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Councilmember

June 26, 2020

Adam M. Gordon, Esq
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Re: City of Cape May
Midpoint review reporting

Mr. Gordon:

In compliance with the Settlement agreement entered into by the City and Fair Share Housing on February 21, 2018, and further memorialized in a Judgement of Compliance and Repose dated August 30, 2018, attached are The City of Cape May's midterm reports.

Thank you,

Louis M. Belasco
Municipal Housing Liaison
City of Cape May

City of Cape May
National Historic Landmark

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www.capemaycity.com

Midpoint Review Questions

In addition to updating the attached monitoring spreadsheet with up to date information on each project in your approved settlement/fair share plan, please answer the following questions in narrative form:

Conditions of Compliance

1. What conditions from the court's approval of the municipal housing element and fair share plan and judgment of compliance and repose (or whatever standard terms is being used), if any, have not yet been satisfied? Explain the reasons for any delay and the steps the municipality is taking to satisfy the condition(s).

A. Conditions & Response:

- 1. The City's efforts to meet its present need include the City's recent approval of rehabilitation of Victorian Towers, an existing age-restricted affordable housing complex. This was sufficient to satisfy the City's present need obligation of 4 units. The City also further represents that it has supported the rehabilitation of the existing public housing in the City operated by the Cape May Housing Authority in accordance with the terms of its earlier Third Round substantive certification from COAH and will not take any municipal action during the term of this Agreement that would lead to the loss of existing public housing within the City.*

The City has invited the Cape May Housing Authority (CMHA) to participate in the recent 2018 Master Plan Reexamination. After this effort, the following language was adopted:

In past Master Plans and Reexaminations, little attention has been paid to planning for the CMHA's future. During this reexamination, the Planning Board recognizes the Authority's important role in providing Cape May with stable year-round residents living in affordable housing while promoting stability, self-sufficiency, upward mobility and partnership with residents, community and others to enhance the quality of life in our community. It is recognized that the housing stock is now over 50 years old and that replacement may need to occur in the near future. The existing sites may offer the potential to be redeveloped at higher densities and provide more affordable units in the core downtown area. The City should strive to foster the relationship with the CMHA and aid in comprehensively planning for the future. The City and CMHA should work together to navigate the changing State and Federal regulations and if possible, replace the existing aging housing stock with modern housing.

Although no future development has been planned to date, Cape May anticipates developing future plans consistent with these stated goals.

2. *The City has a realistic development potential (RDP) of 12 units. The RDP is based on a vacant land analysis attached as Exh. A, which finds no parcels generating an RDP other than approved subdivisions on the Osprey Landing, Pella, and Somers tracts, which generate a combined 12 unit RDP. That RDP will be satisfied through its accessory apartment program codified at § 59-80 and § 59-81 of the City Code. A limit of 10 accessory apartments are permitted currently by the ordinance which will be modified to allow up to 12 accessory apartments. The City will modify the ordinance to require that of the 12 there will be six low-income units of which two will be deed restricted for very low income households, with funding levels of \$20,000 for a moderate income unit, \$25,000 for a low income unit, and \$30,000 for a very low income unit, with those amounts subject to review at the midpoint review specified in paragraph 17 of this Agreement to evaluate whether these amounts have been sufficient to incentivize accessory apartments. The City shall provide information on adequate and stable funding pursuant to N.J.A.C. 5:93-5.5 for the accessory apartment program as part of its Housing Element and Fair Share Plan to be adopted in accordance with this Agreement.*

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date.

3. *The RDP of 12, subtracted from the Third Round obligation of 212 units, in addition to the Prior Round unmet need of 58 units, results in an unmet need of 258 units, which is required to be addressed through the following mechanisms:*

- (a) The City shall modify its existing inclusionary overlay zoning ordinance on six specified areas, as detailed in COAH's September 25, 2009 grant of substantive certification to the City and adopted in City Code § 59-43(e), by permitting the currently permitted density bonuses as stated in §59-43(e) with a 15 percent set-aside for rental housing and a 20 percent set-aside for for-sale housing and eliminating the payment-in-lieu option and replace it with a requirement for either on-site or off-site provision of the required units of affordable housing.*

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date.

- (b) The City recently approved, as part of the ordinances adopted in response to Cape May's previous substantive certification, a 13-unit development including 2 on-site affordable units (which may be provided off-site at the discretion of the City in accordance with City Code §59-43 and/or any modifications to such Code that may be applicable to this development) and a payment in lieu of construction for the fractional remaining requirement, at Block 1172, Lot 1.*

Block 1172 Lot 4 is still in the planning approval phase. The applicant Cape May Cove, LLC, f.k.a. Thomas DiDonato proposes to subdivide the lot into 13 lots. All thirteen (13) lots are proposed to be developed with single family dwellings. Two (2) of the dwelling

units are to be provided on-site to meet the low/moderate income housing requirement. These units have been proposed on Lots 4.01 and 4.05. A monetary contribution is proposed for the fractional 0.6 unit requirement. The Planning Board has granted preliminary approval in 2017 (PB Resolution 10-10-2017:2) and the applicant has filed an application for final major subdivision application dated May 1, 2020 which has not yet been heard by the Planning Board.

(c) The parties acknowledge the pendency of litigation regarding the Sewell Point Tract, which is comprised of numerous parcels in the City, a list of which is attached hereto as Exh. B. This Tract was included as a portion of the City's 2009 substantive certification by COAH, but since then the settlement referenced in that certification has not resulted in development and further litigation has commenced. As an additional mechanism to meet unmet need, the City will require that 20 percent of any residential units developed on the Sewell Point Tract be affordable in compliance with the terms of this Agreement.

The Sewell Point Tract is still in litigation.

(d) The City shall update its existing city-wide inclusionary zoning ordinance at § 59-43 of City Code requiring a mandatory affordable housing set aside for all new residential developments of five (5) units or more and providing a density bonus for such development, so as to remove references to growth share and maintain a requirement for either on-site or off-site provision of the required units of affordable housing with payment-in-lieu provisions only utilized to fulfill fractional unit obligations.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date.

4. The City agreed to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements by providing one very-low-income accessory apartment as specified above and by requiring that very low income units constitute 13 percent of affordable units developed on any site in the City via inclusionary zoning and/or overlay zoning requirements through the specific sites or town-wide ordinances.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date.

5. The City is required to meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:

- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
- d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
- e. The City agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date.

6. The City is required to add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, and the Cape May County, Mainland/Pleasantville, and Atlantic City Branches of the NAACP, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The City also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes. No development has occurred to date and the City will enforce for future development as it is constructed and marketed.

7. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the

exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The City as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the City annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the region that the City is located within (i.e. Region 6) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the City's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes.

8. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes.

9. Within one hundred and twenty (120) days of Court's approval of the Settlement Agreement, the City was required to introduce and adopt an ordinance or ordinances providing for the amendment of the City's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.

The City revised its affordable housing ordinance on 9-4-2018 (Ord. No. 359-2018) to address the required changes.

10. *The parties agree that if a decision of a court of competent jurisdiction in Cape May County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the City for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the City may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the City shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the City prevails in reducing its prospective need for the Third Round, the City may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.*

No amendments have occurred.

11. The City was required to prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek

approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the City, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the City agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

Copy of posting to www.capemaycity.com is attached

12. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the City agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

Copy of posting to www.capemaycity.com is attached

13. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this Agreement. The City agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

Copy of posting to www.capemaycity.com is attached

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

Copy of posting to www.capemaycity.com is attached

Developments that Are Not Completed

2. For each court-approved inclusionary development project that is not yet constructed, please provide a narrative as to its status and any progress towards construction. *No. Block 1172 Lot 1 is still in the planning phase.*

- *The Sewell Point Tract is still in litigation.*
- *Block 1172 Lot 4 is still in the planning approval phase.* The applicant Cape May Cove, LLC, f.k.a. Thomas DiDonato proposes to subdivide the lot into 13 lots. All thirteen (13) lots are proposed to be developed with single family dwellings. Two (2) of the dwelling units are to be provided on-site to meet the low/moderate income housing requirement. These units have been proposed on Lots 4.01 and 4.05. A monetary contribution is proposed for the fractional 0.6 unit requirement. The Planning Board has granted preliminary approval in 2017 (PB Resolution 10-10-2017:2) and the applicant has filed an application for final major subdivision application dated May 1, 2020 which has not yet been heard by the Planning Board.

3. Have any non-inclusionary development projects (including 100% affordable projects, group homes, accessory apartments, market-to-affordable, extensions of affordability controls, etc.) included in the court-approved plan not yet been built/converted to affordable housing/controls extended? *No.*

4. Are there any projects that have missed any construction deadline established in the court-approved Settlement Agreement, or other mechanisms (e.g. market-to-affordable, accessory apartments, extensions of affordability controls) that have not met the completion schedule set forth in the Settlement Agreement or Housing Element and Fair Share Plan? *No.*

5. Are all unbuilt developments currently in a sewer service area, and if not what has the municipality done to incorporate the site into a sewer service area? *All of Cape May City is in a sewer serviceable area.* Are there any barriers to obtaining water or sewer for any unbuilt site? *No.* Are there any other regulatory conditions (e.g. changes to DEP permits or conditions) that make it not possible to complete any site as originally contemplated? *No*

Rehabilitation Obligation

6. Is the rehabilitation program being administered by a municipality, county, or both? *City* Do the program(s) include rental rehabilitation? *No.* If the municipality has not met at least half of its rehabilitation obligation by this midpoint review, what affirmative steps is the municipality taking to meet the obligation and to facilitate participation by homeowners and/or landlords? *N/A (See 1.A.1 above).*

For Municipalities with a Prior Round and/or Third Round Vacant Land Adjustment (note please make sure any development referenced in the answers to these questions that includes or will include affordable housing is also in the monitoring spreadsheet):

7. If the municipality's court-approved Prior and/or Third Round plan includes Unmet Need:
a. Has there been any development, proposal for development received by the municipality (even if ultimately rejected), adoption of rezoning or a redevelopment plan for of any parcel larger than 0.5 acres since the settlement was approved by the court on a parcel that was neither previously identified in calculating the municipality's RDP nor included in an inclusionary overlay zone? If so: *No*

i. Please describe the development(s), development proposal(s), rezoning(s) or redevelopment plans(s)?

ii. Is any affordable housing included in any of the development(s) proposals(s), and/or rezoning(s) or redevelopment plan(s) referenced?

iii. If the municipality has a mandatory set-aside ordinance, was that applied to the development(s) and/or rezoning(s) or redevelopment plan(s)?

b. Has any development occurred or been proposed to occur within any inclusionary overlay zone or for which a mandatory set-aside ordinance, if required to be adopted by the municipality, would apply since the settlement? If so: *No*

i. What is that development or developments?

ii. Does that proposed or actual development include any affordable housing? What percentage of the development is affordable?

c. Have any changed circumstances occurred that result in additional parcels becoming available for development that were neither previously identified in calculating the municipality's RDP nor included in an inclusionary overlay zone? *No*

For Municipalities with a Prior Round and/or Third Round Durational Adjustment: Not Applicable.

8. If the municipality's court-approved plan had a durational adjustment, have there been any changed circumstances with regards to limited sewer and/or water capacity? If yes, please describe the changes and when and where additional infrastructure capacity will become available.

9. What steps has the municipality taken, if any, to address limited water and/or sewer capacity, and to facilitate the extension of public water and/or sewer to any site identified in the settlement agreement?

10. Has any property owner or developer contacted the municipality to extend public water and/or sewer to a site not identified in the settlement agreement? If so, how did the municipality respond to the request?

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Trust Fund

Municipality: CAPE MAY CITY, CAPE MAY County - Muni Code: 0502

Trust Fund Bank:	Bank Name	Account Number	Address	Escrow Agreement Original Date	Escrow Agreement Last Date
View	Sturdy Savings Bank	9800643943	506 S. Main Street, PO Box 900, Cape May Court House, NJ, 08210		

Date COAH Approved Dev. Fee Ordinance: (Original) Most Recent:

Date Municipality Adopted Dev. Fee Ordinance: (Original) Most Recent:

Date COAH Approved Spending Plan: (Original) Most Recent:

Date Account Frozen:

Date Account Released:

Date of Last Bank Statement:

May Retain Non Residential Fees: ☒

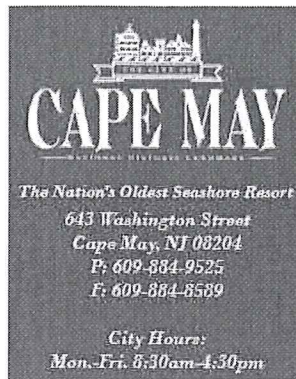
Residential %: Non Residential %:

"d" Variance Residential: "d" Variance Non Residential:

Period From: To: [Recalculate](#)

Total Income:		\$374,490.74	Open
Administrative Costs		\$25,263.58	Open
Affordability Assistance		\$0.00	Open
Barrier Free Conversions		\$0.00	Open
Housing Activity		\$0.00	Open
Total Expenditures:		\$25,263.58	
Balance in The Account:		\$349,227.16	

	Contact Name	Role
View	Daniel Shustack	Trust Fund Report Preparer II
View	Neil Young	Trust Fund Report Preparer



Council on Affordable Housing

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Cape May City Monitoring Form as of May 31, 2020

Cape May COAH Midpoint Review Questions

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