

Spending Plan

January 2016



TOWNSHIP OF LIVINGSTON New Jersey

Prepared by:

A handwritten signature in black ink, appearing to read "Megan York".

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TOWNSHIP OF LIVINGSTON SPENDING PLAN

INTRODUCTION

This Spending Plan is prepared for the purpose of setting forth planned expenditures from the affordable housing trust fund. Livingston Township has prepared the 2015-2025 Housing Element and Fair Share Plan adopted by Livingston Planning Board on January 19, 2016, which was then endorsed by the Township Council on January 25, 2016.

A Development Fee Ordinance creating a dedicated revenue source for affordable housing and establishing a Affordable Housing Trust Fund was adopted initially on May 17, 1997 (Ordinance No. 17-97) and was approved by the Superior Court by Order entered on September 22, 1997, as subsequently re-confirmed by a Final Judgment entered on February 7, 2000. An updated Development Fee Ordinance was adopted on May 16, 2011 (Ordinance No. 22-2011).

As of October 31, 2015, Livingston Township's Affordable Housing Trust Fund had a balance of \$3,173,237.95 as a result of development fee collections, earned interest and other funds collected. All development fees, payments in lieu of constructing affordable units on site, and interest generated by the fees have been deposited in a separate interest-bearing affordable housing trust fund with Investors Bank for the purposes of affordable housing. These funds will be spent in accordance with N.J.A.C. 5:97-8.7 to 8.9 as described in the sections that follow.

By letter dated January 23, 2012, Sean Thompson, Director of the Local Planning Services unit in the Department of Community Affairs (successor to COAH staff) notified Livingston Township of approval of its revised Spending Plan (dated November 2011). This authorization permitted expenditures from the Township Affordable Housing Trust Fund that are consistent with the Spending Plan, except that further DCA approval was required for actual affordable housing construction projects other than the \$200,000 designated to assist the Cerebral Palsy of North Jersey ("CPNJ) group home.

Livingston submitted a revised Spending Plan (dated July 2012) to COAH on July 16, 2012 which included, amongst other revisions, an additional commitment of \$200,000 to CPNJ and a new commitment of \$400,000 to the ARC of Essex County ("ARC"). Relying on the good faith of Livingston to fulfill its financial commitment, both group homes proceeded with their development. Livingston awaited approval of its revised Spending Plan to release the funds to these group homes. As COAH's approval was not forthcoming and the group homes desperately needed the committed funds for their projects, in May 2013 Livingston made application to its Mount Laurel Judge for the purpose of facilitating these two proposed expenditures from Livingston's Housing Trust Fund. Livingston sought a Court Order that supported these affordable housing group home projects as being consistent with the implementation of the Final Judgment entered on June 21, 2011 in the Builder Remedy Litigation heard in Superior Court.

In May 2013 Superior Court Judge Dennis Carey signed an Order (Appendix A) confirming that the Housing Trust Fund expenditures for the CPNJ and the ARC group homes were consistent with the implementation of the Final Judgment of Mount Laurel Compliance and Repose. Livingston has proceeded to release the funds - \$200,000 to CPNJ and \$400,000 to the ARC.

This revised Spending Plan is being submitted to reflect actual and projected revenue and expenditures. This amended Spending Plan adopted by the Township Council on January 25, 2016, provides additional details as to affordable housing programs to be funded by the Affordable Housing Trust Fund.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the third round period, Livingston Township considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers as follows: None

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units:

The Township collected funds for two signed Regional Contribution Agreements ("RCA") as part the prior Second Round plan. The original RCA amount and interest earned are included in this Spending Plan, since implementation of the RCA is precluded by subsequent legislation adopted in 2008. \$703,995.99 was deposited in the Affordable Housing Trust Fund account on September 23, 2015 and \$430.59 (a residual interest earned balance) remains and is currently being closed out and transferred to the Trust Fund account.

The October 31, 2015 Investors Bank statement for the Affordable Housing Trust Fund show an account balance that is \$336,162.86 more than the balance shown in the COAH CTM system. This additional income is being listed as other funding sources for the purposes of this Spending Plan. Livingston has completed an extensive review of its Affordable Housing Trust Fund account and provided a detailed memo to COAH on March 12, 2013 in order to resolve the discrepancy but COAH did not respond to numerous requests to review this.

(d) Projected interest:

Interest on the projected revenue in the Affordable Housing Trust Fund at the current average interest rate.

Livingston Township projects a total of \$1,864,500 in revenue to be collected between November 1, 2015 and December 31, 2025. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

Projected Revenue												
Source of funds	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
Development fees	30,000	208,000	208,000	208,000	208,000	208,000	134,500	134,500	134,500	134,500	134,500	1,742,500
Payments in Lieu of Construction	0	0	0	0	0	0	0	0	0	0	0	0
Other Funds	0	0	0	0	0	0	0	0	0	0	0	0
Interest	2,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	122,000
Total	32,000	220,000	220,000	220,000	220,000	220,000	146,500	146,500	146,500	146,500	146,500	1,864,500

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Livingston Township.

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Livingston Township’s development fee ordinance for both residential and non-residential developments in accordance with COAH’s rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

A maximum of twenty (20) percent of the affordable housing trust fund revenues may be utilized to address administrative costs. The remaining eighty (80) percent will be used to fund various affordable housing programs and for affordable housing assistance.

Housing trust fund revenues will be distributed under the same procedures as used for the payment of any bill or purchase by the Township. Purchase orders will be requested and processed.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)

Livingston Township will dedicate \$3,076,293.21 for rehabilitation or new construction programs as follows:

Rehabilitation program: \$270,000 is committed for a total of 10 units. This total is based on average assistance of \$27,000 per unit.

Scattered Site Program: \$1,656,293.21 has been committed to develop single family and duplex units in various locations in residential neighborhoods throughout Livingston. Livingston has identified 34 possible Township owned sites that have access to public water and sewer. The Township expects to partner with Habitat for Humanity to develop 5 affordable sale units on selected sites.

New Jersey Community Capital Project: \$700,000 has been committed to partner with New Jersey Community Capital. New Jersey Community Capital has identified potential bank owned homes that they will purchase, rehabilitate, deed restrict and sell to income eligible households. Trust fund money will be utilized to subsidize the purchase price and rehabilitation costs. It is estimated that two units will be completed through this program.

New Units at Cedar Street (Market to Affordable Rental)- \$450,000 has been committed to subsidize the creation of five new senior rental units. Livingston will contract with the owner of Cedar Street Commons to make five existing market rate units affordable. The units will be deed restricted for 30 years.

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

Projected minimum affordability assistance requirement:

Affordability Assistance Calculation		
Actual development fees thru 10/31/15		\$ 4,202,732.99
Actual interest thru 10/31/2015	+	\$ 389,407.45
Actual Funds collected for RCA + RCA Interest (do not count for affordability assistance requirement)		
Other Funds (do not count for affordability assistance requirement)		\$ 1,040,158.85
Projected Development Fees, 11/1/2015 thru 2025	+	\$ 1,742,500.00
Projected Trust Fund Interest, 11/1/2015 thru 2025	+	\$ 122,000.00
Less housing Activity thru 6/2/2008	-	\$ -
	Total =	\$ 7,496,799.29
Total fees and interest for affordability assistance calculation		
		\$ 6,456,640.44
30% Requirement	x .30	\$ 1,936,992.13
Less Affordability assist. expenditures thru 10/31/2015		
	-	\$ 1,012,849.00
Projected Min Afford Assist, 11/1/2015 thru 2025		
	=	\$ 924,143.13
Proj Min Afford. Assist. for Very Low Income, 11/1/2015 thru 2025		
	x 1/3	\$ 308,047.71

Livingston Township will dedicate \$1,337,500 from the affordable housing trust fund to render units more affordable, including \$308,047.71 to render units more affordable to households earning 30 percent or less of median income by region.

A first month's rent program has been developed to facilitate rental of affordable rental units by qualified low and moderate income households. This program includes guidelines for provision of direct payments to affordable housing rental providers of all or a portion of the first's month rent on behalf of newly

qualified tenant households. Priority is given to very low income households. \$100,000 from the Affordable Housing Trust Fund has been dedicated for this use.

An affordability assistance program has been established to fund the sewer hook-up fees for new affordable units in two inclusionary projects. It is estimated that there will be a total of 95 units in two projects (44 affordable units at Squiretown and 51 affordable units at Pulte Homes.) Based on these estimates, \$237,500 would be set-aside for the connection fees for the affordable units (95 units x \$2,500 per sewer connection fee.)

Livingston Township has also dedicated \$100,000 in Affordability Assistance funding to establish a program to assist purchasers of deed restricted affordable homes with down payment and closing cost assistance.

Livingston Township has set aside \$900,000 from the Affordable Housing Trust Fund for group homes. The Township is considering partnerships with Our House, Inc. and SERV Behavioral Health System Inc. It anticipated that this funding will result in three group homes with a total of 9 beds.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

Administrative Expense Calculation		
Actual development fees and interest thru 10/31/2015		\$ 4,592,140.44
Projected Development Fees and interest 11/1/2015 thru 2025	+	\$ 1,864,500.00
Payments-In-Lieu of construction and other deposits thru 7/17/08	+	\$ -
Less RCA expenditures thru 12/31/25	-	\$ -
Total For Admin. Calculation, 11/1/2015 thru 2025	=	\$ 6,456,640.44
20% Maximum for Admin Expense	x .20	\$ 1,291,328.09
Less Admin thru 10/31/2015	-	\$ 667,383.35
Available for Admin 11/1/2015 Thru 12/31/2025	=	\$ 623,944.74

Livingston Township projects that a maximum of \$623,944.74 will be available from the Affordable Housing Trust Fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, include the following:

1. Salary and expenses for the Municipal Housing Liaison and other employees and consultants in connection with development and implementation of affordable housing assistance programs, affirmative marketing plan and other affordable housing administration activities.
2. Expenditures for consultant and professional fees and other expenses in connection with preparation of the Housing Element and Fair Share Plan and future amendments thereto.
3. Legal fees in connection with preparation of the Housing Element and Fair Share Plan and future

amendments thereto and development and implementation of affordable housing assistance programs and affirmative marketing plan, not including any legal fees related to opposition to specific affordable housing sites.

4. EXPENDITURE SCHEDULE

Livingston Township intends to use Affordable Housing Trust Fund revenues for the creation and/or rehabilitation of housing units and other affordable housing assistance programs. These programs are in addition to the affordable housing mechanisms in the Housing Element and Fair Share Plan, which addresses Livingston's current affordable housing obligation. The projected schedule of expenditures is summarized on the following page.

Project/Programs											
Housing Activity	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
Rehabilitation Program (10 projected units)	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	27,000	270,000
Scattered Site Program - land and construction (5 projected units)	440,000	440,000	400,000		376,293						1,656,293
NJ Community Capital Project (2 projected units)	250,000	250,000	200,000								700,000
New Units at Cedar Street (Market-to-Affordable Rental) (5 projected units)	450,000										450,000
Total Housing Activity	1,167,000	717,000	627,000	27,000	403,293	27,000	27,000	27,000	27,000	27,000	3,076,293
Affordability Assistance											
First Month Rent Program	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
Sewer Hook Up Program	237,500										237,500
Down Payment for Deed Restricted Ownership Homes		20,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
Group Homes - SERVE & Our House	300,000		300,000			300,000					900,000
Total Affordability Assistance	547,500	30,000	320,000	20,000	20,000	320,000	20,000	20,000	20,000	20,000	1,337,500
Administration	62,394	62,394	62,394	62,394	62,394	62,394	62,394	62,394	62,394	62,394	623,945
TOTAL	1,776,894	809,394	1,009,394	109,394	485,688	409,394	109,394	109,394	109,394	109,394	5,037,738

5. EXCESS OR SHORTFALL OF FUNDS

Implementation of the affordable housing programs in the Spending Plan will satisfy Livingston's current affordable housing obligation.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to increase the budget of the Housing Rehabilitation Program in order to assist more households.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with Section 170-123.3(b) of Livingston's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

SUMMARY

Livingston Township intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan dated January 2016 and described in this Spending Plan subject to limited amendments.

Livingston Township had a balance of \$3,173,237.95 as of October 31, 2015 and anticipates an additional \$1,864,500 in revenues (including interest) before the expiration of the compliance period for a total of \$5,037,737.95. The Township will dedicate \$3,076,293.21 towards rehabilitation and new construction, \$1,337,500 to render units more affordable, and \$623,944.74 to administrative costs. Livingston will dedicate any excess funds toward assisting additional households through the Housing Rehabilitation Program.

Spending Plan Summary		
Balance as of 10/31/15		\$ 3,173,237.95
Projected REVENUE 2015-2025		
Development fees	+	\$ 1,742,500.00
Payments in Lieu of Construction	+	\$ -
Other Funds	+	\$ -
Interest	+	\$ 122,000.00
TOTAL AVAILABLE FUNDS	=	\$ 5,037,737.95
PROJECTED EXPENDITURES 2015-2025		
Housing Activity		
Rehabilitation Program	+	\$ 270,000.00
Scattered Site Program - land and construction		\$ 1,656,293.21
NJ Community Capital Project	+	\$ 700,000.00
New Units at Cedar Street (Market-to-Affordable Rental)	+	\$ 450,000.00
Total Housing Activity		\$ 3,076,293.21
Affordability Assistance		
First Month Rent Program	+	\$ 100,000.00
Sewer Hook Up Program	+	\$ 237,500.00
Down Payment for Deed Restricted Ownership Homes	+	\$ 100,000.00
Group Homes - SERV & Our House, Inc.	+	\$ 900,000.00
Total Affordability Assistance		\$ 1,337,500.00
Administration	+	\$ 623,944.74
TOTAL PROJECTED EXPENDITURES	=	\$ 5,037,737.95
REMAINING BALANCE	=	\$ 0.00

Appendix A - May 2013 Court Order from Superior Court Judge Dennis Carey regarding expenditures of Trust Fund

APPENDIX A

*May 2013 Court Order from Superior Court Judge Dennis Carey
regarding expenditures of Trust Fund*

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Attorneys for Defendants
Township of Livingston
Livingston Township Council and
Livingston Township Planning Board

FILED

MAY 20 2013

Dennis F. Carey, III, C.P.J.

**JOSEPH KUSHNER HEBREW ACADEMY,
INC. and TMB PARTNERS, LLC,**

Plaintiffs,

v.

**TOWNSHIP OF LIVINGSTON, LIVINGSTON
TOWNSHIP COUNCIL and LIVINGSTON
PLANNING BOARD,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY**

DOCKET NO. ESX-L-9126-07
DOCKET NO. ESX-L-9785-07
DOCKET NO. ESX-L-9126-08
(Consolidated Actions)

Civil Action
(Mount Laurel)

SQUIRETOWN PROPERTIES, LLC,

Plaintiff,

v.

**TOWNSHIP OF LIVINGSTON, LIVINGSTON
TOWNSHIP COUNCIL and LIVINGSTON
PLANNING BOARD,**

Defendants.

**ORDER CONFIRMING HOUSING TRUST
FUND EXPENDITURES AS CONSISTENT
WITH AND IN IMPLEMENTATION OF
FINAL JUDGMENT OF MOUNT LAUREL
COMPLIANCE AND REPOSE**

HILLSIDE-NORTHFIELD PARTNERS, LLC,

Plaintiff,

v.

**TOWNSHIP OF LIVINGSTON, LIVINGSTON
TOWNSHIP COUNCIL and LIVINGSTON
PLANNING BOARD,**

Defendants.

This matter having come before the Court on the application of McCarter & English, LLP (Gary T. Hall, Esq.), attorneys for defendants Township of Livingston, Livingston Township Council and Livingston Township Planning Board, and Murphy McKeon P.C. (Sharon I. Weiner, Esq.), attorneys for defendant Township of Livingston, requesting the entry of an Order Confirming Housing Trust Fund Expenditures as Consistent with and in Implementation of Final Judgment of Mount Laurel Compliance and Repose; and copies of certain pertinent documents having been provided in support of this application; and court-appointed special master Elizabeth C. McKenzie, P.P., having issued a letter to the Court recommending entry of the requested Order; and the Court having considered this request, the supporting documents, the recommendation of the special master and the Final Judgment; and good cause having been shown;

IT IS THIS 20 day of May, 2013 ORDERED THAT:

1. This Court entered a Final Judgment of Mount Laurel Compliance and Repose ("Final Judgment") in the within action on June 21, 2011, which expressly approved Livingston Township's Prior Round Mount Laurel Compliance Plan ("Compliance Plan") subject to Livingston Township addressing with Council on Affordable Housing ("COAH") staff questions concerning documentation for supportive/special needs housing credits and also approval of the Township spending plan. The Final Judgment continued the appointment of Elizabeth McKenzie as special master to assist Livingston with compliance actions.

2. By letter dated January 23, 2012, Sean Thompson, Director of Local Planning Services in the Department of Community Affairs (successor to COAH pursuant to a reorganization plan subsequently invalidated by the Appellate Division) approved portions of the Livingston Township spending plan, specifically including a funding contribution of \$200,000 to Cerebral Palsy of North Jersey ("CPNJ") for a group home project. This letter indicated that additional information would have to be submitted in order to authorize future expenditures for

additional affordable housing construction projects, and such information was provided by Livingston following adoption of a revised spending plan.

3. Livingston adopted a resolution approving a revised spending plan on June 4, 2012. The revised spending plan included: (1) an increase from \$200,000 to \$400,000 in the funding contribution for the CPNJ group home that will provide 6 credits for affordable housing, and (2) a funding contribution of \$400,000 to ARC of Essex County for construction of a group home that will provide 4 affordable housing credits.

4. Livingston Township adopted a resolution on June 26, 2012 authorizing an agreement with CPNJ concerning the provision of \$400,000 in funding for the group home project, and the authorized agreement was entered into shortly thereafter.

5. Livingston Township adopted a separate resolution on June 26, 2012 authorizing an agreement with ARC of Essex County concerning the provision of \$400,000 in funding for a group home project, and the authorized agreement was entered into shortly thereafter.

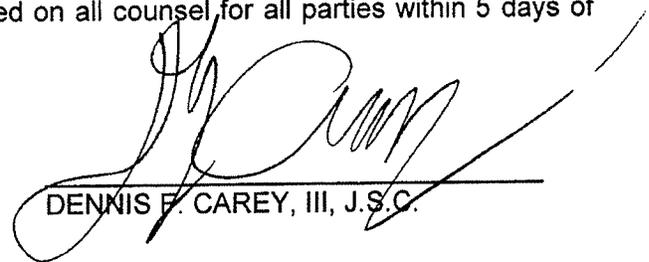
6. On July 16, 2012, Livingston forwarded the revised spending plan and supporting documents as to the CPNJ and ARC group home projects to Mr. Thompson as Acting Director of COAH (rather than DCA by virtue of the Appellate Division decision invalidating the reorganization plan that had eliminated COAH). Since that time, Livingston has not received any comments from Mr. Thompson or COAH concerning these two group home projects.

7. Construction of the CPNJ group home was begun in October 2012, and Livingston provided an initial funding contribution of \$200,000 in November 2012, consistent with the initial spending plan. The remaining payment of \$200,000 is required to be made now for timely completion of the project.

8. The ARC of Essex County project was initiated by site acquisition in June 2012 in reliance on the \$400,000 funding commitment by Livingston Township. The previously authorized funding contribution need to be made in order for this project to proceed.

9. Based on the documents presented by Livingston and the recommendation of the special master, this Court hereby concludes that Implementation of the CPNJ and ARC group home projects will entitle Livingston to 10 affordable housing credits, which will be consistent with and in implementation of both the Compliance Plan and the Final Judgment.

10. A copy of this Order shall be served on all counsel for all parties within 5 days of receipt.



DENNIS F. CAREY, III, J.S.C.