



On November 21, 2018, Berkeley Heights filed a written objection to Warren Township’s proposed Settlement Agreement with Fair Share Housing Center. The written objection letter was filed in advance of Warren Township’s Fairness and Preliminary Compliance Hearing, held on December 4, 2018 in the Superior Court (Somerset County). In its objection, Berkeley Heights argued that the K. Hovnanian and Premier sites identified in Warren Township’s Settlement Agreement do not create a realistic opportunity for the provision of affordable housing because the sites are not “approvable” or “suitable” – two of the four factors in the compliance hearing analysis. Berkeley Heights’ objection letter has been available to the public since its filing.

Between the date of filing the objection letter and the date of the Fairness and Preliminary Compliance Hearing, Berkeley Heights officials met with officials from Warren Township, the Warren Township Sewerage Authority, K. Hovnanian (K. Hov) and Premier, among others. At that meeting, Berkeley Heights raised the concerns previously expressed by residents, elected and appointed officials and professionals regarding the impacts of the K. Hovnanian and Premier projects on Berkeley Heights residents and infrastructure. After lengthy conversation and negotiation, the parties developed a preliminary list of action items to begin to address and solve for the concerns of Berkeley Heights. These action items include:

1. Each traffic study performed for the K. Hov and Premier sites will include the impacts, if any, from all new Warren Township and Berkeley Heights developments, including those listed in the Berkeley Heights development matrix, which will be shared with Warren Township. Such studies will specifically include the impacts, if any, to Emerson Lane running west from Hillcrest Road, and each such study will be shared with Berkeley Heights upon completion.
2. Warren Township will create a conservation easement between the west side of the K. Hov Project and the Rogers Avenue property line as noted on the January 24, 2018, K. Hov Concept Plan, with all existing vegetation to remain, subject to customary maintenance.
3. K. Hov will contemplate realigning the Emerson Road ingress/egress to line up with North Ridge Way.
4. As a result of the realignment in 3. above, K. Hov will contemplate moving the interior road on the east side of the project farther west, bringing the buildings on the east side farther west, which will create a wider conservation buffer on the northeast side of the project fronting Rogers Avenue.

5. Supplement the conservation easement area, as expanded as described in 4. above, if applicable, with additional vegetation to reduce visibility to K. Hov project from Rogers Avenue.

6. K. Hov will contemplate making the current ingress/egress on Hillcrest Road egress-only, and add an ingress-only road farther south on Hillcrest Road.

7. K. Hov will provide cross-section view renderings and elevations from Rogers Avenue towards the K. Hov project.

8. K. Hov will provide elevations with facade materials and color palate from a project comparable to the one contemplated in Warren Township.

9. Berkeley Heights reserves the right to raise concerns with the Premier site upon receipt of concept and site plan information for the Premier project that was not available at the November 30, 2018 meeting of the parties.

10. Berkeley Heights reserves the right to raise additional concerns upon receipt and review of the information set forth in 1 through 9 above.

On December 4, 2018, Warren Township held its Fairness Hearing before Judge Miller in the Superior Court (Somerset County). The purpose of any Fairness Hearing is to determine whether the proposed Settlement Agreement is fair to the protected class of low- and moderate-income households. Site suitability, safety, infrastructure, environmental and other concerns are not considered during a Fairness Hearing.

Court Special Master Frank Banish prepared a report concluding that Warren Township's Settlement Agreement is fair and reasonable to the interests of low and moderate income households. It provided compliance with site suitability criteria for all sites can be demonstrated as part of Warren Township's Compliance Plan. The Court Master's Report also included the Berkeley Heights/Warren Township action items described above.

The December 4 hearing was also a Preliminary Compliance Hearing. The purpose of a Compliance Hearing is to determine whether the proposed Settlement Agreement, through the sites identified in such Agreement, create a realistic opportunity for the production of affordable housing.

Court Special Master Frank Banish in his report noted Berkeley Heights' objection, further noted the project improvements required, at a minimum, to make the sites approvable and suitable; but nonetheless, concluded that the sites are suitable and will create a realistic opportunity for production of affordable housing. The Court Master's report is available through the Superior Court and is on file in the Office of the Township Clerk.

On December 4, Judge Miller did not rule on the Fairness Hearing or Preliminary Compliance Hearing. Rather, his Honor noted that he would make a decision within a week's time.

On December 10, 2018, Judge Miller released his decision, ruling that (i) Warren Township's Settlement Agreement provides for a substantial amount of affordable housing and that the interests of low- and moderate-income households will be advanced by the Court's approval of the Settlement Agreement and (ii) subject to the supplementation in the Court Master's Report, Warren Township has created a realistic opportunity for satisfaction of Warren Township's affordable housing obligation.

The Court does note in its opinion that Berkeley Heights, among others, raised objections regarding the suitability of the K. Hov and Premier sites, and that Berkeley Heights has reserved its right to continue to object if site suitability issues are not adequately addressed. Warren Township and the developers will have 150 days to resolve all site suitability issues, including those raised by Berkeley Heights, and to appear before Judge Miller again at that time to demonstrate compliance.

The Township will continue to insist that the K. Hov and Premier sites adequately address and mitigate all of the concerns previously raised by its residents and elected and appointed officials, and its objections remain filed with the Superior Court for further enforcement in the event that such issues are not adequately addressed.