SUPERIOR COURT BERGEN COUNTY
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Landmark Dumont, LLC Plaintiff, vs. Borough of Dumont, a Municipal Corporation of the State of New Jersey, County of Bergen; the Mayor and Council of the Borough of Dumont; and the Planning Board of the Borough of Dumont Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY (Mount Laurel II/Builders Remedy) Docket No. L-1297-14 Civil Action **COMPLAINT IN LIEU OF PREROGATIVE WRIT AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiff, Landmark Dumont, LLC ("Landmark") having a business address of 392 Main Street, Township of Wyckoff, County of Bergen, State of New Jersey 07481 (hereinafter referred to as "Plaintiff"), by way of Complaint against the Defendants, Borough of Dumont, a Municipal Corporation of the State of New Jersey, County of Bergen ("Borough"); the Mayor and Council of the Borough of Dumont ("Mayor and Council"); the Planning Board of the Borough of Dumont ("Board"), whose municipal addresses are 50 Washington Avenue, Dumont, New Jersey 07628 (hereinafter collectively referred to as "Defendants") says:

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INTRODUCTION

This is an exclusionary zoning (Mt. Laurel II) suit brought by Plaintiff, the contract purchaser of property in the Borough of Dumont, Bergen County, against the Borough of Dumont and the Borough of Dumont Planning Board. The suit alleges, *inter alia,* that the Borough of Dumont has failed to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income households to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough,* 67 N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222. Plaintiff seeks a declaration that the Borough of Dumont is in violation of its constitutional obligations, an order requiring the Defendants to rezone and to take such other steps as may be necessary to bring it into compliance with its constitutional obligations, appointment of special master, awarding a site-specific builder's remedy requiring rezoning of the D'Angelo Property (as hereinafter defined), and awarding reasonable attorney fees and litigation expenses.

FIRST COUNT

1. The Estate of Marylou D'Angelo is the owner of real property located in the Borough of Dumont, County of Bergen and State of New Jersey. The property owned by the D'Angelo Estate is commonly known as 511 Washington Avenue and 546 Washington Avenue, Dumont, New Jersey, and known and designated as Block 212, Lot 20 and Block 215, Lot 1 on the Tax Maps of the Borough of Dumont (hereafter collectively referred to as the "D'Angelo Property" or "Properties").

2. Landmark is a limited liability company organized under the laws of the State of New Jersey and is the contract purchaser of the D'Angelo Property (as hereinafter defined).

3. The D'Angelo Properties are located generally in the central portion of the Borough. Dumont and is located in Bergen County and has a constitutional fair share housing obligation to create sufficient opportunities for construction of safe, decent housing affordable to low and moderate income households to satisfy the unmet housing needs of its indigenous poor and its fair share of the unmet housing needs of the poor in the housing region in which it is located.

4. Sufficient water capacity is available to adequately service the proposed development of the Property.

5. The sewage system has sufficient capacity to adequately service the proposed development of the Property.

6. The Property is within easy access to employment opportunities, shopping, regional transportation network, schools and other community and municipal services.

7. The Property is located in the P-Parks and Public Use zone on the Zoning Map of the Borough.

8. Competent land use professionals have examined the Property.

9. Said examination has concluded that the Property is physically well suited for higher density multi-family residential development.

10. The Property qualifies for improved development and/or infilling to obtain higher densities but the Property does not qualify to be subject to the New Jersey Local Redevelopment and Housing Act, N.J.S.A. 40A:12A-1 et seq..

11. The Defendants have failed to comply with the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and has otherwise failed to comply with the COAH regulations.

12. Dumont has not received substantive certification for a housing element and fair share plan filed with the Council on Affordable Housing under the terms of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq.

13. Dumont is not now subject to a judgment of repose entered by the courts pursuant to *Southern Burlington County NAACP v. Mt. Laurel Borough,* 92 N.J. 158 (1983).

14. Dumont's zoning ordinance makes no affirmative provision for the construction of housing for low and moderate income households.

15. The Housing Element and Fair Share Plan adopted by the Board and approved by the Mayor and Council designate the Property as a site to be rezoned for inclusionary development to satisfy a portion of the municipality's constitutional fair share housing obligation, including 17 units of low and moderate income housing.

16. Although Defendants have designated the Property as a site to be rezoned for inclusionary development to satisfy the municipality's constitutional fair share housing obligation, they have failed to rezone the property for that purpose.

17. The Borough is a duly organized municipal corporation of the State of New Jersey with an address of 50 Washington Avenue, Dumont, New Jersey 07628. Pursuant to N.J.S.A. 40:55D-1 et seq. (hereinafter the "Municipal Land Use Act, or "MLUL"), the Borough has exercised its authority through its Mayor and Council and its Board and has adopted zoning and land use regulations controlling the use, extent and cost of developing lands within the Borough's boundaries.

18. Dumont's Zoning Ordinance contains residential zones and non-residential zones. The least restrictive residential zone does not provide a realistic opportunity for the construction of low and moderate income housing unless infilling and improved development takes place with

higher densities.

19. Dumont's Zoning Ordinance does contain certain multi-family zones which permit the construction of multi-family units. However, because of the ordinance's density limitation, other excessive cost generating features and the limited designation of sites for this zone, the zones do not allow for a realistic opportunity for the construction of affordable housing without higher densities and an appropriate density bonus.

20. Dumont's Zoning Ordinance contains numerous excessive cost generating features, and compliance with the Borough's other land use development and design regulations impedes or limits opportunities for development of affordable housing. Thus, none of the Borough's zones permit the realistic development of housing which would be affordable to persons or families of low and moderate income.

21. The D'Angelo Property is available for a Mount Laurel development at a higher density.

22. Only a development at a substantial density would allow the minimum 20% set aside for sale units and 15% for rental units for low and moderate income housing to be economically possible.

23. A development and/or infilling of the D'Angelo Property with a substantial density and a 20% set aside for sale units and 15% for rental units would help Dumont satisfy its fair share obligation.

24. Dumont's zoning ordinances and development regulations are unreasonable, onerous and are calculated to or have the effect of producing indirect artificial constraints on development which, in turn, increases unit rental and sales costs beyond a level affordable to low and moderate income families of the Borough and the region.

25. The Borough's land use controls, as currently constituted contains numerous

provisions which are not reasonably calculated to preserve or necessary to protect the public interest, health, safety or general welfare.

26. The Borough's zoning ordinances fail to provide adequate mandatory set asides (at reasonable compensating density) or other affirmative measures/techniques which encourages or acts as an incentive for the development of a substantial number of low or moderate income units.

27. Dumont, through its zoning ordinances and development regulations, violated its obligations under Mount Laurel by failing to:

(a) comply with its constitutional obligation to provide for and create a realistic opportunity for the construction of low and moderate income housing and an appropriate choice and variety of housing;

(b) promote the general welfare of all people within the Borough, as well as the region;

(c) provide a realistic opportunity and incentive for the construction of the Borough's fair share, which includes its present and prospective need for low and moderate income housing units; and

(d) provide for or address the housing needs of the Borough's indigenous need.

28. The Borough's land use regulations are intended to have and have precluded the creation of a realistic opportunity for or the actual construction of low or moderate income housing units anywhere within the Borough.

29. The Borough's land use regulations, upon information and belief, are exclusionary in that they do not permit or create a reasonable opportunity or incentive for the construction of Mount Laurel type units anywhere within the Borough.

30. Dumont's ordinances and master plan do not create sufficient opportunities for

construction of safe, decent housing affordable to low and moderate income households to satisfy the unmet housing needs of its indigenous poor and its fair share of the unmet housing needs of its aggregate fair share of the poor in the housing region in which it is located.

31. By its failure to affirmatively plan and provide for the construction of low and moderate income housing and by its failure to the other steps necessary to enable the development of such housing, Dumont has failed to create sufficient realistic housing opportunities for low and moderate income households to satisfy its fair share housing obligation in violation of the requirements of the New Jersey Constitution and the New Jersey Fair Housing Act.

32. The Property lies in Planning Area 1 (Metropolitan Planning Area) as shown on the State Development and Redevelopment Plan adopted by the New Jersey Planning Commission pursuant to the State Planning Act, N.J.S.A. 52:18A-186 et seq. It is State policy in this area to "[p]rovide a full range of housing choices through redevelopment, new construction, rehabilitation, adaptive reuse of nonresidential buildings, and the introduction of new housing into appropriate nonresidential settings."

33. The Borough of Dumont's Zoning Ordinance and development regulations are presumptively and facially invalid, ultra vires, and in contravention of substantive due process and equal protection guarantees secured by Article I, Section I of the New Jersey Constitution (1949) and in violation of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

34. Plaintiff is ready, willing and able to present an economically feasible multi-family residential plan which provides for an improved development and/or infilling to provide a higher density, in conformance with the principles established by Mount Laurel. The Plan would include providing a substantial percentage of low and moderate income units and be in conformance with sound land use and environmental principles.

35. By reason of the facts set forth herein, Dumont is in violation of its duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough,* 67 N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222.

36. By the reason of the facts set forth herein, the Planning Board is in violation of the its statutory duties to formulate a housing plan that provides for sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough, 67* N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222.

37. Plaintiff has made a good faith effort to secure voluntary rezoning of this property for inclusionary development. Further efforts would be futile.

38. By reasons of the facts set forth herein, Plaintiff is entitled to a site-specific builder's remedy.

39. By reason of the facts set forth in herein, Defendants have deprived both Plaintiff and low and moderate income persons in the housing region in which Dumont is located of substantive rights, privileges or immunities secured by the Constitution or laws of this State.

40. By reason of the facts set forth herein, Plaintiff is entitled to injunctive relief and award of reasonable attorney fees and litigation expenses under the New Jersey Civil Rights Act, N.J.S.A. 10: 6-2.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring the entire Zoning Ordinance and other land use regulations of the Borough of Dumont unconstitutional, null and void and of no effect;

(b) Enjoining the Borough of Dumont from enforcing its entire Zoning Ordinance and land use regulations;

(c) Appointing a special master to revise the Borough of Dumont's zoning ordinance and land use regulations, to supervise the implementation of a builder's remedy for D'Angelo's Property, and to insure a bona fide and expeditious review by the Defendants of all development applications for D'Angelo's Property;

(d) Ordering the Defendants to revise their zoning and land use ordinances within 90 days to meet its fair share obligation including affirmative measures to provide a reasonable incentive for the actual construction of low or moderate income housing units;

(e) Formulating a "builder's remedy" which shall order the Defendants to permit 40 units per acre for multi-family residential, including, or such other higher density consistent with sound land use and environmental planning, including, but not limited to, any density bonus, and sufficient to provide a reasonable economic return to Plaintiff so as to permit the construction of low or moderate income housing units, in accordance with and/or consistent with the holding in Tomu Development Co. v the Borough of Carlstadt, Planning Board of Carlstadt and the New Jersey Meadowlands Commission, bearing Docket No. BER-L-5894-03 and 5895-03, allowing a density of 100 units per acre (see also, East/West Venture v. Fort Lee 286 NJ Super 311, 322 (App. Div. 1996), which permitted a density of 110 units per acre);

(f) Alternatively, if the Court should determine that the Mount Laurel obligation

cannot be otherwise satisfied, then directing the Court-appointed master to assist in developing rezoning and land use regulations which provide a realistic opportunity for the construction of "least-cost" housing in the Borough;

(g) Directing that inclusionary Mount Laurel development applications be reviewed and approved in time periods substantially shorter than those prescribed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and as such be "fast tracked";

(h) Directing that fees, including but not limited to application fees, escrow fees, inspection fees, engineering fees, legal fees, building fees, permit fees and certificate of occupancy fees be waived for all inclusionary Mount Laurel developments;

(i) Ordering that all performance and maintenance guarantees and associated fees, except those absolutely essential to protect the public health and safety be waived and that all decisions and inspections required also be "fast tracked";

(j) Directing the Borough to provide a tax abatement for all inclusionary Mount Laurel developments;

(k) Ordering the Defendants to reimburse Plaintiff's reasonable attorney fees and cost of suit; and

(l) For such other relief as the Court shall deem just and equitable.

SECOND COUNT

41. The allegations of the Introduction and First Count are repeated herein and incorporated by reference as if set forth at length.

42. Defendants have an obligation to provide a realistic opportunity for its fair share of the region's present and prospective low and moderate income housing needs.

43. Dumont has an obligation to provide for low and moderate income housing for its indigenous need.

44. The Council on Affordable Housing has calculated Dumont's indigenous need.

45. The Borough has failed to effectuate compliance with its obligation or to create a realistic opportunity for even COAH's most conservative estimate of its fair share obligation.

46. The zoning ordinances and land use regulations of Dumont are violative of the mandates of: Mount Laurel II; Hills Development Co. v. Bernards Twp.; The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., case law and in contravention of substantive due process and equal protection guarantees secured by Article I, Section I of the New Jersey Constitution (1949) and in violation of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

47. The Borough's land use regulations are intended to have and, in fact, have precluded the creation of a realistic opportunity for or the actual construction of low or moderate income housing units anywhere within the Borough.

48. Plaintiff is ready, willing and able to present an economically feasible residential development plan, in conformance with the principles established by Mount Laurel. The Plan would include providing a substantial percentage of low and moderate income units and be in conformance with sound land use and environmental principles.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring the entire zoning ordinance and other land use regulations of the Borough of Dumont unconstitutional, null and void and of no effect;

(b) Enjoining the Borough of Dumont from enforcing its entire zoning ordinance and land use regulations;

(c) Appointing a special master to revise the Borough of Dumont's zoning ordinance and land use regulations, to supervise the implementation of a builder's remedy for Plaintiff's property, and to insure a bona fide and expeditious review by the Defendants

of all development applications for D'Angelo's Property;

(d) Ordering the Defendants to revise their zoning and land use ordinances within 90 days to meet its fair share obligation including affirmative measures to provide a reasonable incentive for the actual construction of low or moderate income housing units;

(e) Formulating a "builder's remedy" which shall order the Defendants to permit 40 units per acre for multi-family residential, including, or such other higher density consistent with sound land use and environmental planning, including, but not limited to, any density bonus, and sufficient to provide a reasonable economic return to Plaintiff so as to permit the construction of low or moderate income housing units in accordance with and/or consistent with the holding in Tomu Development Co. v the Borough of Carlstadt, Planning Board of Carlstadt and the New Jersey Meadowlands Commission, bearing Docket No. BER-L-5894-03 and 5895-03, allowing a density of 100 units per acre (see also, East/West Venture v. Fort Lee 286 NJ Super 311, 322 (App. Div. 1996), which permitted a density of 110 units per acre);

(f) Alternatively, if the Court should determine that the Mount Laurel obligation cannot be otherwise satisfied, then directing the Court-appointed master to assist in developing rezoning and land use regulations which provide a realistic opportunity for the construction of "least-cost" housing in the Borough;

(g) Directing that inclusionary Mount Laurel development applications be reviewed and approved in time periods substantially shorter than those prescribed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and as such be "fast tracked".

(h) Directing that fees, including but not limited to application fees, escrow fees, inspection fees, engineering fees, legal fees, building fees, permit fees and certificate of occupancy fees by waived for all inclusionary Mount Laurel developments;

(i) Ordering that all performance and maintenance guarantees and associated fees, except those absolutely essential to protect the public health and safety be waived and that all decisions and inspections required also be "fast tracked";

(j) Directing the Borough to provide a tax abatement for all inclusionary Mount Laurel developments;

(k) Ordering the Defendants to reimburse Plaintiff's reasonable attorney fees and cost of suit; and

(l) For such other relief as the Court shall deem just and equitable.

THIRD COUNT

49. The allegations of the Introduction and First and Second Counts are repeated herein and incorporated by reference as if set forth at length.

50. On December 17, 2013, the Defendant Dumont Planning Board adopted a Housing Element and Fair Share Plan ("HEFSP").

51. On December 17, 2013, the Defendant Mayor and Council of the Borough of Dumont endorsed the Housing Element and Fair Share Plan.

52. The Housing Element and Fair Share Plan identifies that it was prepared using the Council on Affordable Housing's ("COAH") "Third Round" regulations that were adopted in 2008.

53. The Housing Element and Fair Share Plan relies upon COAH's "Growth Share" methodology to calculate Dumont's affordable housing obligation which obligation is required under the New Jersey Constitution.

54. COAH's "Growth Share" methodology was held to be legally invalid because it violates the Fair Housing Act, *N.J.S.A.* 52:27D-301 *et seq.*, by the New Jersey Supreme Court in

I/M/O the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 215 N.J. 578 (2013).

55. The Supreme Court invalidated the "Growth Share" methodology on September 26, 2013.

56. Although legally invalid and not enforceable, the Planning Board adopted the Housing Element and Fair Share Plan based upon the "Growth Share" methodology which methodology was declared invalid by the New Jersey Supreme Court nearly three (3) months prior to Dumont's adoption of its HEFSP.

57. The decision to adopt the Housing Element and Fair Share Plan despite the invalidity of the methodology upon which it is based was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is arbitrary, capricious and unreasonable;

(b) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is invalid, null, void and of no force and effect;

(c) Awarding interest, costs of suit, and legal fees; and

(d) Such other relief that the Court deems equitable and just.

FOURTH COUNT

58. The allegations of the Introduction, First, Second and Third Counts are repeated herein and incorporated by reference as if set forth at length.

59. Upon information and belief, the Dumont Planning Board did not provide proper notice, in accordance with the Municipal Land Use Law, for the public hearing on the adoption of the Housing Element and Fair Share Plan that was held on December 17, 2013.

60. Upon information and belief, the Dumont Planning Board did not otherwise comply with the procedural requirements for the adoption of the Housing Element and Fair Share Plan.

61. The adoption of the Housing Element and Fair Share Plan was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is arbitrary, capricious and unreasonable;

(b) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is invalid, null, void and of no force and effect;

(c) Awarding interest, costs of suit, and legal fees; and

(d) Such other relief that the Court deems equitable and just.

CERTIFICATION

I certify that the dispute which is the subject of this litigation is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that this is not an appeal from any local agency decision. There are no transcripts to be ordered.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Estate of Landmark Dumont, LLC

Dated: February 4, 2014

By: _____
Antimo A. Del Vecchio, Esq.
For the Firm

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Antimo A. Del Vecchio, Esq. is hereby designated as trial counsel in the within matter.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Estate of Landmark Dumont, LLC

Dated: February 4, 2014

By: _____
Antimo A. Del Vecchio, Esq.
For the Firm