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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
(MOUNT LAUREL II LITIGATION)
DOCKET NUMBER BER-L-2731-97

TICE ASSOCIATES, L.P., a New Jersey Limited Partnership;
and MAHONEY ASSOCIATES, L.P., a New Jersey Limited Partnership,

Plaintiffs,

vs.

BOROUGH OF SADDLE RIVER and
PLANNING BOARD OF THE BOROUGH OF
SADDLE RIVER,

Defendants,

vs.

CHRISTIAN STUEBEN and SADDLE
RIVER PROPERTIES, INC.,

Intervenors.

Civil Action

ORDER

This matter having come on to be heard by the Court at a Fairness Hearing held in conjunction with the settlement of the above captioned Mt. Laurel litigation, in the presence of Goldberg, Mufson & Spar, P.A. (Jeffrey Kantowitz, Esq., appearing) on behalf of plaintiff Tice Associates; Sills, Cummis, Radin, Tischman, Epstein & Gross (Thomas Jay Hall, Esq., appearing), on behalf of plaintiff Mahoney Associates; Russell R. Huntington, Esq., on behalf of Saddle River Properties, Inc.; Stickel, Koenig & Sullivan (Stuart R. Koenig, Esq., appearing) on behalf of defendants Borough of Saddle River and Planning Board of the Borough of Saddle River; and the Court having been provided with a Settlement Agreement entered into by and between the plaintiffs and the defendants, and the Court having conducted a hearing on the fairness of the settlement on November 8, 10, and 30 and December 2, 1999, and the Court having had the benefit of the testimony and cross-examination of three planning experts presented by the parties as well as the testimony of the Court appointed Master in this matter, and notice of the Fairness Hearing having been provided as earlier directed by the Court and no other parties appearing in interest at the Fairness Hearing, and the Court having been satisfied that the objections of the intervenor Christian Stueben having been resolved and that party being dismissed from the litigation, and for good cause shown;

It is on this 11 ^{JANUARY} ~~December~~ day of ~~December~~, 1999, hereby ORDERED as follows:

⊛ NUNC PRO TUNC TO DECEMBER 16, 1999

1. The Housing Element of the Master Plan and Fair Share Plan of the Borough of Saddle River presents a realistic opportunity for the satisfaction of the municipal obligation to provide its fair share of low and moderate income housing, and the settlement reasonably protects the interests of low and moderate income persons. The settlement is approved, except as modified by this Order.

2. The matter is hereby remanded to the Borough of Saddle River and the Saddle River Planning Board, without entry of a final Judgment of Compliance and Repose, in order to enable the municipality to adopt the ordinances and resolutions necessary to implement the plan, including, but not limited to, the finalization of the Regional Contribution Agreements and the obtaining of the approval of the form of those agreements from the Council on Affordable Housing.

3. In addition to the ordinances and resolutions set forth in the Fair Share Plan, the municipality shall adopt the following:

(a) An ordinance amendment which shall allow the boarding house use at Villa Marie Claire to be permitted under the ordinance.

(b) A resolution providing that the Court appointed Master shall receive progress reports of the status of completion of the affordable units to be constructed in Saddle River. The reports shall be for the periods ending June 30, 2000, December 31, 2000, June 30, 2001, and December 31, 2001, and be provided ten days after the end of any such period. After the last period, there shall be contin-

ued reporting as of the end of each calendar year, to be submitted to the Master by the following January 10, for a period of six years, or until all elements of the plan are completed, whichever first occurs.

(c) A resolution of the governing body that it will use its best efforts and good faith to require performance under the performance guarantee and any completion bond issued in conjunction with the low and moderate income housing to be constructed in Saddle River. In this regard, the Court does not direct that Saddle River must actually build the units upon a default of the developer, but that best efforts and good faith be used to bring about such construction.

(d) The ordinance contemplated in the Settlement Agreement which will serve to rezone the Tice property for up to 68 townhouse units.

4. The Planned Unit Development zoning of the municipality conforms with the requirements of the Fair Housing Act, and the Borough has achieved 82 credits toward its total fair share obligation of 162 units. In this regard, condition number 1 of the Saddle River Planning Board resolution number 99-11 adopted April 19, 1999, in the application of Saddle River Properties, Inc., is satisfied.

5. The variance granted by the Saddle River Planning Board to permit posting of a completion bond in satisfaction of the phasing requirements of the ordinance is approved. The form of completion bond, if posted, and the form of performance guarantee, both as refer-

enced in conditions 2 and 3 in Planning Board resolution number 99-11, shall be reviewed and approved by the municipality, not the Court, and copies shall be forwarded to the Master when approved by the municipality.

6. The existence of Villa Marie Claire entitles the municipality to 18 credits against its fair share obligation, subject to satisfaction of paragraph 3(a) of this Order. The municipality may satisfy the balance of its obligation (62 units) by entering into Regional Contribution Agreements as specified in paragraph 2 of this Order.

7. The Master shall continue to serve until completion of all elements of the plan, or six years, whichever first occurs. The Master shall submit an affidavit of services and a request for compensation to the Court.

8. The Court was requested by the attorneys representing Tice Associates to declare that the development contemplated on the Tice property is entitled to benefits described in Dynasty Bldg. v. Upper Saddle River, 267 N.J. Super. 611 (App. Div. 1993). The Court defers making any such declaration, at this time, and will await a specific dispute in the event one occurs.

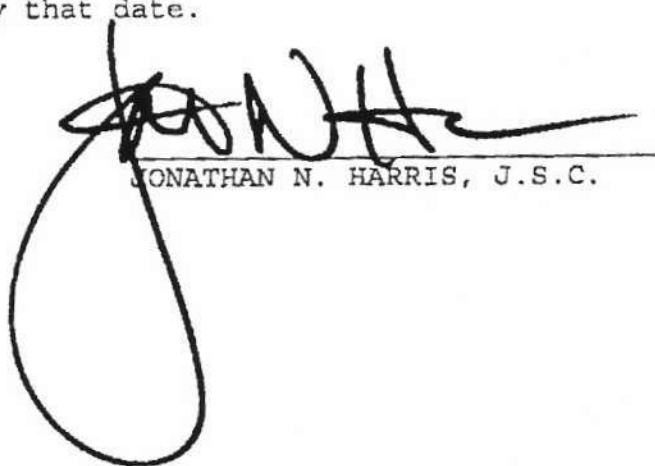
9. Section 10.03 of the Settlement Agreement is declared to be ultra vires as to the motion practice related to third parties. Upon entry of a Judgment of Compliance and Repose, action for redress

of grievances shall be by complaint in lieu of prerogative writs which may be brought upon order to show cause, if appropriate.

10. Saddle River may submit a proposed Judgment of Compliance and Repose after all of the conditions set forth in paragraph 3 of this resolution are satisfied, and expiration of the 45 days after publication of any legislative action.

11. The complaint of the plaintiffs in this matter shall be dismissed upon adoption of the rezoning of the Tice property as contemplated in paragraph 3(d) of this Order, and after 45 days from the date of publication of such legislative action.

12. No person or entity shall be permitted to file an action challenging or disputing the Borough of Saddle River's revised Housing Element of the Master Plan and Fair Share Plan and settlement in this action, unless such action is brought within 45 days of this Order, or on or after January 1, 2002, if a final Judgment of Compliance and Repose is not entered by that date.


JONATHAN N. HARRIS, J.S.C.

Contested

Uncontested