

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

RESOLUTION No. 2018-136

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 SPECTRUM 360 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, by Order dated May 12, 2017, SPECTRUM 360, LLC ("Spectrum" and, collectively with the Township, the "Parties"), a non-profit entity that operates schools and serves children, adolescents, young adults, and adults on the autism spectrum and with behavioral and related disabilities, was granted leave to intervene in the DJ Action as an interested party owning certain property located in the Township commonly known as One Sunset Avenue and otherwise designated as Block 13, Lot 4 on the Township's official Tax Map (the "Property"); and

WHEREAS, the Property consists of approximately eight (8) acres, with approximately 5.5 acres situated in the Township and the remaining approximate 2.5 acres located in the Town of Montclair; and

WHEREAS, Spectrum currently utilizes the Property as a campus for its Lower School and has a need to expand the Lower School to develop a career education/vocational wing for older students, but lacks adequate space on the Property for the planned expansion; and

WHEREAS, given Spectrum's inability to expand its existing Lower School on the Property, it desires to sell the Property for a developer who will construct a multifamily inclusionary development on the Property; and

WHEREAS, Spectrum prepared concept plans that are representative of the type of proposed project, depicting a maximum six (6) stories including parking, which accommodates approximately 300 residential units (the "Project"); and

WHEREAS, Spectrum and the Township engaged in amicable negotiations and have agreed upon the general terms for Project, which will have an inclusionary affordable housing component; and

WHEREAS, Spectrum is currently engaged in a competitive selection process with several developers who desire to purchase the Property and construct the Project; and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing units that can be credited 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**"), the terms of the Settlement Agreement with Fair Share Housing Center in In the Matter of the Township of Verona, Docket No. ESX-L-4773-15, and any and all other applicable law, and said Inclusionary Development shall be deed restricted as such for a period of at least thirty years and thereafter until the municipality takes action to release the restrictions; 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 (the "**Ordinance**") and/or the actions necessary for the effectuation of the Inclusionary Development as an "as-of-right" development.

WHEREAS, the Township and Spectrum 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 Spectrum 360.

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

