

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2016-349

Council Meeting Date: 11-22-2016

Date Adopted: 11-22-2016

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE
AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT
BETWEEN THE BOROUGH OF NEW PROVIDENCE AND FAIR
SHARE HOUSING CORPORATION.

Councilperson Galluccio submitted the following resolution, which was duly
seconded by Councilperson Muñoz.

BE IT RESOLVED, by the Mayor and Council of the Borough of New Providence,
County of Union, State of New Jersey, as follows:

WHEREAS, the Borough of New Providence (hereinafter "Borough") filed a
Complaint on or about July 7, 2015 seeking a declaration of its compliance with the
Mount Laurel Doctrine and Fair Housing Act of 1987, N.J.S.A. 53:27D-301, et seq., in
accordance with In re: N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015); and

WHEREAS, after extended negotiations with Fair Share Housing Corporation
(hereinafter "FSHC"), with the participation of a Court-appointed special master, the
Borough and FSHC have agreed to settle the litigation and present the settlement for
review and approval by the Superior Court having jurisdiction over this matter;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of
the Borough of New Providence that the Mayor and Borough Clerk are hereby authorized
to execute a written settlement agreement with FSHC in the form attached hereto as
Exhibit A, with the following additional provisions to be added:

1. FSHC shall provide a copy of the Resolution or other appropriate
documentation evidencing that Kevin D. Walsh, Esq. is authorized to execute the
settlement agreement on behalf of FSHC;

2. The language at paragraph 18 providing that FSHC agrees not to challenge the plan at the fairness hearing shall be deleted and in its place a provision shall be included whereby FSHC agrees to advise of its consent and support of such plan.

3. The Housing Element and Fair Share plan shall provide for mixed family and senior housing at designated lots and blocks as set forth in Exhibit B.

This Resolution shall take effect immediately.

APPROVED, this 22nd day of November, 2016.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 22nd day of November, 2016.

Wendi B. Barry, Borough Clerk



December 1, 2016

Steven A. Kunzman, Esq.
DiFrancesco Bateman
15 Mountain Blvd.
Warren, N.J. 07059

**Re: In the Matter of the Borough of New Providence, County of Union,
Docket No. UNN-L-2442-15**

DRAFT – PRIVILEGED AND CONFIDENTIAL – ATTORNEY – CLIENT/DELIBERATIVE
PROCESS – PENDING LITIGATION - NOT SUBJECT TO DISCLOSURE UNDER OPRA

Dear Mr. Kunzman:

This letter memorializes the terms of an agreement reached between the Borough of New Providence ("Borough"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

New Providence filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Borough have participated in case management conferences as directed by the Court and have engaged in settlement negotiations with the assistance of the court appointed Special Master. Through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement for review and approval to the trial court with jurisdiction over this matter, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of the attached draft Housing Element and Fair Share Plan ("the Plan"), Exh. A, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025), including the Borough's "present need."
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and New Providence hereby agree that New Providence's affordable housing obligations are as follows:

Rehabilitation Share	37
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	135
Third Round Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	316 ¹

4. The Borough's efforts to meet its present need/rehabilitation share include the following: New Providence intends to address its rehabilitation obligation through continued participation in Union County rehabilitation programs, operated by the County's Bureau of Community Development and Bureau of Housing. These Bureaus oversee the federally funded Community Development Block Grant (CDBG) program and the HOME Investment Partnership Program (HOME). The Borough will also rely on monies from the affordable housing trust fund to supplement the County rehabilitation programs in order to address rehabilitation for moderate and low-income rental units within the Borough. This is sufficient to satisfy the Borough's rehabilitation obligation.
5. As noted above, the Borough has a Prior Round prospective need of 135 units, which is met through the following compliance mechanisms:

Summary of New Providence Prior Round Obligation	
<i>Prior Round Credits</i>	Units
Our House (very low, rental)	4
<i>Existing/Under Construction Inclusionary Development</i>	
The Villages at New Providence (rental)	10
Patriot Village (rental)	4
Spring Gardens (rental)	6
Stonefields at New Providence	2
Riverbend	4
Southgate at Murray Hill	2
Murray Hill Farms	13
<i>100% Affordable</i>	
Elizabeth Barabash Manor (rental)	22
<i>Existing Alternative Living Arrangements (very- low rental)</i>	
Community Action Independent Living	4
Union County Arc I	4

¹David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, April 16, 2015, revised July 2015.

Union County Arc II	3
Community Access I	6
Community Access II	6
Arc of Union County	3
<i>Existing Inclusionary Zoning</i>	
Blocks 310 and 311	9
Total Units	
	102 units
<i>Bonus Credits</i>	
	<i>Credits</i>
<i>The Villages at New Providence</i>	10
<i>Community Action Independent Living</i>	3
<i>Patriot Village</i>	4
<i>Spring Gardens</i>	6
<i>Union County Arc 1</i>	4
<i>Community Access 1</i>	6
<i>Total Rental Bonus Credits</i>	33 credits
TOTAL	
	135 Credits

The municipality, as calculated in Exh. A, had a realistic development potential (RDP) of 54 units in the Prior Round. The Borough has addressed its entire Prior Round Obligation of 135, which includes the RDP of 54 and unmet need of 81. The Borough is therefore foregoing the Vacant Land Adjustment (VLA) related to the Prior Round Obligation.

- The Borough has a Prospective Need of 316 units. The Borough, as calculated in Exh. A, has a revised realistic development potential (RDP) of 14 units for the Third Round. The RDP of 14 units, subtracted from the Third Round obligation of 316 units, results in an unmet need of 302 units.

The Borough has addressed its entire Prospective Need obligation of 316, which includes the RDP of 14 and an unmet need of 302. The Borough is therefore foregoing the VLA related to the Prospective Need obligation. In terms of the Borough's Third Round prospective need obligation of 316, the Borough intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Existing Inclusionary Zoning:

These properties are located in the southeast section of New Providence across Mountain Avenue from each other and are both zoned A-2 for inclusionary development at 10 units/acre. Block 310 Lots 1 and 2 contain 2.9 acres, while Block 311 Lot 3 is approximately 1.9 acres in size. Both are served by sewer and water infrastructure.

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Between the two sites, a total of 50 units are permitted, including market rate and affordable units. Ordinance Section 275-9(A) requires all developments in the A-2 district to provide affordable housing units at a rate of 20% of the total constructed units. A total of 10 affordable family units would be required. Both proposed developments are approvable, available, developable, and suitable. Of the 10 units, 9 are applied to the Borough’s Prior Round obligation and 1 will address the Borough’s Third Round obligation.

Proposed Rezoning:

To create future opportunities for affordable housing, the Borough will enact an amendment to the zoning code for the area located northwest of the Murray Hill train station. This area of land includes lots in Blocks 210, 221, and 340 (“Rezoned Area”). A full list of properties and detailed information on the Rezoned Area, is set forth in Appendix B of the Housing Element and Fair Share Plan.

The Rezoned Area includes a total of 79 acres of unconstrained land. Of the total acreage, 50.5 unconstrained acres are proposed to be developed for non-age restricted rental housing, ranging from 14 dwelling units per unconstrained acre to 18 dwelling units per unconstrained acre with a minimum 20 percent affordable set-aside. The higher density shall be located closest to the train station. At the proposed densities, this portion of the Rezoned Area can theoretically support approximately 785 units, of which 157 will be affordable units. Of the 157 affordable, a minimum of 79 units will be rental affordable.

As part of the Murray Hill rezoning, the Borough proposes to rezone Block 210 Lots 23, 32, and 33 which includes 28.5 acres of unconstrained land, for multi-family age-restricted housing at a density of 14 dwelling units per unconstrained acre, with a minimum 20% affordable set-aside. At this density, the sites will support approximately 395 age-restricted units, of which up to 79 will be affordable.

The Rezoned Area can support approximately 1,180 units, of which 236 will be affordable units. With rental bonus credits of 79, the Rezoned Area would result in 315 credits.

Proposed Affordable Zone Breakdowns	
Total Senior Affordable Units (25%):	79
Total Family Affordable Units:	157
Total Rental Bonus Credits (25%):	79
Total Credits from New Zones:	315
Total Units AH-AR:	395 units
Total Units in AH Zone:	785 units
Estimated Total New Units - Market & Affordable:	1180 units

In summary, the Prospective Need obligation of 316 will be addressed as follows:

Summary of New Providence Third Round	
Third Round Obligation	316 units
Existing Inclusionary Zoning	1
Proposed Affordable Housing Zone	236

<i>Total Affordable AH-AR zone</i>	79
<i>Total Affordable AH zone</i>	157
Total Affordable Units	237
Rental Bonus Credits (25%)	79
Third Round Total Credits	316

7. The Borough shall meet its Third Round Prospective Need in accordance with the following standards:
- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
 - f. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
8. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), FSHC (510 Park Blvd, Cherry Hill, NJ); the Latino Action Network (PO Box 943, Freehold, NJ 07728); East Orange NAACP (PO Box 1127, East Orange, NJ 07019); Newark NAACP (PO Box 1262, Newark, NJ 07101); Morris Co. NAACP (PO Box 2256, Morristown, NJ 07962); Elizabeth NAACP (PO Box 6732, Elizabeth, NJ 07206), and the New Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

9. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, and all other applicable law. The Borough as part of its Plan shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
10. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall adopt the Housing Element/Fair Share Plan and shall introduce an ordinance providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the Plan.
11. The parties agree that if a decision of a court of competent jurisdiction in Union County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in (a) a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent of the total prospective Third Round need obligation established in this agreement (i.e. determined to be 253 or less), and if the calculation or determination is memorialized in an unappealable final judgment or action by the legislature or administrative agency, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, New Providence shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
12. The Borough shall prepare and submit a spending plan to the Special Master and the court for approval, with FSHC being provided an opportunity to comment on the spending plan. The parties hereto agree that the spending plan, once approved, shall be valid. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended; however, the Borough may redact or remove any personally identifying information on individual assistance raising privacy concerns from the website

13. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
14. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
 - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
15. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
16. Prior to becoming effective, this settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025.

17. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County.
18. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
19. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
20. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
21. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
22. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
23. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
24. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
25. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
26. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
27. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a

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recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Telecopier:
Email:

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Please sign below if these terms are acceptable.

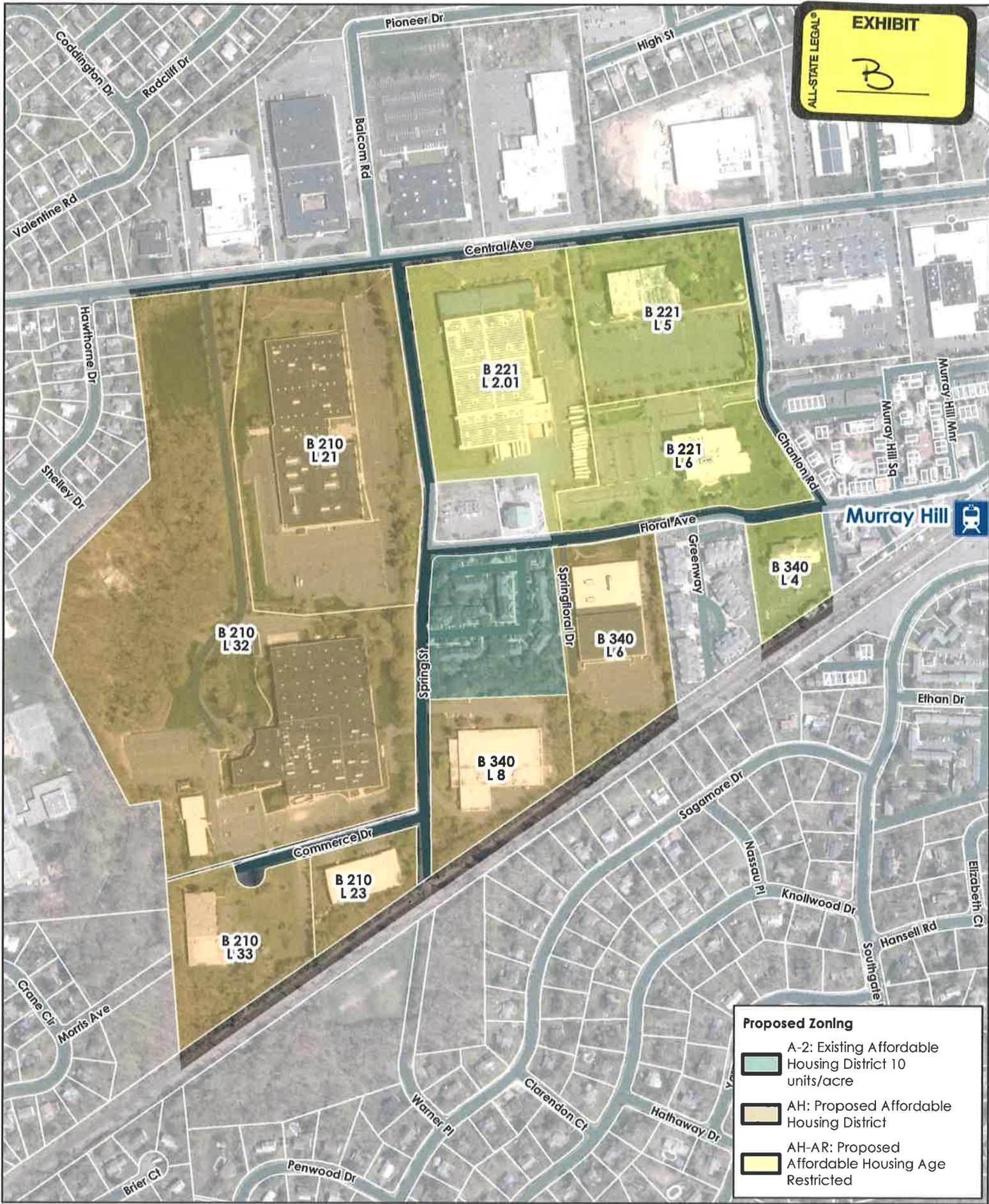
Sincerely,

Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of _____, with the authorization
of the governing body and Planning Board:

Dated: _____

ALL-STATE LEGAL®
EXHIBIT
 B



Proposed Zoning

- A-2: Existing Affordable Housing District 10 units/acre
- AH: Proposed Affordable Housing District
- AH-AR: Proposed Affordable Housing Age Restricted



Affordable Housing Murray Hill Districts
 New Providence, NJ

HEYER GRUEL & ASSOCIATES
 November 2016