

**REPORT ON APRIL 19, 2010 FINAL JUDGMENT OF REPOSE HEARING**  
**BEFORE JUDGE CRYSTAL AT THE UNION COUNTY COURTHOUSE IN ELIZABETH, NJ**  
**IN THE MATTER OF ROSELLE PARK VP, LLC V. THE BOROUGH OF ROSELLE PARK**

Michael Jedziniak from the law offices of Surenian & Associates represented the Borough of Roselle Park. He had two witnesses scheduled to testify on the matter: Janice Talley from H2M Associates and Elizabeth McKenzie from Elizabeth C. McKenzie, PP, PA.

Robert Kasuba, from the law offices of Sills, Cummis & Gross, represented AvalonBay Communities. He had no witnesses.

Mr. Jedziniak spoke on the notice provided to the public and to the region's affordable housing advocates. There were no written responses to those notices.

Janice Talley was called to testify. She spoke on the 12 conditions that were ordered on March 3, 2010 by the Court as part of the Conditional Judgment Of Repose that had to be satisfied by the Borough before April 14, 2010. The sections of the order discussed were subsections A through L starting on page 4 or paragraph 7.

**Condition A:** The Borough had to amend its Housing Element Fair Share Plan to remove any reference to "For Sale" units. Ms. Talley testified that references to "for sale" in one of the zoning sites were eliminated from the text of the Housing Plan which was adopted by the Borough on February 8, 2010.

Mr. Jedziniak stated that Mayor & Council endorsed the Fair Share Plan on February 15, 2010. Additionally, Mr. Jedziniak stated that there was a paragraph that had some wording that Ms. McKenzie did not agree with and Mr. Jedziniak issued a letter to Ms. McKenzie (copying all relevant parties) that cleared up the issue. He agreed with the interpretation of the Special Master and wanted it as part of the record that there was no controversy to the issue.

**Condition B:** The Borough had to amend the Land Use Analysis (on page 25 of its Housing Element) to remove reference to the Borough's intent to consider utilizing 'condemnation' on the Romerovski site. Mrs. Talley testified that any and all comment regarding 'condemnation' on the Romerovski site was eliminated from the Housing Plan that was adopted.

Paragraph 8 discussed if the Borough took certain actions it could render the conditions or certain conditions moot.

**Condition C:** The Borough was required was required to discuss the suitability and credit worthiness of the train station site and the Catholic Charities senior housing site. Ms. Talley testified that the Borough satisfied those conditions for the train station site on pages 38-39 and the Catholic Charities on pages 36-37 of the Amended Plan. The issue was discussed with the Special Master.

One additional item that was required was the variance application for the train station site several years ago that was denied by the Zoning Board of Adjustments. Mr. Jedziniak stated that it was just a matter of securing a copy of an adopted resolution from the borough with the Zoning Board of Adjustments regarding that issue.

With regard to Catholic Charities, in addition to the proposed zoning, council had purchased the land from ConRail. There was a copy of a resolution authorizing council to expend the funds to purchase the land. There is a draft site plan although it is still in the discussion stages. There are some provisions in that contract regarding environmental issues.

**Condition D:** The Borough had to amend its Housing Element/Fair Share Plan to correctly state that COAH assigned the Borough a 96-unit rehabilitation obligation. The condition was in the agreement because there were one or more references in the last version of the Housing Element Fair Housing Plan that had the wrong number; it was corrected.

**Condition E:** The Borough had to provide sufficient documentation regarding its 96-unit rehabilitation obligation. Ms Talley testified that the Borough had arranged the Fair Share Housing Plans so that the Borough would be using excess credits from its new construction component to address the rehabilitation obligation; with the 100 units on the Catholic Charities and seven (7) units that will be on the Romerovski site plus other inclusionary zoning for the train station there are excess credits. From those credits, the total rehabilitation obligation will be reduced. In the end, the plan included 15 units from the Union County Public Group Home Program and 14 units in a local program funded by resources in Roselle Park.

Union County currently needs to make changes necessary to those units because the Union County program uses deed restrictions that COAH would not deem to be acceptable for credits. The goal is to have Roselle Park and other municipalities meet with the Union County representatives to amend their program & process to utilize deed restrictions that would ultimately qualify towns for rehabilitation credits.

The Borough submitted a draft Rehabilitation Manual to the Special Master.

**Condition F:** The Borough had to provide proper documentation regarding the credit-worthiness of the support of the Special Needs Housing within the Borough's plan. This information was discussed and provided to the Special Master.

**Condition G:** The Borough had to demonstrate that at least half of the Very Low Income housing obligations satisfied the family units per COAH's regulations. Page 33 of the amended plan satisfied this condition.

**Condition H:** The Borough had to provide a draft zoning amendment required for an inclusionary municipally sponsored affordable site. Appendices A & C provide those amendments.

**Condition I:** The Borough had to provide a valid draft Affordable Housing Ordinance and an Affordable Marketing Plan. Ms. Tally testified that the Affordable Marketing Plan is provided in Appendix D of Housing Element adopted on February 8<sup>th</sup>. It was also adopted by Borough council on April 15, 2010.

**Condition J:** The borough had to provide a Development Fee Ordinance with the associated order approving the Development Fee Ordinance which would permit the Borough to begin collecting Affordable Housing Development Fees. Ms. Talley provided copies of the Development Fee Ordinance and the Spending Plan.

Exhibit F in D2, also had an order on October 17, 2008, by Judge Espinoza approving the Borough's Development Fee Ordinance. The Borough did not have a fully-executed Affordable Housing Escrow Agreement. This is a three-way agreement between the Borough, the Borough's bank, and COAH. This agreement would create transparency for COAH to allow them to monitor the way funds are being spent. The Borough will not spend any of the money from fees it collects until it secures an approval from COAH on its Spending Plan and until it has an Escrow Agreement signed by COAH and the bank.

Mr. Jedziniak submitted a draft form of the relevant resolution to the Borough as well as a draft Escrow Agreement. The resolution should be adopted by the Borough within the next 30 days which would be signed by the Borough and the Borough's bank. It would then be sent to COAH for them to sign.

**Condition K:** The Borough had to adopt a resolution to contract with a Qualified Administrative Agent in a timely fashion. Ms. Talley testified that the Borough adopted a Resolution Of Intent to contract with an Administrative Agent for both its Restructuring Program and its Rehabilitation Program on April 15, 2010. Mr. Jedziniak stated that this also addressed the Administrator for the Rehabilitation Program.

**Condition L:** The Borough had to provide evidence to the Court that it adopted an ordinance creating the Municipal Housing Liaison position and also a resolution appointing a certain person to be the Municipal Housing Liaison. Ms. Talley stated that the Borough adopted the ordinance creating the position in February 2008 and the resolution appointing a person on November 20, 2008.

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After a short recess, court resumed. Mr. Kasuba stated that there should be an additional document attached to Appendix C, which is the Redevelopment Plan - as part of the settlement agreement. It should be attached to the Housing Element Fair Share Plan.

Ms. Elizabeth McKenzie was called to testify. She stated that she reviewed the documents and spoke extensively with Ms. Talley and Mr. Jedziniak. She concurred that there were a few items that needed to be done within a short period of time but that these items always occur after the granting of a Final Judgment of Repeal. She was comfortable that they could draft an order, although there was no order prepared as of the court date, that would have appropriate deadlines - within 45 days - for the adoptions of any ordinance that were in the document.

Within 45 days there should be some resolution of the issue regarding whether Union County was going to make any steps to amend its Rehabilitation Program. If it appeared to be a waste of time, then within those same 45 days, the Borough would have to amend its Rehabilitation Program so that it can increase its coverage a full 29 units. That would be its own share plus its share attributing to Union County. The Borough would also need to amend its Spending Plan accordingly to cover the additional units.

The documentation provided from the Borough, to-date, appeared to be satisfactory to Ms. McKenzie. She asked for a copy of the Resolution Of Denial on the train station site, mainly because the Housing Element had indicated that there had been a previous application that had been denied but there was no information about it. Some narrative information was provided and the Resolution would just be additional documentation to be put into the Appendix so that there could be a complete set of documents. The whole objective of having all this information included in a package (which the Court would receive a copy of the final package for the file when it is completed) was so that Roselle Park could then proceed with COAH for ongoing annual review and monitoring and the actions that COAH is required to take on the Spending Plan and the Escrow Agreement.

The objective was to give COAH a complete package so that there would be no questions as to the basis of what the Court approved and the conditions of the Court's approval and the expectations as to how Roselle Park would continue to fulfill its Affordable Housing obligations. That did not mean that if problems arise it would not come back to the court on Motion In Aid Of Litigant's Rights or to clarify something to do with the order.

The work remaining will be in crafting an order that covers all the minor issues that need to be covered.

Judge Chrystal granted the Judgment of Compliance and Repose and she granted the implementation of a final order. What was recommend was 45 days for adoption of zoning changes by the Municipal Housing Liaison that would ensure the town to follow through on its obligation. The items that were listed specifically that required a follow up had the first 45 days set as a deadline.

Mr. Jedziniak stated he would draft an order and would discuss any issue with the Special Master, Ms. McKenzie, and Mr. Kasuba and will get it to the court as soon as possible.

For purposes of the record, Judge Chrystal, having heard the testimony of Janice Talley and the recommendations of Elizabeth McKenzie (the Special Master), was satisfied that the Final Judgment Of Compliance and Repose was consistent with the Court's final order. Additionally, having reviewed evidence D1 through D4 (D4 having been submitted that morning), the judge would compare the final order with D4 to be sure that it was appropriate. She was satisfied that the Final Judgment Of Compliance and Repose was appropriate at that point.

Judge Chrystal granted the request of Mr. Jedziniak on behalf of Roselle Park to not consider the order 'Conditional' but would allow those deadlines to be set forth in the court order and given the fact that there are judicial procedures or remedies for enforcement of same, she was satisfied that those would be brought before the court, if necessary, if compliance did not proceed. Once she signed the order, it would include that the case would be dismissed with prejudice and even though it was dismissed if there has to be a Motion For Compliance, that it could be done under the same docket number.

Judge Chrystal thanked all parties involved for the professionalism and cooperation. She will look for the order which you will circulate pursuant to the five (5) day rule and then she would sign the same.