township petitioned for Third Round substantive certification on December 24, 2008 but was unable to obtain substantive certification before the applicable COAH rules were overturned by the New Jersey Appellate Court. The Township filed a motion for Declaratory Judgment on July 2, 2015.

Verona's Declaratory Judgment action had three intervenors. The Township settled with one intervenor, Spectrum, whose Settlement Agreement is subject to the upcoming Fairness Hearing. Poekel Properties, LLC dismissed their complaint against the Township in a March 25, 2021 Consent Order. The Township reached an agreement with the third intervenor, Bobcar Corporation, Neil Joy LLC, Forsons Partners, LLC, and Wolfbane Associates, for Township purchase of their property in 2020.



3.0 CONTEXT FOR REVIEW

Before addressing the documents that have been submitted for the Court’s consideration, I would like to acknowledge the parties’ efforts in achieving settlement. Settlement of Mount Laurel litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the adjudication of a dispute. Among the most prominent advantages to settlement is that it creates a more civil atmosphere for the further interactions between the parties, such as the ongoing monitoring of the Township’s progress in addressing its fair share obligations and resolving differences that may arise in the future. In this way settlements typically facilitate the local compliance process and thereby expedite the delivery of affordable housing.

The Agreements will be evaluated according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). These cases require agreements in Mount Laurel litigation to be subject to a “Fairness Hearing.” The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process conducted by then–Assignment Judge Peter Ciolino in East/West Venture v. Borough of Fort Lee. In its 1996 decision, the Appellate Court ruled that a settlement between a builder Plaintiff and municipal Defendant in a Mount Laurel case may be approved by the Trial Court after a hearing which establishes that the settlement “adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built” 286 N.J. Super.311, 329 (App. Div. 1996). The Appellate Court provided specific factors for Trial Courts to consider in making fairness determinations. These factors, adjusted as necessary for application in a settlement such as this, between a public interest advocate and a municipality will be detailed in a subsequent section of this report.

This report relies on the “Second Round” regulations of the NJ Council on Affordable Housing (hereinafter “COAH”) (*N.J.A.C. 5:93*) to the greatest extent practicable in the course of this review for the Court. This approach encourages uniformity in the interpretation of the Mount Laurel doctrine and is consistent with both legislative and judicial directives.

The Fair Housing Act (P.L. 1985, c. 222) states,

“The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation.” (*N.J.S.A. 52:27D-302(c)*)

Furthermore, the New Jersey Supreme Court, in its decision in The Hills Development Co. v. Town of Bernards, 103 NJ 1 (1986) (commonly known as Mount Laurel III) upheld the constitutionality of the Fair Housing Act, and stated,

“Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with



definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity [COAH].” (103 N.J. at 25)

Lastly, in the decision, the Supreme Court also stated that to the extent that Mount Laurel cases remained before the courts,

“...any such proceedings before a court should conform wherever possible to the decisions, criteria and guidelines of the Council.” (103 N.J. at 63)

On March 10, 2015 the N.J. Supreme Court delivered In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter “Mount Laurel IV”). This decision acknowledged COAH’s inability or unwillingness to adopt constitutional rules for the so-called “Third Round” of municipal affordable housing compliance. In the absence of regulatory guidance from COAH or Legislative action, the decision instructs the Trial Courts to once again evaluate the constitutionality of municipal Fair Share Plans.

While the Court has invalidated COAH’s attempts to promulgate Third Round rules, the Second Round rules (N.J.A.C. 5:93) are still largely intact. In fact, these rules have been relied upon by the Trial Courts in numerous compliance and fairness hearings during the “gaps” in COAH’s rule-making since the Second Round ended in 1999. Furthermore, in the Mount Laurel IV decision the NJ Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions. The parties to the Settlement Agreements have been guided by these instructions and this Report relies on COAH’s Second Round rules and established Court precedent to evaluate the Settlement Agreements before the Court. This will promote the uniformity of approach which is clearly indicated in the Supreme Court’s decisions.

4.0 FSHC SETTLEMENT AGREEMENT & FAIRNESS

The FSHC Settlement Agreement

The Settlement Agreement was executed on March 10, 2021 by Matthew Cavallo, Township Manager, and Adam M. Gordon, Esq. of Fair Share Housing Center. This agreement is the “typical” Settlement Agreement between FSHC and a municipality that filed a Complaint for Declaratory Judgement. The Agreement sets forth the extent of Verona’s Rehabilitation Share, Prior Round, and Third Round fair share obligations, provides a brief description of the compliance mechanisms by which Verona proposes to address those obligations, and sets forth other terms relevant to compliance and monitoring.

The parties to the Settlement Agreement have agreed upon the following fair share obligations for the Township for the period from 1987 through July 1, 2025:

- Rehabilitation Obligation: 23 units
- Prior Round (1987 – 1999) Obligation: 24 units



- Third Round (1999 – 2025) Obligation: 215 units

The source of the Rehabilitation Share and Prior Round obligation is that which was calculated by Dr. David N. Kinsey, PhD, PP, FAICP in his July 2016 report titled, “New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology”. Notwithstanding the source of the Prior Round obligation, this report did not recalculate the Prior Round obligation calculated by COAH for their 2008 substantive rules, *N.J.A.C. 5:97 Appendix C*. The 215-unit Third Round obligation set forth in the Agreement reflects the number multiple experts have used as an extrapolation of the methodology established by the Hon. Mary C. Jacobson, A.J.S.C. in her decision, In the Matter of the Application of the Municipality of Princeton, Docket. No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018) (hereafter the “Mercer County decision”).

The Settlement Agreement contains a provision stating that if a decision or action of a court of competent jurisdiction in Essex County or by administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature results in the calculation of a municipal obligation more than 20% lower than the 215-unit Third Round obligation set forth in the report (or an obligation of 172 units or lower), the Township may request that its obligation be adjusted to that lower number. Notwithstanding such an adjustment, the Township would be required to fully implement the compliance plan contained in the Agreement but would be able to carry over any resulting surplus units and credits into the fourth round.

The Settlement Agreement sets forth several mechanisms to address each component of the affordable housing obligation; however, additional information is necessary to confirm that these mechanisms satisfy the crediting requirements of the Settlement Agreement, the Uniform Housing Affordability Code (“UHAC”), the Fair Housing Act, and COAH’s rules. Notwithstanding, there is no evidence at this time that the units will not be eligible to satisfy their respective obligations. The Township will need to submit documentation, including but not limited to evidence of affordability controls and facilitating ordinances, for the credit eligibility of each affordable unit and project to be verified. It should be noted that it is typical for such information to be submitted and reviewed as condition of a Court Order addressing Fairness of a settlement agreement with FSHC. To assist ensuring compliance with the time limits in the Settlement Agreement, **I recommend that all crediting documentation and a draft affordable housing ordinance be submitted to the Special Master and FSHC within 60 days of the Court’s approval of the Settlement Agreement.** Review of these documents well in advance of the Settlement Agreement’s time limitation of 120 days could identify and rectify any flaws prior to the Township taking official action on the documents.

Rehabilitation Obligation

The Township will participate in the Essex County Home Improvement Program, which is limited to owner-occupied units, and will implement a supplemental municipal rehabilitation program for renter-occupied



units. The municipal program is necessary for the Township to be compliant with *N.J.A.C. 5:93-5.2(f)*, which states rental units may not be excluded from the rehabilitation program. Operating manuals for both the County and municipal programs must be submitted as part of the crediting documentation to ensure the programs meet the requirements of *N.J.A.C. 5:93-5.2*.

The Settlement Agreement also permits the Township to conduct a Structural Conditions Survey in order to adjust the rehabilitation obligation. Conducting such a survey is explicitly permitted in *N.J.A.C. 5:93-5.2(a)* and Appendix C. of *N.J.A.C. 5:93*, should a municipality wish to modify its Rehabilitation Share to reflect “on the ground” conditions. The survey, which must be performed by an individual licensed to conduct building and/or housing inspections, is an exterior inspection that determines if a home is substandard. The definition of “substandard”, for this purpose, is having one major system (foundation, siding, walls, roof, chimney) deemed fair/poor or two minor systems (stairs, porch, fire escape, windows, doors) deemed fair/poor. Should the Township proceed with the Survey, it shall be submitted to FSHC and the Special Master for review and approval not less than 60 days prior to the Compliance Hearing.

Prior Round Obligation

The Township satisfies the 24-unit Prior Round obligation with a variety of mechanisms that provide low and moderate income rental housing for families, seniors, and those with special needs. The table below provides a summary of these mechanisms. These mechanisms meet the rental obligation and the senior limitation set forth in the Settlement Agreement.

Satisfaction of the 24-unit Prior Round Obligation							
Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits	Status
Hillwood Senior Housing (6 of 59)	x	x		6		6	Occupied
ARC of Essex County	x			6	6	12	Occupied
Jewish Services Group Home	x			2		2	Occupied
Spectrum 360, LLC (4 of 15)	x		x	4		4	Zoned
Total				18	6	24	



Third Round Obligation

The Township satisfies the 215-unit Prior Round obligation with a variety of mechanisms that provide low and moderate income rental housing for families, seniors, and those with special needs. The table below provides a summary of these mechanisms. These mechanisms meet the family, rental, family rental obligations, as well as the senior limitation set forth in the Settlement Agreement.

Satisfaction of the 215-unit Third Round Obligation							
Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits	Status
Hillwood Senior Housing (53 of 59)	x	x		53	0	53	Occupied
Spectrum 360, LLC (11 of 15)	x		x	11	11	22	Zoned
Cameco 100% Affordable	x		x	95	43	138	Approved
Project Live	x			3	0	3	Occupied
Total				162	54	216	
						Surplus	1

Aside from meeting the 215 unit Third Round obligation, the Township agrees to the following additional mechanisms:

- **Mandatory Set-aside Ordinance** – The Township will maintain a 2018 ordinance that requires any site that receives benefits from a rezoning, variance or redevelopment plan that results in five (5) or more units of multi-family housing shall provide an affordable housing set-aside of 15% if the affordable units are for rent or 20% if the affordable units are for sale.
- **Block 1807, Lots 2-12,14 Overlay** – The Borough will adopt overlay zoning for this area along Bloomfield Avenue, between Montrose Avenue and South Prospect Street, that will permit mixed use development at a density of up to 22 units per acre with an affordable housing set-aside of 15% if the affordable units are for rent or 20% if the affordable units are for sale.



Fairness Analysis

The Settlement Agreement must be subjected to the fairness analysis embodied in the East/West Venture case referenced above. Before doing so, it is worth noting, as the Court did in Morris County Fair Housing Council v. Boonton Township 197 N.J. Super., that “...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents.” FSHC was heavily involved in all aspects of this case including the Township’s fair share allocation and the Township’s compliance plan. FSHC is the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households. Consequently, FSHC’s endorsement of the Settlement Agreement is a compelling indication that it believes the Agreement to be fair and reasonable.

Under the East/West Venture case the Court established criteria for evaluating the fairness of settlements between municipalities and builder plaintiffs in exclusionary zoning cases. By contrast, this settlement involves a municipality and a public interest organization.

The first step under East/West Venture is to evaluate the number and rationale for the affordable housing units to be provided by the developer(s). However, the fairness of the Agreement must be viewed from a Township-wide perspective rather than evaluating the proposal for development of a single inclusionary project.

First, evaluation of the fair share obligation must begin with Verona’s allocation under alternative methodologies. As stated, the source of the Rehabilitation Share and Prior Round obligation is that which was calculated by Dr. David N. Kinsey, PhD, PP, FAICP in his July 2016 report titled, “New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology”. Also as stated, the 215-unit Third Round obligation set forth in the Agreement reflects the number multiple experts have used as an extrapolation of the methodology established by the Mercer County Decision.

FSHC commissioned Dr. David Kinsey to prepare a fair share methodology which would calculate the regional need for the 1999-2025 period and allocate that housing need to the constituent municipalities in each housing region. As part of this effort, Dr. Kinsey authored several reports with variations to his methodology that have been submitted to various Superior Courts. A report dated May 2016 allocated Verona a rehabilitation obligation of 23 units, Prior Round obligation of 24 units, and a Third Round obligation of 379 units. Dr. Kinsey’s July 2016 Report allocated Verona a Third Round obligation of 327 units. The Mercer County decision also allocated Verona a Rehabilitation Obligation of 0 units and a Prior Round Obligation of 24 units.

Econsult Solutions, the expert retained by the 288-municipality “consortium”, produced a series of expert reports and included an allocation for each municipality. According to Econsult’s most recent report,



released in April 2017, Verona was allocated a rehabilitation obligation of 0 units, a Prior Round obligation of 24 units, and a Third Round obligation of 50 units.

On January 17, 2017 The New Jersey Supreme Court found In Re Declaratory Judgment Actions Filed By Various Municipalities, County Of Ocean, Pursuant To The Supreme Court’s Decision In In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1(2015). that the “gap period”, defined as 1999 to 2015, generates an affordable housing obligation. The decision requires an expanded definition of municipal present need obligation to include low- and moderate-income (“LMI”) households that were formed during the gap period and are entitled to their delayed opportunity to seek affordable housing. The Rehabilitation Share (also referred to as present need) obligation, has historically been an estimate of LMI households living in substandard housing at the beginning of an affordable housing round. Although some parties argued the gap obligation should be calculated as part of the prospective need, the Supreme Court found that such a position is not supported by the Fair Housing Act (“FHA”), which defines prospective need as a projection of new LMI households formed during a future housing cycle. Accordingly, the municipal affordable housing obligation is now composed of the following four parts:

- present need (rehabilitation);
- Prior Round (1987 to 1999, new construction);
- present need (1999 to 2015, new construction); and
- prospective need (Third Round, 2015 to 2025, new construction).

While the structure of the obligation identified in the Settlement Agreement is different than the findings of this Supreme Court decision (i.e., no redefined present need and a prospective need specific to 1999 – 2025), the Township’s obligation reflects the entirety of the Third Round period, from 1999-2025. In the absence of any consensus on the methodology and in light of the considerable spread in the calculations presented by the experts for the respective parties I find the fair share resolution set forth in the Settlement Agreement to be fair and reasonable to the region’s low and moderate income households. This opinion is supported by the following:

- The Township and FSHC have agreed to the 23-unit rehabilitation obligation. This figure exceeds the 0-unit obligation calculated by Econsult Solutions as well as the Mercer County decision’s allocation. Additionally, the Settlement Agreement invites the Township to adjust the obligation to reflect “on the ground” conditions with the structural conditions survey.
- The parties have both accepted COAH’s Prior Round obligation of 24 units; this is in accordance with Mount Laurel IV “...prior unfulfilled housing obligations should be the starting point for a determination of a municipality’s fair share responsibility;” In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1, 30 (2015) (“Mount Laurel IV”);



- The Settlement at 215 units for the Third Round obligation is roughly mid-way between that which was calculated by Fair Share Housing Center in Dr. Kinsey’s reports (327 units, 379 units) and that which was calculated by Econsult (50 units). Additionally, and importantly, the Township agreed to not only meet the 215 unit obligation but also agreed to two additional inclusionary housing mechanisms that will further expand affordable housing opportunities in Verona.
- As stated above, while the structure of the obligation identified in the Settlement Agreement is different than the findings of this recent Supreme Court decision (i.e. no redefined present need and a prospective need specific to 1999 – 2025), the Township’s obligation reflects an obligation for the entire Third Round, 1999 through 2025.
- The specific fair share number in this case is of lesser import than the municipal compliance plan’s prospects for successfully delivering affordable housing. The Settlement Agreement commits Verona to implement new mechanisms that create the opportunity for the development of very-low, low-, and moderate-income housing in areas of the Township suited for redevelopment. As stated, the Township will exceed its Third Round obligation with the additional inclusionary housing mechanisms.

Second, under the East/West Venture fairness analysis any other contributions being made by the municipality must be considered, along with any other components which contribute to the municipality’s satisfaction of its Mount Laurel obligation.

As stated above, the Township has agreed to various compliance methods that will address the Rehabilitation Share, Prior Round, and Third Round obligations, including the majority of which will produce family rental housing. In addition, the Settlement Agreement carries a series of features which advance the goal of meeting the housing needs of low- and moderate-income households, as follows:

1. The Township agrees to prepare and adopt within 120 days an amended Housing Element and Fair Share Plan, including a Spending Plan. The also agrees to introduce within 120 days of Court approval an ordinance amending the Township’s Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this agreement and the zoning contemplated therein.
2. At least half of all housing units addressing the Third Round Prospective Need shall be affordable to low-income households, with 13% of the affordable housing units being reserved for very-low income households. The remainder of the affordable units shall be affordable to moderate-income households.
3. At least 25% of the Township’s Third Round Prospective Need shall be met through rental units, at least half of which will be rental units available to families.
4. At least half of the units addressing the Third Round Prospective Need in total must be available to families.



5. No more than 25% of the affordable units addressing the Township's Prior Round and Third Round obligation shall be age-restricted.
6. Rental bonuses shall be calculated in accordance with COAH's Second Round rules *N.J.A.C. 5:93 – 5.15 (d)*.
7. All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of #2 above in which case those rules have been superseded by an amendment to the Fair Housing Act.
8. The Township shall update its affirmative marketing plan to include FSHC and other named organizations in its list of community and regional organizations, and both the Township and any other developers or administrative agencies conducting affirmative marketing shall provide notice to those organizations of any available units. The Township shall ensure all affordable units are marketed on the Housing Resource Center website, consistent with a recent amendment to the NJ Fair Housing Act.
9. On the first anniversary of the execution of the Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Township agrees to provide a status report of all affordable housing unit and trust fund activity.
10. The Township shall submit its midpoint realistic opportunity review on or before July 1, 2020, as required pursuant to *N.J.S.A. 52:27D-313*. This midpoint review permits any interested party, such as FSHC, to request by motion a Court hearing regarding whether any sites in the Township's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced. While this review is statutorily sanctioned and certainly reasonable, in the event the Court finds that an affordable housing site or other compliance mechanism should be replaced I recommend that the Township be given the opportunity to supplement its Fair Share Plan to correct any deficiency while being protected by immunity from builder remedy litigation. This municipal opportunity to remedy a defect is certainly warranted since the plan which is being amended was approved by the Court.
11. Within 30 days of every third anniversary of the Agreement the Township will publish on its website and submit to FSHC a status report regarding its satisfaction of the very-low income requirement pursuant to *N.J.S.A. 52:27D – 329.1*.
12. The Township agrees to request that the Court enter an order declaring FSHC is an intervenor, without the need to file a motion to intervene. The Township also agrees that failure to have such order granted will not impact FSHC's rights.



All the requirements cited above contribute to Verona Township’s satisfaction of its affordable housing obligation. Moreover, the very act of settling this litigation advances and expedites Mount Laurel compliance.

5.0 SPECTRUM 360, LLC SETTLEMENT AGREEMENT & FAIRNESS

Spectrum 360, LLC Settlement Agreement

The Spectrum Agreement was executed January 31, 2020.

The Spectrum Settlement Agreement provides for the development of Block 303, Lot 4, located at One Sunset Avenue. This approximate 5.5 acre site is located at the corner of Bloomfield Avenue and Sunset Avenue. The site is located at the municipal boundary with Montclair Township and an additional portion of the site (2.5 acres) is in the neighboring Township, although that land is not subject to the agreement. The Settlement Agreement sets forth that the site will be redeveloped with inclusionary housing. The property is currently developed with a school for special needs children and young adults that will be relocated prior to the site’s redevelopment.

The site, excluding the portion in Montclair Township, consists of approximately 5.5 acres located at the corner of Bloomfield Avenue and Sunset Avenue and is surrounded by a mix of uses. West of the site are single family homes. South of the site are single-family homes in both Verona and Montclair, as well as a park in Montclair. Across Bloomfield Avenue, to the east, are residential uses composed of single-family and multi-family buildings. North of the site, along Bloomfield Avenue, are mix of commercial uses. The existing zoning is the R-100 district which permits single-family residential uses on 12,000 s.f. lots.

The Agreement allows for redevelopment of the site with 200 multi-family housing units, which is a density of approximately 36 du/ac, including 15 affordable housing units. The units will be developed in a four-story building with most of the parking as structured parking. In addition to creating 15 affordable units, which equates to a 7.5% set-aside, the developer will contribute \$3,250,000 to the Township’s affordable housing trust fund once final unappealable government approvals are issued. The parties agreed to redevelopment planning for the site, such that the Township would adopt a redevelopment plan consistent with Exhibit A to the Settlement Agreement, and the parties agreed a Payment In Lieu of Taxes (PILOT).

The parties agreed that the Township Council would introduce an ordinance to adopt a Redevelopment Plan in January 2020 and that a public hearing on the Redevelopment Plan would be conducted in February 2020. The Township did not adhere to this schedule; however, the Redevelopment Plan was adopted on March 8, 2021. **The Township should indicate the status of the PILOT agreement and, if not complete, when execution of the agreement is expected.**



The Agreement also provides for an alternative project that would be activated should the redevelopment designation be challenged and said challenge extends for 18 months, or longer as agreed to by both parties. After this time period, referred to as the “tolling period”, and after a request by Spectrum, the Township will adopt a zoning ordinance for the site within 45 days. However, the alternative project, which will not be subject to a redevelopment plan or a PILOT, will be composed of 300 total units with a 15% affordable housing set-aside and no contribution to the affordable housing trust fund. The units will be developed consistent with Exhibit B in the Settlement Agreement, including a six-story building with most of the parking as structured parking.

The Settlement Agreement requires that the affordable units be developed, in either scenario, in accordance with the Uniform Housing Affordability Control rules (*N.J.A.C. 5:80-26.1 et seq.*) and the Fair Housing Act (*N.J.S.A. 52:27D-301 et seq.*), including but not limited to income distribution, bedroom distribution, affordability controls of not less than 30 years, and phasing of the affordable and market rate units pursuant to *N.J.A.C. 5:93-5.6(d)*. Additionally, the Settlement Agreement states the Township will not impose development standards and/or requirements considered to be unreasonably cost generative and the Township will expedite the review and approval of all necessary governmental approvals. The Settlement Agreement is silent on the percent of very low income units required for the 200 unit project, although it does include a general requirement to provide very low income units. This appears to be an oversight. Notwithstanding, **the Township and Spectrum should confirm compliance with the 13% very low income obligation in the Fair Housing Act.**

Spectrum 360, LLC Fairness Analysis

The Settlement Agreement must be subjected to the fairness analysis embodied in the East/West Venture case referenced above. Before doing so, it is worth noting, as the Court did in Morris County Fair Housing Council v. Boonton Township 197 N.J. Super., that “...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents.” FSHC was heavily involved in all aspects of this case including this Agreement. FSHC is the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households. Consequently, FSHC’s endorsement of the Settlement Agreement is a compelling indication that it believes the Agreement to be fair and reasonable.

For the Agreement to be found fair to the interests of low- and moderate-income households, there must be a finding that the site intended for development is suitable for construction of affordable housing. COAH has adopted rules which specify that inclusionary development sites must “available, suitable, developable and approvable, as defined in *N.J.A.C. 5:93-1*” (*N.J.A.C. 5:97-5.3(b)*). These rules provide guidance on the determinate of site suitability. The following provides a summary of site suitability; however, the Township’s future housing element and fair share plan will also need to provide additional detail.



- “Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

The Township and Spectrum have represented that the site has a clear title and has no encumbrances which would preclude its development with market rate and affordable housing in accordance with the Agreement.

- “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*.

As detailed above, the site is adjacent to compatible land uses. Access will be provided to Sunset Avenue and Bloomfield Avenue. The site has substantial steep slopes; however, their presence does not preclude the site from being developed as set forth in the Settlement Agreement, including the Alternative development for 300 units. The majority of the redevelopment will occur in locations that have been previously developed and not subject to steep slopes and the majority of steep slope areas are along the periphery which are not proposed for redevelopment.

- “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.

The site is served by public water and sewer and the Township represents there is adequate water and sewer, including for the Alternative project.

- “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.

The site appears to be developable consistent with the Residential Site Improvement Standards, *N.J.A.C. 5:21*. The site does not contain any historic or architecturally important structures and is not within an historic district.

- In addition to determining whether the site and proposed development is suitable pursuant to the above definitions, COAH’s rules, in *N.J.A.C. 5:93-5.4*, provide guidance as to where in the state inclusionary housing is encouraged. COAH’s rules rely on the 2001 State Development and Redevelopment Plan (SDRP) for this guidance and state inclusionary housing in Planning Areas 1, 2, and Centers is encouraged. The site is in Planning Area 1, the Metropolitan Planning Area. As such, this site is consistent with the guidance provided in *N.J.A.C. 5:93-5.4*,

Considering the analysis above, the Spectrum site passes the threshold test for site suitability: it is adjacent to land uses which would be compatible with inclusionary development, has adequate access, and appears to be otherwise available, approvable, and developable as these terms are defined in COAH rules and have been relied upon by Court routinely in Mount Laurel cases.

Under the guidance provided by the East/West Venture case, the first step is to evaluate the number and rationale for the affordable housing units to be provided by the developer(s).



- 200 family multi-family rental units are permitted on the site at a density of approximately 36 du/ac. The affordable housing contribution is split between 15 on-site affordable housing units, which equates to a set-aside of 7.5%, and a contribution of \$3,250,000 toward the affordable housing trust fund. The density is appropriate for multi-family inclusionary development in this area. The low on-site set-aside is mitigated with the contribution. If viewed as a 15% set-aside (30 affordable units), the payment amounts to approximately \$217,000 per affordable unit.
- In the Alternative Plan, 300 family multi-family rental units are permitted on the site at a density of approximately 55 du/ac and an affordable housing set-aside of 15%. This density and set-aside are appropriate for multi-family inclusionary housing.

Second, under the East/West Venture fairness analysis any other contributions being made by the developer or municipality must be considered, along with any other components which contribute to the municipality's satisfaction of its Mount Laurel obligation.

- The Spectrum site will provide not less than 15 family rental affordable units. These units will contribute toward the Township's rental obligation, family rental obligation, as well as the total Third Round obligation.
- The Agreement requires compliance with the applicable affordable housing regulations. It requires 50% of affordable units to be restricted to moderate-income households, 37% of units to be affordable to low-income households (exclusive of very-low income households) and 13% of affordable units to be affordable to very-low income households. It also requires compliance with the bedroom distribution set forth in UHAC.
- The Agreement permits the Alternative project should a challenge to the redevelopment planning exceed 18 months. This provision seeks to ensure litigation does not delay the timely production of low and moderate income housing units.

6.0 CONCLUSION

As directed by the Court, I have evaluated the Agreements by and between the Township of Verona and Fair Share Housing Center, and the Township of Verona and Spectrum 360, LLC based on the authority, procedures, and standards set forth in Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

It should be noted that the Settlement Agreement with FSHC encompasses both an agreement on the magnitude of the Township's Prior and Third Round fair share obligations as well as a preliminary plan through which the parties anticipate the Township will meet its obligation. Should the Court approve the FSHC Agreement, the Township still must perfect the Settlement and re-apply to the Court for final approval and a grant of repose at a Compliance Hearing.



The Settlement Agreement with FSHC cites most of the actions which the parties must take to qualify for final Court approval and need not be reiterated here. The most important documents will be the Township's responsibility: The Housing Element of the Master Plan and a Fair Share Plan which incorporates the vacant land adjustment, Spending Plan and Affirmative Marketing Plan, the zoning amendments required by the Agreement, and any other ordinances necessary to implement the Agreement (Fair Share / Affordable Housing Ordinance, etc.). The Housing Element must be duly adopted by the Planning Board and endorsed by the Township's Governing Body, and the zoning amendments to implement the Fair Share Plan must be adopted by the Governing Body and effective upon approval by the Court. The Township is required to adopt the Housing Element and Fair Share plan within 120 days of the Court's approval of the Settlement Agreement

Should the Court approve the Settlement Agreement, I recommend, as cited in the Settlement Agreement with FSHC, the Court set a time limit of 120 days within which the Township and FSHC will complete the actions/documents necessary for final judicial approval. This includes the adoption of the Housing Element and Fair Share Plan and its required components, such as the inclusionary zoning.