ORDER PREPARED BY THE COURT

FILED
SEPTEMBER 4, 2026
HUNTERDON COUNTY SUPERIOR COURT
WILLIAM G. MENNEN, J.S.C.

IN THE MATTER OF THE DECLARATORY JUDGMENT ACTION OF THE TOWNSHIP OF WARREN, SOMERSET COUNTY PURSUANT TO P.L. 2024, CHAPTER 2 (N.J.S.A. 52:27D-304.1, et seq.),

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
SOMERSET COUNTY
DOCKET NO. SOM-L-180-25

Civil Action

Mt. Laurel Program

FINAL JUDGMENT OF COMPLIANCE AND REPOSE FOR THE FOURTH ROUND HOUSING CYCLE

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program ("Program"), pursuant to the Complaint for Declaratory Judgment filed on January 31, 2025 ("DJ Complaint") by the Petitioner, **TOWNSHIP OF WARREN** ("Petitioner" or "Municipality" or "Township"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the "Program", seeking a certification of compliance with the FHA; and

WHEREAS, the Court entered its Decision and Order Fixing Municipal Obligations for "present need" and "prospective need" for the Fourth Round Housing Cycle on April 23, 2025 for the Municipality – specifically, a "present need" obligation of 10 affordable housing units, and a "prospective need" obligation of 262 affordable housing units (collectively, the "Fourth Round Affordable Housing Obligation"); and

WHEREAS, the Planning Board of the Municipality adopted its proposed Housing Element and Fair Share Plan ("HEFSP") for the implementation of its Fourth Round Affordable Obligation on June 25, 2025, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended); and

WHEREAS, the governing body of the Municipality adopted Resolution #2025-144 on June 26, 2025 thereby endorsing the HEFSP for the implementation of its Fourth Round Affordable Obligation, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended), and which plan contained the elements set forth in the "Addendum" attached to Directive #14-24 (as amended); and

WHEREAS, challenges to the Municipality's HEFSP ("Challenges") were timely and properly filed by Fair Share Housing Center ("FSHC") and Avalon Bay Communities, Inc. ("Avalon") (each a "Challenger", and collectively the "Challengers") by and through their respective counsel, in accordance with the FHA and Section III.B of Directive #14-24, wherein the Challengers disputed, in whole or in part, certain compliance mechanisms and/or other aspects of the Municipality's proposed HEFSP, as set forth in each Challenge; and

WHEREAS, pursuant to the Program, the Administrative Office of the Courts ("AOC") appointed and assigned the case to Program member, the Hon. Thomas C. Miller, A.J.S.C. (Ret.) ("Program Member") to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC's Directive #14-24, and that the Program Member appointed Francis J. Banisch, III PP, AICP, an independent affordable housing expert, as special adjudicator ("Special Adjudicator") in this case to work with, make

recommendations to and assist the Program, and who worked closely with the Program Member; and

WHEREAS, on November 10, 2025 and December 12, 2025 the Program Member conducted settlement conferences (a.k.a. mediation sessions) on notice to and with the participation of all parties in accordance with the statutory framework and Directive #14-24 with the goal of reaching a resolution; and

WHEREAS, the parties engaged in extensive settlement negotiations before and during the settlement conferences, with the guidance and assistance of the Program Member and the Special Adjudicator; and

WHEREAS, as a result of the settlement conferences, the Municipality and Challenger FSHC reached a resolution ("Settlement"); the Settlement was placed on the record on December 12, 2025; and

WHEREAS, the Municipality and FSHC entered into a settlement agreement (a.k.a. mediation agreement) last executed on December 21, 2025 (the "Settlement Agreement" or "Mediation Agreement"). Said Settlement Agreement which was uploaded to eCourts on December 21, 2025 sets forth the manner in which the Municipality shall address its Fourth Round affordable housing obligations;[1] and

WHEREAS, notwithstanding the Settlement by and between the Municipality and FSHC, a session was conducted by the Program Member on December 12, 2025 at which session the Program Member heard oral argument from the remaining Challenger, concerning their objections to the Municipality's adopted HEFSP; and

[1] *See* Trans. ID: LCV20253556959

WHEREAS, the Challenger Avalon filed a Supplemental Letter Brief on December 19, 2025 in support of its challenge to the HEFSP; and

WHEREAS, in addition to the argument and submissions of the Municipality and the remaining Challenger, the Program Member considered the written recommendation and report of the Special Adjudicator wherein it was opined, *inter alia*, that the issues raised in Avalon's objection to the HEFSP "overlap materially with those resolved through the Agreement between the Township and FSHC…Accordingly, the substantive issues raised in [Avalon's] challenge are addressed through the terms of the [Settlement]"; and

WHEREAS, the written recommendation and report of the Special Adjudicator further opined that the Settlement "fairly and reasonably resolves the issues raised by FSHC and brings the Township of Warren's compliance into alignment with applicable statutory requirements"; and

WHEREAS, the Court received and reviewed the Program Member's report and Decision Recommendation and accompanying detailed Statement of Reasons contained therein, dated January 29, 2026 which was posted to the eCourts jacket for this matter at Trans. ID: LCV2026234486 (the "Report"), the findings, terms, and recommendations of which were incorporated by reference as though set forth more fully in the Court's February 3, 2026 Decision and Order; and

WHEREAS, the Program Member recommended acceptance of the Settlement as reasonable and in furtherance of the interests of low- and moderate-income households in the Municipality and the Program Member further recommended that the Court adopt the findings and recommendations set forth in the Report and enter an Order, *forthwith*, implementing the terms of Settlement, dismissing the Challenge submitted by Avalon, and to thereby formally approve the

Municipality's HEFSP as amended by the Settlement to implement the "present need" and "prospective need" obligations of the Municipality for the Fourth Round housing cycle; and

WHEREAS, the Court having reviewed and considered the Program Member's Report and Recommendations, found and determined that the proposed HEFSP was fair and equitable and provides a "realistic opportunity" for the construction and/or delivery of housing affordable to those of the protected class of low- and moderate-income households in the Municipality, and is thereby in their best interests, and entered its "*Decision and Order Approving Municipal Housing Element and Fair Share Plan ("HEFSP") As Same Will Be Amended for the Fourth Round Housing Cycle*" on February 3, 2026 (eCourts Trans ID: LCV2026273221) ("Approval Order"); and

WHEREAS, the Court, by way of its Approval Order, formally **APPROVED** the endorsed HEFSP of the Municipality, as amended, for the Fourth Round housing cycle previously filed in accordance with the requirements of the FHA and Directive #14-24 (as amended), and **DISMISSED** Avalon's Challenge, conditioned on the following:

(1) The Municipality, in accordance with N.J.S.A. §52:27D-304.1(f)(2)(c), adopting and filing the implementing ordinances and resolutions proposed within the HEFSP by March 15, 2026[2], whereupon the Court would schedule a HEFSP Confirmation Hearing (or, if and may be determined necessary, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's Amended HEFSP, and the issuance of a Certification of Compliance and Repose; and

[2] The statutory deadline for municipalities to adopt all necessary implementing ordinances and resolutions for non-challenged HE/FSPs, or alternatively, a binding resolution to commit to adopting the implementing ordinances and resolutions following settlement and/or resolution of a Program-submitted dispute (with necessary adjustments) was March 15, 2026. Because the deadline fell on a Sunday, the deadline became Monday, **March 16. 2026**, as the next day that was neither a Saturday, Sunday, or a legal holiday, and thus adoptions made and confirmed on and as of March 16, 2026, were and are deemed compliant. *See* R. 1:3-1.

(2) The Township being granted continued immunity from exclusionary zoning litigation for the duration of the compliance process *conditioned upon* the Township's compliance with the Approval Order and good faith implementation of the HEFSP as same would be amended under the terms of the Settlement and good faith participation in the compliance process.

WHEREAS, thereafter the Municipality thereafter timely adopted necessary and required implementing ordinances and resolutions on or before March 16, 2026 as required by the Amended FHA so as to presumptively warrant the Court's issuance of a Compliance Certification pursuant to N.J.S.A. 52:27D-304(q), N.J.S.A. 52:27D-304.1f.(2)(a)-(e) and N.J.S.A. 52:27D-304.1f.(3)(d), to wit:

- Ordinance 26-11 Creating New AH-9 Affordable Housing District (Toll Brothers Inclusionary Housing Project)
- Ordinance 26-07 Creating New AH-10 Affordable Housing District (Firewood/ Silbert Inclusionary Housing Project)
- Ordinance 26-08 Creating New AH-11 Affordable Housing District (Bardy Farms Inclusionary Housing Project)
- Ordinance 26-09 Creating New AH-12 Affordable Housing District (Chua Property Inclusionary Housing Project)
- Ordinance 26-10 Amending AH-4 Affordable Housing District to Remove Hotel and Provide for Age Restricted Inclusionary Housing (Chase Inclusionary Housing Project)
- Ordinance 26-06 Affordable Housing and Development Fees Ordinance
- Resolution 2026-099 Adopting Spending Plan/Spending Plan
- Resolution 2026-100 Adopting Affirmative Marketing Plan
- Resolution 2026-104 Endorsing Amended Housing Element and Fair Share Plan/ Amended HEFSP
- Resolution 2026-105 Authorizing Agreement and Deed Restrictions for Extension of Affordable Housing Controls/Agreement/Deed Restrictions (Cooperative Housing)

WHEREAS, the Settlement and resulting amendment to the HEFSP included the development of a special needs community on Township owned property ("Wagner Farm") by Bergen County United Way; and

WHEREAS, the development of the Wagner Farm was the subject of protracted litigation brought by a neighboring property owner who objected to the project; and

WHEREAS, as a result of the objection raised (and ultimately litigated) by the neighboring property owner, the Bergen County United Way expended significant funds to obtain and defend the necessary land use approvals; and

WHEREAS, having expended such significant funds, the Bergen County United Way withdrew from the Wagner Farm project; and

WHEREAS, notwithstanding the Municipality's timely compliance with the adoption of necessary and required implementing ordinances and resolutions, counsel for Avalon suggested that the withdrawal of Bergen County United Way represented a significant change in circumstances that warranted and required a wholesale reopening of the compliance process and fairness determinations previously made; and

WHEREAS, in response, counsel for the Municipality argued that the Township "proactively included, as an alternate site for the project, the Township owned property identified as Sitrling Road, Block 114, Lots 28 & 29". See also eCourts Trans ID: LCV20261286179; and

WHEREAS, the Township reported that it secured an alternate developer given the withdrawal of Bergen County United Way; and

WHEREAS, counsel for FSHC reported at the July 1, 2026 Case Management Conference that they were familiar with the proposed developer who they classified as experienced; and

WHEREAS, based upon the assertions and arguments presented by Avalon, the Court initially found that some amendment to the Settlement was likely necessary to account for the pivot to the Sitrling Road site; and

WHEREAS, the Court likewise previously found that should any amendment to the HEFSP resulting from the withdrawal of Bergen County United Way prove necessary, said amendment should be codified by the Township; and

WHEREAS, the Court has nonetheless remained consistent in its recognition of the purpose for which the Program was established: "resolving disputes associated with the FHA" N.J.S.A. § 52:27D-313.2; and

WHEREAS, the Court notes that the Program functioned as intended in the instant matter, assessing and resolving the Challenges by either settlement or recommendation of dismissal; and

WHEREAS, the Program followed the procedural requirements imposed upon it by the FHA and Directive #14-24, and in so doing provided the Challengers with the opportunity to be heard; and

WHEREAS, the Challengers were also afforded the opportunity to be heard before the Municipality as it publicly introduced and adopted the various enactments necessary to provide a realistic opportunity for the provision of affordable housing, including the HEFSP, Settlement Agreement, implementing ordinances, and resolutions; and

WHEREAS, the Court has already approved the Settlement and HEFSP and the Court is well apprised of the presumption of validity accorded to the Program Member's Decision, Report and Recommendation issued on January 29, 2026, as adopted by the Court in its Decision and Order of February 3, 2026 (*see* N.J.S.A. 52:27D-304.1.3b.(2)); and

WHEREAS, while paragraph 4 of the Court's Approval Order empowers the Court to schedule a "HEFSP Confirmation Hearing" to consider the issuance of a Certification of Compliance and Repose, that same provision empowers the Court to alternatively schedule a Compliance Hearing to consider the issuance of a Certification of Compliance and Repose; and

WHEREAS, by Order entered on July 6, 2026, the Court scheduled the instant matter (September 3, 2026) for a *limited* (focused *exclusively* on the any amendments to the Settlement and HEFSP) combined Fairness and Compliance hearing to address the arguments advanced by Avalon; and

WHEREAS, Avalon neither appeared at the aforementioned September 3, 2026 hearing nor submitted any briefing or other correspondence after the entry of the Court's July 6, 2026 Scheduling Order; and

WHEREAS, Counsel for the Township, Counsel for FSHC, and the Special Adjudicator appeared and participated in the September 3, 2026 hearing; and

WHEREAS, the Township, FSHC, and Special Adjudicator all agreed and argued at the September 3, 2026 hearing that no amendments to the Settlement and HEFSP are required by virtue of the change from the Wagner Farm site to the Stirling Road site; and

WHEREAS, the Court notes the identification of and analysis of the Stirling Road site as an alternate site in both the Settlement Agreement (page 3 of the agreement, eCourts Trans ID: LCV2026234486 page 15 of 42) and the HEFSP (pages 40-41 of the plan, eCourts Trans ID: LCV2026669437 pages 47-48 of 63); and

WHEREAS, at the September 3, 2026 hearing, the Court heard testimony from Katherine Sarmad, PP, the Township's Affordable Housing Planner; and

WHEREAS, during her testimony Ms. Sarmad reviewed the Approval Order, the Mediation Agreement, the Township's Amended HEFSP, and the various enabling ordinance and resolutions adopted by the Township; and

WHEREAS, Ms. Sarmad testified that the Township timely adopted all of the necessary enabling ordinances and resolutions; and

WHEREAS, in correspondence dated March 13, 2026 (eCourts Trans ID: LCV2026669437), the Township's attorney submitted the following enabling ordinances and resolutions that had been adopted:

i. Ordinance 26-11 Creating New AH-9 Affordable Housing District (Toll Brothers Inclusionary Housing Project)
ii. Ordinance 26-07 Creating New AH-10 Affordable Housing District (Firewood/ Silbert Inclusionary Housing Project)
iii. Ordinance 26-08 Creating New AH-11 Affordable Housing District (Bardy Farms Inclusionary Housing Project)
iv. Ordinance 26-09 Creating New AH-12 Affordable Housing District (Chua Property Inclusionary Housing Project)
v. Ordinance 26-10 Amending AH-4 Affordable Housing District to Remove Hotel and Provide for Age Restricted Inclusionary Housing (Chase Inclusionary Housing Project)
vi. Ordinance 26-06 Affordable Housing and Development Fees Ordinance
vii. Resolution 2026-099 Adopting Spending Plan/Spending Plan
viii. Resolution 2026-100 Adopting Affirmative Marketing Plan
ix. Resolution 2026-104 Endorsing Amended Housing Element and Fair Share Plan/ Amended HEFSP
x. Resolution 2026-105 Authorizing Agreement and Deed Restrictions for Extension of Affordable Housing Controls/Agreement/Deed Restrictions (Cooperative Housing)

WHEREAS, in response to specific questions asked of her, Ms. Sarmad testified that a pivot to the Stirling Road site was preferred due to its access to public water and sewer; and

WHEREAS, Ms. Sarmad testified that it was her opinion that the HEFSP and Settlement Agreement both sufficiently contemplated and made provisions for a shift to the Stirling Road site rather than the Wagner Farm site such that no amendment of the Court approved Settlement or HEFSP was necessary; and

WHEREAS, Counsel for the Township introduced a Memorandum of Understanding (Exbibit P-1) between the Township and Nouvelle, LLC ("Nouvelle") to develop the Stirling Road

site with a "100% affordable housing supportive needs project" (generally the "Project") which is substantively similar to the Wagner Farm project. Exhibit P-1 was entered into evidence; and

WHEREAS, all parties at the September 3, 2026 hearing agreed that while not changing the Settlement, Exhibit P-1 should be made a part of the record in this matter; and

WHEREAS, while already addressed in the HEFSP and Settlement, Ms. Sarmad's testimony highlighted the proposed project's developability at the Stirling Road site – noting a higher likelihood of success given the availability of public water and sewer and noted Nouvelle's successful track record (including within Somerset County) and "diversity of funding"; and

WHEREAS, counsel for FSHC expressed satisfaction with the Township's endeavors to date in pursuit of the realization of the Project and expressed support for the transition to the Stirling Road site and expressed familiarity and comfort with Nouvelle as the developer; and

WHEREAS, counsel for FSHC expressed satisfaction and confirmed that the Township has met its obligations under the Settlement, the Approval Order, the FHA, Directive #14-24, and the Program; and

WHEREAS, the Special Adjudicator appeared at the September 3, 2026 hearing and concurred with the testimony of Ms. Sarmad and the argument/assertions offered by counsel; and

WHEREAS, the Special Adjudicator testified that the Stirling Road site is well positioned to accommodate the Project and opined that the Stirling Road site would be able to replace all 32 units originally contemplated at the Wagner Farm site; and

WHEREAS, the Special Adjudicator concurred that the Settlement Agreement and HEFSP made provisions for the development of the Stirling Road site such that amendment or modification is not necessary; and

WHEREAS, the Special Adjudicator suggested certain post judgment conditions to ensure realization of the proposed Development; and

WHEREAS, Ms. Sarmad and the Special Adjudicator both testified that the Township has finalized and done everything they need to do address their affordable housing obligation under the statues, agreements, and Court Orders; and

WHEREAS, the Court specifically finds that Exhibit P-1 represents a sufficient memorialization of the switch to the Stirling Road site (even though same was contemplated and provided for in both the Settlement and HEFSP) and finds that no additional amendment of the Settlement or HEFSP is necessary; and

WHEREAS, the Court having heard and considered (i) the testimony of the Township's Affordable Housing Planner, and having found such testimony to be both unrefuted and highly credible, and (ii) the testimony of the Special Adjudicator, and having found such testimony to be both unrefuted and highly credible, and (iii) the argument of counsel; and the Court having reviewed and considered all the documents uploaded to the eCourts jacket in this matter and referenced during the September 3, 2026 Hearing; and for good and sufficient cause having otherwise been shown:

IT IS on this **4th** day of **SEPTEMBER 2026**, **HEREBY ADJUDGED AND ORDERED**, as follows:

1. The Court readopts the findings and conclusions set forth in its February 3, 2026 Approval Order as if set forth more fully herein.

2. The amended HEFSP, attachments, and implementing ordinances and resolutions described herein (including by reference to eCourts Trans ID #) are hereby admitted into evidence and entered into the record.

3. The Court finds and confirms that the Municipality has timely met all of its obligations under the Settlement, the Mediation Agreement, the FHA, and the Court's February 3, 2026 Order and Decision.

4. The Municipality is entitled to a Judgment of Compliance and Repose ("**JOR**").

5. The Municipality's Spending Plan, included as an exhibit to the Housing Element and Fair Share Plan, be, and hereby is also **APPROVED**.

6. That the JOR shall remain in full force and effect until July 1, 2035, and during this period, the Township and its Planning Board shall have repose from all Mount Laurel exclusionary zoning lawsuits, including, but not limited to, builders remedy lawsuits.

7. The Township shall continue to comply with any and all notice/update provisions set forth in the Mediation Agreement.

8. The Township shall timely comply with the following post judgment conditions: (i) the Township and Nouvelle shall enter into a formal development agreement within six (6) months, (ii) based upon the specifics of the plan for the Development, the Township shall adopt any necessary rezoning of the Stirling Road site within six (6) months after the consummation of the formal development agreement as described in subparagraph "i' immediately above, (iii) the Township shall calculate and provide definitive credit calculations for the substituted 32 affordable units.

9. Failure by the Township to meet any of the post-judgment conditions enumerated above shall permit FSHC to move before the Court to reopen these proceedings for further judicial review and scrutiny.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of this Final Judgment of Compliance and Repose and the Municipality's Fourth Round HEFSP or any applications for modification of the approved Plan; and

IT IS FURTHER ORDERED that the Township and its Planning Board, be, and hereby are **IMMUNE** from all exclusionary zoning law suits, including, but not limited to, builders remedy lawsuits, until **July 1, 2035**; and

IT IS FURTHER ORDERED that a copy of this Final Judgment of Compliance and Repose shall be deemed served on all counsel of record upon its posting by the Court to the eCourts case jacket for this matter. Pursuant to R. 1:5-1(a) and R. 1:32-2A, counsel for the Township shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order, and shall provide a copy of this Final Judgment of Compliance and Repose to the Special Adjudicator via email.

SO ORDERED:

HON. WILLIAM G. MENNEN, J.S.C.
Designated Mt. Laurel Judge –Vicinage XIII

(X) By the Court.

The Court's Statement of Reasons was further set forth on the record in open Court on September 3, 2026 at the conclusion of the Hearing.