

**BOROUGH OF BELMAR
COUNCIL MEETING
JULY 23, 2024**

McManimon, Scotland & Baumann, LLC

Affordable Housing Background

- **As of December 2022, the Borough was non-compliant with its affordable housing obligations**
 - Borough's affordable housing obligation - 204 new construction units based on Jacobson Decision
 - 6 projects with a total of 170 units were developed in the Borough between 2011-2023 requiring only 12 affordable units*, these projects should have required a minimum of 26 units (15% minimum)
 - *These units were not deed restricted –Borough is working with property owner to rectify
 - Missed opportunity to create 14 additional affordable units which now requires a 100 unit project to make up for short-fall
 - Exposed to **builder's remedy lawsuits** and **Fair Share Housing Center litigation**

Builder's Remedy Lawsuits

- When a municipality is out of compliance with its affordable housing obligation, developers can file a lawsuit that would allow them to forgo zoning and planning restrictions by including a certain number of affordable units in their project
- The municipality and its planning and zoning boards lose control over the zoning (site plan, including density, height, setbacks, landscaping, etc) of the property
- Developer in this type of lawsuit must commit to include a 20% set aside of low- and moderate- income housing as part of its development
- Borough attorney warned the Borough about these lawsuits on multiple occasions over the last 10 years

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February 11, 2019

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PLEASE REFER TO:

GL-27962

Peter Avakian, P.E.
RE: Belmar – Affordable Housing 2019
February 11, 2019
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Thank you for your anticipated cooperation.

Very truly yours,

JERRY J. DASTI

JJD/mc

cc: Honorable Mark Walsifer, Mayor [via email](#)
April Claudio, Borough Clerk [via email](#)
Edward D. Kirschenbaum, Sr., Administrator [via email](#)
Christine Manolio, Borough CFO [via email](#)

Via Email

Peter Avakian, P.E.
Leon S. Avakian, Inc.
321 Newman Springs Road
Red Bank, NJ 07719

RE: Belmar – Affordable Housing 2019

Dear Peter:

As you are aware, the Borough is willfully deficient in its Affordable Housing obligations. We have discussed this matter briefly with the Mayor and Council. I believe we all agree we need to review and adopt our Affordable Housing Plan, presuming there is one, in order to be certain, to say the least, that all of the proposed redevelopers meet their obligation. We want to be certain that all new redevelopers and developers of areas in the Borough, either commercial, retail, or residential meet their Affordable Housing obligation either on site, or by contribution to a (yet to be established) Affordable Housing Trust Fund.

Before getting started, I believe the Mayor and Council would like to review a proposal from you detailing as much as possible the estimated costs, time needed for competition, etc.

I am disturbed that the Borough is lacking in this regard and worried about possible litigation in the future and a "builder's remedy" lawsuit which would leave the Borough in great jeopardy. Therefore, we would appreciate if you could give this matter your immediate attention and respond accordingly.

**DASTI, MURPHY, MCGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**
COUNSELLORS AT LAW

Affordable Housing Litigation

- **Builder's Remedy Lawsuits** have been filed throughout NJ, including in Brielle (June, 2024), Sea Girt, Allenhurst, West Windsor, Hopewell, Cranford, Livingston, Caldwell, Alpine, Demarest, Fair Lawn, Fort Lee, Little Ferry, Mahwah, New Milford, River Vale, Upper Saddle River, Freehold Borough, Middletown and South Brunswick
- By filing a Declaratory Judgment Action, a municipality secures temporary immunity from builder's remedy lawsuits
- **Lawsuit by Fair Share Housing Center-** FSHC has the right to file action directly against any municipality that has not filed a DJ action and is in non-compliance of its Affordable Housing Obligations

Affordable Housing Background

- **As of December, 2022, the Borough had been engaged in negotiations with 4 redevelopers - NONE of these projects included affordable housing units**
 - Mark Built
 - Sackman/75 Rainey
 - Repetti/Russo Development
 - 613 Tenth Avenue
- Borough was exposed to builder's remedy lawsuits and/or FSHC litigation

Declaratory Judgment Action

- Borough filed a Declaratory Judgment Action on 3/2/2023 to satisfy its constitutional obligation to provide affordable housing as set forth by the New Jersey Supreme Court in the Mt. Laurel decision
 - Superior Court Monmouth County - Judge Grasso-Jones
 - Determine Borough's Affordable Housing Obligation and develop a housing plan to meet the obligation
 - Borough worked with the Court, the Special Adjudicator and Fair Share Housing Center to determine the Vacant Land Adjustment (VLA)
 - VLA produced a Realistic Development Potential (RDP) of 96

Declaratory Judgment Action (continued)

- Provides temporary immunity to the Borough from builder's remedy lawsuits and litigation brought by Fair Share Housing Center
- Develops a Housing Element and Fair Share Plan to meet the obligation of 96 affordable housing units
- Judgment of Compliance and Repose from the Court
- Consolidates all multi-family developers into a single lawsuit for a more comprehensive and global resolution

Declaratory Judgment Action (continued)

- Approximately 350 municipalities in NJ have settled with FSHC
- Neighboring towns
 - Spring Lake – filed a DJ action and entered into a settlement agreement with FSH in 2018 establishing 3rd round obligations
 - Sea Girt - filed DJ action in 2020 with settlement agreements in 2021 and 2023
 - Bradley Beach - filed a DJ Action in 2021-2022 that is still pending

How Will Belmar Meet Its Affordable Housing Obligation

- Redevelopers joined the DJ Action as Intervenors
- The Intervenor Projects together with existing affordable units provide **99 credits satisfying the RDP with 3 bonus credits toward future rounds**
 - Mark Built
 - Sackman/ 75 Rainey
 - Repetti/Russo Development
 - 613 Tenth Avenue, LLC
- Negotiate the project scope and Settlement Agreements with the Intervenors
- Defeated effort by Seventh Avenue Associates to intervene

Mark Built

Project Site -River Road/Sixth Avenue and Main Steet
Block 56, Lots 1, 2, 4 and 6; Block 57, Lot 4

| Project Summary | 2021 Project | Final Project * | |
|------------------|--|--|---|
| Unit Count | 131 | 139 | |
| Affordable Units | NONE | 17 % / 24 units (rental within for-sale project) | |
| Parking Spaces | 282 | Approximately 235 | |
| Height | Both buildings at 6 stories at 69' 9" with connecting walkways over River Road And 50' height cap within 30' of Main Street | Main Street Building | 4 stories at 42' within 30' of Main Street |
| | | | 5 Stories at 54' for the remainder of the triangular block |
| | | River Road Building | 5 stories at 60' |
| Retail | 10, 100 sf | 6,000 sf - Main Street building | |

*8 unit increase for 24 affordable units with a decrease in height





Mark Built – Fiscal Impact

- Prepared by NW Financial Group, LLC – Borough’s Financial Advisor
- Current annual tax revenue to Borough/School District - \$40,752
- Estimated annual tax revenue to Borough/School District - \$809,843
- Estimated annual costs to Borough/School District - \$391,101
- **Estimated annual net benefit to Borough/School District- \$419,000**
- The Project will also provide the following intangible benefits:
 - Redevelopment of vacant and/or underutilized properties
 - Increased support for local businesses
 - Contribute **24** units towards the Borough’s **96** unit affordable housing obligation

Repetti/Russo Development

Project Site - Route 35 between 8th and 10th, Block 87, Lots 1, 2, and 3

| Project Summary | 3/2020 Project | 9/6/2023 | 10/2023 Project | Final Project * |
|------------------|--|--------------|-----------------|--|
| Unit Count | 250 | 444 | 234 | 198 |
| Affordable Units | NONE | 15%/67 units | 15% /35 units | 10% on-site affordable (20 units) with 5% payment in lieu for 10 units at \$2M |
| Parking Spaces | 514 | 680 | 326 | 293 |
| Height | 5 stories (4 stories at 10 th and 8 th) | 21 stories | 5 stories | 4 stories |
| Retail | 5,410 sf | | 1,602 sf | 1,602 sf |

*Reduced by 52 units and 1 story, added 20 affordable units and \$2M payment to the Affordable Housing Trust Fund

Potential Builder's Remedy - 444 units at 21 stories



Repetti/Russo Project

Financial Terms

- \$2,000,000 contribution to the Affordable Housing Trust Fund in lieu of constructing 10 affordable units (20 units (10%) and \$2M (5%))
- Payment in Lieu of Taxes (PILOT) at 6.7% of Annual Gross Revenue for 30 years
- The Borough will enter into an agreement with the Belmar Board of Education to share the PILOT revenue with the BOE
- 30% of the Annual Service Charge received from the Repetti/Russo Project will be provided to the BOE on an annual basis

Repetti/Russo – Fiscal Impact

- Prepared by NW Financial Group, LLC
- Current annual tax revenue to Borough/School District - \$92,060
- Estimated PILOT Revenue to Borough/School District* – \$488,700
- Estimated annual costs to Borough/School District - \$379,475
- **Estimated annual net benefit to the Borough/School District - \$109,000**
- The Project will also provide the following intangible benefits:
 - Redevelopment of vacant and/or underutilized properties
 - Increased support for local businesses
 - Contribute **20** units and **\$2M** payment towards the Borough's **96** unit affordable housing obligation

*Assumes sharing of 30% of PILOT revenues with the School District

Sackman - Project Site – 708-710 Main Street, Block 75, Lots 4, 5, and 6

| Project Summary | 11/2021 Project | 10/2023 Project | Final Project * |
|------------------|------------------------|--|------------------|
| Unit Count | 45 | 59 | 56 |
| Affordable Units | NONE | 20% | 18%/ 10 units |
| Parking Spaces | 73 | 76 | 76 |
| Height | 3 ½ stories 51'4.5" | 4.5 story profile on Main Street/3.5 story profile on 8 th Avenue | 4 stories at 54' |
| Retail | 4,675 sf | 3,822 sf | 3,752 sf |

*11 unit increase with 10 affordable units and 3 ft increase in building height



Sackman Project - Financial Terms

- Payment in Lieu of Taxes (PILOT) at 10.0% of Annual Gross Revenue for 30 years
- The Borough will enter into an agreement with the Belmar Board of Education to share the PILOT revenue with the BOE
- 30% of the Annual Service Charge received from the Sackman Project will be provided to the BOE on an annual basis

Sackman – Fiscal Impact

- Prepared by NW Financial Group, LLC
- Current annual tax revenue to Borough/School District - \$14,326
- Estimated PILOT Revenue to Borough/School District*– \$190,000
- Estimated annual costs to Borough/School District - \$159,088
- **Estimated annual net benefit to the Borough/School District- \$30,800**
- The Project will also provide the following intangible benefits:
 - Redevelopment of vacant and/or underutilized properties
 - Increased support for local businesses
 - Contribute 10 units towards the Borough's 96 unit affordable housing obligation

*Assumes sharing of 30% of PILOT revenues with School District

613 Tenth Avenue

Project Site – 613 10th Avenue, Block 105, Lot 8

| Project Summary | 12/2022 Project | Final Project* |
|------------------|-----------------|--|
| Unit Count | 12 | 12 |
| Affordable Units | NONE | 20%/ 2 units with payment in lieu for .4 unit in the amount of \$60,890.80 |
| Parking Spaces | 22 | 23 |
| Height | 4 stories | 4 stories |
| Retail | 168 sf(ATM) | 0 |

*Same # of units with 2 affordable units and \$60,890 payment to the Affordable Housing trust fund



PROPOSED MIXED-USE BUILDING

613 Tenth Avenue ~ Belmar, New Jersey

Next Steps

- Tonight - Council is voting on the Settlement Agreements with Mark Built, Sackman, Russo and 613 Tenth Avenue
- September 24, 2024 - Fairness Hearing with the Court for approval of the Settlement Agreements with Intervenors and the Settlement Agreement between the Borough and FSHC
- Action Items
 - Housing Element and Fair Share Plan
 - Redevelopment Plan Amendments
 - Redevelopment/Developer's Agreements for Intervenor Projects
 - Financial Agreement – Repetti/Russo and Sackman
 - Site Plan Approval for Intervenor Projects
- Judgment of Compliance and Repose from the Court finding the Borough satisfied its constitutional obligation to provide affordable housing for the Third Round and providing immunity to the Borough through July 1, 2025

Additional Information

- Affordable Housing summary and FAQs on the Borough Website
- Affordable Housing updates presented during the 4/9/24 and 6/25/24 Council meetings are on YouTube with links in the FAQs