BOROUGH OF WOODCLIFF LAKE
MAYOR AND COUNCIL AGENDA
July 9, 2020
6:00 PM

CALL TO ORDER

Notice of this meeting, in accordance with the "Open Public Meetings Law, 1975, C. "231", has been posted and two newspapers, The Record and The Ridgewood News, have been notified.

ROLL CALL

Mayor Carlos Rendo
Councilman Stephen Falanga
Councilwoman Jacqueline Gadaleta
Councilwoman Nancy Gross
Councilwoman Angela Hayes
Councilman Craig Marson
Council President Brian Singleton

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT- Budget and Any Other Matter
(limited to 3 minutes per speaker)

NON-CONSENT AGENDA
Resolution No 20-151 Resolution Approving Settlement Agreement with Fair Share Housing Center

ADJOURNMENT

******Disclaimer******
Subject to Additions and/or Deletions

Council Member	Motion	Second	Yea	Nay	Abstain	Absent
Falanga						
Gadaleta						
Gross						
Hayes						
Marson						
Singleton						
Mayor Rendo						

RESOLUTION APPROVING SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

RESOLUTION NO. 20-151
JULY 9, 2020

WHEREAS, the Borough of Woodcliff Lake entered a Notice of Appearance as an interested party with regard to the matter In Re the Borough of Saddle River Third Round Mount Laurel Affordable Housing, Docket No. BER-L-6120-15; and

WHEREAS, a Fairness Hearing was held on June 2, 2020 before the Honorable Gregg A. Padavano which was subsequently adjourned to July 30, 2020; and

WHEREAS, as a result of the Fairness Hearing, the Borough of Saddle River and the Fair Share Housing Center, together with all interested parties have reached a 4-party Amendment to the Settlement Agreement, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, the Borough Engineer and Borough Attorney have reviewed the Amendment to the Settlement Agreement and recommend the approval of same.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Bergenfield, County of Bergen and State of New Jersey that the 4-Party Amendment to the Settlement Agreement with regard to the matter In Re the Borough of Saddle River Third Round Mount Laurel Affordable Housing, Docket No. BER-L-

6120-15, a copy of which is attached hereto and incorporated herein by reference be and is hereby approved; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute the Amendment to the Settlement Agreement on behalf of the Borough; and

BE IT FURTHER RESOLVED, that the Borough Clerk is hereby authorized and directed to forward a copy of this Resolution together with the signed Amendment to the Settlement Agreement to the attorney for the Fair Share Housing Center upon its passage.

CERTIFICATION

I, Deborah Dakin, Municipal Clerk of the Borough of Woodcliff Lake in the County of Bergen and the State of New Jersey, do hereby certify that the foregoing resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting of July 9, 2020.

_____

DEBORAH DAKIN, RMC, CMR
BOROUGH CLERK

SETTLEMENT AGREEMENT BETWEEN THE BOROUGH OF SADDLE RIVER, THE BOROUGH OF WOODCLIFF LAKE, FAIR SHARE HOUSING CENTER, AND ZHANNA TORRES

In the Matter of the Borough of Saddle River, County of Bergen, Docket No. BER-L-6120-15

Background

The Borough of Saddle River ("Saddle River" or "Borough") filed the above-captioned matter on July 8, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with Mount Laurel IV, 221 N.J. 1 (2015). On February 10, 2020, Saddle River and Intervenors Fair Share Housing Center ("FSHC") and Saddle River Investors, LLC ("SRI") entered into an agreement to settle the matter ("Original Settlement Agreement"). Prior to the scheduled fairness hearing in this matter on June 2, 2020, Zhanna Torres ("Torres") and the Borough of Woodcliff Lake ("Woodcliff Lake") filed objections regarding the 78 Woodcliff Lake Road site contained in the Original Settlement Agreement.

After an initial attempt to resolve those objections failed to produce a mediated agreement, the Borough and FSHC entered into an amendment to the Original Settlement Agreement which was submitted to the Court on June 26, 2020 as to the 78 Woodcliff Lake Road site. After further negotiation and mediation conducted by Special Master Francis Banisch, all parties agreed to amend the Original Settlement Agreement to resolve the objection and present such amendment to the trial court reviewing the Original Settlement Agreement. FSHC and the Borough agree that this amendment supersedes in its entirety the amendment submitted to the Court on June 26, 2020.

Settlement Terms

1. Torres and Woodcliff Lake, and any agent, affiliated company or assignee, or municipal agency thereof, agree that the execution of this Agreement (hereinafter referred to as "Settlement Agreement Amendment") by all parties hereto shall be deemed a withdrawal of their respective objections (the "Objections") to the Original Settlement Agreement , and also serve as agreement to not file any further objections relative to the to the fairness of the Original Settlement Agreement or this Settlement Agreement Amendment. This Settlement Agreement Amendment shall be filed by Saddle River with the court in the above-captioned matter to evidence the withdrawal of the Objections.

2. Woodcliff Lake agrees to provide sewer and water service to serve the 78 Woodcliff Lake Road site, in accordance with the customary terms and fee schedule for such service. This obligation shall be expressly subject to the sanitary sewer system's capacity to adequately handle such connection, and the Borough and Bergen County Utilities Authority engineering analysis and approval

of the connection and discharge of sanitary flow. Saddle River shall be responsible for any costs of provision of such service including, but not limited to, all professional fees for any such engineering or other professional analysis to confirm capacity to the extent such analysis is required, in accordance with the customary terms and fee schedule for such service and applicable law. In return, Saddle River agrees that a separate meter shall be installed by Saddle River at its sole cost and expense; and Saddle river shall pay Woodcliff Lake an annual charge in quarterly payments for the use of the system, treatment and disposal of wastewater, maintenance and a capital improvement surcharge.

3. The parties acknowledge that Woodcliff Lake's water supply comes from either Park Ridge or SUEZ Water. Woodcliff Lake shall not object to the Borough of Saddle River utilizing either water source. All costs for connection and use of the water supply shall be paid by Saddle River.

4. Torres shall not interfere with Saddle River's purchase(s) and/or offer(s) to purchase any and all lots which are included in the Original Settlement

Plan Component	Number of Affordable Units	Bonus Credits	Total Credits
SRI E. Allendale Road site. 60 total units (B 1402, L 23, 24 & 25)	8	N/A	8
SRI 14 Algonquin Trail site. 60 total units (B 1603, Lots 1 & 2 and B 1602, Lot 1)	12	N/A	12
Choctaw Trail Borough 100% affordable rentals. 92 total units. 56 allocated to 3rd Round; 36 to Unmet Need (B 1601 L 10, 10.01 & 11)	56 (of 92)	33	89
E. Allendale Road Borough Special Needs Housing (B 1605 L 1)	23	-	23
TOTAL	**99**	**33**	**132**

Agreement as 100% affordable housing developments.

5. The Original Settlement Agreement is hereby modified as follows. All other provisions not specifically modified herein remain in full force and effect:

   a. The chart in Paragraph 7 is replaced with the following chart:

   b. Paragraph 8(a) is replaced with "36 surplus units generated from satisfying RDP as reflected in the above chart."

c. Paragraph 8(b) is replaced with "100% affordable family site (Block 17.03 Lot 15, 2.3 acres) – 12 total family rental units. This site is described further in paragraph 10 below."

d. Paragraph 10(a) is replaced with:

a. **Choctaw Trail.** A 92-unit 100% affordable family rental development on Block 1601, Lots 10, 10.01, 11 and the land area of the municipal street known as Choctaw Trail that shall be vacated (the "Choctaw Trail" site). The affordable units will be 12 very low, 34 low, 46 moderate and will meet UHAC bedroom distribution (max 20% 1 BR, i.e. maximum 18 units, minimum 30% 2 bedroom, i.e. minimum 28 units, and minimum 20% 3 bedroom, i.e. minimum 19 units, or minimum 20 units if the additional 3 bedroom unit referenced below on the 78 Woodcliff Lake Road site is provided on the Choctaw Trail site) proportionally distributed across each income category.

   i. The Borough agrees that the three lots comprising the Choctaw Trail site, plus the vacation of Choctaw Trail if necessary, are sufficient to accommodate 92 affordable family rental units. The Borough agrees to acquire these three lots either through voluntary purchase or by eminent domain within one (1) year of the execution of the original settlement agreement on February 10, 2020.
   ii. The Borough shall rezone these lots to allow for this proposed development during the compliance phase of the litigation.
   iii. A developer shall be designated by the Borough for the site during the compliance phase of this matter. The Borough shall work with the developer to provide a timetable during the compliance process showing how each step in the development process will lead to construction to commence no later than September 30, 2022.
   iv. The project shall include adequate age-appropriate active and passive outdoor recreation facilities and spaces which shall be the subject of an agreement with the developer during the compliance phase of this matter.
   v. No later than September 1, 2020 the municipality shall start the process by adoption of a resolution to bond for the full cost of construction of 12 units of the project, proportionally distributed across income levels and bedrooms, as identified in collaboration with developer and approved by Special Master and Court in final compliance hearing; Saddle River shall proceed through the bonding process with usual diligence to secure necessary financing.
   vi. During the compliance phase of this matter, the Borough shall provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the

Borough and/or project sponsor, and any applications still pending, and provide a resolution of intent to bond in event of shortfall up to the full development cost of this development as shown in the pro forma.

1. Provided that during the compliance phase of this matter the Borough demonstrates that the Choctaw Trail site scores perfectly on the current NJ HMFA family scoring for 9% tax credits, the developer designated by the Borough may seek 9% Low Income Housing Tax Credits in the 2020 and 2021 NJ HMFA 9% tax credit cycles for the 80 units not bonded for as provided for above. If the Borough and/or its designated developer does not secure tax credits in either cycle, the Borough shall be obligated to bond for the cost of construction necessary to construct the entire project no later than December 31, 2021, deducting only firmly committed funding from outside sources at that time from the bond amount for the total cost necessary to complete the project, and provide for construction to commence no later than September 30, 2022. The Borough may utilize NJ HFMA 4% tax credits as part of its obligation to commence construction of the project no later than September 30, 2022.
2. However, if the sites do not score perfectly, the Borough shall proceed immediately towards construction of the site either with 4% tax credits or without tax credits and provide for financing in place no later than December 31, 2021 including any bonding necessary, with the same requirement as to commencement of construction of the project no later than September 30, 2022.

e. Paragraph 10(c) is replaced with:

c. **Woodcliff Lake Road.** A development of 12 family rental affordable units on Block 1703, Lot 15 (the "78 Woodcliff Road Site" or the "78 Site"). The affordable units will be 2 very low, 4 low, 6 moderate – and will meet UHAC bedroom distribution requirements (max 20% 1-BR, minimum 30% 2-bedroom, and minimum 20% 3-bedroom) across each income category, with the very low income units being one two bedroom and one three bedroom unit. Notwithstanding the requirement for a minimum of 20% 3-bedroom units on the 78 site, the Borough will attempt to reduce the number of 3-bedroom units from three to two on the 78 Site and instead provide one additional 3-bedroom unit on the Choctaw Trail site so long as that effort does not compromise (through tax credits or otherwise) the Borough's ability to build all 24 units on both sites and comply with the UHAC regulations.

   i. The Borough agrees to acquire this lot either through voluntary purchase or by eminent domain within one (1) year of the

execution of the Original Settlement Agreement dated February 10, 2020.

ii. The Borough acknowledges that this site does not have water or sewer service at this time, though it is within the sewer service area. The Borough will be solely responsible for all costs of extending water and sewer to the site to make the development as described in this Agreement feasible.

iii. A developer shall be designated by the Borough for the 78 Site during the compliance phase of this matter. The Borough shall work with the developer to provide a timetable during the compliance process showing how each step in the development process will lead to construction to commence no later than September 1, 2022.

iv. The project on the 78 Site shall consist of a building that is no more than 2-stories in height and shall include adequate age-appropriate active and passive outdoor recreation facilities and spaces which shall be the subject of an agreement with the developer during the compliance phase of this matter.

v. The property shall have a single driveway entrance.

vi. All parking shall be located at the front of the dwelling.
The Borough shall use best efforts to work with the developer during the compliance phase in this matter to design the building to provide for landscaped screening and buffering along all of the property lines, and to have an architectural design similar to single-family homes in the surrounding neighborhood in Saddle River and Woodcliff Lake (as opposed to a garden apartment-style building with multiple exterior entrances to units).

vii. Apple Ridge Road shall not be opened up nor shall there be any access from the site onto Apple Ridge Road.

viii. There shall be no encroachments on any Wetlands or C-1 Waterways or buffers.

ix. Torres shall have the right to install a gate on her property (Block 1703, Lot 10) at least 5-feet back from the Shefler Drive right of way, which gate must be in compliance with all applicable zoning and municipal ordinances.

x. This 12-unit development and associated improvements shall be the sole development on the 78 Site, and more units will not be allocated to this site to cover a shortfall at any other site proposed in the Original Settlement Agreement or in this Settlement Agreement Amendment.

xi. No later than September 1, 2020 the municipality shall start the process by adoption of a resolution to bond for the full cost of construction of the project as identified in collaboration with developer and approved by Special Master and Court in final compliance hearing; Saddle River shall proceed through the

bonding process with usual diligence to secure necessary financing.

xii. Units shall be under construction no later than September 1, 2022.

f. In paragraph 25, "$95,000" is replaced with "$105,000." The parties agree that $5,000 of this total shall be paid by Torres to FSHC within 30 days of the Court's approval of this Settlement Agreement Amendment pursuant to a duly-noticed fairness hearing with the remainder to be paid by the Borough within 30 days of the Court's approval of this Settlement Agreement Amendment pursuant to a duly-noticed fairness hearing.

d. The Original Settlement Agreement as anticipated to be amended by this Settlement Agreement Amendment must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). If this Settlement Agreement Amendment is rejected by the Court at a fairness hearing, or approved at a fairness hearing but that approval is reversed on appeal, this agreement shall be null and void.

e. In the event any party is in default of its obligations pursuant to this Settlement Agreement Amendment, the party may seek to enforce this Settlement Agreement Amendment by a motion in aid of litigant's rights or a separate action in Superior Court, Law Division, Bergen County.

f. Unless otherwise specified, it is intended that the provisions of this Settlement Agreement Amendment are to be severable. The validity of any article, section, clause or provision of this Settlement Agreement Amendment shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Settlement Agreement Amendment shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

g. This Settlement Agreement Amendment shall be governed by and construed by the laws of the State of New Jersey.

h. This Settlement Agreement Amendment may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

i. This Settlement Agreement Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Settlement Agreement Amendment.

j. The Parties acknowledge that each has entered into this Settlement Agreement Amendment on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Settlement Agreement Amendment, that this Settlement Agreement Amendment contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

k. Each of the Parties hereto acknowledges that this Settlement Agreement Amendment was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Settlement Agreement Amendment; and (ii) it has conferred due authority for execution of this Settlement Agreement Amendment upon the persons executing it.

l. Any and all Exhibits and Schedules annexed to this Settlement Agreement Amendment are hereby made a part of this Settlement Agreement Amendment by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Settlement Agreement Amendment with prior written approval of both Parties.

m. This Agreement constitutes the entire Settlement Agreement Amendment between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

n. No member, official or employee of Saddle River or Woodcliff Lake shall have any direct or indirect interest in this Settlement Agreement Amendment, nor participate in any decision relating to the Settlement Agreement Amendment which is prohibited by law, absent the need to invoke the rule of necessity.

o. Anything herein contained to the contrary notwithstanding, the effective date of this Settlement Agreement Amendment shall be the date upon which all of the Parties hereto have executed and delivered this Settlement Agreement Amendment.

p. All notices required under this Settlement Agreement Amendment ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be

affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE BOROUGH OF SADDLE RIVER:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009
Phone: 973-239-8800
Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Vanessa Nienhouse, RMC
Saddle River Municipal Building
100 E. Allendale Road
Saddle River, New Jersey 07458
Phone: 201-327-2609
Telecopier: 201-327-0168
Email: vnienhouse@saddleriver.org

TO THE BOROUGH OF WOODCLIFF LAKE:

John L. Schettino, Esq.
Law Offices of John L. Schettino, LLC
800 Main Street STE 101
Hackensack, New Jersey 07601
Phone: 201-498-9768
Telecopier: 201-498-9769
Email: mail@jlslegal.com

TO ZHANNA TORRES:

Joseph Paparo, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway, P.O. Box 1997

Morristown, NJ 07962
Phone: 973-889-4042
Email: japaparo@pbnlaw.com

On behalf of Fair Share Housing Center:

_____
Adam M. Gordon, Esq., Executive Director
Dated:____June 19, 2020_____

On behalf of the Borough of Saddle River, with the authorization of the governing body:

_____
_____
Dated:_____

On behalf of the Borough of Woodcliff Lake, with the authorization of the governing body:

_____
_____
Dated:_____

On behalf of Zhanna Torres:

_____
_____
Dated:_____