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Attorneys for Plaintiff
Roselle Park VP, LLC

ROSELLE PARK VP, LLC

Plaintiff,

v.

BOROUGH OF ROSELLE PARK, the
PLANNING BOARD OF THE
BOROUGH OF ROSELLE PARK, and
the BOROUGH COUNCIL OF THE
BOROUGH OF ROSELLE PARK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
DOCKET No: UNN-L-338-07

Civil Action

**STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Pursuant to Rule 4:46-2(a), Roselle Park VP, LLC (“Plaintiff”), makes this statement in support of its motion for partial summary judgment seeking a declaration that Roselle Park was non-compliant with its obligations under the Mount Laurel doctrine at the time this lawsuit was filed and for the appointment of a Special Master and asserts that there is no genuine dispute as to the following material facts:

The Parties

1. Defendant Borough of Roselle Park (“Borough” or “Roselle Park”) is a municipal corporation of the State of New Jersey and is located in Union County.

2. Defendant Planning Board of Roselle Park (“Planning Board”) is the planning board of the Borough of Roselle Park, and has the authority of a planning board

set forth under the Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-1, et seq. and the Borough’s Ordinances.

Roselle Park’s Affordable Housing Obligation

3. Under COAH regulations, Roselle Park’s first round obligation, covering the period from 1986 through 1993, was 53 affordable housing units of which 40 were rehabilitation and 13 were new construction. Certification of Shirley M. Bishop, P.P., dated July 30, 2007 (“Bishop Cert.”), at ¶8.

4. For the second round, COAH calculated the fair share obligation of the Borough for the period 1987-1999 to be 36 units, consisting of a new construction component of 16 units and a rehabilitation component of 20 units. Id. at ¶9.

5. On December 20, 2004, COAH adopted new third round regulations for the 1999-2014 period. Under those regulations, particularly N.J.A.C. 5:94-2.1, a municipality’s fair share for the third round is the sum of: (a) a rehabilitation obligation based on the number of deficient units in the municipality occupied by low- and moderate-income households; (b) the remaining prior round (1987-1999) obligation; and (c) the growth share obligation, i.e. the affordable housing need generated by development activity within the municipality between 2004 and 2014. Id. at ¶10.

6. In the third round regulations, COAH recalculated Roselle Park’s remaining prior round obligation to be 16 units, and recalculated Roselle Park’s rehabilitation share to be 50 units. Id. at ¶11. In addition, to comply with the third round regulations, Roselle Park must also address its growth share obligation. Id.

7. In a decision dated January 25, 2007, in the litigation, In re Adoption of N.J.A.C. 5:94 and 5:95 (“Appellate Division Decision”), the Appellate Division invalidated some aspects of COAH’s Round Three regulations and upheld other aspects. Id. at ¶12. See id. at ¶¶13-20.

8. Subject to revision in accordance with any new COAH rules, Roselle Park’s affordable housing obligation is at least 104 units, which is the sum of the 50 unit rehabilitation obligation, the 16 unit prior round obligation (as calculated by COAH in December 2004), and the 38 unit growth share obligation determined by the MPO. Id. at ¶21.

9. For purposes of this motion, Plaintiff will accept the Borough’s calculation of its affordable housing obligation to be ninety (90) units. The Borough calculated that its affordable housing obligation was ninety (90) units in its Housing Element and Fair Share Plan dated June 2007.

10. A component of the Borough’s affordable housing obligation must be addressed through rental units. The rental obligation is 25% of both the Borough’s prior round obligation and its growth share obligation. Id. at ¶22.

Roselle Park Is A Non-Compliant Municipality

11. Prior to the filing of this lawsuit, Roselle Park had taken no action, either through the Planning Board or the governing body to bring the community into compliance with its obligations under New Jersey’s Constitution. Id. at ¶23. Roselle Park has done nothing to encourage anyone to undertake the construction or rehabilitation of housing to meet the needs of lower income households. Id.

12. The 1997 Master Plan of Roselle Park, dated October 20, 1997, does not address any affordable housing obligation and does not contain a Housing Element as required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28(b)(3). Id. at ¶24.

13. The 1997 Master Plan does not contain a Fair Share Plan or draft implementing ordinances or an affirmative marketing plan. Id. at ¶25.

14. Roselle Park's 2003 Reexamination Report does not mention affordable housing. Id. at ¶26.

15. Prior to the filing of this lawsuit, Roselle Park had not adopted a zoning ordinance that provided for a set-aside for low and moderate income housing or an accessory apartment ordinance or a zone that provided for all affordable housing. Id. at ¶28. There were no incentives for a developer to provide affordable housing. Id. Moreover, Roselle Park had not adopted a development fee ordinance to raise funds for affordable housing, or a growth share ordinance to address third round requirements. Id.

16. After this litigation was filed, Roselle Park adopted a Housing Element and Fair Share Plan ("2007 HE/FSP"). The 2007 HE/FSP concedes that Roselle Park has not addressed its affordable housing obligations. See id. at ¶29, at Ex. E, p. 32.

17. As for the 50 unit rehabilitation obligation, the 2007 HE/FSP acknowledges that it is entitled to no credits towards that obligation. Id. at ¶30, at Ex. E, pp. 32-33. The Borough has not satisfied this obligation through the rehabilitation of substandard units with appropriate deed restrictions. Id. According to the 2007 HE/FSP, Union County has rehabilitated three units in Roselle Park between 2000 and 2006 but it

is admitted that “Union County does not deed restrict the units.” Id. at Ex. E, pp. 32-33. Additionally, Union County funded these rehabilitation efforts. Id.

18. The obligation to create a realistic opportunity for the satisfaction of its affordable housing units belongs to the municipality, and not the County. Id. at ¶31. The Borough has not satisfied its rehabilitation obligation through the development of new affordable housing units, as permitted by COAH and the courts. Id.

19. The 2007 HE/FSP acknowledges that it has not fully addressed the 16 unit prior round obligation but contends that it is entitled to 8 credits towards its second round obligation for a group home project referred to as the Sherman Avenue Group Home. Id. at ¶32, at Ex. E, p.32. Roselle Park provides insufficient information to determine whether it is entitled to credits as a result of this group home. Id. at ¶32. However, even if it is entitled to credits, there would still be an eight unit deficit to satisfy the prior round obligation. Id.

20. The 2007 HE/FSP calculates its growth share obligation to be 29 affordable units, and in its 2007 HE/FSP, Roselle Park indicates that its total fair share obligation is 90 units. Id. at ¶33, at Ex. E, p.35.

21. The Roselle Park affordable obligation is at least 90 units. See id. at ¶34.

22. Regardless of the precise quantification of the obligation, as of the filing of the lawsuit, Roselle Park had not provided, through its land use regulations, a realistic opportunity for its fair share of affordable housing and the Borough is thus not compliant with its constitutional obligation. Id. at ¶34.

The Roselle Park VP, LLC Site

23. Plaintiff, Roselle Park VP, LLC, is the developer of an approximately 4.8-acre tract of land that is designated as Block 213, Lot 1 and Block 314, Lot 1 on the Borough's tax maps (collectively, "Plaintiff's site"). Id. at ¶37. The Non-Managing Member of Plaintiff is 450 West Westfield Realty, LLC, which is the owner of the property. See Certification of Ron Ladell dated July 3, 2007, at ¶5.¹

24. Plaintiff's site is in Planning Area One (PA1) according to the State Development/Redevelopment Plan. Bishop Cert. at ¶37. PA1 are the locations in the State where the State Plan encourages new development and redevelopment.

25. The Borough has adopted a Redevelopment Plan that provides for the redevelopment of Plaintiff's site with residential uses (limited to condominiums and cooperatives) and ancillary and secondary uses, such as retail. See id. at Ex. F, p.15. The Redevelopment Plan does not provide for a maximum permitted density but the Housing Element and Fair Share Plan states that the Borough believes 215 market rate units will be built on this site. See id. at Ex. E, p.33. The Redevelopment Plan prohibits an apartment rental project by requiring the project to be condominiums or cooperatives. See id. at Ex. F, p.17.

26. It is unclear what affordable housing contribution the Borough wants Plaintiff's site to make. In the Redevelopment Plan, the site is only obligated to address the growth share obligation generated by its development. See id., at Ex. F, p.17. For the residential component, this obligation is one affordable housing unit for every eight market rate units and, for the non-residential component, is one for every twenty-five

¹ Previously submitted to the court and all parties in Plaintiff's motion filed on July 5, 2007

jobs to be created. Id. at ¶38. In the 2007 HE/FSP, the Borough suggests a 20% set aside for affordable housing on this site. See id., at Ex. E, p.33.

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