

146 Rea Avenue
Hawthorne, New Jersey 07506
(973) 423-0909
(973) 423-0067 fax

**LAW OFFICES OF
MICHAEL J. PASQUALE,
ESQ.**

Affordable Housing Update

On May 21, 2020 I provided a memo to our residents to help explain the process the Borough has engaged in over the past five years in addressing our Third Round Affordable Housing obligation. Since that time the Municipal Council approved Settlement Agreements with the current owner of the Patriot Site at 542 Goffle Road, 3 Ronson Development, and with Fair Share Housing Center. Coupled with a prior settlement reached with the owner of 204 Wagaraw Road for the development of a mixed-use site, Hawthorne presented an application for approval of all three Settlement Agreements to the Superior Court of the State of New Jersey for its approval. The Court, considering the three agreements, testimony of the Borough's Planner, and testimony of the Court-appointed Special Master overseeing the matter, approved the settlements during a Fairness Hearing held on July 9, 2020. The Order entered by the Court is attached to this memo.

The extensive history of this litigation and the Mount Laurel doctrine, which requires every municipality to address its fair share of the statewide obligation to create the realistic opportunity for the creation of affordable housing, is set forth in my prior memo. I am not going to repeat that background here. This memo is intended to provide a summary as to what will happen from here, based upon the approval of these Settlement Agreements.

Rehabilitation of Substandard Units

The Borough will be undertaking a structural conditions survey in order to determine if there is any obligation on its part to rehabilitate substandard units of housing. By definition, a substandard unit is one that is 50 years of age or older and overcrowded or one that is lacking adequate facilities like running water. We have few if any structures meeting that definition. If there are identified units meeting that criteria, applications for forgivable or low-interest improvement loans can be made to the Borough through its Affordable Housing Trust.

New Construction Obligation

The Court agreed that Hawthorne's new construction obligation is 298 units of affordable housing for the period running from 1999 to 2025. It also agreed that given our lack of vacant, developable land, Hawthorne was entitled to a Vacant Land Adjustment, reducing that obligation to 60 units of affordable housing, which is called the Realistic Development Potential, or RDP. The Order approved by the Court addresses both the 60 units Hawthorne is currently obligated to address as its RDP as well as the remainder 238 units, called the Unmet Need, which must be addressed as well.

The 60-unit RDP is addressed through a combination of sites, some already developed, others already approved and under construction. The 204 Wagaraw Road, currently pending for approval before the Planning Board, will also be counted towards that obligation. The specific sites are all set forth in the Order itself. As to the Unmet Need, the Order provides for credits from several existing sites providing homes for persons with developmental disabilities. The site at 542 Goffle Road is to be developed for townhouse use with affordable units counted towards the unmet need. The Council will also be considering for adoption three ordinances intended to help spur redevelopment and creation of affordable housing. This includes rezoning of our downtown B-2 Zone so as to allow for two stories of residential housing over one story of retail or commercial use. The Borough will also be considering an ordinance rezoning the area on Grand and Royal Avenues between Warburton and Diamond Bridge to allow for multi-family housing that is consistent with that already interspersed in the area. Finally, the Council will consider an ordinance requiring any new development of five or more housing units include a set-aside of 15% to 20% for affordable units.

Finally, the Order requires Hawthorne to create a mechanism for the Administration of its Affordable Housing Programs. We have already begun that process, creating the position of Affordable Housing Liaison/Administrator. The Mayor has appointed Lori Fernandez, our Borough Clerk, to serve in this role. Our Land Use Administrator, Gene DeAugustines, will assume responsibility for the rehabilitation study outlined in this memo. Our Planners, Joseph Burgis and John Szabo, will work with me on creating the implementing studies and ordinances as well as a new Master Plan Housing Element and Fair Share Plan. Once all this is in place, we will proceed to a final Compliance Hearing before Judge Brogan.

I am available to discuss any aspect of this matter with any of our residents and can be reached at my office or through email at mpasquale@mpasqualelaw.com.

Michael J. Pasquale, Esq.

Michael J. Pasquale, Esq.
Attorney ID No. 020861986
Michael J. Pasquale & Associates
146 Rea Avenue
Hawthorne, New Jersey 07506
Attorney for Plaintiff/Petitioner,
Borough of Hawthorne

IN THE MATTER OF THE
APPLICATION OF THE Borough of
Hawthorne, a municipal corporation of the
State of New Jersey,

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY
DOCKET NO.: PAS-L-2412-15

Civil Action
(Mount Laurel)

**ORDER APPROVING SETTLEMENT
AGREEMENTS BETWEEN THE
BOROUGH OF HAWTHORNE AND
FAIR SHARE HOUSING CENTER,
204 WAGARAW ROAD, LLC AND 3
RONSON, LLC**

THIS MATTER coming before the Honorable Thomas F. Brogan, P.J.S.C. on application by the Borough of Hawthorne, Plaintiff in this matter, for an Order approving Settlement Agreements with Intervenor Fair Share Housing Center, 204 Wagaraw Road, LLC and 3 Ronson, LLC; and the Court having conducted a hearing on the application on July 7, 2020 by way of virtual proceeding, Michael J. Pasquale, Esq., appearing for Plaintiff, Borough of Hawthorne, (Hawthorne), John Szabo of the office of Burgis Associates, its Planner, also appearing; Antimo A. Del Vecchio, Esq., of the firm Beattie Padovano, LLC, appearing for Intervenor, 204 Wagaraw Road, LLC (204 Wagaraw); Josh Bauers, Esq. appearing for Intervenor, Fair Share Housing Center (FSHC); Dermot Doyle, Esq. of the office of Huntington Bailey for Interested Party, Kohler Distributors (Kohler); Donna M. Jennings, Esq. of the office of Wilentz, Goldman & Spitzer appearing for Intervenor 3 Ronson, LLC (3 Ronson); and Court Master, Christine Nazzaro-

Cofone, also appearing; and the matter having been initiated by the bringing by the Plaintiff of a Declaratory Judgment Complaint, filed on July 7, 2015, to approve the Borough's Housing Element and Fair Share Plan in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"), said Complaint seeking both interim and final relief as set forth therein; and 204 Wagaraw, the owner of lands located at 204 Wagaraw Road in Hawthorne, having filed an Answer to the Complaint and opposition to the application filed by Hawthorne, opposing the grant of interim and final relief and seeking certain additional preliminary and final relief, was granted Intervenor Status by the Court; and the Court at such time as it addressed all applications for preliminary relief, entered an Order granting, among other things, temporary immunity from the institution of any lawsuits by way of Builder's Remedy action to Hawthorne, pending subsequent and final determination of the matter, and further appointing Christine Nazzaro-Cofone, P.P., as the Special Mount Laurel Court Master; and 3 Ronson, LLC, the owner of lands located at 542 Goffle Road in Hawthorne, and FSHC, a public interest entity representing the interest of persons qualifying to reside in properties developed for occupancy by low and moderate income households, having joined the litigation as Intervenors during the pendency of the complaint and having been granted Intervenor status; and Kohler Distributors also having joined the litigation as an Interested Party and having participated in the litigation as the owner of lands directly adjacent to the lands owned by Intervenor 204 Wagaraw Road, LLC; and the parties referenced above having engaged in multiple mediation sessions under the supervision of the Court Master in an attempt to reach agreement as to the development of the individual tracts of land owned by Intervenors 204 Wagaraw Road, LLC and 3 Ronson, LLC, as well as agreement as to the Borough's overall Round Three Fair Share Obligation with FSHC, including compliance with the same, were able to reach final, negotiated settlements between Hawthorne and each Intervenor; and the Borough having negotiated and approved, by duly adopted Resolution, Settlement

Agreements with all three Intervenors, now comes before this Court for approval of the same by way of Fairness Hearing, submitting the following Exhibits, marked for identification and then admitted into evidence by the Court:

P-1 Settlement Agreement between Hawthorne and FSHC dated June 8, 2020;

P-2 Settlement Agreement between Hawthorne and 204 Wagaraw dated March 3, 2020;

P-3 Settlement Agreement between Hawthorne and 3 Ronson dated June 17, 2020;

P-4 Affidavit of Service of Notice of Fairness Hearing;

P-5 Proof of Publication of Notice of Fairness Hearing;

and the Settlement Agreement with FSHC providing therein an agreement as to the Third Round Fair Share Obligation of Hawthorne, as negotiated by the parties, and based upon application of the methodology established by the Superior Court in Mercer County rendered in the case titled, In the Matter of the Municipality of Princeton, Docket No. MER-L-1550-15 and In the Matter of West Windsor Township, Docket No. MER-L-1561-15, Superior Court of New Jersey; and the parties, Hawthorne and FSHC, being of the belief that the settlement reached, given the lack of definitive determinations as to Fair Share Obligations on a statewide basis, is appropriate for submission to the Court for consideration of the same in terms of Hawthorne's Prior Round Obligation (1987-1999), Present Need (Rehabilitation Component), and Prospective Need, inclusive of the Present Prospective Need (Gap Period, 1999-2015) and Prospective Need, (2015-2025); and the Borough and Intervenor 204 Wagaraw having entered into a separate Settlement Agreement regarding its property at 204 Wagaraw Road, providing for development of an inclusionary mixed-use residential and commercial complex; and the Borough and Intervenor 3 Ronson having entered into a separate Settlement Agreement regarding its property at 542 Goffle Road, providing for development of an inclusionary townhouse complex; and both named Intervenors similarly joining with Hawthorne in presenting to the Court Settlement Agreements

for consideration in terms of Fairness under Mount Laurel case law; and the Court having set a date of July 7, 2020 for a Fairness Hearing to consider approval of the FSHC Settlement Agreement and the 204 Wagaraw and 3 Ronson Settlement Agreements, so as to determine whether said settlements are fair, reasonable and adequately protect the interest of low and moderate income households; and the Borough having provided proper public and actual notice of the Fairness Hearing all as set forth in the Affidavit of Service and Proof of Publication referenced herein; and no objections to the settlements having been received; and the Court Master having submitted a report to the Court on July 1, 2020 recommending that the Court approve the FSHC Settlement Agreement as well as the 204 Wagaraw and 3 Ronson Settlement Agreements; and the Fairness Hearing having been held on July 7, 2020 during which Exhibits P-1 to P-5, which are incorporated herein by reference, were marked into evidence; and the Court having considered the testimony taken during the Fairness Hearing, as well as the comments of counsel and all of the documents submitted into evidence during the Fairness Hearing; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 22 day of July, 2020 as follows:

1. The Court finds and determines, pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (Exhibit P-1) and the 204 Wagaraw and 3 Ronson Settlement Agreements (Exhibits P-2 and P-3,), the Court Master's report, and on the basis of the testimony taken during a Fairness Hearing conducted on July 7, 2020, that the settlement between FSHC and Hawthorne, as well as the settlements between 204 Wagaraw and 3 Ronson and Hawthorne, are fair, reasonable and adequately protect the interest of low and

moderate income households, and the Court hereby approves all three settlements, marked as Exhibits P-1 through P-3.

2. Within 120 days of the date of the Fairness Hearing, Hawthorne and its Planning Board shall (a) prepare, adopt and endorse a Housing Element and Fair Share Plan, which shall include a Spending Plan, and shall reflect all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), and will also satisfy any conditions listed in the Court Master's July 1, 2020 report; and shall (b) submit the adopted and endorsed Housing Element and Fair Share Plan, with all required supplementary documentation and adopted ordinances and resolutions needed to implement the plan, to the Court, the Court Master and FSHC for final review and recommendation by the Court Master and for approval by the Court. A Compliance Hearing to consider approval of Hawthorne's Housing Element and Fair Share Plan and the issuance of a Judgment of Compliance and Repose, which will provide Hawthorne its Planning Board immunity from all Mount Laurel lawsuits through July 7, 2025, is scheduled for Oct 6, 2020 at 10 a.m./p.m.

3. The temporary immunity from Mount Laurel lawsuits that is currently in place for Hawthorne and its Planning Board will remain in place until one month after a final Compliance Hearing is held.

4. As a result of the Settlement between Hawthorne and FSHC, Hawthorne's Prior Round Obligation is 57 units, its Rehabilitation Obligation is 93 units, and its Prospective Need or New Construction Obligation, inclusive of Present Prospective or Gap Years and Prospective Obligation, is 298 units.

5. Hawthorne is permitted, in accordance with the Settlement Agreement, to conduct an actual conditions survey of substandard housing units, in accordance with established protocols for such purpose, and provide a report of the same to the Court, FSHC and the Court Master, not later than 60 days prior to the Compliance Hearing date regarding its rehabilitation component. In

the event there remains any such obligation or if Hawthorne elects not to perform such survey, it will provide to the Court a plan and program for conduct of the rehabilitation of such units of housing in accordance with NJAC 5:93-5.2.

6. Hawthorne relies upon a prior Judgment of Repose, addressing in full its Prior Round Obligation, which established Hawthorne's Prior Round Realistic Development Potential ("RDP") at fifty-seven (57) units, which Hawthorne has fully satisfied as follows:

- a. Twenty-Three (23) credits from the fully funded and completed Regional Contribution Agreement ("RCA") with the City of Paterson.
- b. Twelve (12) affordable units at the Westervelt Avenue Group Home constructed, fully occupied and operated by Community Development Corporation for persons with Developmental Disabilities, consisting of twelve (12) rental units and a twelve (12) unit rental bonus credit, for a total of Twenty-Four (24) credits.
- c. Eight (8) Medicaid Waiver Beds in the Van Dyk Nursing located on Goffle Road plus two (2) rental bonus credits for a total of ten (10) credits.

7. Hawthorne has also prepared a Vacant Land Analysis for its Prospective Need or Round 3 Obligation (1999-2025), and, as a result of that analysis, Hawthorne and FSHC, with concurrence from the Court Master, have agreed that Hawthorne has a Realistic Development Potential of sixty (60) units and is entitled to a Vacant Land Adjustment in such amount, leaving a remaining or "unmet need" of 238 units of housing.

8. Hawthorne will address its 60 Unit RDP as follows:

- a. Three (3) additional Medicaid Waiver beds at the Van Dyk Nursing Home on Goffle Road.
- a. Two (2) affordable family rental units attributable to the Dello Buono/Washington Avenue development, completed on Washington Avenue.
- b. Four (4) affordable family rental units attributable to the Dello Buono/Royal Avenue development, currently under construction, on Royal Avenue.

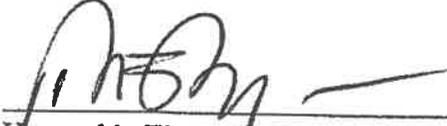
- c. Six (6) affordable family rental units attributable to the Millview Lofts development, completed at 55 Westervelt Avenue.
 - d. Eight (8) affordable family rental units (age restricted) attributable to the Christian Health Care Center development, currently under construction on Goffle Hill Road.
 - e. Four (4) affordable rental units attributable to the Forest Avenue Supportive Housing development, completed on Forest Avenue.
 - f. One (1) affordable rental unit attributable to the Eastern Christian Children's Retreat, completed on Surrey Place.
 - g. Seventeen (17) affordable family rental units, plus 15 rental bonus credits, attributable to the development proposed and pending before the Planning Board at 204 Wagaraw Road.
9. Hawthorne will address its remaining Round Three "unmet need" of 238 units as follows:
- a. Rezoning, by way of Area in Need of Redevelopment study, of the 3 Ronson site, located at 542 Goffle Road, pursuant to the settlement agreement, so as to provide for 117 units of housing with 99 market rate units, 17 affordable units, and 1 superintendent unit.
 - b. Application of excess credits from remaining Eastern Christian Children's Retreat developments at Surrey Place, Goffle Hill Road and Rockledge Road, consisting of 14 total bedrooms.
 - c. Rezoning of the B-2 Downtown Business Zone so as to permit two stories of housing over one story of commercial at a density of 12 du/acre with a 20% set-aside for for-sale affordable housing units, 15% for affordable rental units.
 - d. Rezoning by way of Overlay Zoning of an area on Grand Avenue and Royal Avenue, between Warburton Avenue and Diamond Bridge Avenue, for multi-family housing at a density of 16 du/acre with a 20% set-aside for for-sale affordable housing units, 15% for affordable rental units.
 - e. Adoption of a Borough-wide Mandatory Set-Aside Ordinance ("MSO"), which will require that any new multifamily residential site developed in the Borough, consisting of five (5) units or more of housing, shall include affordable housing at a set-aside rate of twenty percent (20%) for for-sale affordable units and at a set-aside rate of fifteen percent (15%) for rental affordable units. The adoption of the MSO does not give any developer the right to any rezoning, variance, redevelopment designation or other relief, or establish any obligation on the

part of the Borough to grant such rezoning, variance, redevelopment designation or other relief.

10. All other terms and conditions in the FSHC Settlement Agreement (P-1) and the 204 Wagaraw and 3 Ronson Settlement Agreements (P-2 and P-3), shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

11. Based upon the Settlement Agreement reached between Hawthorne and 204 Wagaraw, and subject to compliance with and implementation of the terms and conditions of the same, the Court does dismiss the action filed by Intervenor 204 Wagaraw Road in the Builder's Remedy action it has filed under Docket PAS-L-985-1.

12. A copy of this Order shall be served upon all parties within seven (7) days of the date hereof.



Honorable Thomas F. Brogan, P.J.S.C.

THOMAS F. BROGAN, P.J.C.