

**Re: Chatham Borough DJ - Request for Consideration of Market to Affordable Program for the POP Area**

Rachel Lokken <rachellokken@fairsharehousing.org>

Wed 4/13/2022 1:42 PM

To: Jonathan Drill <jdrill@sksdlaw.com>

Cc: Adam Gordon, Esq. <adamgordon@fairsharehousing.org>

Jon,

As you are aware, on or about June 14, 2021, FSHC and the Borough amended their 2016 global settlement agreement ("First Amendment") to, in part, account for changed circumstances in the Borough that increased its Third Round RDP to 71 units and reduced its unmet need to 266 units.

In accordance with the terms of the First Amendment, and to help satisfy the Borough's RDP of 71 units, the Mayor and Borough Council adopted an amendment to the Post Office Plaza Redevelopment Plan to create a realistic opportunity for the development of at least 15 affordable family non-age-restricted rental units as part of an inclusionary development at Post Office Plaza, Block 121, Lots 10 through 13 and 17 ("POP"), on December 13, 2021. Under the terms of the First Amendment, the Borough is required to use its best efforts and act with all continuity of purpose to designate and to enter into a developer's agreement for inclusionary development at POP by June 1, 2022. The Borough's obligations with respect to POP have been affirmed in subsequent court orders dated December 30, 2021 and January 1, 2022.

In early March 2022, the Borough announced that it would hold a series of town hall meetings to "unveil" and discuss five potential redevelopment plans for POP. FSHC understands that one of the five redevelopment plans consists of a 99-unit inclusionary development with a set-aside of 15 affordable units consistent with the inclusionary development contemplated by the First Amendment.

FSHC further understands that there has been a recent proposal to implement a market-to-affordable program in lieu of the agreed upon redevelopment at POP. Any effort to change course so dramatically so close to its compliance deadline of June 1, 2022, is concerning to say the least. The court's orders of December 30, 2021 and January 1, 2022, referenced the Borough's continued obligation at POP in reliance upon the Borough's representations that it was still pursuing this compliance mechanism.

Further, FSHC is not aware that the Borough has a market-to-affordable program to implement. Thus, the Borough's proposal for a completely different alternative at the 11<sup>th</sup> hour would presumably cause considerable and unnecessary delay.

Importantly, the First Amendment, and subsequent orders, expressly require the Borough to use its best efforts to designate and to enter into a developer's agreement for inclusionary development at POP by June 1, 2022. While FSHC is not aware of the specifics of all five redevelopment plans that the Borough planned to unveil to the public at the town halls, it appears that there are suitable alternatives to fill the obligation at POP without delay.

Moreover, and as you are also well aware, a market-to-affordable program requires that the Borough: (a) demonstrate that there are sufficient market-rate units in the municipality for a

viable program, (b) certify that the units are “in sound condition . . . by a licensed building inspector,” (c) provide a minimum of \$25,000 per unit to subsidize the cost of moderate-income units and \$30,000 per unit to subsidize the cost of low-income units, with additional subsidy depending on the market prices/rents in the Borough, (d) not address more than ten percent (10%) of its fair share obligation via such a program (and typically far less), (e) deed restrict the units as affordable for at least thirty (30) years, (f) affirmatively market each unit, and (g) supply a resolution reflecting the Borough's intent to bond any shortfall. The Borough is also required to adopt an operating manual for the program and designated an experienced agent to oversee the program. See N.J.A.C. 5:93-5.11; N.J.A.C. 5:97-6.9. FSHC is skeptical that these requirements are achievable in Chatham even if it were not already seven years into Chatham's compliance with an already extended court deadline looming, given the scarcity of market-rate units that could be used; the cost of such a program could easily be many millions of dollars.

Indeed, FSHC expects the Borough to comply with its contractual obligations and the court's orders to use its best efforts to execute a redevelopment agreement for inclusionary development at POP by June 1, 2022. Stated differently, FSHC is not willing to consent to an alternative mechanism that will further delay the provision of affordable housing in the Borough when there are one or more developers with viable redevelopment plans ready and willing to provide for the affordable housing contemplated under the settlement amendment.

We remain hopeful that the Borough will abide by its obligation under the First Amendment and subsequent court orders.

Best,  
Rachel

On Fri, Apr 8, 2022 at 2:07 PM Jonathan Drill <[jdrill@sksdllaw.com](mailto:jdrill@sksdllaw.com)> wrote:

Rachel,

Ahead of the Town Hall meeting scheduled in Chatham for Monday night, April 18th, I am writing to ask on behalf of the Borough if FSHC would agree to a further amendment to the Settlement Agreement and the Court orders entered in the DJ action to allow the Borough to produce the 15 units of affordable housing that is slated to be produced by the redevelopment of the POP area to be produced through a market to affordable program instead.

I am directly copying Adam on this to save time as this request is time sensitive.

If you could get back to me prior to Monday afternoon I would greatly appreciate it as this issue is sure to be raised during the Town Hall meeting.

Looking forward to your reply,

Jon

Jonathan E. Drill, Esq.

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Sent from my iPhone.

Rachel N. Lokken, Esq.  
Fair Share Housing Center