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**In the Matter of the Township of
Jackson, a municipal corporation
of the State of New Jersey**

EL at Jackson, LLC,

Plaintiff,

v.

**Township of Jackson Planning
Board,**

Defendant.

SUPERIOR COURT OF NEW JERSEY
Law Division
Ocean County
Docket No. OCN-L-1879-15
Docket No. OCN-L-822-92

CIVIL ACTION

SUPERIOR COURT OF NEW JERSEY
Law Division
Ocean County
Docket No. OCN-L-271-20-P.W.

**ORDER GRANTING IN PART AND
DENYING IN PART WITHOUT
PREJUDICE MOTION IN AID OF
LITIGANTS RIGHTS**

This matter having been brought before the Court through a January 27, 2020 motion in aid of litigant's rights by Movant/Plaintiff EL at Jackson, LLC ("EL") with respect to Jackson Township's Judgment of Repose entered in relation to Docket No. OCN-L-1879-15 and Docket No. OCN-L-822-92 and a prerogative writ action challenging the action of the Planning Board in denying EL's application for preliminary and final major subdivision, preliminary and final major site plan, and conditional use approval

for the North Parcel (the "North Parcel Application") on November 4, 2019, and by way of resolution dated, December 16, 2019 (the "North Resolution");

And EL appearing through its counsels Douglas Wolfson, Esq., Jason Tuvel, Esq., and Mitchell Newman, Esq.; Jackson Township ("Township") appearing through its counsels Jeffrey R. Surenian, Esq. and Wanda Chin Monahan, Esq.; Jackson Township Planning Board ("Planning Board") appearing through its counsel Sean D. Gertner, Esq.; and Fair Share Housing Center ("FSHC") appearing through its counsel, Adam M. Gordon, Esq.; and the Court-appointed Special Master, Mary Beth Lonergan, P.P., A.I.C.P. ("Special Master") also appearing;

And the Court having convened the parties for an in person case management conference on March 5, 2020 and then a further telephonic case management conference on April 3, 2020;

And the Court having entered a Case Management Order following the March 5, 2020 and April 3, 2020 conferences, dated April 7, 2020 ("April 7 Order"), which, among other matters, directed the Planning Board to "reconsider the denial of EL's application for preliminary and final site plan, subdivision and conditional use approval of the North Parcel" no later than April 27, 2020 and providing for terms specified in that order for such reconsideration which, if agreed to by the Planning Board, would result in the withdrawal of the balance of the claims raised in EL's motion in aid of litigant's rights and prerogative writ action, and that all conditions of approval consented

to by EL on the North Parcel Application would be accepted, other than that condition prohibiting construction traffic on Reed Road and instead requiring that construction traffic be allowed on an interim basis until such time as use of the Connector Road by construction was deemed acceptable by Ocean County;

And the Planning Board having held a meeting on April 20, 2020, pursuant to the April 7 Order ("April Meeting"), at which it declined to accept the proposal for settlement as embodied in the April 7 Order by refusing to grant EL final major subdivision or final major site plan approval and by imposing conditions unacceptable to EL, and having memorialized the actions taken by the Planning Board on May 18, 2020 ("May Resolution");

And EL and FSHC having specifically reserved all rights to challenge the Planning Board's denial of the North Parcel Application in the event that the Planning Board declined the offer of settlement;

And the Court having had a subsequent case management conference on April 22, 2020 and scheduled at that conference a briefing and argument schedule for deciding the motion filed by EL;

And the Court having considered briefs filed by FSHC on May 26, 2020; Jackson Township on May 26, 2020 and June 8, 2020; the Jackson Township Planning Board on May 26, 2020 and June 3, 2020; and a reply brief filed by EL on June 3, 2020; and oral argument by all parties on June 5, 2020;

And the Court having provided its opinion on the record on June 18, 2020 and directed counsel for FSHC to prepare this order consistent with the Court's opinion;

IT IS on this 7th day of July,
2020 ORDERED that:

1. EL at Jackson v. Tp. of Jackson Planning Board, Docket No. OCN-L-271-20-P.W. is hereby consolidated with In the Matter of Township of Jackson, Docket No. OCN-L-1879-15/Docket No. OCN-L-822-92.
2. The Planning Board's denial of the North Parcel Application as memorialized in the North Resolution, is VACATED and REVERSED:
 - a. The Planning Board's November 4, 2020 denial of the North Parcel Application and the North Resolution, based on the entirety of the record, was without legal basis and was therefore arbitrary, capricious and unreasonable.
 - b. The Planning Board's action at the April Meeting as memorialized in the May Resolution is hereby deemed null and void and of no effect for two independently sufficient reasons: (i) there was no legal basis in the record or provided by counsel in briefing or argument for the Board to deny final approval; (ii) the Board's decision to neither accept the offer of settlement and

the conditions thereto nor reaffirm the North Resolution was not within the scope of the remand directed by the Court's April 7, 2020 Order.

- c. The North Parcel Application for preliminary and final major subdivision, preliminary and final major site plan and conditional use approval is hereby granted, subject to such reasonable conditions as may be deemed necessary and appropriate by the Special Master upon her review of the entirety of the record, which conditions shall include EL's right to utilize Reed Road during construction as set forth herein and in Paragraph 8 of the April 7 Order. The parties shall provide the Special Master copies of all documents, plans, and other materials the Special Master deems necessary. The Special Master may consult with any of the parties' professionals in determining which conditions are necessary and appropriate.

3. Statutory default approval as to the South Parcel Application is DENIED WITHOUT PREJUDICE.
4. Appointment of a special hearing examiner to hear EL's applications and any other application pertaining to any affordable housing site so designated under Defendant Township's Housing Element and Fair Share Plan is DENIED WITHOUT PREJUDICE.

5. Direction of the special hearing examiner, with the assistance of the Special Master, to review and make recommendations concerning the approval of said applications, as well as any and all other applications as Plaintiff may make in connection with its property in Jackson is GRANTED IN PART AND DENIED WITHOUT PREJUDICE IN PART:

a. The request for a special hearing examiner is DENIED WITHOUT PREJUDICE.

b. The request for assistance of the Special Master is GRANTED. The Special Master shall oversee, participate in and supervise the application process for all inclusionary projects within the Township of Jackson (including, but not limited to, the North Parcel Application and South Parcel Application). All costs for the Special Master shall be paid by the Township. The Special Master's responsibilities shall include:

i. Attending all Planning Board public hearings/meetings and any and all other important hearings/meetings held by any agency of the Township, which attendance may be via virtual means;

ii. Review all applications or proposals before and issue a report at least seventy-two (72) hours prior to any Planning Board hearing/meeting that will be distributed to all parties as well as the

Court as to the consistency of such application or proposal with the Housing Element and Fair Share Plan, the Settlement Agreement, and applicable court orders;

- iii. Issuing a report no later than seventy-two (72) hours after every Planning Board hearing/meeting that will be distributed to all parties as well as the Court as to whether the actions taken at said hearing or meeting are consistent with the Housing Element and Fair Share Plan, the Settlement Agreement, and applicable court orders;
- iv. Freely correspond with the professionals of the Township, EL, FSHC, and any future applicant for development that is part of the Fair Share Plan;
- v. Overseeing post-approval compliance with any and all resolutions from the Planning Board, signing of plans, posting of performance guarantees, as well as any outside agency approvals or permits and all other actions necessary to obtain building permits and commence construction; and
- vi. Any other duties or responsibilities that the Court may deem necessary.

6. Revocation of Jackson's immunity from builder's remedy litigation and the Township's Judgment of Compliance and Repose is DENIED WITHOUT PREJUDICE.

7. Application for attorney's fees and costs of suit is GRANTED:
 - a. Counsel for EL and FSHC shall each submit an Affidavit of Services no later than 30 days from the entry of this Order.
 - b. Any response to the Affidavits of Service shall be submitted no later than 14 days from the submission of such Affidavits.
 - c. The Court shall thereafter make a determination as to the amounts of fees and costs to be granted to each party.
8. The South Parcel Application shall be heard by the Planning Board either in person or virtually as circumstances may require on a date agreed upon with EL between the dates of August 10, 2020 and August 27, 2020. The resolution of approval for the South Parcel Application shall be adopted at the next regularly scheduled meeting of the Planning Board, subject to reasonable adjournments agreed upon by the parties. The Special Master shall attend the hearing, which attendance may be via virtual means, and prepare appropriate reports with regard to the South Parcel Application in accordance with paragraph 5 of this Order.
9. The Township and Planning Board shall have 20 days from the date of this Order to file answers to EL's Prerogative Writ Complaint.

10. A case management conference is scheduled for Monday, August 3 at 10:00 A.M. to further review the status of the COVID-19 emergency and how the hearings for the South Parcel Application will be conducted in light of that status.
11. The Court shall retain jurisdiction as to any subsequent issues on the North Parcel and South Parcel in accordance with the procedures provided for above.
12. A copy of this Order, if not uploaded by the Court onto Ecourts, shall be served by counsel from FSHC on other counsel by Ecourts within five (5) days of receipt, and provided by FSHC to the Special Master in this matter.

/s/ Mark A. Troncone

Hon. Mark A. Troncone, J.S.C.