

**FILED**

JUN 08 2020

CHRISTINE A. FARRINGTON,  
J.S.C.

IN THE MATTER OF THE  
APPLICATION OF ENGLEWOOD  
CLIFFS, COUNTY OF BERGEN

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION:  
BERGEN COUNTY

DOCKET NO. BER-L-6119-15

CIVIL ACTION

**ORDER**

This matter having come before the Court on May 22, 2020 on the application of Movant Fair Share Housing Center, through its counsel, Joshua D. Bauers, Esq., for an Order In Aid of Litigant's Rights, requiring the Borough of Englewood Cliffs (the "Borough") to move forward with the municipal site, and the Court having considered all filed written submissions and heard and considered the oral argument of all counsel, and for good cause shown;

IT IS on this 8<sup>th</sup> day of June, 2020 ORDERED:

1. The Court reserves the right to address Fair Share Housing Center's Motion In Aid of Litigant's Rights against the Borough of Englewood Cliffs on a later date for the reasons set forth herein.
2. In light of the fact that the Borough has refused to adopt a compliant plan and the necessary implementing ordinances by April 16, 2020 as Ordered by this Court, the Court hereby finds that prior to the Court making such a determination concerning whether to Order the specific 100% municipally sponsored affordable housing development proposed by the Borough in its 2019 adopted housing element and fair share plan, or Order the Borough to replenish the Affordable Housing Trust Fund ("Trust Fund") of all sums expended from the Trust Fund for the Borough site and Order any future use of the Trust Fund, there is a need for the preparation of a compliant plan to address this Court's January 17, 2020 decision and issues raised therein with respect to the municipal site, and including, but not limited to, 100% Affordable Housing sites and Inclusionary Zoning sites.
3. Consequently, in furtherance of the need for a compliant plan to address this Court's January 17, 2020 Order, the Special Master and Special Counsel/Administrator("Special Master/

Counsel") are hereby directed to proceed to develop and prepare the component parts of a compliant plan addressing this Court's January 17, 2020 decision, including but not limited to 100% Affordable Housing sites and Inclusionary Zoning sites.

4. In preparation of a compliant plan, Special Master/Counsel shall:
  - a. Determine the feasibility and use of the municipal site (both fiscally and physically) for inclusion in a compliant plan, and in addition to such use, when compared to other possible 100% affordable housing sites in the Borough. As part of this determination, the Special Master/Counsel shall demonstrate to the Court whether the deed restrictions or other clouds on the Borough proposed 100% affordable housing site prohibit development of some or all of such site.
  - b. Simultaneously with title research/clearing title on the municipally proposed site, the Special Master/Counsel shall also prepare a Request for Qualifications ("RFQ") for the selection of one or more experienced 100% affordable housing developers for the possible development of 100% affordable housing on other suitable site(s) in the Borough, in addition to the possible use of the municipally proposed site.
  - c. As part of the RFQ, the Special Master/Counsel shall develop site suitability criteria and include potential access to the Trust Fund (current/future) for affordable housing production, to the extent warranted, as well as to include a commitment for the Court's ordering of any HMFA required Low Income Housing Tax Credit ("LIHTC") documents such as but not limited to a municipal payment in-lieu of taxes ("PILOT"), site plan/subdivision approval, Resolution of Need, etc. Regarding development approvals, it is anticipated that such applications will be heard by the Special Hearing Officer appointed by the Honorable Bonnie J. Mizdol, A.J.S.C on April 17, 2020.
  - d. With a recommendation from the Special Master/Counsel, this Court shall select one or more experienced 100% affordable housing developer(s).
  - e. Once selected, the experienced 100% affordable housing developer(s) shall proceed to get a suitable site under contract, prepare a pro forma, construction schedule, address site suitability, prepare a site plan/LIHTC 9% tax

credit funding application for submission to NJ HMFA for the 2021 LIHTC round, among other necessary development steps not listed herein but to be determined by the Special Master/Counsel.

- f. The Special Master/Counsel shall be permitted to plan for senior and/or special needs 100% affordable housing to the extent that an initial LIHTC application is made for a family affordable rental development (not age-restricted). If a second 100% LIHTC application is contemplated by this Court, the second 100% LIHTC application may be filed in any tax credit cycle including the senior and/or special needs cycle.
- g. Regarding Inclusionary Development sites, the Special Master/Counsel shall prepare a Request for Proposal ("RFP") for the selection of one or more suitable sites for the possible development of inclusionary development(s) with a minimum affordable housing set-aside of 20% on site(s) in the Borough, in addition to the possible use of Borough site(s) for 100% affordable development.
- h. The Special Master/Counsel may propose the rezoning of lands in the Borough to encourage the future production of inclusionary development to the extent warranted to address this Court's January 17, 2020 decision.
- i. The Special Master/Counsel are permitted to consult with representatives from 800 Sylvan, FSHC, and/or the Borough's professionals such as attorneys, planners, engineers and any other parties and professionals they deem necessary and such individuals shall cooperate with the Special Master/Counsel in this regard.
- j. The Special Master/Counsel are permitted to utilize proposed Borough documents "as is" or as are required to be modified to address issues such as Affirmative Marketing Plans, Fair Share Ordinances, Development Fee Ordinance, etc.
- k. After consultation with, and agreement by, the Site A property owner/counsel, the Special Master/Counsel may allow the site plan application to proceed ahead before the Borough's Land Use Board or may develop an inclusionary zoning ordinance for Court approval and for site plan action by the Special Hearing Officer appointed on April 17, 2020 by Judge Mizdol.
- l. The Special Master/Counsel shall issue an RFP for the selection of an experienced Affordable Housing

Administrative Agent to be approved by the Court with a recommendation from the Special Master/Counsel.

- m. By mid-July 2020, the Special Master/Counsel shall develop a schedule for commencement and completion of the above ordered tasks with the understanding that this Court requires the ultimate plan components to be zoned, affordable housing developers selected, spending plan, affirmative marketing plan, Administrative Agent Contract, etc., to be submitted to this Court for action prior to December 31, 2020.

\_\_\_\_\_/s/Christine A. Farrington \_\_\_\_\_

Hon. Christine A. Farrington, J.S.C.