

From: John N. Malyska  
To: Mayor Stuart Patrick and Borough Council  
CC: Michael Rohal, Borough Administrator  
Dated: December 31, 2018  
Re: **Status of Affordable Housing Litigation as of December 31, 2018**

As reported in prior briefings, Glen Ridge has an obligation under New Jersey's constitution to provide its fair share of affordable housing for low and moderate income households.

In the past, Glen Ridge was unable to satisfy that obligation because it lacked vacant land. This changed when a builder known as Glen Ridge Developers LLC successfully acquired ownership to 5 contiguous single family homes on Baldwin Street and consolidated them into one 2.1 acre parcel. By doing that, the builder made land available for affordable housing. At the time the builder acquired its property rights, the Baldwin Street homes were all occupied as single-family residences and the area was not zoned for multi-family use. The builder's acquisition of these properties was a changed circumstance which directly impacted Glen Ridge's affordable housing obligation.

Recognizing that, the builder commenced a lawsuit against Glen Ridge on July 27, 2015, in the Superior Court of New Jersey, Law Division, Essex County. That lawsuit, known as a builder's remedy litigation, sought the right to construct 125 units of unspecified size on the site. Although Glen Ridge acknowledged its constitutional obligation to provide its fair share of affordable housing, the Mayor and Council nonetheless rejected the builder's plan because of its scope and adverse impacts on the affected area.

On the commencement date of that litigation, a separate matter was already pending in the same court. That action involved various other Essex County municipalities and sought a determination of those municipalities' fair share housing obligations.

In March 2016, the builder's remedy litigation was consolidated into the greater Essex County litigation for the limited purpose of determining Glen Ridge's fair share obligation of affordable housing. As part of that consolidation, the court appointed a mediator, known as a Special Master, for both the builder's remedy litigation and the greater Essex County action.

In April 2018, the builder increased the scope of its intended development from 125 dwelling units to 150 dwelling units and sought parking for 288 cars. The Mayor and Council rejected this larger project for the same reasons they rejected the builder's original smaller project.

From the time of the Special Master's appointment until now, Glen Ridge has worked not only with the builder and the Special Master but also with Fair Share Housing Center, a private affordable housing advocate, to formulate Glen Ridge's required number of affordable housing units ("AHUs") for the period from 1999 to 2015 (known as the Prior Round Obligation) and thereafter to 2025 (known as the Third Round Obligation). The Third Round Obligation includes the "present need" for households formed from 1999-2015 and the "prospective need" anticipated to be generated between 2015 and 2025.

Fair Share Housing Center's consent has been a requirement for any resolution of the builder's remedy litigation, even if a resolution were otherwise satisfactory to the builder. It has been Fair Share Housing Center's position that Glen Ridge had a Third Round Obligation to provide 404 AHUs for the 1999-2025 period. That amount was based on a report and calculations prepared in

2016 by Fair Share Housing Center's expert.

On multiple occasions, Glen Ridge, the builder and Fair Share Housing Center participated in judicially supervised court conferences and also participated in court-ordered mediation with the Special Master. After almost 3½ years of litigation and mediation, an amicable settlement of both the Baldwin Street Litigation the greater Essex County litigation was achieved in November 2018.

As part of Glen Ridge's settlement with the builder, the builder has received the right to construct an inclusionary development of 110 residential rental units with amenities and site improvements including a garage facility with 188 parking spaces. As a condition of the construction, there will be created a deed restricted set-aside for a period of at least 30 years requiring that 17 rental units be dedicated to the region's very low, low and moderate income households. A conversion to condominium ownership is prohibited by the settlement agreement.

The inclusionary development's 110 rental units will have the following "mix":

- (1) there will be 93 market rate units;
- (2) at least 47 of the market rate units will be 1-bedroom units;
- (3) no more than 46 of the market rate units will be 2-bedroom units;
- (4) of the 17 affordable housing units, 3 will be 1-bedroom, 10 will be 2-bedroom and 4 will be 3-bedroom;
- (5) thirteen (13%) percent of the affordable units (*i.e.*, 3 units) shall be made affordable to very low income households at 30% of the region's median income.

Simultaneously with its settlement with the builder, Glen Ridge also entered into a global settlement agreement with Fair Share Housing Center, thereby amicably resolving Glen Ridge's borough-wide fair share housing obligations for the entire 1999-2015 period. As part of that settlement, Glen Ridge's 1999-2015 Prior Round Obligation was fixed at 28 AHUs. To induce Glen Ridge to settle its 2015-2025 Third Round Obligation, Glen Ridge received a 30 percent reduction in the 404 AHUs that Fair Share Housing Center had originally demanded. This resulted in Glen Ridge's agreeing to a negotiated Third Round Obligation of 283 AHUs.

Combining Glen Ridge's Prior Round Obligation of 28 AHUs and Glen Ridge's Third Round Obligation of 283 AHUs results in Glen Ridge's having an obligation to provide 311 AHUs for the period from 1999 to 2025.

In addition to receiving a 30 percent reduction (from 404 AHUs to 283 AHUs) in Glen Ridge's Third Round Obligation as claimed by Fair Share Housing Center, Glen Ridge also proved its eligibility for a further downward adjustment in its Third Round Obligation. This additional adjustment was based on Glen Ridge's lack of vacant developable land and lack of sites ready for redevelopment. It is important to note that the vacant land adjustment does not reduce Glen Ridge's fair share obligation. It does, however, separate that obligation into two components: the first being the number of units that can realistically be expected to be built (the Realistic Development Potential or "RDP") and the second being the remaining portion (the "Unmet Need") for which

Glen Ridge continues to be liable, but which it is not expected to satisfy before (and possibly even after) July 1, 2025.

Because of its lack of vacant developable land and lack of other sites ready for redevelopment able sites, Glen Ridge received a vacant land adjustment of 284 credits. After giving effect to that credit, Glen Ridge has an "RDP" (Realistic Development Potential) of only 27 AHUs (its negotiated 311-unit obligation *less* 284 credits for its vacant land adjustment).

It has been agreed that Glen Ridge may satisfy its 27-unit "RDP" as follows: (1) Glen Ridge has been given 3 credits for an existing 3-bedroom group home that was established in 1999 and has been in continuous operation since that date and (2) Glen Ridge has been given 24 credits for the builder's development of the Baldwin Street site.

Bearing in mind that Glen Ridge's vacant land adjustment does not reduce Glen Ridge's unsatisfied fair share obligation, Glen Ridge has agreed to attempt to satisfy its Unmet Need (*i.e.*, 284 additional AHUs) by providing for the possibility of further affordable housing through the following compliance mechanisms:

- a. *Overlay zoning on Block 132, Lots 1, 1.01, 2, & 14 (13.8 acres, per tax records) -- Glen Ridge Country Club:*

Glen Ridge has agreed to amend the existing inclusionary overlay zoning on the portion of the Glen Ridge Country Club site that lies within Glen Ridge. Most of the golf course itself lies in Bloomfield Township. The Glen Ridge site is presently zoned for Planned Residential Development (PRD) which requires a twenty percent (20%) set-aside of affordable housing. The current permitted density is nine (9) units per acre, thereby allowing a total of 124 units. Based on the required 20% set-aside for AHUs, current zoning would generate 25 AHUs. The required amendments to the PRD ordinance will still require a 20% set-aside for affordable housing. However, Glen Ridge will increase the density assigned to this site to 14 units per acre, instead of the 9 units per acre for which it is currently zoned, thereby allowing a development of 193 units of which 39 units would be AHUs.

- b. *Borough-wide set-aside ordinance:*

Glen Ridge must adopt by mid-April 2019 an ordinance (the "Implementing Ordinance") that imposes that an affordable housing set-aside of 20% (if the affordable units will be for-sale) and 15% (if the affordable units will be for rent) on any site that benefits from a borough-approved rezoning, variance or redevelopment plan that results in multi-family residential development at a minimum density of six (6) dwelling units per acre or more than five (5) additional dwelling units over the number previously permitted on the site. The Implementing Ordinance will prohibit sites from being subdivided into smaller developments to avoid compliance with the Implementing Ordinance. The adoption of the Implementing Ordinance will not give any developer the right to any such rezoning, variance, redevelopment designation or approval or other relief, or establish any obligation on the part of Glen Ridge to grant such rezoning, variance, redevelopment designation or approval or other relief. The Implementing Ordinance does, however, provide a mechanism for Glen Ridge to capture affordable housing opportunities in the future, in the event currently unanticipated redevelopment occurs.

As it finally relates to Glen Ridge's settlement with Fair Share Housing Center, Glen Ridge through mediation and negotiation has agreed to provide rehabilitation for 4 existing housing units which qualify for affordable housing assistance. This is Glen Ridge's "Rehabilitation Share" and represents an obligation substantially lower than the share Fair Share Housing Center originally demanded. Glen Ridge's efforts to meet its Rehabilitation Share include the following: Glen Ridge will contract directly with the Essex County Home Improvement Program (which is funded by Community Development Block Grants) to rehabilitate 4 substandard housing units in Glen Ridge occupied by low or moderate income homeowners. The Home Improvement Program offers deferred loans to low- to moderate- income homeowners to make improvements on heating system, roofing, plumbing, electrical and code violation abatements. Because of the small size of Glen Ridge's Rehabilitation Share, and the lack of existing rental units in Glen Ridge that might qualify for rehabilitation, the Special Master recommended, and Fair Share Housing Center concurred, that the requirement for Glen Ridge to provide a supplementary rental rehabilitation program may be waived for the Third Round. In addition, the Special Master has allowed Glen Ridge simply to " earmark" \$100,000 for its rehab obligations. Normally, Glen Ridge would have been required to transfer this money to the State. Now Glen Ridge may retain that money so long as Glen Ridge's records indicate that it is dedicated for rehab purposes.

The terms of Glen Ridge's settlement with the builder and Glen Ridge's settlement with Fair Share Housing Center were recommended in their entirety by the Special Master. Both agreements were presented to Judge Robert H. Gardner, J.S.C., at a fairness hearing conducted on December 7, 2018. At the fairness hearing, the Court approved both settlements, determining that the settlements adequately protect the interests of lower-income persons for whom the affordable units proposed by the settlements are to be built. Glen Ridge must satisfy various non-substantive conditions imposed by the Court and a final judgment of compliance will be entered in April 2019, assuming all these conditions have been satisfied. As part of the entry of the final order, Glen Ridge will receive "the judicial equivalent of substantive certification and accompanying protection" as provided under the Fair Housing Act, which period of repose shall remain in effect through July 1, 2025.

Lastly, as part of Glen Ridge's negotiations with the builder, Glen Ridge designated the builder's affiliated entity, GlenRidge ReDevelopers Urban Renewal Entity LLC, a New Jersey limited liability company, as the redeveloper for the inclusionary development on the Baldwin Street site. A Redevelopment Agreement was executed which sets forth the terms and the conditions of Glen Ridge's understandings with the redeveloper.

As a corollary to that, Glen Ridge also entered into a financing agreement with the redeveloper. The financing agreement was authorized by Ordinance No. 1693, introduced on first reading on September 24, 2018, and passed on second reading on October 9, 2018. The financing agreement exempts the Baldwin Street inclusionary development from the payment of *ad valorem* real estate taxes. Instead, the owner of the rental complex will make payments in lieu of taxes, commonly called "PILOTs". The term of the exemption and the required payments in lieu of taxes shall extend 30 years from the date the Baldwin Street inclusionary development is substantially completed. The date of substantial completion is anticipated to be during the fall of 2020.

In consideration of receiving the exemption from the payment of *ad valorem* taxes, the required PILOTs shall consist of the following annual service charge payable to Glen Ridge (assuming in all cases, substantial completion during fall 2020):

- (1) The annual service charge through 2021 shall be 13% of the annual gross revenue generated by the rental complex.
- (2) The annual service charge for 2022 shall be 14% of the annual gross revenue generated by the rental complex.
- (3) The annual service charge for 2023 through the end of the exemption period shall be 15% of the annual gross revenue generated by the rental complex for each year in such period.

Protections have been established in the event of payment and other defaults (for example, any past-due payment shall bear interest until paid at the same rate assessed against other delinquent taxpayers and expose the inclusionary development to foreclosure and loss of tax exemption).

In addition, in no event will annual PILOTs be less than \$85,914, the amount of *ad valorem* taxes generated by the affected Baldwin Street properties prior to the exemption. Further, commencing in 2033, a comparison will be made between the applicable year's required PILOTs and the *ad valorem* taxes otherwise payable had the PILOTs not existed. In 2033, the required annual payment would be the greater of 15% of the rental complex' annual gross revenue for that year or 20% of the *ad valorem* taxes otherwise due had the tax exemption not existed. The alternate 20% rate increases by 20% each year until it reaches 80% for 2036 and for each year thereafter. Glen Ridge is allowed to keep 95% of all amounts collected, the remaining 5% of collections required to be given to Essex County.

As part of its administration of the PILOTs program, Glen Ridge is entitled to be reimbursed for costs associated with that administration. That amount equals 2% of the annual service charge collected for each applicable year.

In closing, Glen Ridge has always acknowledged its constitutional obligation to provide its fair share of housing affordable to low and moderate income households. Glen Ridge opposed the projects as proposed by the builder largely because of their size, their lack of detail and their adverse impacts on neighboring areas.

Working through the Special Master, Glen Ridge's settlement of the builder's remedy litigation and the greater Essex County litigation represents a "constitutionally compliant" affordable housing plan fair to all parties and provides Glen Ridge with a moratorium through 2025 against future litigation over this issue. During that time, it is hoped that the New Jersey courts and the New Jersey legislature might be able to better address this statewide issue.

As a responsible member of the Essex County and New Jersey communities, Glen Ridge can now go forward knowing it has fulfilled its constitutional obligation to provide its fair share of affordable housing to those who need it.