

ORDINANCE NO. 1171-2022

AN ORDINANCE OF THE TOWNSHIP OF CLINTON IN HUNTERDON COUNTY, NEW JERSEY RESCINDING RESOLUTION #128-2021 AND AUTHORIZING A FINANCIAL AGREEMENT BETWEEN THE TOWNSHIP OF CLINTON AND SPRUCE RUN URBAN RENEWAL ASSOCIATES, LLC PURSUANT TO THE LONG TERM TAX EXEMPTION LAW, N.J.S.A. 40A:20-1 ET SEQ.

WHEREAS, in accordance with the New Jersey Supreme Court’s “Mount Laurel I” decision (*South Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975)), the Township has a constitutional obligation to provide for its fair share of the region’s affordable housing needs; and

WHEREAS, the Township entered into a settlement agreement with Fair Share Housing Center, Inc. (“Fair Share Housing Center” or “FSHC”) on December 13, 2017 and an amended settlement agreement with FSHC on February 7, 2018 (collectively, the “settlement agreement”), setting forth the Township’s third round affordable housing obligation covering the period 1999 to 2025, including the various plan mechanisms to satisfy its obligation in full, which agreement was further amended in 2020; and

WHEREAS, on May 7, 2021, the Township and Fair Share Housing Center entered into a third amendment to the settlement agreement (the “Third Amendment to Settlement Agreement”), which amendment among other things added as one of the mechanisms to be employed in satisfying the Township’s affordable housing obligations a mixed-income affordable housing project on a ±11.7-acre property located at 1726 and 1730 Route 31 in Clinton Township and designated as Block 70, Lots 6 and 6.01 on the Township tax maps (the “Site”), consisting of approximately 146 multi-family residential units, comprising 66 market-rate units and 80 affordable housing units (including at least 11 very low income units as part of a total of 40 low income units) and other amenities (the “Project”); and

WHEREAS, the changes called for in the Third Amendment to Settlement Agreement were incorporated into the 2021 Amendment to the Third Round Housing Plan Element and Fair Share Plan adopted by the Clinton Township Planning Board on June 7, 2021 and endorsed by the Mayor and Council on June 23, 2021; and

WHEREAS, the 80 units of rental housing in the Project will qualify as low and moderate income units under the Fair Housing Act, *N.J.S.A. 52:27D-301 et seq.* and the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-16.1 et seq.* and 66 units will qualify as market rate rental housing; and

WHEREAS, pursuant to Resolution #130-2021 adopted by the Clinton Township Mayor and Council on August 25, 2021, the Township entered into an Affordable Housing Agreement (“Agreement”) with Ingerman Development Company, LLC (“IDC”), pursuant to which IDC agreed to construct the Project as described above; and

WHEREAS, pursuant to Resolution #128-2021 adopted on August 11, 2021, the Mayor and Council also authorized the execution of an agreement for payments in lieu of taxes with IDC pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (*N.J.S.A. 55:14K-1 et seq.*) (the “HMFA Law”); and

WHEREAS, IDC has since formed an urban renewal entity known as Spruce Run Urban Renewal Associates, LLC (“Spruce Run URA”); and

WHEREAS, on June 8, 2022, the Township Mayor and Council adopted a resolution authorizing the assignment of all of IDC’s rights, title, interests, and obligations under the Agreement to Spruce Run URA; and

WHEREAS, in place of the previously-approved HMFA PILOT agreement, Spruce Run URA seeks to enter into a financial agreement with the Township for payments in lieu of taxes pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the “LTTE Law”); and

WHEREAS, the LTTE Law permits the Township to enter into a financial agreement granting a tax exemption and accepting payments in lieu of taxes for qualified projects; and

WHEREAS, the Project will qualify for a tax exemption and/or abatement under the LTTE Law; and

WHEREAS, Spruce Run URA has presented to the Mayor and Council a form of financial agreement (“the LTTE Financial Agreement”) providing for, among other things, payments in lieu of taxes, a copy of which is on file with the Township Clerk and available for inspection by the public during normal business hours;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Clinton, in Hunterdon County, New Jersey as follows:

Section 1. Findings.

- a. The Annual Service Charge (payment in lieu of taxes) described hereinbelow will exceed the amount of taxes generated by the Site in the last full year;
- b. The Project will provide for the development of the Site with a much-needed mixed-income affordable housing project, which project is included in the Township’s Third Round Housing Plan Element and Fair Share Plan and will assist the Township in meeting its third round affordable housing obligation;
- c. The tax exemption is important to obtain development of the Project and provide affordable housing:
 - i. Without the exemption, the Project is not financially viable;
 - ii. The exemption permits private development of affordable housing on the Site;and

- iii. The terms of the exemption as set forth in the LTTE Financial Agreement are as or more favorable to the Township as the terms of the previously-approved HMFA PILOT agreement.

Section 2. Authorization of LTTE Financial Agreement.

- a. The development of the Project is hereby approved for a grant of a tax exemption under the LTTE Law; and
- b. The Council authorizes the execution of the LTTE Financial Agreement referenced in the preamble to this ordinance, pursuant to which Spruce Run will be obligated to pay the Township an “Annual Service Charge” (“ASC”) in lieu of taxes, beginning on the date of issuance of the certificate of completion for the Project (“ASC start date”), as follows:
 - i. ASC start date to 15th anniversary of said date : 6.28% of Project Revenue
 - ii. 15th anniversary to 21st anniversary: 6.28% of Project Revenue or 20% of taxes otherwise due, whichever is more
 - iii. 21st anniversary to 28th anniversary: 6.28% of Project Revenue or 40% of taxes otherwise due, whichever is more
 - iv. 28th anniversary to 29th anniversary: 6.28% of Project Revenue or 60% of taxes otherwise due, whichever is more
 - v. 29th anniversary to 30th anniversary: 6.28% of Project Revenue or 80% of taxes otherwise due, whichever is more
- c. The Project shall be exempt from real property taxation and in lieu of real property taxes, Redeveloper shall make payments to the Township of the foregoing Annual Service Charge during the term and under the provisions set forth in the LTTE Financial Agreement; and
- d. The Council hereby authorizes and directs the Mayor and the Township Clerk to execute the LTTE Financial Agreement on behalf of the Township; and
- e. The Council understands and agrees that the revenue projections set forth in Exhibit “A” of the LTTE Financial Agreement are estimates and the actual Annual Service Charge to be paid by Spruce Run URA to the Township shall be determined pursuant to the LTTE Financial Agreement; and
- f. The Township Clerk is hereby authorized and directed to forward a certified true copy of this ordinance to Spruce Urban Renewal Associates, LLC.
- g. The Township Clerk is hereby authorized and directed to forward a certified true copy of this ordinance, and the LTTE Financial Agreement implementing it, to the Township Tax Assessor.

Section 3. Rescission of Resolution #128-2021 and cancellation of HMFA PILOT agreement. Resolution #128-2021 adopted by the Mayor and Council on August 11, 2021 is hereby rescinded, and the HMFA PILOT agreement entered into between the Township and IDC pursuant to said resolution is hereby canceled and replaced by the LTTE Financial Agreement approved herein.

Section 5. Repealer. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

Section 6. Severability. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be valid and enforceable.

Section 7. Effective Date. This ordinance shall take effect 20 days from its date of final passage, in accordance with N.J.S.A. 40:69A-181.

Carla Conner, Township Clerk

Brian Mullay, Mayor

CERTIFICATION

I, Carla Conner, Clerk of the Township of Clinton, do hereby certify that the foregoing resolution was duly adopted by the Clinton Township Mayor and Council at a regular meeting held on __, 2022.

Carla Conner, RMC
Township Clerk