

Fair Share Housing Center

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**In the Matter of the Application
of the Township of Chatham,
County of Morris.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Morris County
Docket No. MRS-L-1659-15

CIVIL ACTION

Order

This matter having been brought before the Court on the application of Cross-Movant Fair Share Housing Center (FSHC), through its counsel, Bassam F. Gergi, Esq., for an Order terminating the Township of Chatham's immunity from builder's remedy suits and for an Order that enforces litigant's rights as to the Township's failure to comply with the Court approved December 13, 2018 (amended January 10, 2019) settlement agreement and Mount Laurel.

And the Court having considered all filed written submissions and having heard and considered the oral arguments of all counsel, if any;

IT IS on this _____ day of _____,
2020 ORDERED as follows:

1. The Township of Chatham's Motion to Extend Immunity is denied.

2. FSHC's Cross-Motion to Terminate Immunity from Builder's Remedy Litigation and to Enforce Litigant's Rights is granted.

3. The Township of Chatham's immunity from exclusionary zoning, constitutional compliance, and builder's remedy litigation is terminated. Any developer or party with an interest in land in Chatham Township is permitted to file an answer and counterclaim(s) or amended answer and counterclaim(s) in this matter.

4. The Court shall evaluate future requests for immunity by requiring substantive evidence to be presented on motion with notice and shall require a report from the Special Master.

5. The Court hereby empowers and directs the Court appointed Special Master to serve as a Mount Laurel Implementation Monitor. In the role as the Mount Laurel Implementation Monitor, the Special Master shall prepare the Township of Chatham's Housing Element and Fair Share Plan, shall select and submit within forty-five days to the Court and the parties his recommendation for the site of the one-hundred-percent affordable development, and shall be authorized to carry out whatever further duties are necessary to bring the Township into compliance with the Court approved December 13, 2018 settlement agreement with FSHC.

6. The vesting of rights pursuant to any and all site plan approvals in the Township of Chatham is hereby stayed until the Township receives an Order of the Court finding that it has fully complied with the terms of the Court approved settlement agreement with FSHC.

7. The Township of Chatham is prohibited from developing land and from acquiring, conveying, and disposing of land or interests in land without prior Court approval.

8. The Township of Chatham, the Township of Chatham Planning Board, Township of Chatham Zoning Board of Adjustment, and any official bodies and persons, agents or employees thereof, who have the authority to grant any type of development approvals, including the municipal construction official and zoning officer, are hereby restrained from granting sub-division, site plan and variance approvals, waivers, and substantial amendments involving parcels of privately or publicly owned land under the terms and conditions hereafter set forth.

9. Pending any further Order of the Court, the restraints in this Order will remain in effect until the Township of Chatham has complied with the Court approved settlement agreement and the Court has reviewed and approved a housing element and fair share plan that satisfies Chatham's Prior Round and Third Round fair share housing obligations, at which time the scarce resource restraints will automatically dissolve, or until such time as they are otherwise dissolved by Court order.

10. The Township of Chatham Planning Board, Township of Chatham Zoning Board of Adjustment, and any of their official bodies, agents, officers and employees, may receive and process, hear and vote on applications for development approvals that are covered by this Order as provided under the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D -1 et seq. The Township of Chatham Planning Board and Township of Chatham Zoning Board of Adjustment shall advise all applicants that any Board action or approval will not confer "vested rights" upon the application decision without the Court's review and approval. Only after an Order has been entered releasing an application from the restraints imposed by this order will an applicant acquire "vested rights" pursuant to the MLUL. Notwithstanding the foregoing, any approval by a Board may be challenged or appealed as provided by law and this Order shall not be deemed to toll the time for such challenge.

11. The Township of Chatham Planning Board and Township of Chatham Zoning Board of Adjustment shall provide at least 7 days' written notice to the Special Master and Fair Share Housing Center, in addition to any other interveners, of any applications for development approvals that are covered by this Order that will be heard or voted on by the Planning or Zoning Boards.

12. The Township of Chatham Planning Board and Township of Chatham Zoning Board of Adjustment shall provide notice to FSHC and the Special Master of votes taken by the Boards on applications for development approvals that are covered by this Order, including

votes involving the adoption of memorializing resolutions, within 7 days of such votes occurring. Notices required by this paragraph may be provided by email.

13. Any party or person affected or potentially affected by the restraints imposed by the Court Order may apply, with notice to all parties and to the Special Master, for relief from this Order prior to or during the pendency of a development application. The form of application shall be a letter with appropriate supporting documentation. The Special Master shall render a decision within 15 business days of receipt of the aforesaid application. If the Special Master determines that relief from the restraints imposed herein is appropriate, he shall authorize the relief from the restraints in writing, provide a copy to Court and all parties, and the applicant may pursue an application for development approvals and the appropriate Board may consider and grant or deny development approvals in accordance with governing law.

14. If the Special Master fails to timely decide or declines to authorize the release, or any party or applicant objects to his decision within 10 days of the decision being made, the party or applicant may move before the Court on notice to the Special Master and all parties for relief from the within restraints.

15. The following applications for development are exempt from this Order and may be considered by the appropriate

Board which may render a decision upon the application, without the reservation that it does not confer "vested rights," as provided by law:

- a. "c" variances not involving a site plan;
- b. Site plans for improvements to existing non-residential sites and/or buildings not involving any change of use (i.e., warehouse to warehouse or retail to retail);
- c. Permits for improvements to existing single or two-family dwellings, provided no additional dwelling units are being created.

16. Prior to the Township of Chatham developing land or acquiring, conveying, or disposing of land, or interests in land, a request for leave to perform these actions shall be provided to the Special Master and counsel for Fair Share Housing Center. Such request shall be provided in writing. The Special Master shall render a decision within fifteen (15) business days of receipt of the request. In the event there is no objection from the Master or any party, the Township may proceed. In the event the Master or any party objects, the Township may move for the relief it seeks before the Court.

17. Chatham Township's Spending Plan is not approved at this time. It shall resubmit a Spending Plan if and when it proceeds to a duly noticed Compliance Hearing.

18. Attorney's fees and costs in favor of FSHC pursuant to Rule 1:10-3 for their application to enforce litigant's rights

are granted and shall be paid by the Township of Chatham. FSHC shall provide a Certification of Services within 14 days.

19. Copies of this order shall be served through eCourts. Counsel for FSHC shall forward a copy of this Order to the Court's Special Master within five (5) days of receipt.

Hon. Michael C. Gaus, J.S.C.