



TOWNSHIP of HOPEWELL
MERCER COUNTY
Department of Community Development
201 WASHINGTON CROSSING – PENNINGTON ROAD
TITUSVILLE, NEW JERSEY 08560-1410

Affordable Housing Third Round Midpoint Progress Report
Hopewell Township, Docket No. MER-L-1557-15

Response to Midpoint Review Questions
June 24, 2020

Conditions of Compliance

1. What conditions from the court's approval of the municipal housing element and fair share plan and judgment of compliance and repose (or whatever standard terms is being used), if any, have not yet been satisfied? Explain the reasons for any delay and the steps the municipality is taking to satisfy the condition(s).

Hopewell Township received an unconditional judgment of Final Compliance and Repose from the court on August 29, 2019.

In the time between filing its Declaratory Judgement in July 2015 and receiving its unconditional judgement, the township has worked through multiple challenges to its plan and worked cooperatively with both the Fair Share Housing Center and the interveners to refine its plans and satisfy outstanding conditions.

When Hopewell Township first entered into a Settlement Agreement on June 12, 2017, and a supplemental Settlement Agreement on July 13, 2017, the township received a Conditional Judgement of Final Compliance and Repose. The Conditional Judgement was confirmed at a December 14, 2017 hearing, with the official Order issued by the court on January 10, 2018. The Conditional Judgement included seventeen (17) conditions that were enumerated by the Court Master in a report dated December 11, 2017.

As Hopewell Township worked to satisfy the Court Mater's conditions included in the Conditional judgement Order, the township's plan was challenged by a prerogative writ action filed by Deer Valley, LLC. The challenges to the plan led to court ordered mediation that resulted in a global settlement agreement executed by all parties in June 24, 2019. A significant element of the global settlement agreement involved redistributing 125 units of the township's third round obligation for new units to property owned by Deer Valley, LLC, creating an additional inclusionary site in the township's affordable housing plan. While that modification resulted in a superior overall plan for the township, it required added measures be implemented by the township to implement the change. Among other items, Hopewell Township enacted additional zoning ordinances to accommodate the additional development and provided support to Deer Valley to seek amendments to the Wastewater Management Plan.

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Following the issuance of the unconditional judgement on August 29, 2019, a group identified as Concerned Citizens of Hopewell and Ewing (Concerned Citizens) brought additional litigation against the township.

- Concerned Citizens filed a challenge to the Township's Fair Share Plan with the appellate division. While Concerned Citizens voluntarily withdrew this challenge, it did affect the timeline with which the township could advance completion of the stipulated conditions.
- Concerned Citizens filed an additional challenge regarding the township's creation of a new Zoning District, the Inclusionary Multi-Family – Commercial (IMF-C) Zone, that applied to the properties comprising the additional inclusionary site added as part of the global settlement agreement. Under the terms of the Global Settlement Agreement, the rezoning was adopted by the township prior to the August 29, 2019 fairness hearing.

The complaint filed by the Concerned Citizens of Hopewell and Ewing led to a trial held from May 11, 2020 to May 13, 2020. Briefs in this matter are scheduled to be filed by mid July 2020.

The ongoing litigation has impacted the advancement of certain inclusionary projects contained within the Township's Affordable Housing Plan.

However, Hopewell Township has continued to work cooperatively with many of the interveners included in the settlement agreements to refine and advance the planning of these projects. Detailed updates of the progress advanced on each of the inclusionary projects is contained in the responses to the following questions.

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Developments that Are Not Completed

2. For each court-approved inclusionary development project that is not yet constructed, please provide a narrative as to its status and any progress towards construction.

For ease of reference, refer to the attached Key Map identifying the location of each of the inclusionary projects contained within the township's approved plan.

BMS

The inclusionary project included on the BMS site is located within an existing corporate campus currently owned by Bristol Myers Squibb (BMS) and contributes 50 units to the township's third round obligation, as per the 2019 settlement. The 2019 settlement identifies this as a conditional project. Shortly after Hopewell filed its jurisdictional determination for the third round, BMS notified the township that it would be selling the campus facility and vacating the property by 2020, with no buyer identified at the time. As a part of both the 2017 and 2019 settlement agreements, Hopewell Township included provisions for a transfer of the committed units from the BMS site to the Zaitz site, with a condition that the Township confirm the location of the obligated units at the mid-term reporting period. The township enacted amendments to the ordinance, establishing inclusionary residential uses on the BMS campus as a conditional use, and built contingencies into the Redeveloper's Agreement for the Zaitz project to construct the units as an alternative to ensure that a reasonable opportunity to fulfill the obligation was maintained regardless of the ownership of the BMS site.

The Township worked simultaneously with BMS in their efforts to secure a buyer for the BMS campus. It became necessary for the township to enact additional changes to its ordinances to reflect industry changes that favor / allow multi-tenant/owner occupancy with flexible use types, as opposed to a single-owner campus on a large facility with minimal marketability.

BMS did recently find a buyer for the property, Lincoln Equities Group, with the contract of sale finalized on February 20, 2020. The township has had limited opportunity to discuss specific plans with the new owners of the property. However, the new owners did express their interest in including the previously envisioned inclusionary housing project in their plans for the future of the campus.

The Township Committee initiated future planning for the campus by directing the Township Plan Board to conduct a preliminary investigation to determine the campus as an Area in Need of Redevelopment at its March 2, 2020 meeting. The Planning Board conducted a public hearing on May 28, 2020 and made recommendations to the governing body to declare the Area in Need

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determination for the BMS campus. The Township Committee intends to continue to advance the Redevelopment process following the Planning Board's memorialization of its recommendations at its June 2020 meeting.

While the township has continued to encourage advancement of its affordable housing plan by proactively working with the interveners and property owners, advancement of specific planning for inclusionary development on the BMS site was not possible until a new owner was in place.

The township is continuing its discussions with the Lincoln Equities Group and expects to obtain specific commitments to construct the residential project on the property as the redevelopment process advances. In the interim, the township has retained the commitment from the designated redeveloper for the Zaitz project to continue to plan for the construction of the contingent units.

Zaitz / Enourato

The inclusionary projects for both of these properties are to be developed by US Homes d/b/a Lennar. The projects are adjacent to one another, located on either side of NJSR Route 31 near the Route 31 circle. Lennar has been designated as the Redeveloper for the Zaitz property, by Resolution 18-129 dated April 9, 2018. Agreements for sanitary sewer and water service remain open items on this project, which is being advanced in coordination with the other inclusionary projects within the ELSA sewer service area. Refer to later sections of this report for further details on the status of sanitary sewer agreements.

The Zaitz property also contains a component for providing a township community center, requiring coordination of the site layout to accommodate both uses. Hopewell Township and Lennar have been conducting periodic meetings, approximately monthly, to coordinate the conceptual development of the property. Lennar has advanced concept development on the inclusionary project, and developed preliminary plans that include the location and alignment of the internal road network, building locations, preliminary stormwater management measures, and landscape/buffer areas. As part of our periodic meetings, Hopewell Township has reviewed the preliminary site plans with Lennar against the zoning requirements contained within the Redevelopment Plans to confirm compliance as the plans advance to local Planning Board applications.

Lennar has also advanced environmental due diligence on the property. To date, the following has been completed:

- Freshwater Wetlands / Letter of Interpretation (LOI) Line Verification has been issued on January 9, 2019.

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- A Flood Hazard Area applicability determination application was filed with the NJDEP and is under review.
- Cultural Resources evaluation was completed, submitted the NJDEP and accepted

CF Hopewell / Capital Health

A joint venture agreement, between CF Hopewell and Capital Health Systems (CHS), was executed in November 2019, enabling advanced planning for the project.

CHS has submitted a subdivision application to the Planning Board to separate the portion of the main hospital property from the area that will be included with the CF Hopewell-owned properties that will contain the CCRC inclusionary project.

CF Hopewell – Campus North and Wedge Projects

Advance planning for the Campus North and Wedge projects was impacted by the challenges filed by Deer Valley as redevelopment plans were under development. The lack of an agreement for sanitary sewer service has further affected advancement of these projects. The designated redeveloper for these projects, CF Hopewell, is part of the consortium currently in mediation with ELSA for securing a sewer service agreement.

CF Hopewell / Lennar – Horseshoe

Lennar has contracted with CF Hopewell for the development of the inclusionary project on this property, located on the west side of Scotch Road and wrapping around the Wedge mixed-use inclusionary project, which remains a CF Hopewell-owned project. Lennar purchased the lands for the horseshoe project and closed on the property on January 10, 2020.

Lennar is currently developing concept plans for the project including all applicable zoning criteria as well as the affordable housing obligation:

- Regarding sewer service, Lennar is presently in productive mediation with elsa to secure a sewer agreement.
- Regarding water service, Lennar has met with Trenton Water Works (TWW) and they have confirmed water service. Lennar has funded an ongoing study to confirm the scope of required improvements related to the inclusionary projects.
- Lennar has held meetings with Mercer County and agreed on a scope of improvements along Scotch Road. Plans are currently under preparation by Lennar's engineering consultant

Environmental due diligence completed on the property to date consists of:

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- A Flood Hazard Area Verification approval was issued on November 8, 2019 by the NJDEP.
- Applications for Letters of Interpretation (LOI) for Freshwater Wetlands (FWW) were submitted to the NJDEP. The LOI for the Lennar property on the east side of Scotch Road (Block 91, p/o Lot 3.11) was issued by the NJDEP on May 15, 2020. The LOI for the horseshoe property on the west side of Scotch Road is expected by July 2020.

Deer Valley / Lennar Age Restricted Project

This project was added to the Township's affordable housing plan as part of the 2019 Global Settlement Agreement. Following the court's issuance of the unconditional Final Judgement of Compliance and Repose, the township received a complaint filed by the Concerned Citizens of Hopewell and Ewing challenging the creating of the Inclusionary Multi-Family – Commercial (IMF-C) zoning on the affected properties that would permit the project as envisioned. A trial for this matter was conducted between May 11, 2020 and May 13, 2020, and briefs in this matter are due to the courts in mid-July.

Regardless of the ongoing challenge by Concerned Citizens of Hopewell and Ewing, the parties have advanced other aspects of the project in conformance with the terms of the Global Settlement Agreement. Items advanced include:

- An application for an amendment to the Wastewater Management Plan was submitted to the NJDEP via electronic submission (NJDEP Service #968810) on August 21, 2019. The developer is in the process of responding to County and NJDEP comments.
- An LOI has been issued for a portion of the property. An LOI application for the balance of the properties comprising the project has been submitted to the NJDEP and an LOI expected within 90 days of this report.
- Several meetings were held with Trenton Airport to confirm the location of the airport hazard zone to confirm it does not affect the ability to develop the site as planned.
- The ongoing TWW study funded by Lennar will include the Deer Valley property.
- Lennar has participated in several progress meetings with representatives of the township to address site plan layout to confirm conformance with the zoning standards established by the IMF-C Zoning District.

Woodmont

The Woodmont development, contributing 48 affordable units to the township's total obligation, received final site plan approval from the Hopewell Township Planning Board on November 21, 2019 with Resolution #19-021. Resolution compliance items remain outstanding as well as final approval from ELSA for sanitary sewer service. However, outside agency approvals have been secured for the project, including:

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- Mercer County Planning Board approval issued June 13, 2019
- Mercer County Soil Conservation District Certification issued December 5, 2019.
- Delaware & Raritan Canal Commission (D&RCC) staff has completed its review of the project including the stormwater management design, and has recommended approval at the next meeting of the Commission.
- NJDEP permits issued for Flood Hazard Area Verification, a Freshwater Wetlands General Permit No. 11, and a Transition Area Waiver.

Property owners east of the project location, and located in Lawrence Township, have filed a Motion for Rehearing and Reconsideration with the Hopewell Township Planning Board and Woodmont Properties has subsequently filed an objection to the Motion. The matter is currently scheduled to be heard by the township Planning Board within 30 days of the submission of this report.

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3. Have any non-inclusionary development projects (including 100% affordable projects, group homes, accessory apartments, market-to-affordable, extensions of affordability controls, etc.) included in the court-approved plan not yet been built/converted to affordable housing/controls extended? If yes, explain how many units, if any, have been built for each non-inclusionary project or mechanism and when construction is expected to be completed on the remaining units.

This question is not applicable, as Hopewell Township's plan does not contain any non-inclusionary projects.

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4. Are there any projects that have missed any construction deadline established in the court-approved Settlement Agreement, or other mechanisms (e.g. market-to-affordable, accessory apartments, extensions of affordability controls) that have not met the completion schedule set forth in the Settlement Agreement or Housing Element and Fair Share Plan? If yes, what steps is the municipality taking to complete construction and what is the current timetable?

Agreements with ELSA for sewer service to the inclusionary projects remains one of the critical elements necessary for the all of the projects to advance, excluding:

- The 250-unit inclusionary project located on the BMS campus, which is located within the SBRSA Sewer Service Area.
- The 500-unit total CCRC project, a joint venture with CF Hopewell and Capital Health Systems (CHS), on the east side of Scotch Road adjacent to the CHS hospital. A 330,000 gpd sewer service commitment from ELSA related to a prior project has been applied to this project.

As previously stated, Hopewell Township has been actively involved in litigation involving various issues with its plan. Litigation began with the 2017 settlement agreement, extended to mediation, become principally resolved with the 2019 global settlement agreement, and is currently under challenge for the zoning changes required by the 2019 global settlement agreement. In addition, the township has been named an indispensable party in a suit filed against ELSA by a consortium of the interveners to provide sewer service to the inclusionary projects. The suit was filed on January 10, 2020, following two years of negotiations between ELSA and the interveners. This matter is now in mediation with ELSA under court supervision to achieve a settlement agreement for sewer service.

In spite of the numerous challenges brought to the township on its court-approved affordable housing plan, Hopewell Township is continuing to coordinate with the interveners and actively participate in the advancement of the planning for the individual projects.

The BMS site is served by the Stony Brook Regional Sewage Authority (SBRSA), and the site is within the current Sewer Service Area. With the sale of the BMS property to the Lincoln Equities Group very recently secured, as explained in question two above, site planning for the inclusionary project designated for this property has not yet advanced to the point of utility service agreements. These agreements are expected to advance as the township continues to advance Redevelopment Plans for the property with the new owner.

For the projects under development by Lennar, Hopewell Township has continuing to periodically meet and communicate on the status of the various projects. We have reviewed conceptual development plans to provide constructive feedback on the eventual implementation of the plans. We have assisted in facilitating community support for the projects by facilitating

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discussions between Lennar and representatives of the township and Planning Board to provide assistance and commentary to the developer for the development and refinement of their plans.

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5. Are all unbuilt developments currently in a sewer service area, and if not what has the municipality done to incorporate the site into a sewer service area? Are there any barriers to obtaining water or sewer for any unbuilt site? Are there any other regulatory conditions (e.g. changes to DEP permits or conditions) that make it not possible to complete any site as originally contemplated?

All of the inclusionary projects, with the exception of the Deer Valley Age-Restricted Development Project are included in a sewer service area. Under the terms of the global settlement agreement, Deer Valley filed for an amendment to the sewer service area on August 23, 2019. The amendment request is currently under review by the NJDEP.

The conditional project located on the BMS site is located within the sewer service area under the jurisdiction of the Stony Brook Regional Sewage Authority (SBRSA). With this project included as a committed project by the new owners of the BMS campus, agreement for sewer service is expected. However, since the new ownership has occurred within the past ninety days, planning for specific projects has not yet been initiated. The township has advanced processes to declare the campus an Area in Need of Redevelopment, and intends to continue dialogue with the new owners to advance the inclusionary residential project envisioned in the approved plan. The Township has maintained an obligation in the Redeveloper Agreement with Lennar for the Zaitz property to construct additional units at that location to ensure that obligated units are constructed.

For the other inclusionary projects, all are included in the current sewer service area that is served by the Ewing Lawrence Sewage Authority (ELSA). Under the terms of the settlement agreements executed in both 2017 and 2019, the interveners held the primary responsibility for securing sewer service commitments from ELSA.

While the inclusionary projects are located within an established sewer service area, no sewer collection system or other sewer infrastructure exists within the township that can serve the planned projects. The only collection systems that exist within Hopewell Township were built to serve individual commercial and residential projects built to satisfy prior round obligations.

Each of the sites within the ELSA sewer service area require construction of new collection systems originating from the project sites, and extending in a southerly direction to connect with the existing collection systems within Ewing Township. The existing collection systems within Ewing Township will then convey the project-related flows to the treatment facility located in the southern portion of Ewing Township.

The interveners formed a consortium to negotiate with ELSA for unified terms in providing sewer service to the various projects. Following approximately two years of unproductive negotiations, the consortium filed a suit against ELSA on January 10, 2020, naming Hopewell Township, among others, as an indispensable party, on January 14, 2020. The suit has progressed on an accelerated timeline. Mediation was immediately ordered by the court. There have been three mediation

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negotiation sessions to date. The next step will be the addition of a court appointed mediator to assist the parties in reaching a settlement. A case management conference is scheduled for June 21, 2020 to discuss the results of the mediation.

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Rehabilitation Obligation

6. Is the rehabilitation program being administered by a municipality, county, or both? Do the program(s) include rental rehabilitation? If the municipality has not met at least half of its rehabilitation obligation by this midpoint review, what affirmative steps is the municipality taking to meet the obligation and to facilitate participation by homeowners and/or landlords?

Hopewell Township's rehabilitation obligation was zero for the plan approved by the courts, and the plan does not contain a rehabilitation program.

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For Municipalities with a Prior Round and/or Third Round Vacant Land Adjustment (note please make sure any development referenced in the answers to these questions that includes or will include affordable housing is also in the monitoring spreadsheet):

7. If the municipality's court-approved Prior and/or Third Round plan includes Unmet Need:

Not Applicable to Hopewell Township, as the approved plan did not include any unmet need.

a. Has there been any development, proposal for development received by the municipality (even if ultimately rejected), adoption of rezoning or a redevelopment plan for of any parcel larger than 0.5 acres since the settlement was approved by the court on a parcel that was neither previously identified in calculating the municipality's RDP nor included in an inclusionary overlay zone? If so:

- i. Please describe the development(s), development proposal(s), rezoning(s) or redevelopment plan(s)?
- ii. Is any affordable housing included in any of the development(s) proposals(s), and/or rezoning(s) or redevelopment plan(s) referenced?
- iii. If the municipality has a mandatory set-aside ordinance, was that applied to the development(s) and/or rezoning(s) or redevelopment plan(s)?

b. Has any development occurred or been proposed to occur within any inclusionary overlay zone or for which a mandatory set-aside ordinance, if required to be adopted by the municipality, would apply since the settlement? If so:

- i. What is that development or developments?
- ii. Does that proposed or actual development include any affordable housing? What percentage of the development is affordable?

c. Have any changed circumstances occurred that result in additional parcels becoming available for development that were neither previously identified in calculating the municipality's RDP nor included in an inclusionary overlay zone? If yes, please identify the parcel(s) and describe how the municipality plans to address the changed circumstances.

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For Municipalities with a Prior Round and/or Third Round Durational Adjustment:

8. If the municipality's court-approved plan had a durational adjustment, have there been any changed circumstances with regards to limited sewer and/or water capacity? If yes, please describe the changes and when and where additional infrastructure capacity will become available.

Not applicable to Hopewell Township.

9. What steps has the municipality taken, if any, to address limited water and/or sewer capacity, and to facilitate the extension of public water and/or sewer to any site identified in the settlement agreement?

Refer to responses in question 5 regarding efforts made to secure sewer service.

10. Has any property owner or developer contacted the municipality to extend public water and/or sewer to a site not identified in the settlement agreement? If so, how did the municipality respond to the request?

Not applicable to Hopewell Township.

