

Township of
DENVILLE

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FAIRNESS HEARING SUMMARY

On Friday, April 20, 2018, a Fairness Hearing was held in Superior Court regarding the two (2) settlement agreements the Township entered into in December 2017 with Glenmont Commons and RAM Associates/Toll Brothers. Judge Maryann Nergaard presided over the hearing. The Township was represented by Ed Buzak (John Jansen was in attendance as an observer) and Jason Kasler. Attorneys were present for interveners Glenmont Commons, RAM Associates/Toll Brothers as well as 382 Franklin Road and Lennar/US Homes (Young Tract). There were two members of the public from Denville I recognized

After qualifying Mr. Kasler as an expert in Planning and Affordable Housing, Mr. Buzak had Mr. Kasler walk through the various features of each of the two properties included in the settlement agreements and the developments proposed thereon. Besides discussing environmental conditions and constraints, Mr. Kasler also discussed the proposed developments and the affordable housing yields from each development. The attorneys for the interveners/developers declined their ability to cross-examine Mr. Kasler.

After Mr. Kasler concluded his testimony, the Special Master to the Court Phil Canton took the stand. Mr. Canton indicated that he concurred with the testimony of Mr. Kasler and supported the settlement agreements. He did point out that as the RAM Associates/Toll Brothers property was located within the Highlands Planning Area and outside the sewer service area, the issue of sewer service would have to be addressed. After Mr. Canton left the stand, the Judge asked Mr. Buzak to call a witness to speak about the status of sewers to the RAM Associates tract. As I had the most knowledge, I was called to the stand and explained the Township received a grant from the Highlands Council to perform a Water Use and Conservation Plan. Before the NJDEP will make a determination as to place the property into the sewer service area, they statutorily require a recommendation from the Highlands Council. Before the Highlands Council can provide a recommendation, the municipality needs to have a Water Use and Conservation Plan developed. I indicated to the Court that the study was underway and should be completed in the coming months.

After hearing the testimony, the Judge recognized a member of the public who advised the Court he wished to make a statement. Mr. Buzak objected to the Judge that a procedure to speak was established in the public notice and was not followed. The judge acknowledged the objection but indicated she would allow the member of the public to make a statement.

The member of the public commented that he had attended all of the public hearings before the Denville Township Council and no one from the community came out in favor of these developments. Furthermore, he mentioned the local Board of Education requested the opportunity to perform an impact study on how such developments would impact the school and that an additional impact study should be performed on how these developments would impact traffic. The individual also pointed out that based upon his research, the biggest driver in increased property taxes in Denville and throughout the State of New Jersey as a whole was residential development. The resident concluded by stating he mentioned all of these concerns to the Township Council at the public meetings and he and other members of the public were repeatedly told that municipalities are not able to consider traffic impact, impact on schools or local property tax impact in attempting to satisfy a yet unknown affordable housing obligation.

Judge Nergaard responded to the resident by indicating that she was a Morris County resident and former local elected official and was sympathetic to the concerns he raised. However, she was firm in indicating that her obligation is to ensure a municipality is working to facilitate the satisfying of its affordable housing obligation. The other issues raised [traffic impact, school impact and tax impact] are factors that need to be addressed with the State legislature and Judge Nergaard implied that they could not be factored into her decision. She is bound by the Supreme Court's edict in *Mt. Laurel IV*.

In making her ruling, the Judge first complimented the Township and the two interveners for working together. Specifically, she mentioned that the proposed developments met both the letter of the law but also met the spirit of the law by integrating the affordable units in with the market rates units so they were as architecturally indistinguishable possible. She indicated that is better for the development and ultimately better for the community as a whole.

The judge requested Mr. Buzak prepare an order so she could approve the settlement agreements and asked that said order be provided to her early this week. Once signed, she was very clear that the Township had 60-days to introduce and adopt the T-5 Zoning Ordinance. Once adopted, she was very clear that the developers had 60-days to file an application before the appropriate land use board. Therefore, in order to meet the timeframe established by the judge, the T-5 Ordinance is listed on tonight's agenda for introduction with the public hearing and adoption vote scheduled for June 26, 2018.

One final and very notable statement from the Judge was that as part of her ruling, she indicated she would extend Denville Township temporary immunity from builder's remedy lawsuits. However, in referencing the recent Mercer County decision, Judge Nergaard made it clear that it was almost certain that our ultimate obligation was going to be much higher than the Township presented to the court in its Conceptual Fair Share Plan in April 2016. She also specifically stated that "if progress does not continue [towards satisfying our affordable housing obligation], this issue of our temporary immunity will be revisited.

I will note that that the Redmond Press Redevelopment Plan was included in our Conceptual Fair Share Housing Plan submitted to the court in March 2016. Although the developer never became an intervener in the declaratory judgment action, the affordable units yielded as part of the proposed development are incorporated into our plan submitted to the court to satisfy our anticipated obligation.

Prior to adjourning the meeting, the attorneys representing two other interveners pressed the judge to establish dates for hearings on their proposed developments. Although no dates were provided by the judge, Special Master Phil Canton indicated that within the coming week(s) he would be contacting the parties to review the Vacant Land Adjustment submitted by Mr. Kasler. Regardless, it is clear the pressure will remain from both the other interveners, our adversary and the court to continue forward with the process despite not having a firm obligation assigned to Denville.

Respectfully submitted,



Steven Ward, Township Administrator

Date: May 15, 2018