

Borough of Allendale
Special Joint Work Session of
The Mayor and Council &
Allendale Planning Board
September 14, 2017
7:00 p.m.

1. Open Public Meeting Act Announcement
2. Roll Call
3. Presentations
 - A. Review of Proposed COAH Litigation Settlement Agreement – Presented by Mary Beth Lonergan, Borough Affordable Housing Consultant
 1. Mayor and Council & Allendale Planning Board Discussion of Proposed COAH Litigation Settlement Agreement
4. Public Comment

Audience members wishing to speak will have a five (5) minute time limit to address the governing body. Large groups are asked to have a spokesperson represent them.
5. Adjournment

Formal Action May Be Taken

Borough Website
Borough Bulletin Board

****AGENDA & AGENDA MATERIALS SUBJECT TO CHANGE****

September 14, 2017

Raymond Wiss, Esq.
Wiss & Bourgey, P.C.
345 Kidnerkamack Road
Westwood, NJ 07675

**Re: In the Matter of the Borough of Allendale, County of Bergen,
Docket No. BER-L-6162-15**

Dear Mr. Wiss:

This letter memorializes the terms of an agreement reached between the Borough of Allendale (the Borough or "Allendale"), 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

In accordance with Mt. Laurel IV, Allendale Borough was deemed to be a 'certified' municipality as it received third round substantive certification from the Council on Affordable Housing ("COAH") on October 14, 2009. Allendale 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. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. As required by the Court, the Borough submitted its preliminary compliance plan summary in December 2015 and submitted a revised plan summary in January 2016. The Borough received temporary immunity from the Honorable Menelaos W. Toskos, J.S.C., which immunity has been extended through October 31, 2017. FSHC and the Borough participated in a number of court case management conferences and specifically met on August 24, 2016 and May 22, 2017 to attempt to settle the matter. Through that process, the Borough and FSHC, under the guidance of the special master, Elizabeth C. McKenzie, PP, AICP, agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter for review, 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 a Housing Element and Fair Share Plan ("the Plan") consistent with this Agreement, and the proposed 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. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
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 contends that Allendale's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	21
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	137
Third Round (1999-2025) Obligation (per Kinsey Report, subsequently adjusted through this settlement agreement to 308 units)	513

The Parties have agreed, by this Agreement, to reduce Allendale's Third Round Obligation to 308 units, as more particularly provided herein.

The Borough's Third Round obligation of 308 units will be adjusted through a vacant land adjustment ("VLA") to a 54-unit realistic development potential ("RDP") and a 254-unit unmet need.

4. For purposes of this agreement, the Third Round obligation shall be deemed to include both the Prospective Need obligation (from 2015-2025) and the Expanded Gap Period Present Need new construction obligation, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough's efforts to meet its present need include the following: participation in Bergen County's Home Improvement Program and funding a rental rehabilitation program to be administered by contract with Bergen County Community Development. This is sufficient to satisfy the Borough's present need obligation of 21 units.
6. As noted above, the Borough has a Prior Round obligation of 137 units, which has been fully met through the completed compliance mechanisms as outlined in the following table:

¹ David 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, May, 2016.

Allendale Borough's Prior Round Compliance Mechanisms: 137-Unit Prior Round	Credits	Bonuses	Total
RCAs – Funds Transferred			
Jersey City	40	0	40
Borough of Ridgefield	4	0	4
Inclusionary Developments – Completed			
Allendale Brook Estate – Family Affordable Sales	9	0	9
Saddle Dale – Family Affordable Sales	3	0	3
Garden Homes/Whitney – Off-Site Supportive Shared Living Rentals on Crescent Commons	11	11	22
100% Affordable Developments – Completed			
Allendale Senior Housing – Senior Affordable Rentals (includes completed 1-unit expansion)	16	0	16
Alternative Living Arrangements – Completed			
Orchard Commons – Supportive Shared Living Rentals (6 units/10 bedrooms)	10	10	20
Crescent Commons – Supportive Shared Living Rentals (11 of 13)	11	11	22
Crescent Commons – Permanent Supportive Rentals	3	3	6
Total	107	35	142
Prior Round Surplus			5

Prior Round Minimum Rental, Maximum Rental Bonus, and Maximum Age-Restricted Requirements

Age-Restricted Cap: $(0.25 \times 137 - 44 \text{ RCAs}) = 0.25 \times 93 = 23$

Rental Minimum / Bonus Cap: $(0.25 \times 137) = 34.25$, round up to 35

7. The Borough has implemented or will implement the following mechanisms to address its Third Round obligation of 308 units:

As noted above, the Borough's Third Round (1999-2025) obligation will be adjusted through a VLA. The municipality has a Third Round realistic development potential (RDP) of 54 units, as calculated in Exh. A. That RDP will be satisfied as outlined in the table below.

Allendale Borough's Third Round Compliance Mechanisms: 54-Unit RDP	Credits	Bonuses	Total
Prior Round Surplus			
Built Surplus	5	0	5
Inclusionary Developments – Under Construction			
Garden Homes/Whitney – On-Site Family Affordable Rentals	12	12	24

Allendale Borough's Third Round Compliance Mechanisms: 54-Unit RDP		Credits	Bonuses	Total
Former Farm – Family Affordable Rentals		2	2	4
100% Affordable Developments – Completed, Proposed				
Crescent Commons – Family Affordable Sales, Built		6	0	6
220 West Crescent Avenue –Affordable Rentals, Proposed		4	cap	4
Alternative Living Arrangements – Affordable Units: Completed, Proposed				
Crescent Commons – Supportive Shared Living Rentals (2 of 13), Built		2	cap	2
Eastern Christian Group Home I – 5 BRs, Built		5	cap	5
Eastern Christian Group Home II – 5 BRs, Agreement		5	cap	5
Total		41	14	55

Third Round Minimum Rental, Maximum Rental Bonus, and Maximum Age-Restricted Requirements 54-Unit RDP

Age-Restricted Cap: $(0.25 \times \text{RDP}) = 0.25 \times 54 = 13.5$, round down to 13
 Rental Minimum / Bonus Cap: $(0.25 \times \text{RDP}) = 0.25 \times 54 = 13.5$, round up to 14
 Family Rental Minimum: $(0.5 \times \text{rental minimum}) = 0.5 \times 14 = 7$
 Family Minimum: $(0.5 \times (\text{RDP} - \text{bonuses})) = 0.5 \times (54 - 14) = 0.5 \times 40 = 20$

The RDP of 54, subtracted from the Third Round obligation of 308 units, results in an unmet need of 254 units, which shall be addressed through the following mechanisms, as more fully described in the fair share plan to be adopted by the Borough:

Proposed Unmet Need Mechanisms, Allendale Borough						
ID	Block	Lot	Location	Owner	Comments	Area (Acres)
1	301	37	200 HEIGHTS ROAD	ROCKLAND ELECTRIC CO	1. Northern portion is part of the Ramsey Golf and Country Club. Unmet Need Overlay Zoning: 10 du/ac 2. Southern half of parcel contains an electric substation and related equipment.	14.09
2	406	21.01	ALBERT ROAD	RAMSEY GOLF & COUNTRY CLUB	Unmet Need Overlay Zoning: 10 du/ac	7.86
3	702	14	40 BOROLINE ROAD	ALLENDALE CORPORATE CENTER, LLC	Unmet Need Overlay Zoning: 12 du/ac	9.48

Proposed Unmet Need Mechanisms, Allendale Borough						
ID	Block	Lot	Location	Owner	Comments	Area (Acres)
4	1803	1	320 FRANKLIN TURNPIKE	CHURCH OF THE GUARDIAN ANGEL	Unmet Need Overlay Zoning: 12 du/ac	11.30
5	Mandatory Affordable Housing Set-Aside Ordinance				Triggered if Borough adopts multi-family rezoning, "d" variance, etc., at 6 du/ac	Borough-wide
6	Affordable Housing Development Fee Ordinance				Existing	Borough-wide
7	Third Round RDP surplus				Proposed	surplus

8. The Borough will provide a realistic opportunity for the development of affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:
- 220 West Crescent Avenue – (Affordable Rentals) – municipally sponsored per NJAC 5:93-5.5; and
 - Eastern Christian Group Home II (ALA) – alternative living arrangement per NJAC 5:93-5.8.

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough meets this obligation as follows: The Borough anticipates that affordable housing developers will apply for outside affordable housing subsidies from federal, state and county sources that may include Low Income Housing Tax Credits, Bergen County HOME funds, Federal Home Loan Bank funds, and private financing. The Borough shall adopt a resolution of its intent to fund each of the programs listed above including through its affordable housing trust account and, if needed, through municipal bonding.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of the entry of an order of the court approving the Borough's Plan. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough meets those obligations as follows:

- 220 West Crescent Avenue – (Affordable Rentals) – construction schedule in accordance with NJAC 5:93-5.5 will be included in the Borough’s revised third round plan; and
 - Eastern Christian Group Home II (ALA) – a deed restriction shall be placed on the group home.
9. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units subject to preliminary or final site plan approval or constructed prior to July 17, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements in the preparation and implementation of its revised third round plan.
10. The Borough shall meet its Third Round obligation in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:
- 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 RDP and unmet 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 RDP and unmet 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 RDP and unmet 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.
11. 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), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League, and Bergen County Housing Coalition, 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.
12. 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, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing

ordinances in conformance with standard ordinances and guidelines developed by COAH and approved by the Court to ensure that this provision is satisfied.

13. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
14. As an essential term of this settlement, within one hundred-twenty (120) days of the Court's entry of an order approving this Settlement Agreement, the Borough shall prepare and adopt an updated Housing Element and Fair Share Plan consistent with this Agreement and introduce and adopt 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 zoning contemplated herein.
15. The parties agree that if a decision of a court of competent jurisdiction in Bergen 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 calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the mechanisms proposed in this settlement agreement, and that will be adopted as part of the Borough's revised Housing Element and Fair Share Plan, 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; maintaining all mechanisms to address unmet need; 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.
16. The Borough shall prepare a spending plan, which will be submitted to the Court for review and approval within 120 days of the entry of an order by the Court approving this Agreement. FSHC may comment on or object to this spending plan. The Borough reserves the right to request the Court's approval that the expenditures of funds contemplated under the agreement constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). 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 and posted on the municipal website, 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.

17. Within 30 days of the entry of an order approving this settlement agreement at a duly-noticed Fairness Hearing, the Borough agrees to pay FSHC's reasonable attorney's fees of \$4,000.
18. 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.
19. 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 any 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 any 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.
20. 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.
21. 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 Borough's Plan as to be revised, so long as it is consistent with the terms of this

agreement, at the fairness hearing. FSHC contends that the municipality should 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 Borough contends that it is entitled to a Judgment of Compliance and Repose through July 1, 2025. Both parties agree to let the trial judge make a final determination as to the form of judgment entered at the fairness hearing and/or compliance hearing and to not appeal any such determination. The judgment and its protections from builder remedy lawsuits shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

22. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.
24. 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.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. 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.
28. 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.
29. 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.

30. 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.
31. 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.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. 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.
34. 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 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:

Mayor Liz White
500 West Crescent Avenue
Allendale, NJ 07401
Telecopier: 201-825-1913
Email: lizwhite@allendalenj.gov

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

Anne Dodd, RMC
Borough Clerk
500 West Crescent Avenue
Allendale, NJ 07401
Telecopier: 201-825-1913
Email: AnneDodd@Allendalenj.gov

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 Allendale, with the authorization
of the governing body:

Dated: _____

DRAFT