

# STICKEL, KOENIG, SULLIVAN & DRILL, LLC

ATTORNEYS AT LAW

571 POMPTON AVENUE  
CEDAR GROVE, NEW JERSEY 07009

MICHAEL D. SULLIVAN  
JONATHAN E. DRILL

---  
KATHRYN J. RAZIN  
OF COUNSEL

973-239-8800 PH  
973-239-0369 Fx

EMAIL: [jdrill@sksdlaw.com](mailto:jdrill@sksdlaw.com)

FRED G. STICKEL, III  
(1978 - 1996)  
STUART R. KOENIG  
(1978 - 2012)

July 25, 2017

Henry Kent-Smith, Esq.  
Fox Rothschild, LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrence NJ 08648-2311  
Ph 609-896-3600 / Fx 609-896-1469  
Email: [HKent-Smith@FoxRothschild.com](mailto:HKent-Smith@FoxRothschild.com)

Re: In re: Town of Westfield Third Round Mount Laurel Compliance, Docket No.  
UNN-L-2391-15 -- Settlement of Elite Homebuilding, LLC ("Elite") Objections

Dear Henry:

I am writing to memorialize the settlement of Elite's objections (the "**Elite Settlement**") to the Town of Westfield (the "**Town**") and Fair Share Housing Center ("**FSHC**") agreement to settle the above captioned declaratory judgment action (the "**Mt. Laurel Settlement Agreement**"). I ask you to countersign a copy of the within letter below and email it back to me and to FSHC so that FSHC can then countersign it and email it to both of us, confirming that the Elite settlement terms are acceptable to all parties.

Subject to written confirmation of the approval of FSHC to the Elite Settlement by FSHC signing a copy of the within letter, and subject to the court's special master Phil Caton agreeing to the Elite Settlement, and subject to approval of the Court as part of the Fairness Hearing and subject to ultimate entry of a Judgment of Compliance and Repose by the Court, the Town accepts your client's settlement counter offer to settle Elite's objections as follows:

1. As to the Elite South site (Block 4004, Lot 17; Block 4005, Lots 3 and 4), the Town will agree to create a new overlay zone on the south side of South Avenue to encompass the Elite South site consisting of 1.56-acres (according to the information provided in the April 25, 2017 letter from David Checchio, Esq. Block 4005, Lot 3 - 0.84 acres; Block 4005, Lot 4 - 0.34 acres and Block 4004, Lot 17 - 0.38 acres). The Town acknowledges and agrees that Lot 17 is not contiguous to Lots 3 and 4, and that the mixed use building will be located on Lots 3 and 4 at the full density allowed for the entire 1.56 acres. Lot 17 shall be used for either parking or open space appurtenant to Lots 3 and 4. This proposed overlay zone would allow multifamily residential housing at 25 units per acre with a required affordable housing set aside of 15% for the rental units. The affordable units shall meet all the provisions of the

Henry Kent-Smith, Esq.

In re: Town of Westfield Third Round Mount Laurel Compliance.

Docket No. UNN-L-2391-15 - Settlement of Elite Objections

July 25, 2017 / Page 2 of 4

ordinances adopted in accordance with the Mt. Laurel Settlement Agreement. The buildings shall not exceed three (3) stories, including parking. The Town will agree with your client's proposal set forth in the April 25, 2017 letter from David Checchio, Esq. to have up to 5,000 square feet of retail on the ground floor of the Elite South site, with the retail space to be neighborhood retail and service uses designed to serve a strictly local population.

2. As to the Elite North site (Block 3307, Lots 1 and 2), the Town will agree to increase the density of the existing proposed overlay as to the Elite North site lots only (not the other lot in the 30 unit per acre overlay zone) from 30 units per acre to 37.77 units per acre, which includes a transfer of the three (3) affordable units from your client's Townhouse project on Myrtle and Grove to the Elite North site. This will increase the unit count on the Elite North site to 156 units (total of market and affordable units) and will reduce the Townhouse project from 16 units (total of market and affordable) to 13 market rate units. The Elite North site consists of 4.13-acres (according to the information provided in the April 25, 2017 letter from David Checchio, Esq. Block 3307, Lot 1 – 1.38 acres; and Block 3307, Lot 2 – 2.75-acres). The required affordable housing set aside for the Elite North site shall be 15% for the rental units but, again, will require an additional three (3) units of affordable housing which will be transferred from the Townhouse site to the Elite North site. The affordable units shall meet all the provisions of the ordinances adopted in accordance with the Mt. Laurel Settlement Agreement.

3. The three (3) units of affordable housing transferred from the Townhouse Project to the Elite North site shall be earmarked for special needs tenants and shall be provided as follows: one (1) 3-bedroom unit; and two (2) 2-bedroom units. For purposes of phasing, the three (3) special needs units shall be included in the phasing schedule required by N.J.A.C. 5:93-5.6(d) for the Elite North development and shall be provided regardless of when or if the Townhouse project on Myrtle and Grove proceeds to be developed. The calculation of required 13% very low income units shall include the 3 total affordable special needs units and the 1 very low income special need units in the calculation. By way of example, if there are 26 total affordable units provided on the Elite North site, there will be four total very low income units provided, one of which is the required very low income special need unit. For all other purposes, including affordability averages, low- and moderate-income split, and bedroom distribution, the three (3) special needs units shall be treated separately under the terms of this agreement. This means that the calculations related to the required 15-percent set-aside regarding affordability averages, low-and moderate-income split, and bedroom distribution, shall be performed without regard to the three (3) special needs units. The three (3) special needs units shall count each as one credit for purposes of calculating how many units of affordable housing must be provided by Elite, with the parties agreeing that credits will not be calculated by bedroom. One of the 2-bedroom special needs units shall be available to a very low-income household comprised of persons or a family with disabilities. One of the 2-bedroom units shall be available to a low-income household comprised of persons or a family with disabilities. The 3-bedroom unit shall be available to a moderate-income household comprised of persons or a family with disabilities. Elite agrees to collaborate with and enter into an agreement with an experienced supportive housing provider in order to market and provide supportive services for the three (3) special needs units. Elite agrees to consult FSHC regarding the selection of the experienced supportive housing provider, but Elite alone shall select the provider. All other affordable units on the Elite North site shall meet all the provisions of the ordinances adopted in



Henry Kent-Smith, Esq.

In re: Town of Westfield Third Round Mount Laurel Compliance.

Docket No. UNN-L-2391-15 - Settlement of Elite Objections

July 25, 2017 / Page 3 of 4

accordance with the Mt. Laurel Settlement Agreement. The Town will agree with your client's proposal set forth in the April 25, 2017 letter from David Checcio, Esq. to allow four (4) story buildings (including parking) where closest to the Raritan Valley railroad line but a three (3) story (including parking) limitation for buildings within 100 feet of South Avenue and, additionally, that the ordinance would provide a conditional use limitation that four (4) stories (including parking) shall be allowed only if there are no existing residential uses within 200 feet of the proposed fourth story in the Town of Westfield. The Town will also agree with your client's proposal set forth in the April 25, 2017 letter from David Checcio, Esq. to have up to 12,000 square feet of retail on the ground floor of the Elite North site, with the retail space to be neighborhood retail and service uses designed to serve a strictly local population.

4. As set forth above, the other lot in the existing proposed 30 units per acre overlay (Block 3307, Lot 3) will remain at 30 units per acre density. Additionally, the following sites will be removed from the settlement plan in exchange for the addition of the Elite South sites into the settlement plan and the increase in density on the Elite North sites from 30 units per acre to 37.77 units per acre. Site 1 (Block 3202, Lot 1), site 19 (Block 2606, Lot 4) and site 20 (Block 2606, Lot 5.01) shall be removed from the settlement plan in exchange for the addition of the Elite South site into the settlement plan. Site 16 (Block 3202, Lot 17) and site 17 (Block 3305, Lot 2) shall be removed from the settlement plan in exchange for the increase in density of the Elite North site from 30 units per acre to 37.77 units per acre.

5. The Town is aware that the Townhouse site is currently before the Board of Adjustment for an amended approval. Elite agrees to seek no more than 13 units on the Townhouse site and the Town will advise the Board of Adjustment that Elite does not have to provide any affordable units on that site.

6. The Town's agreement is conditioned on the project(s) proposed by Elite being reviewed and found acceptable to the Town from a design and aesthetic standpoint (Elite will need to update and revise the Elevations, Site Plan and Unit Floor Plans that it previously submitted) and on Elite withdrawing its objections and the report prepared by Art Bernard that you submitted to Judge Cassidy. Elite and its principals agree that they will not appear as an objector to the settlement of the above declaratory judgment action regarding the Elite North site, the Elite South site, the Townhouse project and/or any other property located in the Town and/or located in any other municipality.

7. Finally, Elite agrees to pay to FSHC within 10 days after the completion of the Fairness Hearing the sum of \$8,000 representing attorneys' fees and cost incurred by FSHC related to the litigation and settlement. While payment of said sum can be enforced by a motion in aid of litigant's rights brought by FSHC against Elite, failure of Elite to make said payment to FSHC shall not negate, nullify or void the within Elite Settlement or the Mt. Laurel Settlement Agreement.

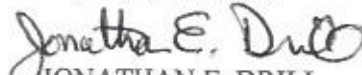
Henry Kent-Smith, Esq.

In re: Town of Westfield Third Round Mount Laurel Compliance.

Docket No. UNN-L-2391-15 - Settlement of Elite Objections

July 25, 2017 / Page 4 of 4

Respectfully submitted,


  
JONATHAN E. DRILL

On behalf of Elite Homebuilding, LLC:

  
Henry Kent-Smith

Dated: 8.3.2017

On behalf of Fair Share Housing Center:

  
Kevin D. Walsh, FSCH

Dated: 8/3/2017

copy:

Russell Finestcin, Esq. (Town attorney) – via email

Henry Kent-Smith, Esq. (attorney for Elite) – via email

Kevin Walsh, Esq. (attorney for FSCH) – via email

Philip B. Caton (Special Master) – via email