

Mid-Point Review of Affordable Housing Activities &



2020 Monitoring

**Bernardsville Borough, Somerset
County**

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EXECUTIVE SUMMARY

Under the supervision of the court-appointed Special Master, The Borough of Bernardsville and Fair Share Housing Center (“FSHC”) entered into a Settlement Agreement in November of 2017, which established agreed upon housing rehabilitation, Prior Round (1987-1999), Gap (1999-2015) and Prospective Need (2015-2025) obligations, and laid out how the Borough would comply with the same. A properly noticed Fairness Hearing was held on December 18, 2017, and the Court entered an order approving the Settlement Agreement on December 18, 2017. Bernardsville’s Final Judgement of Compliance and Repose was filed on December 7, 2018.

Bernardsville has made progress meeting the terms of the Agreement. While the Borough has not yet begun construction of its 100% affordable projects, it has been working very closely with the selected developer, RPM. The Borough, at RPM’s request, has increased the number of proposed units to be part of these two 100% affordable projects, and has been working diligently to be in a position to deliver these units by 2025. As per its recently approved Development Agreement with the Borough, RPM is proposing 47 senior units and 48 family units – 17 senior units and 24 family units more than proposed in the updated in the Housing Element and Fair Share Plan. The Borough will ultimately revise its plan to correspond with those changes in unit provision by the scattered site developments. At this time, while the exact number of family and senior units, though both increasing, are not realized, it is premature to revise at this time. It is also important to note that any proposed revision based on a likely increase of affordable units in the Scattered Site 100% affordable projects will not result in any reduction to Bernardsville’s agreed upon total 3rd round obligation, as specified in the above referenced documents.

CONDITIONS OF COMPLIANCE

The Borough’s Settlement Agreement included the following condition:

1. ...[T]he municipality has flexibility regarding how the requirements of this paragraph are satisfied and that the municipality may at its option alter its approach to complying with this paragraph on the condition that it provides (1) a minimum of six very low-income family units through compliance mechanisms that are not durationally adjusted; (2) a minimum of six very low income family or non-family units through compliance mechanisms that are not durationally adjusted; and (3) seven durationally adjusted very low income family units.

The Borough’s Housing Element and Fair Share Plan complies with this condition.

Bernardsville’s Final Judgement of Compliance and Repose included the following conditions of compliance:

1. On or before March 1, 2019 the Borough shall identify the developer of this site (7 Childs Rd) and shall provide a developer’s agreement and all other information necessary to demonstrate a realistic opportunity in accordance with the terms of the settlement agreement

Frank Petrozzo, owner of the Childs Road property has been identified as the developer of this site. The Borough has yet to enter into a development agreement with Mr. Petrozzo, due to a variety of factors, which is explained in greater detail later in this report.

DEVELOPMENTS THAT ARE NOT COMPLETED

Inclusionary Projects

The Borough's only inclusionary projects are durationally adjusted sites at Quimby Lane and the Quarry site. Quimby Lane was included in a recent preliminary investigation to determine whether designation as an "Area in Need of Redevelopment" is appropriate and in conformance with the statutory criteria in N.J.S.A. 40A:12A-5. The Quarry site is unchanged.

Non-Inclusionary Projects

Summary of Non-Inclusionary Projects & Future Borough Intentions:

While the Borough has not yet completed a number of projects intended to meet its affordable housing obligation as outlined in the Settlement Agreement, it has been acting in good faith with the owner of 7 Childs Road and RPM (selected developer for the 100% affordable scattered site project) to deliver affordable units to the Borough. With RPM's proposal of 41 units above and beyond that required by the settlement agreement, the Borough is reviewing whether the Housing Element and Fair Share Plan should be revised, including the removal of compliance mechanisms that have often proved difficult and/or costly to implement. Any freed up resources set aside in the spending plan for administration and hard costs in implementing these programs may be cost effectively reallocated to RPM's two projects (senior & family rental developments). The programs/projects to be reviewed include:

- Accessory Apartment program (10 units)
- Market to Affordable program (4 units)
- Group Homes (12 total units)

It is expected that some combination of units within these mechanisms will be revised down as they are replaced by the senior or family rental units within the scattered site development.

The Borough included the following non-inclusionary sites as mechanisms to comply with its 3rd round obligation:

- A group home referred to as "The Conti Site" (4 units)
- Three additional group homes (12 units)
- Extension of Controls (7 units)
- Childs Road (6 units)
- Mine Brook Rd (16 family units), Pine II (8 family units), and N. Finley (40 senior units) [collectively referred to now as "The Scattered Site development"]
- Market to Affordable program (4 units)
- Accessory Apartment program (10 units)

The status of these projects is as follows:

Conti Site Group Home: The site for the group home has been acquired and received its Certificate of Occupancy on 5/12/20.

Three Group Homes: According to the terms of the settlement agreement, at least one of the three homes would be completed by 2020. No group homes have been completed at this time; however,

the Borough approved resolution #19-211 on 10/28/19 committing \$83,333 toward the acquisition and conversation of a property for a group home for Community Options. CGP&H has developed an extensive group home outreach program that was just launched in one of its communities. They intend on bringing that aggressive outreach to Bernardsville.

Extension of Controls: No controls have been extended as the proposed units to have their controls extended do not have their controls expire until June of 2025 at the earliest. The controls will be extended prior to their expiry in 2025.

Childs Road: The Borough entered into discussions with the owner of Childs Road to develop the property for affordable housing in April of 2018. A series of emails and phone calls were exchanged between Borough representatives and the owner/owner's attorney, as well as in-person meetings at Borough Hall. The nature of the discussions were regarding the required subsidy to the owner to make the development economically viable. The owner's attorney informed the Borough that his client would be sending through revised financial figures sometime in Feb 2019. Those documents were never received by the Borough Attorney or Affordable Housing Planner (CGP&H). Subsequent outreach efforts did not receive replies. Recently, however, the property owner has reached back out the Borough Mayor seeking to reopen discussions about developing the site.

Scattered Site Development: Bernardsville issued an RFP seeking qualified affordable housing developers on March 22, 2018 and selected RPM Development Group to be its partner in developing 100% affordable housing developments at the sites selected in the Settlement Agreement. The Borough has entered into an exclusive Developer's Agreement with RPM as of 6/22/20. As per the terms of the Developer's Agreement, RPM will provide a 47 unit senior development and 48 family units. This represents an increase of 24 family rental units and 17 senior rental units above the Settlement Agreement obligation. The Borough has retained outside legal counsel experienced in eminent domain proceedings in the event that Bernardsville must condemn the N. Finley site for affordable housing purposes; however, negotiations are still ongoing with the property owner to avoid this outcome. It should also be noted that the Borough Council has adopted a bond ordinance appropriating an additional \$750,000 for property acquisition in case the funds designated in the Borough's spending plan are insufficient to acquire the scattered sites.

Market to Affordable: According to the terms of the settlement agreement, at least half of the four units would be completed by 2020. No market to affordable units have been completed at this time.

Accessory Apartment program: No accessory apartment units have been completed at this time.

Missed Construction Deadlines

The Borough submitted a proposed construction schedule in its Housing Element and Fair Share Plan that outlined a schedule of preliminary site acquisition in Q3 2018, signing of a Developer's agreement in late 2018, with the site acquisition at or nearing completion by March 2019 along with the developer submitting preliminary site plans. While the Borough has not met this proposed schedule, the Borough has entered into a development agreement with RPM as of 6/22/20, and Bernardsville has taken the aggressive position of retaining outside legal counsel for a potential condemnation of the N. Finley site to comply with its affordable housing obligations. The Borough's negotiations with the property owners has been delayed by several factors beyond its control including the COVID-19 pandemic.

Unbuilt developments not in a sewer service area

The Quarry site is the only site not within the sewer service area. The Borough will extend the sewer service area to this site when needed for residential development.

REHABILITATION OBLIGATION

Bernardsville contracts with CGP&H to administer its own municipal Housing Rehabilitation program. Both rental and owner-occupied homes are eligible for this program. Homes have also been previously rehabilitated through the Somerset County Rehabilitation Program as identified in the Housing Element and Fair Share Plan.

Bernardsville has commenced advertisement of its Housing Rehabilitation program on the Borough's website, social media pages, and flyers were posted in the Borough's Municipal Building, and Library. One unit is currently in progress.

VERY LOW INCOME ANALYSIS

The Borough's plan complies with the conditions for Very-Low Income units in the Settlement Agreement. Since the Settlement Agreement was executed, four (4) VLI special needs units have been created at the Conti Site. Please refer to the VLI report at Appendix 2 for more information about the status of the Borough's very low income units.

DURATIONALLY ADJUSTED SITES

As mentioned, the Borough has two durationally adjusted sites, one located within the sewer service area (Quimby), and one located outside the sewer service area (Quarry). As described above, Quimby is the subject of a larger ongoing redevelopment study and the Quarry site remains undeveloped. Quimby has been designated as an area in need of redevelopment and Topology is in the process of preparing a redevelopment plan.

INVITATION OF SUBMISSIONS

Any interested party may submit comments to the municipality regarding whether any sites no longer present a realistic opportunity and should be replaced by contacting:

John R, Pidgeon
c/o Pidgeon & Pidgeon, P.C.
600 Alexander Road
Princeton, New Jersey 08540
(609) 520-1010
jpidgeon@pidgeonlaw.com

Any party may by motion request a hearing before the court regarding these issues.

APPENDIX 1 – UNIT MONITORING FORM

Bernardsville Borough, Somerset County

Project/Unit Monitoring - June 25, 2020 (Page 1)

Site / Program Name	Regional Contribution Agreements					Somerset County Rehabilitation Program					Bernardsville Home Improvement Program					Rolling Hills at Bernardsville					Pine Ridge Townhomes				
Project Type	RCA					Housing Rehabilitation Program					Housing Rehabilitation Program					100% Affordable Family Sale					100% Affordable Family Sale				
Block & Lot / Street	NA					B: 115 / L 4 (Liberty Road)					T.B.D.					B: 125 / L: 27.31-27.45 Blazure Drive & Fox Hollow Trail					B: 114 / L: 1.101-1.126 Bernards Ave & Pine Street				
Status	Completed					Completed					Under Construction					Completed					Completed				
Date	Substantive Certification granted 12/6/95					12/28/2011					NA					Last CO issued 3/12/1998					Last CO issued 7/11/96				
Length of Affordability Controls						10 Years					10 Years					30 Years					30 Years				
Administrative Agent	N/A					Somerset County Community Development Office, 92 East Main Street 2nd Floor P.O. Box 3000, Somerville, NJ 07039, ,					CGP&H, LLC, 1249 South River Road, Suite 301, Cranbury, NJ 08512, (609) 664-2769, https://www.affordablehomesnewjersey.com/					CGP&H, LLC, 1249 South River Road, Suite 301, Cranbury, NJ 08512, (609) 664-2769, https://www.affordablehomesnewjersey.com/					CGP&H, LLC, 1249 South River Road, Suite 301, Cranbury, NJ 08512, (609) 664-2769, https://www.affordablehomesnewjersey.com/				
Contribution	77					N/A					N/A					N/A					N/A				
Type of Units	RCA					Housing Rehabilitation Program					Housing Rehabilitation Program					Family Sale					Family Sale				
Total Affordable Units	0					1					14					15					26				
Units Notes	RCA includes 41 units to New Brunswick and 36 units to Perth Amboy.										Bernardsville Borough to complete 14 units by 2025.										Six (6) units to have their controls extended, being 15-01, 05, 06, 07, 08, and 24 Pine Street.				
Income/Bedroom Distribution	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4
Very-Low-Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Low-Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	4	2	-	-	3	8	2	-
Moderate-Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	3	2	-	-	3	8	2	-

Bernardsville Borough, Somerset County

Project/Unit Monitoring - June 25, 2020 (Page 2)

Site / Program Name	210 N. Finley Avenue					Mine Brook Road					Pine Street II					7 Childs Road					Conti Site				
Project Type	100% Affordable Age Restricted Rental					100% Affordable Family Rental					100% Affordable Family Rental					100% Affordable Family Rental					100% Affordable Special Needs Rental				
Block & Lot / Street	B: 125 / L: 25 N. Finley Ave					B:80 / L:15,38 Mine Brook Road					B: 115 / L: 1 & 2 Pine Street					B: 62 / L: 2 Childs Rd					Claremont Rd				
Status	Proposed/Zoned					Proposed/Zoned					Proposed/Zoned					Proposed/Zoned					Completed				
Date	NA					NA					NA					NA					CO issued 5/12/20				
Length of Affordability Controls	30 Years					30 Years					30 Years					30 Years					30 Years				
Administrative Agent	RPM Development Group, 77 Park Street, Montclair, NJ 07042, (973) 744-5410, http://www.rpmdev.com/					RPM Development Group, 77 Park Street, Montclair, NJ 07042, (973) 744-5410, http://www.rpmdev.com/					RPM Development Group, 77 Park Street, Montclair, NJ 07042, (973) 744-5410, http://www.rpmdev.com/					CGP&H, LLC, 1249 South River Road, Suite 301, Cranbury, NJ 08512, (609) 664-2769, https://www.affordablehomesnewjersey.com/					Midland Adult Services, 94 Readington Rd PO Box 5026, North Branch, NJ 08876, (908) 722-8222, midlandschool.org				
Contribution	N/A					N/A					N/A					N/A					N/A				
Type of Units	Age Restricted Rental					Family Rental					Family Rental					Family Rental					Special Needs Rental				
Total Affordable Units	40					16					8					6					4				
Units Notes	Part of scattered site project. Project is to be funded by LIHTC and is exempt from UHAC. Exact income and bedroom distribution to be finalized.					Part of scattered site project. Project is to be funded by LIHTC and is exempt from UHAC. Exact income and bedroom distribution to be finalized.					Part of scattered site project. Project is to be funded by LIHTC and is exempt from UHAC. Exact income and bedroom distribution to be finalized.					Exact income and bedroom distribution to be finalized.					Group home purchased and under development on Claremont Rd.				
Income/Bedroom Distribution	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4
Very-Low-Income	-	-	-	-	-	-	2	1	-	-	-	1	1	-	-	-	-	1	-	-	-	4	-	-	-
Low-Income	-	37	3	-	-	-	-	4	2	-	-	-	1	1	-	-	-	1	1	-	-	-	-	-	-
Moderate-Income	-	-	-	-	-	-	1	4	2	-	-	-	2	2	-	-	-	2	1	-	-	-	-	-	-

APPENDIX 2 – 2020 VERY LOW INCOME ANALYSIS

Bernardsville Borough, Somerset County: Very-Low Income Units 2020

Development/Compliance Mechanism	Project Status	Controls Date	Affordable Units	Very-Low Income Units
Somerset County Rehabilitation Program	Completed	12/28/2011	1	0
Conti Site	Completed	CO issued 5/12/20	4	4
210 N. Finley Avenue	Proposed/Zoned	NA	40	0
7 Childs Road	Proposed/Zoned	NA	6	1
Bernardsville 3 Group Homes	Proposed/Zoned	NA	12	12
Bernardsville Accessory Apartments	Proposed/Zoned	NA	10	0
Bernardsville Market to Affordable Program	Proposed/Zoned	NA	4	0
Mine Brook Road	Proposed/Zoned	NA	16	3
Pine Street II	Proposed/Zoned	NA	8	2
Quarry Site	Proposed/Zoned	NA	51	7
Quimby Lane Project	Proposed/Zoned	NA	12	2
Totals:			164	31
			<i>(%) of VLI units: 18%</i>	

APPENDIX 3 – 2020 TRUST FUND MONITORING FORM

Bernardsville Borough, Somerset County
Trust Fund Balance as of December 31, 2019

	INCEPTION DEC 31, 2018	JAN 1, 2019 DEC 31, 2019	TOTAL
REVENUE SUMMARY			
Barrier Free Escrow	\$0.00	\$0.00	\$0.00
Development Fees	\$2,597,762.90	\$289,855.52	\$2,887,618.42
Interest Earned	\$136,803.54	\$57,499.56	\$194,303.10
Other Income	\$0.00	\$0.00	\$0.00
Payments-in-Lieu of Construction	\$364,757.50	\$0.00	\$364,757.50
TOTAL	\$3,099,323.94	\$347,355.08	\$3,446,679.02
EXPENDITURE SUMMARY			
Administration	\$342,263.88	\$48,946.00	\$391,209.88
Affordability Assistance	\$0.00	\$6,000.00	\$6,000.00
Barrier Free Conversions	\$0.00	\$0.00	\$0.00
Housing Activity	\$0.00	\$0.00	\$0.00
TOTAL	\$342,263.88	\$54,946.00	\$397,209.88
TRUST FUND ACCOUNT BALANCE AS OF December 31, 2019			\$3,049,469.14

HOUSING ACTIVITY : JAN 1, 2019 - DEC 31, 2019

TOTAL	\$0.00

AFFORDABILITY ASSISTANCE: JAN 1, 2019 - DEC 31, 2019

Emergency Health/Safety Repairs	\$2,000.00
Emergency Health/Safety Repairs	\$2,000.00
Emergency Health/Safety Repairs	\$2,000.00
TOTAL	\$6,000.00