

FILED

MAY 06 2021

**CHRISTINE A. FARRINGTON,
J.S.C.**

PRIME & TUVEL

By: Jason R. Tuvell, Esquire
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Attorneys for Defendant, KRE Acquisitions Corp.

FAIR SHARE HOUSING CENTER,
INC.

Plaintiff,

v.

THE PLANNING BOARD OF THE
TOWNSHIP OF TEANECK, COUNTY
OF BERGEN, STATE OF NEW
JERSEY; and KRE ACQUISITION CORP.

Defendants.

LAW DIVISION: BERGEN COUNTY

DOCKET NOS. BER-L-000642-21 and
BER-L-000639-21, Consolidated

Civil Action

CONSENT ORDER OF REMAND

DENISE STANFORD BELCHER,
VINCENT P. BREVETTI, TONIETTE H.
DUNCAN, THEODORA SMILEY
LACEY, HENRY J. PRUITT, ALAN
SOHN, BARBARA LEY TOFFLER

Plaintiffs,

v.

PLANNING BOARD OF THE
TOWNSHIP OF TEANECK, KRE
ACQUISITIONS CORP., HOLUBA
REALTY CO LLC

Defendants.

THIS MATTER, having been opened to the Court by way of a Complaint in Lieu of Prerogative Writ filed on January 28, 2021, by Joshua D. Bauers, Esquire, on behalf of Plaintiff, Fair Share Housing Center (hereinafter referred to as "FSHC") and a Complaint in Lieu of Prerogative Writ filed on January 28, 2021 and amended on February 4, 2021, by Gail L. Price,

Esquire of Price, Meese, Shulman & D'Arminio P.C. on behalf of Plaintiffs, Denise Stanford Belcher, Vincent P. Brevetti, Toniette H. Duncan, Theodora Smiley Lacey, Henry J. Pruitt, Alan Sohn, and Barbara Ley Toffler (hereinafter referred to as the "Residents"), (hereinafter referred to as the "Complaints", which were subsequently consolidated under Docket No. BER-L-000642-21), with Jason R. Tuvel, Esquire of Prime & Tuvel, attorney for Defendant, KRE Acquisition Corp. (hereinafter "KRE") and Brian E. Eyerman, Esquire of Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz & Krouse L.L.C., attorney for Defendant, Planning Board of the Township of Teaneck (hereinafter referred to as the "Board"), appearing; and

WHEREAS, KRE, a corporation of the State of New Jersey, is the owner of certain real property located at 520 Palisade Avenue in the Township of Teaneck, County of Bergen, State of New Jersey, and designated as Block 2402, Lot 1 on the Township of Teaneck Tax Map (hereinafter referred to as the "Property"); and

WHEREAS, the Property is located in the Residential Affordable Housing Overlay Zone (R-AHO), which was created by Ordinance No. 2019-6 adopted on March 26, 2019 pursuant to a Settlement Agreement entered into by the Township of Teaneck (hereinafter referred to as the "Township") and FSHC on December 7, 2017 in connection with the Township's Declaratory Judgment Action seeking a declaration of compliance with the Mt. Laurel doctrine and the Fair Housing Act, N.J.S.A. 57:27D-301 et seq. (the "Mt. Laurel Settlement"); and

WHEREAS, on May 31, 2018, after conducting a duly noticed fairness hearing, the Hon. Menelaos w. Toskos entered an Order granting preliminary approval of the Mt. Laurel Settlement; and

WHEREAS, the Mt. Laurel Settlement contemplated the development of several sites, including the Property, with inclusionary developments which would advance the Township of

Teaneck's goal of satisfying its obligation to provide housing for low- and moderate-income residents as further set forth in the Housing Element and Fair Share Plan adopted by the Board on February 28, 2019; and

WHEREAS, KRE previously filed an application with the Board for Preliminary and Final Major Site Plan Approval along with bulk variance and design waiver/exception relief, to, *inter alia*, construct a multifamily residential development consisting of 62 townhouse dwelling units and 16 affordable apartment dwelling units, along with related site improvements including parking, signage, landscaping, lighting and stormwater management infrastructure (hereinafter referred to as the "Application"); and

WHEREAS, the Board held a public hearing on the Application on November 12, 2020 (the "Hearing"); and

WHEREAS, at the conclusion of the Hearing, the Board voted to approve the Application; and

WHEREAS, on December 9, 2020, the Board adopted a resolution memorializing its approval of the Application, and a notice of decision was published on December 14, 2020; and

WHEREAS, on January 28, 2021, FSHC filed its Complaint, challenging the Board's approval of the Application; and

WHEREAS, on January 28, 2021, the Residents filed their Complaint, challenging the Board's approval of the Application, which Complaint was subsequently amended on February 4, 2021; and

WHEREAS, on February 19, 2021, the Board filed its Answer to the Complaint filed by FSHC; and

WHEREAS, on March 9, 2021, KRE filed its Answers to both Complaints; and

WHEREAS, on March 12, 2021, the Board filed its Answer to the Complaint filed by the Residents; and

WHEREAS, on March 30, 2021, the Court entered an Order on its own motion to consolidate the two Complaints under Docket No. BER-L-000642-21 after being advised that the parties were working cooperatively toward settlement of both matters; and

WHEREAS, the parties hereto have advised that they have reached a global settlement of all claims made by FSHC and the Residents, subject to the entry of the within Consent Order of Remand and a subsequent Whispering Woods¹ hearing before the Board, at which time KRE will present a revised site plan reflecting the modifications set forth below;

NOW, THEREFORE, the Court having reviewed the terms and conditions set forth in the within Consent Order of Remand, and it appearing that the attorneys for all parties of record have each signed the within Consent Order of Remand, indicating their client's respective consent to the form and entry of same, and it further appearing that the terms of the within Consent Order of Remand are fair and reasonable;

IT IS ON THIS this 6th day of May, 2021, hereby **ORDERED** that, consistent with the holding of the Court in Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super. 161 (Law Div. 1987), the within matter is remanded to the Board, subject to and in accordance with the settlement terms and conditions set forth below:

1. The within matter is remanded to the Board for a duly noticed public hearing to consider and act upon revised plans submitted by KRE in connection with its application for preliminary and final major site plan approval, together with bulk variance relief and any

¹Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super. 161 (Law Div. 1987).

additional exceptions, waivers, variances, interpretations, de minimis exceptions to the New Jersey Residential Site Improvement Standards (“RSIS”), modifications of conditions of prior approvals, if any, continuation of any preexisting conditions and other approvals as may be determined to be necessary during the review and processing of the application (hereinafter referred to as the “Revised Application”), with said hearing to be held at the Board’s next available scheduled meeting, taking into account the time needed to submit all necessary plans and reports in support of the Revised Application and to provide newspaper notice and mailed notice to all property owners within 200-feet of KRE’s property.

2. The Revised Application shall incorporate the modifications to the Application previously approved by the Board set forth on the conceptual plan attached hereto as Exhibit A, which are generally summarized as follows:

- a. The elimination of the 16-unit affordable housing multifamily building and its associated parking and refuse areas;
- b. The incorporation of the 16 affordable housing units (including 4 – three bedroom units, 9 – two bedroom units, and 3 – one bedroom units which shall include the income mix across bedroom distribution required by the Uniform Housing Affordability Controls) into the townhouse building strings (Buildings 3-10) by converting 1 townhouse unit within each of those buildings into 2 stacked affordable units, with each affordable unit to include 1 garage parking space and 1 driveway parking space, in lieu of parking spaces within a surface parking area;

- c. The inclusion of a new 7-unit townhouse building (Building 2), a new 4-unit townhouse building (Building 13), and a new 3-unit townhouse building (Building 14);
- d. The inclusion of a cul-de-sac at the terminus of Road A;
- e. Modifications to the grading design, drainage and utility design, site lighting and landscaping design, and soil erosion and sediment control design to accommodate the revised layout;
- f. Plan revisions to address the applicable conditions of the Board's prior approval, including, but not limited to, the widening of Road A to include a 30-foot cartway throughout the new development on the Property; the removal of the general vehicular access drive from Leonia Avenue and replacement thereof with an emergency-only access drive; the provision of gated access to Herrick Park on the northern portion of the Property; the inclusion of screen fencing between the Property and the adjacent properties to the south which are located in the Borough of Bogota; and the inclusion of additional fencing between the Property and other adjacent properties; and
- g. The inclusion of a water loop through Herrick Park in accordance with the requirements of Suez Water.

3. At the time of the hearing held on the Revised Application pursuant to this Consent Order of Remand, in addition to the right to supplement the record by testimony and exhibits, the parties hereto shall have the right to rely on the record established at the prior Hearings on the Application, which shall be incorporated by reference therein, including all testimony, exhibits and other documentation.

4. KRE shall provide notice as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (hereinafter referred to as the "MLUL"), for the hearing to be held on the Revised Application pursuant to this Consent Order of Remand.

5. In the event that the Board approves the Revised Application and memorializes such approval in a resolution thereafter adopted by the Board in accordance with the MLUL, and no appeal of such approval is brought by a third-party, Plaintiffs shall file voluntary dismissals with prejudice of the Complaints, with fees and costs to be paid by KRE in amounts that have been agreed upon by the parties. Such voluntary dismissals shall be filed by Plaintiffs within ten (10) days of the expiration of the statutory appeal period.

6. In the event that the Board denies the Revised Application or approves the Revised Application with conditions not satisfactory to KRE and KRE elects to proceed with the approval previously granted by the Board, Plaintiffs retain the right not to dismiss the Complaints.

7. In order to protect Plaintiffs' rights not to dismiss the Complaints in accordance with Paragraph 6 of this Consent Order, the time frame within which the Complaints shall have been commenced, as prescribed by R. 4:69-6, is tolled, and should the Plaintiffs decline to dismiss the Complaints accordingly, the Board, KRE, and any third party are barred from challenging the same as untimely.

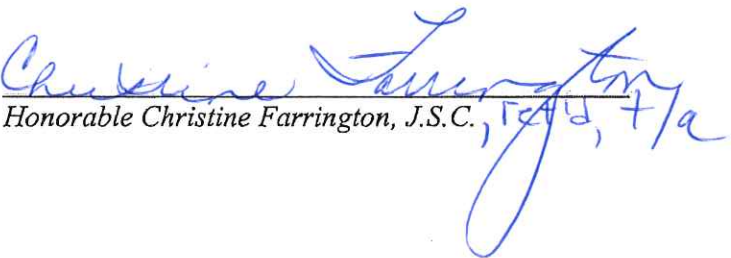
8. Should Plaintiffs decline to dismiss the Complaints in accordance with Paragraph 6 of this Consent Order, they shall submit a letter to the Court advising of the same within ten (10) days of receiving either constructive or actual notice that KRE has elected to proceed with the approval previously granted by the Board.

9. The Board shall adopt a resolution within the time frame prescribed by the Municipal Land Use Law ("MLUL") upon rendering a decision on the Revised Application, and a notice of such decision shall be published as soon thereafter as is reasonably practical. In the event KRE decides to appeal the Board's decision on the Revised Application, KRE shall do so within the time prescribed by the MLUL. In the event that the Board's decision on the Revised Application contains conditions not satisfactory to KRE or is otherwise contrary to the settlement terms memorialized herein, KRE's decision to appeal the Board's decision on the Revised Application is completely within its own discretion. Plaintiffs' election not to dismiss the Complaints in accordance with the terms of this Consent Order shall in no way limit KRE's right to appeal the Board's decision on the Revised Application.

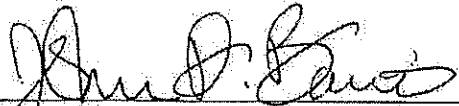
10. The Court shall retain jurisdiction over this matter so as to ensure the implementation of the within Consent Order of Remand.

11. A copy of the within Consent Order of Remand shall be deemed served by the uploading of same to eCourts.

IT IS SO ORDERED.


Honorable Christine Farrington, J.S.C.

The undersigned hereby consent to the form and entry of the foregoing Consent Order.



 JOSHUA D. BAUERS, ESQUIRE
Attorney for Plaintiff, Fair Share Housing Center
 Dated: 5/4/21

 GAIL L. PRICE, ESQUIRE
 Price, Meese, Shulman & D'Arminio P.C.
*Attorney for Plaintiffs, Denise Stanford Belcher,
 Vincent P. Brevetti, Toniette H. Duncan, Theodora
 Smiley Lacey, Henry J. Pruitt, Alan Sohn, and
 Barbara Ley Toffler*
 Dated: _____

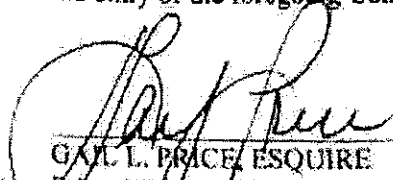
 JASON R. TUVEL, ESQUIRE
 Prime & Tuvel

*Attorney for Defendant,
 KRE Acquisitions Corp.*
 Dated: _____

 BRIAN E. EYERMAN, ESQUIRE
 Dario, Albert, Metz, Eyerman, Canda,
 Concannon, Ortiz & Krouse, LLC
*Attorney for Defendant, Planning Board of the
 Township of Teaneck*
 Dated: _____

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JOSHUA D. BAUERS, ESQUIRE
Attorney for Plaintiff, Fair Share Housing Center
Dated: _____


GAIL L. PRICE, ESQUIRE
Price, Meise, Shulman & D'Arminio P.C.
Attorney for Plaintiffs, Denise Stanford Belcher,
Vincent P. Brevesti, Toniette H. Duncan, Theodora
Smitley Lacey, Henry J. Pruitt, Alan Sohn, and
Barbara Lev Toffler
Dated: 4/30/21

JASON R. TUVEL, ESQUIRE
Prime & Tuvel
Attorney for Defendant,
KRE Acquisitions Corp.
Dated: _____

BRIAN E. EYERMAN, ESQUIRE
Dario, Albert, Metz, Eyerman, Canada,
Concannon, Ortiz & Krouse, LLC
Attorney for Defendant, Planning Board of the
Township of Teaneck
Dated: _____

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 JOSHUA D. BAUERS, ESQUIRE

Attorney for Plaintiff, Fair Share Housing Center

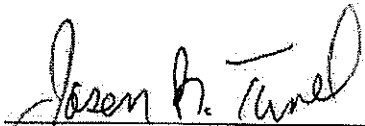
Dated: _____

 GAIL L. PRICE, ESQUIRE

Price, Meese, Shulman & D'Arminio P.C.

*Attorney for Plaintiffs, Denise Stanford Belcher,
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 Smiley Lacey, Henry J. Pruitt, Alan Sohn, and
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Dated: _____

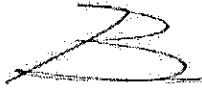


 JASON R. TUVEL, ESQUIRE

Prime & Tuvel

*Attorney for Defendant,
 KRE Acquisitions Corp.*

Dated: 5-7-21



 BRIAN E. EYERMAN, ESQUIRE

*Dario, Albert, Metz, Eyerman, Canda,
 Concannon, Ortiz & Krouse, LLC*

*Attorney for Defendant, Planning Board of the
 Township of Teaneck*

Dated: May 4th, 2021