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December 15, 2015

VIA FEDERAL EXPRESS

Elizabeth K. McManus, PP/AICP

Clarke Caton & Hintz

100 Barrack Street

Trenton, New Jersey 08608

Re: In the Matter of the Application of the Borough of East Rutherford
Docket No. BER-L-5925-15

Dear Ms. McManus:

This office represents Catalyst Development Partners, LLC ("Catalyst"), an interested party on the service list, and a movant seeking the right to intervene in the for the declaratory judgment action filed by the Borough of East Rutherford under the docket number referenced above. On November 30, 2015, my office received a copy of the Borough's Summary of Plan for Fair Share Obligation (Matrix) that was attached to a letter dated November 25, 2015, to you from Richard J. Allen, Esq., the Borough Attorney for East Rutherford. By the terms of the Case Management Order entered by Judge William C. Meehan on October 29, 2015, interested parties and interveners are required to submit objections or comments to the municipality and you by December 17, 2015.

Enclosed please find a memorandum dated December 14, 2015, prepared by Steven M. Lydon, PP/ACIP of Burgis Associates, Inc., on behalf of Catalyst, which sets forth my client's comments, objections and concerns with respect to the Summary Plan (Matrix) submitted by the Borough of East Rutherford.

Kindly address any questions with respect to the referenced enclosure to this office.

Very truly yours,

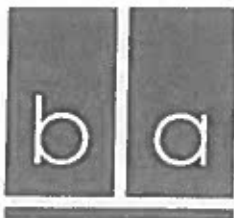
THOMAS H. BRUINOOG, ESQ. LLC
a New Jersey limited liability company
d/b/a Bruinoog & Associates

By: 

THOMAS H. BRUINOOG

THB/mes

cc w/enc: Richard J. Allen, Esq. (via e-mail & regular mail)
Robert T. Regan, Esq. (via e-mail & regular mail)
George Stevenson, PP/AICP, Remington & Vernick (via e-mail & regular mail)
Catalyst Development Partners, LLC (via e-mail)



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
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Edward Snieckus, Jr. PP, LLA, ASLA

December 15, 2015

Elizabeth K. McManus, PP/AICP
Clarke Caton & Hintz
100 Barrack Street
Trenton, New Jersey 08608

Re: IMO Application of the Borough of East Rutherford
For a Judgement of Compliance and Repose
Docket No.: BER-L-5925-15

Dear Ms. McManus:

Our office has been retained by NCP Fund I Holdings the owner of property located at 932 Paterson Plank Road, East Rutherford and Catalyst Development Partners, LLC, the developer and authorized agent of the owner. On behalf of our client we have reviewed the East Rutherford Summary of Plan for Fair Share Obligation (Matrix) attached to a November 25, 2015 letter from Borough Attorney Richard Allen to yourself. All obligations cited in the East Rutherford Matrix are from a published but never adopted analysis prepared for the Council on Affordable Housing ("COAH") in 2014. Our findings are below.

1. Rehabilitation Obligation: I agree with the conclusion that according to the unapproved 2014 COAH numbers, East Rutherford was assigned a rehabilitation obligation of 132 dwellings. East Rutherford claims they will challenge the magnitude of this obligation. It is noteworthy that E. Rutherford has failed to rehabilitate even a single dilapidated dwelling located in the Borough. East Rutherford fails to indicate how it will address the rehabilitation component of its affordable housing obligation.

2. 1987-1999 New Construction Obligation: With respect to the 1987-1999 affordable housing obligation, E. Rutherford is claiming the 70 unit obligation published by COAH in 2014 is incorrect. E. Rutherford states the Tomu Development court decision established the Borough's 1987-1999 obligation at 60 units of affordable housing.

East Rutherford should not receive credit for 60 units of affordable housing toward the 1987-1999 obligation as depicted on sheet 1 of the Matrix. The 60 units of affordable housing listed on the Matrix are a combination of 45 units of affordable housing and 15 bonus credits all associated with and deriving from the Tomu development. The affordable units associated with the Tomu site do not represent a 'realistic opportunity for the construction of affordable housing'. The approval of this development is not of recent time. If this development represented a realistic development opportunity, construction would have already commenced. The fact that this development has not moved forward is proof positive that it fails to represent a realistic development opportunity. The Borough should not receive any

affordable housing credit for this development. Based on this analysis, E. Rutherford is left with zero affordable housing credits to apply to the 1987-1999 prior round obligation.

3. **1999-2015 Gap Obligation:** I agree that E. Rutherford was assigned a zero affordable housing obligation for the time period of 1999-2015 pursuant to the never adopted 2014 COAH affordable housing need analysis. We further recognize that a new affordable housing need analysis is being prepared and as a result of this upcoming analysis East Rutherford might be assigned an affordable housing obligation for the 1999-2014 time period. We reserve the right to comment further upon publication of the upcoming affordable housing need analysis.

4. **2015-2025 Obligation:** Turning attention to the obligation assigned for the 2015-2025 time frame, I disagree that E. Rutherford was assigned an affordable housing obligation of 24 units. Pursuant to the 2014 COAH analysis, E. Rutherford was assigned an affordable housing obligation for this time period of 26 affordable dwellings, 2 affordable dwellings more than reported by E. Rutherford.

E. Rutherford seeks to apply 15 affordable housing units from the Tomu site to satisfy, in part, the 2015-2025 obligation. For the reason stated in an earlier paragraph, these units do not represent a realistic opportunity for the delivery of affordable housing and therefore these phantom affordable housing units should not be applied towards partial satisfaction of the 2015-2025 affordable housing obligation.

On page 4 of E. Rutherford's submission there is a second, lower table. In the first row of this lower table E. Rutherford seeks credit for 6 affordable housing credits. This is despite the fact that for three units, only payments in-lieu of housing construction were agreed to be made. For COAH, and presumably Court Substantive Certification, the certificate of occupancy is the crediting mechanism. E. Rutherford would be able to receive affordable housing credit for these 3 units not when a payment is agreed to, but when affordable housing funded by the payment is actually constructed. Otherwise East Rutherford would be double counting units. Therefore, the 6 units cited should be reduced to 3, thus reducing the total in this table to 48 units from the 51 units cited.

On the Matrix form the 86 proposed units entered under 2015-2025 Inclusionary Zoning should be 50 units. This number is achieved by adding the adjusted total (51 to 48 units) from the second table found on page 4 and the 2 proposed units to be constructed with the assistance of the Housing Authority of Bergen County, if in fact binding agreements have been executed between East Rutherford and the Housing Authority of Bergen County. If no binding agreements exist, then East Rutherford should not be able to claim affordable housing credit for these 2 units.

Below the lower table is a short description of a potential, but as I understand it, completely unrealistic expansion of the Group at 3 development. Until such time as the Borough clearly demonstrates that these 44 affordable housing units represent a realistic opportunity for the production of affordable housing, they should not be included in the Matrix and E. Rutherford should not receive any credit from this speculative assumption of potential future development.

At the top of page 5, footnote XI claims 21 bonus rental units for Round 3, however, the Matrix form lists 6 bonus rental credits for the 2015-2025 time period. This discrepancy needs to be adequately explained. Further, this footnote says 109 units less the disputed 21 bonus rental units yield 148 units or credits. When "21" is subtracted from "109", the answer is "88", so how "148" is achieved needs further clarification.

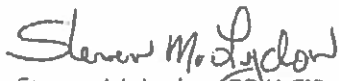
In the summary table on the bottom of page 2 it is stated that the non-age restricted housing is 201% of the total obligation. According to footnote XVI the total obligation is reported as being 84 units of affordable housing. This is also claimed in footnote XIII. This number is incorrect.

The numbers in the summary table need further clarifying and likely correcting.

Of course, none of the 35 constructed affordable housing units for which East Rutherford seeks credit qualify for COAH or judicial crediting purposes if the affordable units were not deed restricted or affirmatively marketing throughout the housing region or if there has been some other non-compliance with COAH's regulations concerning tenant selection, occupancy or pricing of units. We leave the Borough to its proofs.

In closing, we welcome the opportunity to meet with yourself as the judicially appointed Court Master and representatives of East Rutherford to demonstrate that the inclusion of the property at 932 Paterson Plank Road, which is available, approvable, developable and suitable for the production of affordable housing, into the Housing Element and Fair Share Plan can assist East Rutherford in achieving a constitutionally compliant affordable housing plan.

Respectfully,


Steven M. Lydon, PP/AICP

CC: Tom Bruinooge, Esq.
Stephen Parnes, Catalyst Development Partners
Richard Allen, Esq.
Robert T. Regan, Esq.
George Stevenson, PP/AICP