

**MANSFIELD TOWNSHIP
BURLINGTON COUNTY
PLANNING BOARD**

RESOLUTION NO. 2021-3-7

**REVIEWING MANSFIELD TOWNSHIP ORDINANCE 2021-8 CREATING AND
ADOPTING A NEW ZONING DISTRICT, ARTICLE XVIIIIC, R-6, RESIDENCE
DISTRICT CONSISTING OF BLOCK 42, LOTS 1 & 2.02 (“CARTY PROPERTY”) AND
REPORTING TO THE GOVERNING BODY THAT SAID ORDINANCE IS
CONSISTENT WITH THE TOWNSHIP’S ADOPTED HOUSING ELEMENT OF THE
MASTER PLAN AND FAIR SHARE PLAN AND RECOMMENDING IT BE ADOPTED
BY THE MANSFIELD TOWNSHIP COMMITTEE**

WHEREAS, Centex Corporation (now Pulte), Mansfield Township (“Township”) and the Mansfield Township Planning Board (“Board”) were parties to a certain 2005 Settlement Agreement (the “2005 Settlement Agreement”); and

WHEREAS, the 2005 Settlement Agreement resolved litigation between the parties concerning the development of property in the Township identified in the Settlement Agreement and known as Block 41, Lot 2.01 (the “Reed Property”) and Block 42, Lots 1 and 2.02 (“the “Carty Property”); and

WHEREAS, the 2005 Settlement Agreement provided for dedication of the Reed Property to the Township, which has been accomplished and completed; and

WHEREAS, the 2005 Settlement Agreement further provided for the development of the Carty Property for market rate age restricted homes, with a required set-aside for affordable housing; and

WHEREAS, the Township and the Board were subsequently named as defendants in litigation filed by the developer of Block 70, Lot 6.02, consisting of approximately 118.53 acres (“Tower Gate Property”) in the Superior Court of New Jersey, Law Division, entitled Tower Gate Associates v. Township of Mansfield, et al., Docket # L-1739-18, challenging the Township’s satisfaction of its affordable housing obligation and seeking to construct an inclusionary development on the Tower Gate Property; and

WHEREAS, as part of the settlement of said litigation, the Township prepared a new Housing Element and Fair Share Plan (“HE/FSP”) to satisfy the Township’s constitutional obligation to provide for its prior Rounds and Round Three affordable housing obligation; and

WHEREAS, said HE/FSP provided, on page 52 that, the Carty Property was already recognized as “available, suitable, developable and approvable” under applicable COAH regulations, and thus was and is an appropriate affordable housing site; and

WHEREAS, the HE/FSP further provided, on page 53, that the Carty property would be developed for affordable housing as a necessary component of the Township’s overall affordable housing obligation, and to accommodate said affordable housing, the Property would be rezoned for a density of four units per acre with a 20% set-aside for affordable housing, of which 13% would be available for very-low income housing; and

WHEREAS, on February 3, 2020, the Court Master David J. Banisch, PP/AICP, issued a “Fairness Report” reviewing the Township’s proposed HE/FSP; and

WHEREAS, on February 18, 2020, the Hon. Jeanne T. Covert, A.J.S.C., Burlington County Superior Court of New Jersey, Law Division, after the required “Fairness Hearing”, and the Court Master’s Fairness Report, entered and filed an Order (“Fairness Order”) conditionally approving the Township’s HEFSP; and

WHEREAS, the Fairness Order further required the Township to satisfy all of the conditions of the Court Order, during the Court-ordered compliance phase, including an agreement with Pulte Homes as set forth in section 2(e) below:

“During the compliance phase, the Township shall provide to the Special Master, and to the Court, a Development Agreement between Mansfield Township and Pulte Homes and/or its successor-in-interest, as well as an inclusionary Zoning Ordinance to address the Pulte Homes component of the Township's overall HE/FSP. The percentage of the proposed affordable housing set-aside should be clarified and revised if necessary in the draft HE/FSP. The draft HE/FSP, the Development Agreement and Zoning Ordinance should specify the correct percentage of affordable units and identify applicable compliance parameters regarding income mix, bedroom mix, thirteen per cent (13%) very low income, affirmative marketing, 30 year income controls, consistent with HUAC Section 5:80 and any other relevant information and standards required to be met.”; and

WHEREAS, as required by the Fairness Order, the Township negotiated an Amendment to the 2005 Centex Settlement Agreement (the "Amendment"); and

WHEREAS, by adoption of Resolution 2020-12-20 on December 28, 2020, the Planning Board authorized the execution of the Amendment on behalf of the Planning Board; and

WHEREAS, the Amendment provided, *inter alia*, for the aforesaid rezoning of the Carty Property at a gross density of four units per acre with a 20% affordable housing set-aside, and further provides for development of the property in two phases. The first phase of the development will generate a portion of the required number of affordable units to satisfy the Township's current affordable housing obligation in Rounds Two and Three, based on the HE/FSP and the Court Order. The Amendment permits development of market housing in the second phase based on the Township's need to provide the required number of affordable units that the Township may be obligated to provide in the future, including Round Four, which is unknown at this time; and

WHEREAS, on January 2, 2021, the Court Master David J. Banisch, PP/AICP, provided the Court with an updated Compliance Report advising the Court of the Township's compliance with the Fairness Order and setting forth the remaining conditions for the Township to obtain a Final Judgment of Compliance; and

WHEREAS, the Court Master's updated Compliance Report approved the Amendment and required the Township to adopt an inclusionary zoning ordinance implementing the terms of the Amendment, after first submitting a draft of same to the Court Master for review and approval; and

WHEREAS, on January 8, 2021, after reviewing the Township's efforts to comply with the terms and conditions of the Fairness Order and the Special Masters updated Compliance Report, Judge Covert entered an Interim Order of Compliance and Judgment of Repose, with conditions, (the "Interim Order") adopting the conditions set forth in the Court Master's updated Compliance Report, including the condition requiring the adoption by the Township of the inclusionary zoning ordinance implementing the terms of the Amendment to the 2005 Settlement Agreement, as herein set forth below; and

WHEREAS, the Township Committee has introduced Ordinance 2021-8 on first reading, as required by the Amended Settlement Agreement and the Court Order, and referred the Ordinance to the Planning Board as required by the New Jersey Municipal Land Use Law pursuant to N.J.S. 40:55D-64; and

WHEREAS, the Planning Board finds that Ordinance 2021-8 is consistent with the Township's Housing Element and Fair Share Plan as approved by the Planning Board by adoption of Resolution 2020-4-6 on April 15, 2020, for the following reasons:

1. As set forth in the 2005 Settlement Agreement, the Carty property was already approved for market rate housing at a density required to generate affordable housing on the site.
2. The Carty Property has already been recognized as “available, suitable, developable and approvable” under applicable COAH regulations, and thus was and is an appropriate affordable housing site.
3. The Carty property was already designated as an affordable housing site and a part of the Township's Housing Element and Fair Share Plan (HE/FSP) approved by Court Order and previously approved by the Planning Board.
4. The density and affordable housing set-aside in the first phase of the development of the Carty Property is directly tied to the Township's constitutional obligation to provide for its regional share of affordable housing in the prior Rounds and Round Three, as set forth in the HE/FSP and the Court Order approving same.

5. The density and affordable housing set-aside in the first phase of the development of the Carty Property further provides a "buffer" to protect the Township against non-compliance with the HE/FSP and the Court Order approving same, based on other components of the HE/FSP.
6. The density and affordable housing set-aside in the phase 2 of the development of the Carty Property is directly tied to the Township's constitutional obligation to provide for its regional share of affordable housing in Round Four and in the future, which at present is unknown.
7. The provisions of the Amendment protect the Township against future builder's remedy litigation and the need to identify other sites for affordable housing both now and in the future.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Mansfield, County of Burlington and State of New Jersey, that, given the background, rationale and provisions of Mansfield Township Ordinance 2021-8, and the Township's constitutional obligation to provide for its regional share of affordable housing, and the Planning Board having been a party to both the Amendment to the 2005 Centex Settlement Agreement and the Court Order as set forth above, and the Planning Board having previously approved the Township's Housing Element and Fair Share Plan, the Mansfield Township Planning Board does hereby report to the governing body that Ordinance 2021-8 is substantially consistent with the Housing Element of the Mansfield Master Plan, and recommends its adoption by the Mansfield Township Committee.

ROLL CALL VOTE

Those in Favor: 07

Those Opposed: 0

Those Abstaining: 02

CERTIFICATION

I hereby certify that this foregoing Resolution is a true resolution, as adopted by the Land Use Board of the Township of Mansfield in accordance with its decision at its regular meeting on March 22, 2021.

**LAND USE BOARD
OF THE TOWNSHIP OF MANSFIELD**

Attested:

**EFTHIMIOS TSIKNAKIS
CHAIRMAN**

**LINDA SEMUS, RMC, CMR
SECRETARY**

Dated: 03/22/21