

**TOWNSHIP OF VERONA
COUNTY OF ESSEX, STATE OF NEW JERSEY**

RESOLUTION No. 2018-135

A motion was made by Councilman McEvoy; seconded by Councilman Giblin that the following resolution be adopted:

**AUTHORIZING THE SETTLEMENT AND EXECUTION OF A
MEMORANDUM OF UNDERSTANDING WITH POEKEL PROPERTIES,
LLC WITH REGARD TO DOCKET NO. ESX-L-4773-15**

WHEREAS, the Township of Verona (the "Township") has historically participated in the administrative affordable housing compliance process overseen by the New Jersey Council on Affordable Housing ("COAH"), and has received substantive certification for the Prior Round (1987-1999); and

WHEREAS, since 1999, COAH has failed to adopt constitutionally compliant Third Round Rules that have withstood judicial scrutiny; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued a decision in the case entitled In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), whereby the Court terminated COAH's jurisdiction to administer and approve municipalities' affordable housing plans, determined that trial courts would reassert primary jurisdiction over the same, and directed interested municipalities to petition the Court for immunity while constitutionally compliant housing plans were prepared; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 7, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Verona, a municipal corporation of the State of New Jersey, Docket No. ESX-L-4773-15 (the "Township's DJ Action"), seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs; and

WHEREAS, on or about May 10, 2017, Poekel Properties, LLC filed a motion to intervene in the Compliance Action ("Poekel Intervention") and the Court granted such intervention on May 26, 2015; and

WHEREAS, Poekel is the owner of the approximately 2.7-acre real property designated as Block 2301, Lots 17 & 18 according to the Township's tax and assessment maps and commonly known as 860 Bloomfield Avenue (the "Property"); and

WHEREAS, the Township intends to prepare a housing element and fair share plan (the "Affordable Housing Plan"), which will be adopted by the Township of Verona Planning Board (the "Planning Board"), endorsed by the Township Council, and submitted to the Court for review and approval; and

WHEREAS, the Affordable Housing Plan will include the Property as the site of an inclusionary development at a density of approximately 46 rental units, including a 20% set-aside for units to be affordable to very low, low and moderate income households, together with approximately 6,395 square feet of commercial space and other site improvements (collectively, the "Inclusionary Development"); and

WHEREAS, the Township will seek the Court's approval of the Affordable Housing Plan in connection with the Compliance Action and, regardless of the Court's approval or disapproval of the Affordable Housing Plan and the ultimate disposition of the Compliance Action, the Parties intend to be bound by this Agreement, provided that this Agreement is approved by the Court; and

WHEREAS, Poekel is amenable to fully and finally resolving the Poekel Intervention premised upon securing the right to construct the Inclusionary Development on the Property; and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Township's "Third Round" affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the New Jersey Council on Affordable Housing ("COAH") prior round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and any and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of at least thirty years; and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement at a "Fairness Hearing" in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), and that, in order to approve this Agreement, the Court must find that it adequately protects the interests of lower-income persons for whom the affordable units proposed by this Agreement are to be built; and

WHEREAS, if the Court approves this Agreement at the Fairness Hearing, the Parties anticipate that the Court will provide a period of time, which they approximate will be 120 days, for the Township to adopt an implementing ordinance and/or the actions necessary for the effectuation of the Inclusionary Development as an "as-of-right" development.

WHEREAS, the Township and Poekel wish to enter into this Memorandum of Understanding to memorialize general terms for the development of the Project, with additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, including a formal settlement agreement to be filed with the Court in connection with the Compliance Action.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Verona, in the County of Essex, New Jersey hereby authorizes the Township Manager and the Township Clerk to execute a Memorandum of Understanding with Poekel.

ROLL CALL:

AYES: Giblin, McEvoy, Roman, Nochimson, Ryan

NAYS:

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON OCTOBER 1, 2018.


JENNIFER KIERNAN
MUNICIPAL CLERK

