

**SUPERIOR COURT OF NEW JERSEY**SOMERSET COUNTY  
VICINAGE 13Chambers of  
**THOMAS C. MILLER**  
Presiding Judge - CivilSomerset County Superior Court  
P.O. Box 3000  
Somerville, NJ 08876-1262  
(908) 332-7700 Ext. 13590

May 21, 2020

**FILED VIA ECOURTS ONLY**

Kelly Grant, Esq.

Adam Gordon, Esq.

William J. Caldwell, Esq.

Michael Bolan, AICP, PP

**RE: In Re City of Lambertville (Mt. Laurel)**  
**Docket No. HNT-L-311-15**

Dear Counsel:

Enclosed herewith is the Court's decision with regards to the Fairness and Compliance Hearing held before this Court on May 12, 2020.

Be advised I am requiring that counsel for the City of Lambertville prepare and submit the appropriate Order to the Court under the Five Day Rule pursuant to the Court's decision.

Thank you.

Very truly yours,

**/S/ THOMAS C. MILLER, P.J.Cv.****THOMAS C. MILLER, P.J.Cv.**TCM/jml  
Enclosure

IN THE MATTER OF THE  
APPLICATION OF CITY OF  
LAMBERTVILLE, A Municipal  
Corporation of the State of New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUNTERDON COUNTY  
DOCKET NO. HNT-L-311-15

CIVIL ACTION  
(Mount Laurel)

### **COURT'S OPINION**

Regarding the Fairness and Compliance Hearing for the Amended Settlement Agreement between the City of Lambertville (“Lambertville” or “City”) and the Fair Share Housing Council (“FSHC”) as well as a review of the City’s compliance efforts to date which was held on May 12, 2020.

#### **A. Parties and Counsel Appearing**

City of Lambertville, appeared through its counsel, Kelly Grant, Esq. of the law firm of Malamut & Associates, LLC

Also appearing for Lambertville was the City’s Planner, Emily Goldman, Esq. (who testified); Mayor Julia Fahl; and Councilwoman Julia Taylor. Ms. Goldman also testified before the Court and was qualified as an expert in the field of Professional Planning and as an expert in Mt. Laurel Housing matters.

The Fair Share Housing Council appeared through its counsel, Adam Gordon, Esq.

The Court Appointed Master, Michael Bolan, AICP, PP appeared and testified as an expert witness in the fields of Professional Planning and with a specialty in Affordable Housing matters.

Merrick Wilson and Academy Hill, Inc. appeared through their counsel, William Caldwell, Esq.

The following Interested Parties appeared on the Zoom Hearing and were permitted to participate by cross examining witnesses and offering testimony, if they wished.

Matthew Hanson  
MaryAnn Ranson  
Barbara and John Henchick  
Lynell Antonelli  
Karvalis Roman

Lillie Chen  
John Allen  
Bart Thuber  
Ryan Fuller  
Charles Zarnitz  
Jesse Landon  
Suzanne Bell  
Lauren Kovacs  
Thomas Schwarz  
Elena Feruok Hill  
Richard Green  
Steve Stegman  
Ellen Kuhl  
Audrey Bynes  
Carol Mizsur

**B. Exhibits Admitted Into the Record by the Court**

- P-1 Settlement Agreement by and between “Lambertville” and the “FSHC” dated January 29, 2020
- C-1 Special Master Report dated May 7, 2020
- C-2 Notice of Hearing prepared by the Court
- C-3 Notice of Hearing prepared by the City
- O-1 Fox and Schwarz letter undated
- O-2 Zarnitz letter dated 4/30/2020
- O-3 Lillie Chen letter dated 4/30/2020
- O-4 Tiltel and Walsh letter dated 5/1/2020
- O-5 Lita Sands letter dated 5/1/2020
- O-6 Bert Thurber letter dated 5/2/2020
- O-7 Lynn Kline letter dated 5/1/2020
- O-8 Jeffrey Grundy letter undated
- O-9 Johanna Furst email dated 4/30/2020
- O-10 Gary Cohen email dated 4/30/2020
- O-11 Judith Gleason letter undated
- O-12 Benedetta Lambert letter dated 5/8/2020
- O-13 Russell Lambert letter dated 5/8/2020
- O-14 Steve Stegman letter dated 5/7/2020
- O-15 Barbara Lindsey email dated 4/30/2020
- O-16 April Linder email dated 4/30/2020
- O-17 Audrey Bynes email dated 4/30/2020
- O-18 Wanda Kaluza email dated 5/1/2020
- O-19 Judy Wansor email dated 5/1/2020
- O-20 Ravenna Taylor email dated 5/2/2020
- O-21 E Hiel letter dated 5/1/2020

- O-22 Irene Rudolph letter undated
- O-23 John and Barbara Hencheck letter dated 4/1/2020
- O-24 John and Barbara Hencheck letter dated 4/28/2020
- O-25 Gina Fischetti and Larry Vellensky letter dated 5/1/2020
- O-26 Richard F. Green, Ph.D. letter dated 5/1/2020
- O-27 John Constanzo email dated 5/2/2020
- O-28 Matthew Hanson email dated 5/1/2020
- O-29 Elwood and Elena Hill letter dated 5/1/2020
- O-30 Sue Bell letter undated
- O-31 Lauren Kovacs email dated 5/1/2020
- O-32 Elycia Lerman email dated 5/1/2020
- O-33 Jesse Landon email dated 5/1/2020
- O-34 Jeff Apoian email dated 5/7/2020
- O-35 Anne Stewart email dated 5/1/2020
- O-36 Vincent Uhl letter dated 5/2/2020
- O-37 Judy Wansor email dated 5/1/2020
- O-38 John Mathieu email dated 5/7/2020
- O-39 Carole Mizsur email dated 5/1/2020

**C. Background regarding this Court’s prior findings of “Fairness” in this very matter**

Previously Lambertville’s first Settlement Agreement with FSHC and the City’s preliminary compliance efforts were approved by this Court at a Fairness Hearing held on September 13, 2018. That finding was reflected in the Court’s Order of October 11, 2018.

Subsequently, Lambertville and FSHC agreed to present an amended Settlement Agreement to the Court for review, consideration and approval. It is that amended Settlement Agreement that is the subject of the Court’s review in this Hearing. The amended Settlement Agreement, if approved by the Court, will replace the City’s prior Settlement Agreement in its entirety.

**D. Notice of Hearing Before the Court**

Notice of the Fairness and Compliance Hearing scheduled for May 12, 2020 was provided in accordance with the Court’s Order by the City’s Special Affordable Housing Counsel, Kelly Grant, Esq. on April 2, 2020. The Notice of Hearing provided a description of the Settlement Agreement and indicated that the Agreement was available for inspection and copying at the Lambertville City Municipal Building. In addition, the Notice indicated that an interested party could request a copy to be mailed by the City, could review the Agreement on the City’s website, or could contact the Special Counsel to receive a copy.

Further, the City posted a notice indicating that the Interested Parties could participate or view the “Zoom” Hearing held by the Court by simply contacting Court Representative Robert Colaneri a. The Court also posted similar notice a week before the hearing at the front door entrance

to the Somerset County Court House and the Court Room of this Court.

As a result of these notices, twenty one (21) participants, all of whom claimed to be residents of the City, were permitted to participate in the Zoom Hearing held in this matter on May 12, 2020.

### **E. Substance of the Settlement Agreement**

A review of the substance of the Settlement Agreement demonstrates that it addresses the City's Present Need (Rehabilitation) obligation; Prior Round obligation (1987-1999); estimated Third Round Obligation (1999-2025), which includes the Gap Present Need for the period 1999-2015 and Prospective Need for 2015-2025 in accordance with the N.J. Supreme Court decision of January 18, 2017 on the "gap" period; and, proposals to address the obligations.

#### Present Need (Rehabilitation Share)

The Settlement Agreement indicates that the City has a present need of one affordable unit, and provides as the source the report titled "New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology, July 2016 and April 2017", prepared by David N. Kinsey, PhD, PP, FAICP (Kinsey Report). The City is utilizing two credits from existing units rehabilitated under the City's Rehabilitation Program. Documentation is provided in Appendix 4 of the Housing Element and Fair Share Plan (HEFSP). The City's program is available to both owner-occupied and renter-occupied units as long as the landlord resides in the one of the units on the property.

#### Prior Round Obligation (1987-1999)

The City had a Prior Round Obligation of zero affordable units, pursuant to N.J.A.C. 5:93-1 et seq., COAH's Second Round rules.

#### Third Round Obligation (1999-2025)

In order to assess and address its Third Round Obligation, the City prepared a vacant land analysis which resulted in a Realistic Development Potential (RDP) of 41 affordable units (Exhibit A), but the Settlement Agreement acknowledges an "Agreed To" RDP of 88 units recommended by Special Master Elizabeth McKenzie, PP, AICP, to allow the City to capture both additional rental bonuses and additional credits for existing age-restricted units.

With regards to the method that Lambertville employed to address its Third Round Obligation, the Court acknowledges that municipalities with insufficient resources such as land or access to utilities are temporarily excused from the obligation to create "realistic opportunities" for the immediate development of affordable housing. N.J.A.C. 5:93-4.1 et. seq. Courts and COAH regulations have required municipalities in these situations to seize upon redevelopment opportunities as they arise in order to ensure that these rare opportunities to create affordable housing are not squandered. N.J.A.C. 5:93-4.2(f).

That regulation provides:

(f) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (d) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality. Example: Lowmod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre.

The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside.

The RDP equals 25 low and moderate income units.

10 acres X 8 units/acre X .2 =	16
5 acres X 8 units/acre X .2 =	8
1 acre X 6 units/acre X .2 =	1
	25

A municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 need obligation shall be presumed to have addressed its RDP, provided the municipality continues to implement the terms of its previous substantive certification.

In accordance with the statutory authorization, a municipality’s realistic development potential (RDP) is established by determining how many acres are appropriate for residential development and multiplying that by an appropriate density and then assuming a 20 percent set aside of affordable housing. N.J.A.C. 5:93-4.2(f).1 N.J.A.C. 5:9-4.2(g) states that a “municipality may address its RDP through any activity approved by the Council (now the Courts) pursuant to N.J.A.C. 5:93-5.”

In this case, all of the participants agreed with the determination of the RDP to be used in this case. In fact, this Court endorsed that calculation in the initial Fairness Hearing held in this matter. The Agreement provides that the RDP will be satisfied through the following mechanisms:

- 11 rental units/bedrooms (out of 18 bedrooms/units) for the Little Haven Group Home from the Prior Cycle
- 4 family for sale affordable units constructed by Habitat for Humanity
- 22 age-restricted affordable rental units (out of 37 units) at Heritage Village
- 28 affordable family rental units through inclusionary zoning as part of the Lambertville High School Non-condemnation Redevelopment Plan, with 22 rental bonus credits

The agreed upon RDP of 88 units, subtracted from the Third Round Obligation of 137 units, results in an “Unmet Need” of 49 affordable units. The Agreement indicates that the City proposes to address the “Unmet Need” with the following mechanisms:

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1 Again, in this case Plaintiff has proposed only a 15% set aside.

- Development Fee Ordinance and Spending Plan
- Little Haven Group Home (7 of 18 bedrooms/units)
- Heritage Village Affordable Age-Restricted affordable rental units (12 of 37 units)
- Lily Street affordable family rental unit
- IO-1 Inclusionary Multifamily overlay zone (Burd Farmstead/Corboy Lot)
- IO-2 Inclusionary Adaptive Reuse overlay zone (Trenton Cracker Factory)
- Police Lot Redevelopment with 5 family rental affordable units
- Accessory Apartment Program
- Mandatory Set-Aside Ordinance

The Settlement Agreement indicates that inclusionary zoning will be implemented as follows:

- Lambertville High School Redevelopment. Rezoning through the adoption of a Non-condemnation Redevelopment Plan for an inclusionary development providing for 139 total units with a 20% affordable housing set-aside to produce 28 affordable family rental units
- IO-1 Inclusionary Multifamily overlay zone. An overlay zone allowing a gross density of six units per acre with an affordable housing set-aside of 15% for rental units and 20% for owner-occupied units
- IO-2 Inclusionary Adaptive Reuse overlay zone. An overlay zone permitting the rehabilitation of a vacant nonresidential building into family apartments at a gross density of 10 units/acre with an affordable housing set-aside of 15% for rental units and 20% for owner-occupied units
- Police Lot Redevelopment. Rezoning through the adoption of a Non-condemnation Redevelopment Plan for an inclusionary development providing for a total of 23 units with five affordable family rental units
- An accessory apartment program in the R-2 Residential District for 5 units, consisting of 3 low-income units and 2 moderate-income units, with the City contributing a minimum of \$25,000 for each low-income unit and \$20,000 for each moderate-income unit
- A mandatory set-aside ordinance. The mandatory affordable housing set-aside ordinance will require a set-aside for all new multifamily housing of five units or more with a gross density of at least 6 units permitted by use or density variance, rezoning, redevelopment plan or rehabilitation plan, with a set-aside of 20% for for-sale affordable units and a set-aside of 15% for rental affordable units

For any proposed inclusionary project, as part of the standards for the review of plans to zone for inclusionary development (N.J.A.C. 5:93-5.6), the COAH regulations require a determination as to whether a site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3, Definitions. The site criteria and general requirements for new low and moderate income projects also are detailed in N.J.A.C. 5:93-5.3. These terms are defined as follows:

"'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 area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review the Department of Environmental Protection (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."

Thus, the City proposes to address its Prior Round and Third Round Obligations by means of existing group homes, existing and proposed accessory apartments, existing 100% affordable housing, overlay inclusionary zoning, a mandatory set aside ordinance, and Redevelopment Plans with inclusionary zoning.

The analysis performed by the Court in this matter focuses on the new "Lambertville High School" site and the "Police Lot Redevelopment" site, which are the two significant changes to the prior Agreement. Also, it is those two sites that generated public opposition and opposition from the affected property owners.

#### **F. Objectors to the Amended Settlement**

The Court received 36 letters from "objectors" concerning the Amended Settlement Agreement. All of the objectors are apparently City residents. All of the residents objected to the approval of the Agreement at this time.

The first letter is dated April 1, 2020, with the remaining letters dated from April 28, 2020 to the date of Hearing on May 12, 2020. At the Hearing, the Court held the public record open so that additional comments and arguments could be provided. The principal focus of the letters is the redevelopment of the Police Station lot for affordable housing. The following is a list of the parties who submitted letters, and a summary of the nature of the objections to the Settlement Agreement.

<b>Name</b>	<b>Address</b>
John and Linda Hencheck	99 Quarry Street, Lambertville, NJ
John and Linda Hencheck	99 Quarry Street, Lambertville, NJ
James Mastrich	127 North Union Street, Lambertville, NJ
April Linder and Andre St. Amant	54 Brunswick Road, Lambertville, NJ
Gary Cohen	49 Ferry Street, Lambertville, NJ

Charles Zarnitz	17 Clinton Street, Lambertville, NJ
Johanna Furst	35 N. Union Street, Lambertville, NJ
Barbara Lindsey	123 N. Franklin Street, Lambertville, NJ
Lillie Chen	17 Clinton Street, Lambertville, NJ
Sue Bell	407 Sergeant Drive, Lambertville, NJ
Audrey Byrnes	33 Ferry Street, Lambertville, NJ
Karen Fox and Thomas Schwarz	South Union Street, Lambertville, NJ
Lita Sands	16 Coryell Street, Lambertville, NJ
RoseAnn Baska	
Richard Green	35 Lambert Lane, Lambertville, NJ
Carole Mizsur	37 Lambert Lane, Lambertville, NJ
Judith Wansor	30 South Franklin Street
Annelies van Dommelen	Long-time Lambertville resident
Lauren Kovacs	90 Douglas Street, Lambertville, NJ
Elycia Lerman	10 East Blair Tract, Lambertville, NJ
Henry Young	32 Ferry Street, Lambertville, NJ
Jeffrey Tittel and Barbara Walsh	33 Wilson Street, Lambertville, NJ
Sandy Hanna	Long-time Lambertville resident
Maryann Ranson	52 George Street, Lambertville, NJ
Wanda Kaluza	256 Holcombe Way, Lambertville, NJ
John and Tracey Costanzo	7 Liberty View Court, Lambertville, NJ
Elwood and Elena Hill	29 Wilson Street, Lambertville, NJ
Gina Fischetti and Larry Vellensky	116 Clinton Street, Lambertville, NJ
T. Barton Thurber	Lambert Lane, Lambertville, NJ
Irene Rudolph	90 Clinton Street, Lambertville, NJ
Ravenna Taylor	233 North Union Street, Lambertville, NJ
Judith Gleason	86 North Union Street, Lambertville, NJ

The objections that were articulated in the letters of objectors can generally be categorized into several broad categories.

A. Public Safety Concerns related to the Police Station relocation

Several of the objectors indicated that the relocation of the police station to West Amwell will increase the distance to the Lambertville Elementary School from approximately 1/4 mile to nearly 5 miles. It was submitted that the increased distance and lack of public transportation would likely have a negative impact on victims of domestic violence who are currently able to walk to seek police assistance. The objectors offer that the proposed relocation would impact the coordination of the Lambertville Police Department with the local fire department and first aid squad.

B. Environmental Concerns Associated with the Police Station lot

The objectors who addressed “environmental concerns” addressed issues that were meant to raise issues that may negatively affect the developability of the Police Station Property. Several of the objectors also indicated that past studies of the soils on the Police Station lot indicated poor soils comprised of fill. Also, the lot is situated adjacent to a C-1 stream with 300' buffers and in a flood hazard area. Further, the past use of the lot for an auto body shop may have resulted in contamination, and the City would be responsible for any remediation. Lastly, the objectors proffered that the site is not "safe", "decent" or "suitable" because it is located in close proximity to high voltage transmission lines which emit electromagnetic fields.

C. Community Involvement and Pandemic

Several objectors mentioned the “Novel Corona” pandemic and its effect on community involvement as a reason to defer action by the Court. According to those objectors, it is not sound to propose a project of such public import in a time of health and economic crisis. Those objectors offer that the City's settlement deadline should be extended to address the crisis and the steps necessary for the City to properly perform public outreach, consensus building and planning.

D. Alternative Sites

Several objectors suggested alternative sites or methods to provide affordable housing. Among the sites and methods mentioned are: apartments over commercial uses (e.g. CVS lot) and parking lots (e.g. Acme, PNC, Lambertville Station); an amnesty program for unlicensed apartment units and rooming houses; the YMAC, Napa and Burd sites; the St. John the Evangelist Elementary School; and, the Acme site. Notably, some of those sites have been proposed for development as affordable housing by the City in the past.

E. Additional Comments

Several objectors emphasized the particular character of Lambertville as weighing against the proposal. The objectors note that Lambertville is a walkable community with community policing, and the relocation of the police station would compromise that positive asset in the community. The Court has been advised that the proposal for redevelopment of the Police Station is part of a larger plan to consolidate city hall, the police station and library in a civic center, and to dispose of the

existing facilities.

In that regard, several suggestions and criticisms were offered by the objectors, including that: (1) the height of the proposed building on the Police Station lot is not consistent with Lambertville; (2) a Redevelopment Plan for the Police Station is not necessary to satisfy the “Unmet Need” if it could be addressed through overlay zoning; (3) the removal of the condemnation status for the Academy Hill site makes it less likely to develop during the current round; (4) a survey by Lambertville United indicates that residents consider affordable housing an important part of the community and value environmental resources and their contribution to quality of life, and are concerned with tax burdens and local leadership; and (5) that the City has not practiced exclusionary zoning in the past so that some deference or consideration should be accorded for its record on the subject.

#### F. Testimony offered at the Fairness Hearing

Several of the objectors testified at the Court’s Hearing, including Bart Thurber, Thomas Schwarz, Suzanne Bell, and Lauren Kovacs. These witnesses generally offered many of the same critiques that were summarized above. Other poignant comments were also offered, including:

1. Mr. Schwarz asked that the Court consider “asking” the Special Master to conduct a more detailed study into site suitability issues that had been raised by the residents.
2. Mr. Thurber asked for additional time for the City to “vet” the viability and suitability of the Police Station site.
3. Ms. Bell pointed out several misstatements or misunderstandings by the City in its understanding of the processing of domestic violence complaints under the scenarios offered by the “City.” Ms. Bell offered her testimony from the viewpoint of a trained professional who was involved in the domestic violence process for many years.
4. Ms. Kovacs asked that the “consensus process” within the City should be extended so that additional time, discussion and thought could be allowed before the Court endorses the City’s Plan as “Fair.”
5. Merrick Wilson also provided testimony elicited by questioning from his counsel, William Caldwell, Esq. Neither Mr. Wilson nor Mr. Caldwell filed any written objection with the Court. Mr. Wilson complained about the zoning and resultant density that would be assigned to his site which he believes is unrealistic so as to discourage development of the site for affordable housing.

#### G. **Summation Materials from the Parties and Objectors**

At the end of the “Zoom Public Hearing” the Court announced that it would keep the public record open until Friday, May 15, 2020 at 4:00 p.m. for any party who wanted to provide summation arguments or other materials.

The Court received the following materials which were considered in this opinion.

1. Letter from Kelly A. Grant, Esq. of Malamut & Associates, LLC dated May 15, 2020 on behalf of the City.

The letter enclosed a May 15, 2020 report from Suburban Consulting Engineers, the City Engineers, indicating that the Police Station site is most definitely developable, the development design will simply need to anticipate a method of addressing full capacity issues. They reiterated that consistent with the testimony of City Planner Emily Goldman, that the development would comply with “appropriate remediation standards.”

The City also responded to the criticisms that the City would make plans to fully comply with all State and Federal guidelines pertaining to domestic abuse when the police department is temporarily displaced by the Police Site Redevelopment. (See supplemental report of Emily Goldman dated May 15, 2020).

2. Adam Gordon, Esq. of the Fair Share Housing Council filed a supplemental letter brief dated May 15, 2020.

Mr. Gordon noted that N.J.S.A. 52:27D-311 gives municipalities a broad range of tools they can use to fulfill their fair share obligations. Especially to address a fairly small portion of a municipality’s need, as the police station redevelopment site does, municipalities have numerous options to choose how to address their obligations.

The FSHC indicates that it was willing to move forward with other options including the YMAC and/or Napa Auto Parts site. But these sites ultimately also faced opposition and the City chose to move forward with the police station redevelopment.

Mr. Gordon recognized that as several objectors pointed out in their written objections and testimony, there are a number of challenges to developing the police station, including the impact of a C-1 stream on the site, the presence of fill that will have to be addressed in developing a new building on the site, and the need to ensure continuity of services provided by the police department, notably including the need to comply with applicable laws on domestic violence reporting. As is not unusual before a fully developed redevelopment plan and redevelopers agreement has been developed for a site, not all of these issues have been fully addressed at this point. These issues will have to be addressed in the redevelopment process. No doubt addressing some of these issues may impose additional costs compared to other potential sites; conversely, the sale of the site may also derive additional revenues for the City compared to non-municipally owned alternatives, though obviously there also will be costs to building a replacement police station as well.

Mr. Gordon offered that with that said

“[T]hese issues, in FSHC’s view of the evidence presented, do not prevent the court from approving the site at this stage. FSHC is not convinced that any of the issues raised show the site is not suitable as defined in COAH’s regulations,

N.J.A.C. 5:93-5.3(b), and the testimony of both the City's expert and the court-appointed special master provide the court with a credible basis to find the site is suitable. Like with all other sites, if ultimately the site is somehow found to be infeasible, Lambertville will have to come up with a substitute; because it is neither required by the law nor feasible to require every site in a fair share plan to have a fully engineered site plan at the time of a fairness and compliance hearing, issues do sometimes arise, though again the issues raised at the hearing do not appear at this point to be insurmountable.

The conditions recommended by the Special Master in his report (as slightly modified by his testimony on the point of accessory apartments) are designed to ensure that the plan as currently proposed proceeds to reality, and FSHC supports those conditions. The time period proposed by Mr. Bolan, which he characterizes as an "extended period," Report p. 5, gives over six months before a redevelopment plan is adopted and a year before a redevelopment agreement needs to be executed. FSHC believes it is important during this time period to work through how many of the issues raised by objectors will be addressed – as would generally happen in this phase of the process.

Lastly, Mr. Gordon noted that with regards to Mr. Wilson's objections that (1) no written objections to the plan were filed before the hearing; and (2) no expert reports supporting Mr. Wilson's personal lay opinion were offered.

FSHC noted that the Municipal Planner and the Special Master both found that the zoning for Mr. Wilson's site include "potentially significant incentives" to a developer of the site so as to present a "realistic opportunity" to develop the site.

3. William J. Caldwell, Esq. submitted a lengthy post trial brief on behalf of his clients, Merrick Wilson and Academy Hill.

Although Mr. Wilson did not present any expert testimony to support his position, he criticizes the testimony of the City Planner and the Court's Special Master as being inadequate to support a finding that a proposed development of his site is "realistic." Mr. Wilson points out that as Professional Planners, neither expert who testified in this matter have the expertise to opine concerning the technical detail of site planning that he believes is necessary to assess whether the proposed rezoning of his parcel is realistic.

Mr. Wilson offers that his expertise as a developer does offer the necessary qualifications to be able to render such opinions.

Mr. Wilson's brief refers to development proposals that he has made to the City, either formally or informally, as well as various critiques as to why the City's assessment of his site is incorrect. He also provides comparison of his site to the "adjoining Connaught Hill Redevelopment Area" which was rezoned by West Amwell Township with a higher density.

In that regard, he proffers that he has made out a case for “inverse spot zoning” which, of course, is not an issue that is before the Court in this matter.

Mr. Wilson also offered criticism concerning the City’s prior plan which called for the potential condemnation of his property by charging that the City never entered into good faith negotiations with him concerning the acquisition of the site. Mr. Wilson points out that after this Court issued its initial approval of the City’s Plan, the City failed to comply with many of the deadlines that were established for the purpose of determining whether the condemnation of Mr. Wilson’s properties was actually “realistic” under the circumstances.

Mr. Wilson concludes that the settlement at issue here should not be found to be fair and reasonable as the City has not demonstrated that the component parts of the settlement as to his property is “ultra vires” and is not supported by credible expert testimony.

4. The Court also received the following post-hearing summation letters from objectors to the Agreement. Most of the summation letters were submitted by objectors who provided pre-hearing letters of objection or were present at the Zoom Hearing.

May 15, 2020

Mary and Rich Freeman  
37 Perry Street  
Lambertville, New Jersey

Carol V. Maxwell  
35 Lambert Place  
Lambertville, New Jersey

Charles Zarnitz  
17 Clinton Street  
Lambertville, New Jersey

David B. Morgan  
22 Holcolme Way  
Lambertville, New Jersey

Kevin G. Bynes, Esq.  
PO Box 756  
33 Ferry Street  
Lambertville, New Jersey

Audrey Bynes  
33 Ferry Street  
Lambertville, New Jersey

Lauren Kovacs  
90 Douglas Street  
Lambertville, New Jersey

Richard F. Green, Ph.D.  
35 Lambert Street  
Lambertville, New Jersey

Lili Chen  
17 Union Street  
Lambertville, New Jersey

Steven Stegman  
100 Studdiford Street  
PO Box 373  
Lambertville, New Jersey

Matt Hansen  
165 Douglas Street  
Lambertville, New Jersey

Jess Landon  
105 Douglas Street  
Lambertville, New Jersey

Jeff Apoian  
South Franklin Street  
Lambertville, New Jersey

Thomas J. Schwarz and Kevin Fox  
Lambertville, New Jersey

Sandy Hanna  
Lambertville, New Jersey

The Court has reviewed the letters referred to above and considered the issues and concerns that were raised therein.

Generally the summation letters renewed and reiterated the same issues that were raised in the initial letter objections and testimony that was heard by the Court. Several new nuances to those issues were raised, including (1) several alternative sites were explored in more detail; (2) the cost of the project to the City was emphasized by several objectors who indicted that the Police Station site was enormously expensive and ultimately unaffordable by the City; (3) the City should resort back to the initial agreement which was a better and

more affordable plan for the City; and (4) the City has not met its burden to allow the Court to scrap the initial agreement and instead replace the agreement with this agreement now before the Court.

## **H. Additional Terms of the Settlement Agreement**

The Court has reviewed the Settlement Agreement reached between Lambertville and FSHC in an effort to determine whether or not there was any element of the settlement that would not be fair to the interests of existing and future low and moderate income households in Lambertville's housing region. The Settlement Agreements will be evaluated by the Court in terms of the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311, 329 (App. Div. 1996), which outlines the issues involved in approving a settlement of *Mount Laurel* litigation. The East/West Venture case provides a sound framework and the standard for evaluating any settlement arising out of *Mount Laurel* litigation.

### **1. Summary of Key Terms of the Settlement Agreement**

The Settlement Agreement indicates that the City has met the Prior Round Obligation of zero (0) affordable units, and that it has a Rehabilitation Obligation of one affordable unit. The Settlement Agreement further indicates that the City and FSHC agree that the Third Round Obligation, including the Gap Period present need and the Prospective Need, is 137 affordable units, per the Kinsey Report as adjusted through the Agreement, inclusive of a RDP of 88 affordable units and an unmet need of 49 affordable units. The Agreement contemplates that the City has implemented or will implement mechanisms to address the RDP and unmet need.

In the Agreement, the City agreed to require that 13% of all affordable units approved, vested or constructed after July 17, 2008 be very low income units, and that half of these units shall be available to families. The City agreed that it will comply with these requirements through the Lily Street unit, an existing very low income unit, and by requiring that 13% of all new affordable units produced on each site through each of the zoning strategies identified in Paragraph 7 of the Settlement Agreement be affordable to very low income households.

The parties agreed that Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). At least 50 percent of the units addressing the Third Round Obligation shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households. At least 25 percent of the Third Round Obligation shall be met through rental units, including at least 50 percent in rental units available to families, and at least 50 percent of the units addressing the Third Round Obligation in total shall be available to families. The Agreement provides for the City to promise to comply with an age-restricted cap of 25 percent and to not request a waiver of this requirement.

In the Agreement, the City also agreed to add to the list of community and regional organizations in its affirmative marketing plan receiving notice of all available affordable housing units the FSHC; the New Jersey State Conference of the NAACP, including the New Brunswick,

Plainfield Area, Perth Amboy and Metuchen/Edison branches; the Latino Action Network; NORWESCAP; the Supportive Housing Association; and, the Central Jersey Housing Resource Center. In the Agreement, the City also agreed to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this requirement.

The Agreement also provides that the City will comply with the requirements of the Uniform Housing Affordability Controls including, but not limited to, the marketing, bedroom distribution and affordability controls (UHAC, N.J.A.C. 5:80-26.1 et seq.) for the affordable housing units referenced in the Agreement, with the exception to UHAC that 13 percent of affordable rental units in all projects shall be required to be at 30 percent of median income. The City has agreed to update annually the income limits for the establishment of sales prices and rents of affordable housing units according to the formula in Paragraph 11 of the Agreement, which is the formula approved by Judge Wolfson in his December 16, 2016 decision. All new construction units shall be adaptable in conformance with P.L. 2005, c. 350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

As an essential term of the settlement, within 120 days of the Court's approval of the Settlement Agreement, the City promised that it would introduce and adopt an ordinance or ordinances providing for the amendment of the City's Affordable Housing Ordinance and Zoning Ordinance, including the conversion of the Condemnation Redevelopment Plan to a Non-condemnation Redevelopment Plan for the Lambertville High School Redevelopment site and the adoption of a Non-condemnation Redevelopment Plan for the Police Lot Redevelopment site, to implement the terms of the Amended Agreement and the zoning contemplated in the Agreement. Additionally, within 120 days of the Court's approval of the Agreement, the City agreed to adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of the Agreement.

The parties also agreed that if there is a decision from a court of competent jurisdiction in Hunterdon County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the N.J. Legislature, which would result in a calculation of an obligation for the City for the period 1999-2025 that would be lower by more than 20 percent than the total Third Round Obligation established in the Agreement, and if that calculation is memorialized in an unappealable final judgment, that the City may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding the reduction, the Agreement provides that the City shall be obligated to adopt a HEFSP that conforms to the terms of the Agreement and to implement all compliance mechanisms included in the Agreement. The City also agreed to adopt or leave in place the site specific zoning and/or redevelopment plans as set forth in the Agreement; take all steps necessary to support the development of any 100% affordable developments referenced in the Agreement; maintain all mechanisms to address unmet need; and, otherwise fulfill the fair share obligations. The parties agreed that a reduction in the City's obligation does not provide a basis for seeking leave to amend the Agreement, an order or judgment. The Agreement also provides that if the City prevails in reducing its Third Round Obligation, the City may carry over any resulting extra credits to future rounds in conformance with the then applicable law.

The Agreement also requires the City to prepare a Spending Plan within the 120 day period referenced above. The City has reserved the right, however, to seek approval from the Court that the expenditure of funds under the Spending Plan constitute a "commitment" for expenditure pursuant to N.J.S.A 52:27D-329.2 and 329.3. The funds deemed "committed" shall have the four-year time period for expenditure designated by statute, and the period begins to run with the entry of a final judgment approving the settlement.

The Agreement also provides that on the first anniversary of the execution of the Agreement (established by the date on which the Agreement is executed by the City) and every anniversary thereafter through the end of the period of protection from litigation referenced in the Agreement, the City has agreed to provide annual reporting of trust fund activity to the NJ Department of Community Affairs (DCA), Council on Affordable Housing (COAH), or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms previously developed for this purpose by DCA, COAH or Local Government Services. The reporting will include an accounting of all trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended. Also, the Agreement indicates that on the first anniversary of the Agreement and every anniversary thereafter, the City shall provide annual reporting of the status of all affordable housing activity through posting on the City website, with a copy to the FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

The City has also agreed to comply with two monitoring provisions of the Fair Housing Act regarding action to be taken by the City during the ten-year period of protection provided in this agreement. For the midpoint realistic opportunity review due on July 1, 2020, the City has agreed that it will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting will invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. For the review of very low income housing requirements, within 30 days of the third anniversary of the agreement, and every third year thereafter, the City has agreed to post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirement, including family low income requirements, with the opportunity for any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income housing obligation under the terms of the Agreement.

The City has also agreed to pay FSHC's attorneys fees and costs in the amount of \$2,500 within 10 days of the Court's approval of the Amended Agreement pursuant to a fairness hearing in addition to the \$5,000 in attorneys fees and costs provided for in the previously approved Settlement Agreement.

## 2. Evaluation of the Settlement Agreement

The Appellate Court established, in the East/West Venture case, the standard that must be used in evaluating the fairness of a settlement in a *Mount Laurel* lawsuit. That standard is whether or not “the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built”. The determination of whether or not the standard is met is based upon a five-part analysis, which will be conducted by the Court.

a. **Consideration of the number of affordable units being constructed.** The terms of the settlement agreement provide that the City's Third Round affordable housing obligation is 137 units, consisting of a RDP of 88 affordable units and an unmet need of 49 affordable units, and the City has satisfied the RDP and provided mechanisms to address the unmet need. The result of the Settlement Agreement is the City's adoption of zoning to provide for affordable housing and its compliance with the constitutional obligation to provide its fair share of the regional need for low and moderate income housing. There remains some uncertainty concerning the methodology that might ultimately be used to establish affordable housing obligations. The fair share obligation agreed to by the parties exceeds the affordable housing need developed through the application of the methodology outlined by Judge Mary C. Jacobson, A.J.S.C, of Mercer County Superior Court in her March 8, 2018 decision. Given those circumstances, and that this Court's approval of a settlement is not an adjudication of the fair share obligation, the Court finds that the number of affordable housing units addressed in the settlement is reasonable and substantial.

b. **The methodology by which the number of affordable units provided is derived.** The methodology utilized in the Kinsey Report to calculate the Third Round Obligation was designed to follow the Prior Round methodology used by COAH in 1994 to determine cumulative 1987-1999 fair share obligations as closely as possible, as directed by the Supreme Court in Mt. Laurel IV. Currently, there is no statewide “agreed upon methodology.” In fact, either the FSHC methodology or Jacobson methodology has been utilized in over 300 settlements throughout the State. The FSHC has agreed to reductions from its published allocations of up to 40% in other Vicinages, rather than the 30% incorporated here. Nevertheless, the Court is satisfied that the methodology by which the number of affordable units was derived and the reasonable compromises reached by the parties concerning the application of those competing methodologies is fair, reasonable and valid.

c. **Other contributions by the plaintiff.** This prong of the East/West Venture test originally applied to a plaintiff/developer. In this case the plaintiff/City has agreed to the following, which are described in more detail above in the section discussing Key Terms of the Settlement Agreement:

- agreement to adopt a compliant Housing Element and Fair Share Plan and all implementing ordinances;
- agreement to adopt Redevelopment Plans with inclusionary zoning ordinances;
- agreement to fund and implement an accessory apartment program;
- agreement to adopt multiple overlay zones for inclusionary zoning;

- agreement to adopt a mandatory set-aside ordinance;
- agreement that 13% of affordable units shall be for very low income households;
- agreement that at least 25% of the Third Round Prospective Need shall be rental units;
- agreement that at least 50% of rental units shall be available to families;
- agreement that at least 50% of all affordable units addressing the Third Round Obligation shall be available to families;
- agreement to an age-restricted cap of 25% of affordable units;
- agreement that at least 50% of units shall be available to very low income and low income households;
- agreement to expand the affirmative marketing plan;
- agreement to comply with the requirements of UHAC;
- agreement to approve and implement a spending plan: and,
- agreement to pay FSHC a total of \$7,500 for attorneys fees and costs

d. **Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.** The City has agreed to take the steps necessary to amend and implement its Housing Element and Fair Share Plan in accordance with the terms of the Settlement Agreement and the zoning contemplated in the Agreement, including the adoption of two Redevelopment Plans and associated zoning for inclusionary development. The City has further agreed to fund and implement an accessory apartment program, adopt multiple overlay zones for affordable housing, and adopt a mandatory set-aside ordinance. Those elements of the Agreement help to provide benefits that corroborate this Court's finding that the Agreement is fair and reasonable.

e. **Other factors that are relevant to the fairness of the settlement.** The Agreement also provides for a continuing monitoring program throughout its duration, including annual and triennial reporting requirements. The monitoring and reporting requirements will ensure that the interests of lower income households will be advanced through the Court's approval. The process of obtaining the Court's approval of the Settlement Agreement, the scrutiny that document has received as a result of the intervention by FSHC, and the conditions contained in this report requiring the City to adopt certain documents will allow the City to move forward in the satisfaction of its constitutional obligation. Lastly, the Court's approval of the settlement is subject to a final compliance hearing as well as any conditions that the Court imposes as part of its ruling. All of these safeguards also buttress a finding that the Agreement is fair and reasonable.

f. The Court acknowledges that N.J.S.A. 52:27D-311 gives municipalities a broad range of tools they can use to fulfill their fair share obligations. The Police Station Redevelopment site only involves a small portion of the municipality's need. The Court recognizes that some deference is warranted when a non-profit agency such as the FSHC, whose mission is to advocate for the interests of the protected class of low and moderate income households, is willing to move forward with the Plan proposed by the City.

g. Various criticisms were raised by interested party objectors concerning the various aspects of the Police Station site. The Court recognizes that it is not unusual that all of the particular issues that have been raised in that regard are not fully addressed before a fully developed

redevelopment plan and redevelopers agreement can be proposed. Yet, it is impractical to proceed to solicit and pay for the testing and studies that will be necessary until the municipality is assured that this aspect of the process is endorsed by the Court.

The Court is satisfied that issues raised with regards to the Police Station site can be addressed as part of the compliance process, especially given the monitoring requirements in the agreement and this Court's continued involvement.

Notably, the conditions recommended by the Special Master in his report (as slightly modified by his testimony on the point of accessory apartments) are designed to ensure that the plan as currently proposed proceeds to reality, and FSHC supports those conditions. The time period proposed by Mr. Bolan, which he characterizes as an "extended period," Report p. 5, gives over six months before a redevelopment plan is adopted and a year before a redevelopment agreement needs to be executed.

h. The Court is satisfied that the credible opinions of the Municipal Planner and the Special Master indicate that the Wilson/Academy Hill property includes potentially significant incentives to a developer of the site as the new proposed zoning increases the density above existing zoning and presents a realistic opportunity to develop the site.

i. **Special Master's Endorsement of the Settlement.** Based upon the comprehensive and credible analysis undertaken by the Court's Special Master, he endorsed the fairness of the Settlement achieved between Lambertville and FSHC and recommended favorable consideration by the Court. Special Master Bolan has extensive expertise in Affordable Housing matters. He has testified many times before this Court. The Court accepts Mr. Bolan's credible testimony as a significant factor in the Court's analysis and its determination that the agreement adequately protects the interests of lower income persons on whose behalf the affordable units proposed by the settlement are built.

j. **Consideration and Analysis of the Objections to the Agreement**

The Court has considered the written and testimonial objections offered by many residents who participated in the Hearing. The Court will analyze each of the category of objections that were offered in order to determine what, if any, of those concerns should bear upon this Court's finding. Notably, the vast majority of the objections related to the Police Station project proposal, while other aspects of the Agreement and the City's Plan were not criticized by the objectors.<sup>2</sup>

1) **Environmental Concerns**

While the objectors offered various "environmental" type of concerns concerning the Police Station Site, the Court is not convinced that any of the issues that were raised rise to the level of undermining a finding that the site is suitable for development as proposed.

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<sup>2</sup> Excepting the objections of Merrick Wilson and Academy Hill, Inc. relating to their own property.

Notably, no expert testimony was provided concerning the state of the soil, C-1 stream buffer areas, flood zone or the proximity of the site to high tension wires. In the Court's view, the objectors did not offer credible or admissible evidence regarding those issues that would cause this Court to withhold approval of the agreement.

For instance, with regards to the effects of high tension wires on nearby residential uses, although the objectors cited to literature that was favorable to their position on the subject, the Court is aware of literature on the other side of the issue as well. Regardless, there was no expert testimony that was offered in order to provide the Court with admissible evidence or opinion on the subject.

That all being said, the Court recognizes that many of the "environmental issues" that were raised by the objectors may turn out to affect the developability of the Police Station site as proposed. The City offered opinions from its Planner indicating that those concerns could be accommodated.<sup>3</sup> Although no hard evidence has been provided to support those issues at this point in the process, when the development process does proceed, many of these issues will be probed and explored with more specificity. The objectors have raised enough concern for this Court to find that it should retain jurisdiction over the matter so that as these issues are probed and explored during the development process, the Court will be able to ascertain whether facts revealed during the process undermine the viability and suitability of the development of affordable housing on the site.

## **2) Concerns Over Public Safety**

The concerns raised over public safety that are attendant with the relocation of the Police Station are issues that are technically irrelevant to the Court's fairness analysis. These issues are matters of local concern and are simply not appropriate for this Court to intrude upon. This Court generally does not direct a municipality concerning where to locate its affordable housing, as long as the municipality can provide sites that meet the criteria of being approvable, developable and suitable. It is the municipality's province to provide viable sites (for consideration as part of its affordable housing plan) while balancing the other positive and negative ramifications of their choice. It is the municipality's responsibility to address these concerns and the political concerns that are attendant to these issues.

Nor does this Court involve itself in the local political issues such as the location or relocation of its Police Station. Again, that being said, this issue is clearly important since it is an issue that may prove to be divisive in this community. That circumstance gives the Court pause since, without a modicum of community consensus, the ultimate development of the site in order to produce the real goal – affordable housing units – may be delayed or even thwarted.

Again, for that reason, the Court will retain jurisdiction over this matter in order to monitor the progress of the project.

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<sup>3</sup> The City also presented a report from its City /Engineer in a post-hearing submission. The Court did not consider the report since the City Engineer was not present to testify and be cross-examined regarding his opinions. Ms. Goldman may have relied upon the City Engineer's opinions as part of her analysis however, which is not improper.

### **3) Community Involvement**

While many of the objectors raised concerns over the ongoing “Corona Virus Pandemic” and its effect on community involvement, the Court is convinced that the community had a fair opportunity to be heard on the subject. The uncommon level of public participation on this issue belies the validity of that criticism.

### **4) Alternate Sites**

Again, this Court generally does not actively involve itself in the evaluation of alternative sites within a municipality. In its consideration and analysis of the “fairness” of the Agreement that has been presented to the Court, the Court considers the sites that are proposed in the Agreement that has been endorsed by the City’s governing body. The Court does not impose or substitute its judgment as to whether other alternative sites may be more suitable or more acceptable to certain members of the community.

The Court does not provide any material credence to this particular objection.

### **5) Nuance Issues**

The Court considered the other nuance issues raised as part of the summations received by the Court. The Court is mindful of the fact that the costliness of the project may make it unachievable. In fact, the Court had the same concern with the City’s original plan since the potential cost inherent in the condemnation plan raised the same problem. Again, just as the Court ruled in the prior initial agreement, the Court will retain jurisdiction over the matter in order to monitor the issue.

### **6) Regarding Mr. Wilson’s Objection**

Mr. Wilson testified that it was his opinion that it was his opinion that 139 total units with a twenty (20%) percent set aside for affordable housing could not be sustained based upon the number of units to be constructed. In fact, he indicated that it was unrealistic for him to develop his property in that manner so that the Court should not consider the 28 affordable units that are proposed for this property to be “realistic.”

Notably, Mr. Wilson’s testimony was burdened by his attempt to offer expert opinions on certain issues without (1) offering any qualifications or background to support the proposition that he had any special expertise or experience that would qualify him to render those opinions; (2) he offered no facts or basis to support his opinion, thereby rendering his opinions “net”; (3) he attempted to include his version of the statements made or opinions rendered by non-participant “national builders” who purportedly agreed with his views, even though those references were simply rank inadmissible hearsay; and (4) his position was burdened by his unabashed bias.

Mr. Wilson did not provide any expert testimony to support his position. In his post-trial

brief, he touts that he is an “expert developer,” however he was not even proffered, let alone qualified as, an expert in that area.

While Mr. Wilson criticizes the scope of his expertise of City Planner Goldman and Special Master Bolan, he did not voir dire or cross examine either expert at the hearing concerning the issues raised in his brief with regards to the limits of their expertise.

In any event, the Court is satisfied that Ms. Goldman and Mr. Bolan both have sufficient expertise in the areas of Professional Planning and Affordable Housing. Those areas of expertise and the qualifications of these witnesses enable them to opine on whether the property in question has been provided with potentially significant increases in density above existing zoning in order to present a realistic opportunity.

It is not realistic for the City or for the Special Master to engage in detailed site planning review that will be ultimately undertaken by engineers for Mr. Wilson or by other developer in order to finally assess the viability of the site for a development that includes affordable housing. If those circumstances raise issues that constitute a substantial change of circumstances, the issue can always be revisited with an appropriate application to the Court.

With regards to Mr. Wilson’s complaints and criticisms of the City for its failure to implement its previous contamination plan, these criticisms are not particularly relevant to the issues presented here. This plan is a new non-condemnation plan (which Mr. Wilson wanted all along) that needs to be evaluated on its own merits. The Court has done so in this opinion. Mr. Wilson’s posturing concerning a potential reverse condemnation or spot zoning claim is simply not before the Court in this matter. Nor has Mr. Wilson presented any credible or admissible evidence in this hearing that would support such a claim.

In short, the Court is not convinced that Mr. Wilson’s unsupported lay opinions warrant significant weight.

In conclusion, the Court is tasked to determine whether the interests of low and moderate income households will be served by the approval of the Settlement Agreement with FSHC. For all of the reasons set forth above, the Court finds that the interests of low and moderate income households will be advanced by the Court's approval of the Settlement Agreement.

#### **H. Conditions of Compliance**

The Court’s Special Master, Michael Bolan, recommended that the Court approve the Settlement Agreement and grant the City a Conditional Judgment of Compliance and Repose, as the Agreement is designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time. Mr. Bolan opined that the recommended approval of the City's Application for a Determination of *Mount Laurel* compliance should be subject to the following conditions, all of which should be addressed within 120 days of the Court's Order, except as otherwise noted. Mr. Bolan noted in *italics* the conditions that have already been addressed and the actions required to achieve final compliance, a practice which the

Court will incorporate into this analysis.

1. The City Planning Board shall adopt and the City Council shall endorse a HEFSP with any revisions required by or resulting from the Settlement Agreement and these Conditions, including the adoption of a Redevelopment Plan. For proposed inclusionary development sites, the HEFSP specifically must include an analysis of the proposed inclusionary development sites to demonstrate that they are approvable, available, developable and suitable in accordance with COAH Rules. The Fair Share Plan shall include any Zoning Ordinance amendments and agreements necessary to effectuate the terms of the Settlement Agreement.

*On March 4, 2020 the City Planning Board approved the Housing Element and Fair Share Plan (HEFSP), memorialized in Resolution No. 2-2020, and the City Council has prepared a draft Resolution of endorsement. The adopted HEFSP includes an analysis of the proposed inclusionary development sites that demonstrates they are approvable, available, developable and suitable in accordance with COAH Rules. With the adoption of the City Council Resolution endorsing the HEFSP this condition will be satisfied. The Resolution shall be adopted within 30 days of the Court's Order approving the Settlement Agreement.*

2. The City shall introduce and adopt an ordinance or ordinances providing for the amendment of the City's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of the Settlement Agreement and the zoning contemplated in the Settlement Agreement, and any ordinance(s) to implement the Redevelopment Plan. The Affordable Housing Ordinance shall incorporate all of the provisions of the Settlement Agreement, applicable provisions of UHAC and COAH rules, and any other provisions that result from the adopted HEFSP.

*On November 26, 2018 the City Council adopted Ordinance No. 23-2018, the City's Affordable Housing Ordinance. The Ordinance incorporated the provisions of the Settlement Agreement and applicable provisions of the Uniform Housing Affordability Controls (UHAC) and Council on Affordable Housing (COAH) rules, as well as repealing the existing affordable housing provisions. This condition has been satisfied.*

3. The City shall adopt overlay zoning for the Burd Farmstead and Corboy properties (IO-1 Inclusionary Multifamily Overlay Zone), and the Trenton Cracker Factory, River Horse Brewery, Center Club gym and office space (IO-2 Inclusionary Adaptive Reuse Overlay Zone).

*On April 18, 2019 the City Council adopted Ordinance No. 05-2019. The Ordinance amended the R-L Residential Low Density District to establish the IO-1 Inclusionary Overlay Zone District, and amended the CBD Central Business District to establish the IO-2 Inclusionary Overlay Zone District. This condition has been satisfied.*

4. The City shall adopt a Non-condemnation Redevelopment Plan for the Lambertville High School rezoning the property for an inclusionary development.

*On April 23, 2020 the City Council adopted Ordinance No. 01-2020 adopting the Amended Lambertville High School Redevelopment Plan, which requires 28 affordable family rental apartment units as part of the 139 unit development. This condition has been satisfied.*

5. The City shall adopt a Non-Condemnation Redevelopment Plan for the Police Station lot (Block 1003, Lot 3).

*The Settlement Agreement indicates that the Police Station lot will be rezoned for an inclusionary development through the adoption of a Non-condemnation Redevelopment Plan. The City has authorized funding for the Plan but has not undertaken the preliminary investigation. In order to facilitate community involvement, the City is requesting an extended period of time to prepare the Redevelopment Plan. Given the circumstances, I am recommending that the City have until December 31, 2020 to prepare the Redevelopment Plan, and until May 15, 2021 to select the redeveloper and finalize a Redevelopers' Agreement.*

6. The City shall adopt a mandatory set-aside ordinance in accordance with the terms of the Settlement Agreement.

*Section 1200-6 of Ordinance No. 23-2018, the City's Affordable Housing Ordinance, includes the mandatory set-aside provisions from the Settlement Agreement. This condition has been satisfied.*

7. The City shall endorse a Spending Plan in conformance with the terms of the Agreement.

*The Spending Plan is included in Appendix 17 of the adopted HEFSP. The City Council's endorsement of the HEFSP, as required above, will address the endorsement of the Spending Plan. With the adoption of the City Council Resolution endorsing the HEFSP this condition will be satisfied.*

8. The City shall adopt a resolution of intent to bond for the funds needed to implement the affordable housing programs identified in the Agreement.

*On November 5, 2018 the City Council adopted Resolution No. 169-2018 indicating that the City will fully fund, by way of municipal bonding, any gaps in financing the City's affordable housing compliance techniques. This condition has been satisfied.*

9. The City shall provide documentation for the existing Little Haven group home, Heritage Village, and Habitat for Humanity units, including deed restrictions, Supportive and Special Needs Housing Surveys, and copies of the facility license, if applicable.

*The City has provided crediting documentation for the Habitat for Humanity units (Appendix 7) and Heritage Village (Appendix 8). The income distribution (very-low, low- and moderate-income) for the Heritage Village affordable units is unclear. Documentation for the Little Haven*

*group home, in the form of licenses, inspections and a survey, is provided in Appendix 6, and the City Planner has provided supplemental information. As prior cycle, credits without controls units, the City should confirm that the Little Haven units are occupied by low and moderate income households. Income eligibility through a certification from the owner should be provided.*

10. The City shall provide documentation for the existing accessory apartment and the accessory apartment ordinance.

*Appendix 9 includes the crediting documentation for the Munice accessory apartment (Block 1019, Lot 9). Section 404.4B. of the City's Land Use Ordinance includes the development standards for accessory apartments. The Ordinance should be amended to reflect the requirement of the Settlement Agreement that 3 units be affordable to low-income households and 2 units affordable to moderate-income households or prepare and approve an Accessory Apartment Manual.*

11. The City shall adopt a Resolution appointing a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting, if it has not already done so.

*On January 7, 2020 the City Council adopted Resolution No. 08-2020 appointing Emily Goldman, the City's consulting Planner, and Helen T. Kuhl, the Director of Public Assistance, as Municipal Housing Liaison. This condition has been satisfied.*

12. The City shall adopt a Resolution appointing the City's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

*Appendix 16 includes a 2017 Contract with Millenium Strategies. The City should provide a current contract for the Administrative Agent.*

13. The City shall adopt a Resolution adopting the City's Affirmative Marketing Plan, as modified by the terms of the Settlement Agreement.

*On November 20, 2018 the City Council adopted Resolution No. 171-2018 adopting the Affirmative Marketing Plan with the revisions required by the Settlement Agreement. This condition has been satisfied.*

14. The City shall adopt the monitoring and reporting requirements identified in Paragraphs 15, 16 and 17 of the Settlement Agreement.

*Section 1200-3 of Ordinance No. 23-2018, the City's Affordable Housing Ordinance, includes the monitoring and reporting requirements from the Settlement Agreement. This condition has been satisfied.*

The Court has determined to adopt all of the conditions recommended by Special Master Bolan as part of its approval of the Agreement.

### **I. Court's Summary and Conclusion**

Based upon the foregoing, the Court finds that the Agreement between FSHC and Lambertville is fair and in the interests of the protected class of low and moderate income households in the Region.

As such, the Court will issue an Order for a Conditional Judgment of Compliance and Repose. The conditions should be addressed within 120 days of the Court's Order approving the Settlement Agreement, or within such other time period that may be noted. Specifically, the following conditions need to be addressed by the City:

- a. The City Council shall adopt a Resolution endorsing the HEFSP within 30 days of the Court's Order.
- b. The City Council shall adopt a Redevelopment Plan for the Police Station lot by December 31, 2020, and shall select a redeveloper and finalize a Redeveloper's Agreement by May 15, 2021.
- c. The City should confirm the income eligibility of the occupants of the Little Haven group home through a certification from the owner.
- d. The City should clarify the income distribution for the Heritage Village affordable units.
- e. The City Council shall amend the accessory apartment ordinance (Section 404.4B. of the Land Use Ordinance) to require that 3 new accessory apartments be affordable to low-income households and 2 new accessory apartments be affordable to moderate-income households *or prepare and approve an Accessory Apartment Manual*.
- f. The City Council shall adopt a Resolution, or provide the existing appointment Resolution, designating the Administrative Agent to administer affordable units.
- g. Any other conditions recommended by Special Master Bolan (as aforementioned), but not included in the foregoing shall be incorporated by reference.
- h. The Court will retain jurisdiction over review of the conditions of the Court's approval for the reasons expressed in the Court's opinion.

### **Retention of Jurisdiction**

For the reasons set forth above, the Court will retain jurisdiction over this matter. The Court

will issue an order for “Conditional Judgment of Compliance and Repose” as, in the Court’s view, the City has made sufficient strides and progress so as to be entitled to the legal protections inherent in such an award.

The Court will retain jurisdiction over the matter due to certain concerns and conditions that have been raised in the Court’s opinion. The Court does so in order to assure that the interests of low and moderate income households in the community and the Region are protected in the event that the development process reveals issues or flaws in the City’s Plan that undermine its feasibility. The Court will be able to monitor or further condition or modify its conditional award based upon the circumstances on the ground as it evolves.