

PREPARED BY THE COURT

MARY LOU ANGELO, EILEEN
F. BURKE- MALONEY,
KATHLEEN BURKE O'BRIEN,
MARY GUCKENBERGER,
KRISTINA PANETTA,
GABRIELLE LA PORTA,
DENISE C. MURPHY, RYAN J.
O'PRANDY, JANICE PACIFICIO,
MARIBEL E. PERDOMO,
MATTHEW M. PINCUS, DANA
PIZZO, ELEONORA POYNER
a/k/a ELEONORA DEVARGAS,
ALAINAH ROBILLARD, MARY
BETH SHEEHAN, RICHARD E.
TAYLOR & JANICE TAYLOR,
MELISSA WAH, DEANNA
WESTENDORF, and TINA ROSE
YULI,,

Plaintiffs,

vs.

THE TOWNSHIP OF COLTS
NECK, a Municipal Corporation of
the State of New Jersey, and THE
GRANDE AT COLTS NECK
CONDOMINIUM ASSOCIATION,
INC., a Nonprofit Corporation of
the State of New Jersey.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH
COUNTY

Docket No: MON-L-661-26

Civil Action

ORDER

THIS MATTER having been brought before the Court and the Court having considered the pleadings submitted, having heard oral argument, and for good cause shown;

IT IS on this 27th day of Oct, 2026; **ORDERED** that,

1. Defendants motion for summary judgment is **GRANTED**. Plaintiffs' claims are dismissed as to The Township of Colts Neck;
2. Plaintiffs' cross motion for summary judgment (LCV20261686487) is **DENIED**;
3. Plaintiffs' motion for summary judgment (LCV20261761671) is **DENIED**.



Hon. Gregory L. Acquaviva, J.S.C.

Statement of Reasons

Plaintiffs in this litigation are owners of Affordable Housing Units (Affordable Units) in the Grande Development, Colts Neck. Those units relate back to a 1986 Colts Neck Judgment of Compliance and Repose, enforced to satisfy a portion of the Township's constitutional Mount Laurel obligation to make affordable housing available for low-income individuals and families.

At issue is whether the 2025 Uniform Housing Affordability Controls ("UHAC") apply to the deeds in question. Of consequence, each deed for an Affordable Unit established a thirty-year affordability-control period, reserved a monetary percentage for the Township, made the deed subject to "applicable law," and prescribed procedures for any sale.

First, the affordability control period clause specifies:

The terms, restrictions, provisions and covenants of the Affordable Housing Plan, and the provisions of this First Amendment referring to and incorporating the Affordable Housing Plan shall be binding upon the owners and all heirs, successors and assigns for thirty (30) years from the initial sale or rental of each Affordable Housing Unit. Unless otherwise provided for in the Affordable Housing Plan, said conditions shall automatically expire and terminate for each Affordable Housing Unit thirty (30) years from the date of the initial sale or rental of the Affordable Housing Unit. After the expiration of said thirty (30) year period, the Affordable Housing unit may be sold to any purchaser without price controls, provided that in the case of the first sale after the expiration, fifty (50%) percent of the difference between the sales price on the fair market value of the unit, whichever is greater, and

the restricted sales price which could have been obtained by a Qualified Purchaser in the month before the resale controls end, shall be paid to the Township to be used for any legitimate purpose that assists in rehabilitating, maintaining erecting or meeting some other legitimate housing program for Low and Moderate Income Households.

[First Amendment and Supplement To The Master Deed For The Grande at Colts Neck Section §8.]

Second, each deed specified that the Affordable Units are “subject to the terms, conditions, restrictions and covenants (promises) established by applicable law.” (emphasis added).

In 1993, the Township adopted an Affordable Housing Plan which specified the procedures for resale are to be in accordance with standards promulgated or hereafter promulgated by the Council on Affordable Housing (“COAH”).

Construction of the Affordable Units began in 1994, ending in 1995. At that time, the governing law included COAH’s 1989 regulations, applicable to all newly constructed affordable units after July 17, 1989.

COAH’s rules are now incorporated into UHAC. Boiled to its core, the issue in these warring motions is whether UHAC’s current rules are the proper successors to COAH’s such that the Township's effort to extend affordability controls was proper. If so, the Township prevails. If not, Plaintiffs prevail.

Plaintiffs contend that the Township engaged in unlawful conduct to coerce and induce the extension of affordability controls beyond the thirty-year period

referenced in each deed. Thus, Plaintiffs seek relief declaring that the affordability controls no longer apply and that they may sell their units at fair market value, free and clear of resale restrictions. Put another way, Plaintiffs ask this court to declare that they may sell their affordable units – which they purchased at affordable, subsidized prices and lived in for many years with reduced mortgages, reduced tax rates, and reduced homeowners' association fees – at fair market value and pocket the difference.

The Township disagrees. Put simply, the Township contends that Plaintiffs' myopic and selective reading of the deeds and UHAC regulations is little more than an effort to obtain a windfall at the expense of the next generation of low- and moderate-income individuals, to say nothing of patent inconsistency with the broader Mount Laurel rubric that has developed over the last fifty years.

For the following reasons, the Township's motion to dismiss is granted. Plaintiffs' requests for summary judgment are denied.

Background

Volumes could be written on New Jersey's Mount Laurel doctrine. For purposes of this motion, a brief overview suffices. The Mount Laurel doctrine and series of legislative enactments, regulations, ordinances, are an ongoing process. The timeline of Mount Laurel evolution and of the Grande in that broader mosaic is critical to this matter's disposition.

At bottom, the Supreme Court through S. Burlington County NAACP v. Mt Laurel, 92 N.J. 158 (1983), and its progeny recognized that municipalities must assure an adequate supply of housing for low-income individuals. This obligation is one of constitutional magnitude that, over the last half century, has been refined and amplified through complex and renewed statutes, regulations, and jurisprudence. Put simply, municipalities have wide latitude in the exercise of their police powers to create affordable housing, but also to preserve existing affordable housing stock.

In Colts Neck and in municipalities from Cape May to Montague, municipalities, developers, and, most important here, property owners participated in a common regulatory scheme of an on-going, constitutionally mandated program for the construction, regulation, and preservation of affordable housing designed to provide deserving New Jerseyans with a realistic opportunity to obtain affordable housing.

The Court reaffirmed this constitutional obligation in Mount Laurel II, emphasizing that “the doctrine does not arise from some theoretical analysis of our Constitution, but rather from underlying concepts of fundamental fairness in the exercise of governmental power.” Id. at 209. The Mount Laurel decisions make clear that the need for affordable housing is universal and constant.

Further, New Jersey's Constitution makes it "plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation." Mount Laurel I, 67 N.J. at 179.

Caselaw widely recognizes affordable housing as a protected public interest "serv[ing] the community's interest in achieving an integrated, just and free society and promot[ing] the general welfare of all citizens." De Simone v. Greater Englewood Hous. Corp., 56 N.J. 428, 441 (1970); see also Homes of Hope, Inc. v. Easthampton Twp. Land Use Planning Bd., 409 N.J. Super 330, 337 (App. Div. 2009) ("The public policy of this State has long been that persons with low and moderate incomes are entitled to affordable housing . . . 'There cannot be the slightest doubt that shelter, along with food, are the most basic human needs.'" (quoting Mount Laurel I, 67 N.J. at 178)).

In 1985, New Jersey adopted the Fair Housing Act, N.J.S.A. 52:27D-301, to codify Mount Laurel's guarantee that all municipalities provide a realistic opportunity for affordable housing. See Hills Dev. Co. v. Bernards Twp., 103 N.J. 1, 19 (1986). The FHA created COAH which initially held "primary jurisdiction for the administration of housing obligations." N.J.S.A. 52:27D-304(a).

The Legislature intended the FHA to govern the provision of all new low- and moderate-income units in New Jersey. Mount Laurel III, 103 N.J. at 23-24. In

affirming the FHA's constitutionality in Mount Laurel III, the Court explained that "[t]he statutory scheme set forth . . . is intended to satisfy the constitutional obligation enunciated . . . in the Mount Laurel cases." Hills Dev. Co., 103 N.J. at 20.

The judiciary grants "particularly strong deference . . . to the Legislature relative to this extraordinary legislation" and that it is a "substantial occupation of the field by the Governor and the Legislature" and should "trigger [the judicial] 'readiness to defer.'" Id. at 24-2; id. at 37. ("[T]he judiciary . . . will be responsive to the actions of [COAH] and conform its decisions in this field to [COAH]'s various determinations."); id. at 46 ("[W]e stand ready to defer, not only to the legislature, as we do today, but also to [COAH].").

In 1986, COAH adopted initial regulations. N.J.A.C. 5:92; 18 N.J.R. 1527. Those rules implemented the FHA's purpose through criteria and guidelines, assessing regional need, fair share, and the adequacy of municipal measures. COAH acknowledged those rules would be effective for at least twenty years and could be modified depending on a municipality's circumstances. Id.

In 1989, COAH adopted "Controls on Affordability," which applied to all "newly constructed low-and moderate-income" units after July 17, 1989. See N.J.A.C. 5:93; 21 N.J.R. 2021. COAH adopted those rules to fill the 1986 iterations gap concerning the expiration of affordability control periods. See 21

N.J.R. 592. COAH implemented these rules to create a situation where responsible public officials could make decisions regarding the continued maintenance of affordability as the controls were expiring, see supra.

The 1989 regulations provided municipalities with the option to repurchase affordable units at their restricted sale price at the time of the first non-exempt sale after the control period had been in effect for at least twenty years. N.J.A.C. 5:92-12.3 and 5:92-12.4; 21 N.J.R. 2022. Additionally, the 1989 rules required unit sellers to provide the municipality with a notice of intent to sell. Ibid. Notably, COAH's regulations were effective prior to any original Grande owner purchasing an Affordable Unit, let alone their construction.

Important here, COAH described the new rules and underlying principles as:

[F]lexible enough to give municipalities the first opportunity to decide what is in the community's best interest. As controls begin to expire, communities can choose to purchase individual and moderate income units as they go on sale. Communities then may choose to sell or rent them to income qualified households and continue controls on affordability or to convey the unit at fair market value and utilize the price differential for other low and moderate income housing. The municipality is also able to extend controls by an action of the governing body.

[21 N.J.R. 592 (emphases added).]

In a word, COAH's 1989 rules imbued municipalities with broad power to flexibly preserve precious affordable units for future generations in satisfaction of their constitutional obligation.

COAH repeatedly characterized affordable housing units as precious resources and emphasized that every reasonable effort should be made to preserve the State's affordable housing stock or, if sold at fair market value, to recapture the public funds used to subsidize it. All returned proceeds should be devoted to the rehabilitation, creation, or maintenance of low- and moderate-income housing. 21 N.J.R. 592. Thus, all stakeholders – municipalities; developers; unit owners; impacted condominium and homeowners' associations – participated in a subsidized scheme to provide affordable housing to current New Jerseyans and to pay it forward to future generations of low- and moderate- income New Jerseyans. That guiding principle is a perennial in the Mount Laurel garden.

During the introduction of COAH's first regulations, COAH explicitly rejected the idea that affordable unit owners would be able to retain the equity that came along with the units during a sale. Instead, COAH found that the affordable owners already maintained the benefit of occupying the affordable units – Mount Laurel's primary objective. Furthermore, COAH found that allowing individuals to retain the equity of affordable units, while simultaneously biting into the State's affordable housing supply, would disadvantage the very group of individuals that these affordable housing acts aim to support – low- and moderate-income individuals and families.

Precedent has reaffirmed the special status of affordable unit's classification as such. In Prowitz v. Ridgefield Park Village, the Appellate Division stated that an affordable unit "is not a potential benefit to any specific affordable-housing unit owner with which the resale restriction is concerned, but rather the benefit to the public that is vouchsafed by indefinitely maintaining that unit in the affordable housing stock." 237 N.J. Super. 435, 443 (App. Div. 1989) (emphasis added). As such, "it is that public benefit which is the quid pro quo of the concomitant value-depreciating burden of the restriction." Ibid. The court further stated that a deed restriction limiting resale price is "a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State's woefully inadequate inventory of affordable housing." Ibid.

The 1994 iteration of COAH's rules maintained a municipality's ability to extend expiring control periods by exercising its right of first refusal to purchase affordable units. N.J.A.C. 5:93-9.4; 26 N.J.R. 2337. The 1994 COAH rules further extended expiring control periods from twenty years to beyond thirty. See N.J.A.C. 5:93-9.9; see also N.J.A.C. 5:94-4.16(a) (reaffirmed in N.J.A.C. 5:97-6.14 and permitted municipalities to receive credits for extending expiring affordability controls by resolution).

While the length and conditions of affordability controls have evolved, municipalities have had the option to extend affordability controls in furtherance of Mount Laurel municipal compliance for over thirty years. Put succinctly, municipal extensions remain an authorized form of municipal police powers to this day.

Over the next decade, the Department of Community Affairs and the Housing and Mortgage Finance Agency adopted various rules establishing controls on affordability for units constructed pursuant to the FHA. N.J.A.C. 5:93, 5:43-4, and 5:80-26; 33 N.J.R. 230(a); In re Adoption of Uniform Housing Affordability Controls, 390 N.J. Super. 89, 95-96 (App. Div. 2007).

Those sets were, at times, inconsistent and overlapped. Id. at 96. As a result, in 2004, the HMFA adopted UHAC, N.J.A.C. 5:80-26.1, in cooperation with COAH and the DCA, which became applicable to all three agencies. UHAC was intended to apply retroactively and serve as the single regulatory scheme for New Jersey affordable housing.¹ “The social impact of the adoption of the Uniform Controls, therefore, will be to more effectively preserve housing units created for low-and moderate-income families in New Jersey.” 36 N.J.R. 3655(a).

¹ While the 2001 UHAC dispensed with the repayment requirement on the first nonexempt sale, the 2004 iteration reinstated the municipality’s recapture lien, thereby subjecting affected homeowners’ first post-control, non-exempt sale to repayment rather than permitting an unencumbered open-market sale. That blip is not germane here.

UHAC provides for the administration of affordability controls on restricted units that receive COAH credit under the FHA and govern all restricted units regardless of the date on which the units were created. N.J.A.C. 5:80-26.1

The 2004 UHAC maintained a municipality's right of first refusal to purchase an affordable unit at the end of a control period, required an affordable unit owner to provide notice of intent to sell to the municipality, and required the repayment of the recapture lien if the unit was sold at fair market value after the expiration of affordability controls. See N.J.A.C. 5:80-26.5.

N.J.A.C. 5:80-26.5 governs control periods for ownership units and status:

(a) Each restricted ownership unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements . . . Prior to such a municipal election, a restricted ownership unit must remain subject to the requirements of this subchapter for a period of at least 30 years . . .

[N.J.A.C. 5:80-26.5 (emphases added).]

The UHAC Rules implemented the FHA by assuring that affordable units created under the FHA are occupied by low-and moderate-income families for an appropriate amount of time. See N.J.A.C. 5:80-26.1. All versions of UHAC contain the following language: “(a) This subchapter is designed to implement the New Jersey [FHA] by assuring that low-and moderate-income units created under

the [FHA] are occupied by low and moderate-income households for an appropriate period of time.” Id. at 26.1(a).

Fast forward to 2015, at which point the Court found that COAH had, essentially, stopped functioning properly and failed to carry out its mandate. Such led to the Third and, now, Fourth Rounds of Mount Laurel obligations and litigation. See infra.

In March 2024, Governor Philip D. Murphy signed legislation amending the FHA. The amendment recognized that municipalities may extend expiring affordability controls as a means of maintaining affordable housing, reinforced the long-standing authority of municipalities (established through COAH’s rules and subsequent UHAC), and extended controls to preserve existing affordable housing. See N.J.S.A 52:27D-321(f) and N.J.S.A 52:27D-311(k).

Shortly after the amendment, HMFA adopted interim UHACs to coincide with the statutory amendments, affirming a municipality’s right of first refusal, repayment of a recapture lien at the first non-exempt sale, and the requirement of unit owners providing the municipality with a notice of intent to sell.

Effective November 2025, HMFA adopted the UHAC, which again recognized a municipality’s longstanding right to extend affordability controls beyond the control period, right of first refusal, notice of intent to sell, and the requirement of lien recapture at the time of the first non-exempt sale. In response

to comments to the 2025 regulatory proposal, HMFA affirmed a municipality's ability to unilaterally extend the affordability controls, "as such extensions serve as a critical mechanism in maintaining the State's stock of affordable units."² 57

N.J.R. 2743(a), Response to Comment 2.

Comment: In light of the housing crisis in the State, every effort should be made to maintain the stock of affordable housing by clearly and explicitly affirming municipalities' right to extend affordability controls. The rules must preserve and reinforce the long standing right of a municipality to extend controls beyond the initial control period, consistent with COAH's 1989 regulations and subsequent UHAC provisions. (26).

Response: The Agency agrees with the commenter. The UHAC rules, as proposed, create a uniform mechanism for doing so.

[N.J.A.C. 26-26.6 at Response to Comment 203
(emphases added).]

Further, HFMA stated that the 2025 UHAC "affirm[ed] municipalities' right to extend affordability controls and ensure that those units receive reinvestment, so that they are usable for another generation of affordable."

² HMFA carried over N.J.A.C. 5:80-26.25 from COAH's regulations at N.J.A.C. 5:92-12.8 which took effect on July 17, 1989. N.J.A.C. 5:92-12.8 is virtually identical to N.J.A.C. 5:80-26.25, in declaring that the "municipality shall have the right to determine the most desirable means of promoting an adequate supply of low- and moderate-income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality." See N.J.A.C. 5:92-12.8; see also 5:80-26.25(a).

In short, for five decades, the New Jersey affordable housing regulations, designed to implement the FHA and the Mount Laurel doctrine, have authorized municipalities the right to protect and preserve existing affordable housing opportunities within the community by extending the affordability controls on the existing affordable housing stock at the conclusion of the initial affordability control period. See In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing, 390 N.J. Super. 1, 84 (App. Div. 2007) certif. denied, 192 N.J. 71 (2007) (“Extending affordability controls on existing housing prevents the loss of much needed affordable housing.”); 21 N.J.R. 2020(a). Plaintiffs seek to strip away the rights that the Mount Laurel doctrine sought to preserve for the protected class and future generations so that they can secure an unlimited personal profit – despite the economic concessions previously made, via a subsidized program, by the Township, the developers, and their market-rate condominium neighbors.

Lastly, COAH has repeatedly rejected the contention that owners of affordable units should be allowed to retain equity in their units at the time of a resale.

Comment: Owners of affordable units should be allowed to retain the equity built up in their units if the unit is sold after the resale controls expire. This will encourage the proper maintenance of the units as the owner will have an economic interest in maintaining the value of the property. Also, allowing homeowners to keep the equity built up in an efficient way to help low and moderate income persons improve their economic status.

Response: After listening to many different views, the Council determined that an affordable housing unit is a precious resource and efforts should be made to retain the affordable housing stock or for money to be recycled to create additional housing opportunities. However, the owners of a low and moderate income unit do receive many benefits including an affordable housing unit during the length of their tenure; the equity resulting from repayment of a mortgage; the appreciation resulting from indexed increases to the maximum sales price of the housing unit; and the tax deductions that are synonymous with home ownership. Also, if home maintenance has been ignored, the owner may not be able to sell the unit for the full controlled price.

[21 N.J.R. 2020. (emphasis added).]

Grande Units

Pertinent here, on December 1, 1986, prior to the First Round of affordable housing obligations under the Mount Laurel doctrine, the Township obtained a Judgment of Compliance and Repose in response to builder's remedy litigation. That judgment set forth the Township's plan in addressing its affordable housing obligations which permitted the Grande's construction.

All of Plaintiffs' original deeds explicitly state that the affordable units are "subject to the terms, conditions, restrictions and covenants (promises) established by applicable law." (Emphasis added).

Furthermore, several of Plaintiffs executed and recorded a repayment mortgage with the Township which state in pertinent part.

This Mortgage is given to the Municipality as security for the payment required to be paid upon the first non-exempt

sale of the Property, as provided under the rules of the New Jersey Housing and Mortgage Finance Agency set forth in N.J.A.C. 5:80-26.1 et seq. Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor or assignee of the Owner then selling the Property, shall pay fifty percent (50%) of the difference between (i) the actual sale price and (ii) the regulated maximum sales price that would be applicable where the control period still in effect to the Township of Colts Neck at the closing. The obligation evidenced by this note shall not accrue interest.

[See repayment mortgages for 36 Parker Pass (2023), 26 Parker Pass (2015), 11 Hancock Pass (2015), 9 Parker Pass (2020), 34 Parker Pass (2015), 36 Federal Key (2017), Federal Key (2020), 12 Hancock Pass (2016), 29 Parker Pass (2018) (emphasis added).]

In 1990 (after COAH's first controls on affordability regulations), the Township prepared its First Round Affordable Housing Plan in accordance with the Township's Judgment of Compliance and Repose. In the implementation phase of the Affordable Housing Plan, SGS Communities at Colts Neck, L.P. and Schoor Colts Neck Development (collectively "Developers") applied to construct the Grande. As a condition of approval, the Developers agreed to adopt an affordable housing plan for the Grande. The Township imposed this requirement to satisfy the 1986 Judgment of Compliance and Repose and a portion of its constitutional obligation to make affordable housing available.

In July 1993, the Developers completed an affordable housing plan. The plan established a thirty-year affordability control period on the Grande's

Affordable Units and a fifty percent recapture provision requiring homeowners, at the time of the first non-exempt sale at the conclusion of the control period, to pay the Township one-half of the difference between the resale price and the restricted sales price ("50 Percent Recapture Lien").

The Grande's Master Deed incorporated the affordable housing plan. The deed copied the same language from the affordable housing plan, stating,

The terms, restrictions, provisions and covenants of the Affordable Housing Plan, and the provisions of this First Amendment referring to and incorporating the Affordable Housing Plan shall be binding upon the owners and all heirs, successors and assigns for thirty (30) years from the initial sale or rental of each Affordable Housing Unit. Unless otherwise provided for in the Affordable Housing Plan, said conditions shall automatically expire and terminate for each Affordable Housing Unit thirty (30) years from the date of the initial sale or rental. After the expiration of said thirty (30) year period, the Affordable Housing Unit may be sold to any purchaser without price controls, provided that in the case of the first sale after the expiration, fifty (50%) percent of the difference between the sales price on the fair market value of the unit, whichever is greater and the restricted sales price which could have been obtained by a Qualified Purchaser in the month before the resale control end, shall be paid to the Township to be used for any legitimate purpose that assists in rehabilitating, maintaining, erecting or meeting some other legitimate housing program for Low and Moderate Income Households.

[First Amendment and Supplement To The Master Deed F

or The Grande at Colts Neck Section §8 (emphasis added).]

In November 2003, the Township adopted a Second Round Affordable Housing Plan. This plan resulted in a June 2004 Judgment of Compliance and Repose, in which the Township received credit for the Grande towards its Second Round obligations. Put another way, compliance in Round One and Two was built on the shoulders of previously designated affordable housing units, including the Affordable Units at issue here.

In October 2008, the Township adopted its Third Round affordable housing. In 2015, subsequent to In re Adoption of N.J.A.C. 5.96 & 5.97, 221 N.J. 1 (2015), the Township sought immunity from the original builder's remedy litigation and a final judgment of compliance and repose pertaining to its Third Round obligations. Following hearings, Judge Linda Grasso Jones entered two orders in November 2024. The first required the Township to revise its Third Round Housing Element and Fair Share Plan ("HEFSP"). The second approved the Township's amended Third Round HEFSP.

The Township adopted the amended Third Round HEFSP in February 2025. Affordable housing credit for the Grande was approved as part of the Township's November 21, 2024, Third Round Order of Judgment of Fairness and Conditional Compliance and Repose. Again, the Third Round built on the Second Round, the First Round, and of course, the Grande's Affordable Units.

In January 2025, the Township adopted a resolution committing to its Fourth Round fair share obligation and subsequently initiated its Fourth Round declaratory judgment action. Thereafter, the Township recorded declarations of pre-existing rights against all the affordable housing unit owners of the Grande, referring to the language of the original deeds.

This Unit has been designated as a [two or three bedroom] Low or Moderate Income Unit and is subject to the terms, conditions, restrictions and covenants (promises) established by applicable law and/or by a certain Affordable Housing Plan for The Grande at Colts Neck, a Condominium by and between SGS Communities at Colts Neck, L.P. and Schoor Colts Neck Development Corp. and the Township of Colts Neck, dated November 16, 1994 and recorded November 18, 1994 in the Office of the Clerk of Monmouth County in Book 5364 of Deeds at Page 820.

In February 2025, close to the expiration of the initial thirty-year control period, the Township sent letters to the Grande Affordable Unit owners, attempting to renew the terms of the original agreement, which state in part:

- As you may be aware, the initial Affordability Controls on your condominium are scheduled to expire, subject to certain requirements being met . . . It is the Township's intent, however, to extend Affordability Controls on your unit . . .
- Even if the Township were unable to reach an agreement with you to extend the Affordability Controls, there is a specific legal process that must be followed when the Affordability Controls expire. The process is governed by UHAC . . .

- As set forth in the UHAC Rules, prior to any potential sale, you are required to provide the Township with the enclosed written Notice of Intent to Sell. Based upon the issuance of the Notice of Intent to Sell, the Township may, within 60 days of the receipt of the written notice, exercise a right of first refusal, which includes the right to purchase your condominium unit at its maximum restricted sale price based upon the Affordability Controls . . . In the event the Township does not exercise its right of first refusal, you may thereafter proceed to sell the unit for fair market value . . .
- In the event the Township does not exercise its right of first refusal, you may thereafter proceed to sell the unit for fair market value.

[Emphases added.]

On April 2025, Judge Grasso Jones ordered the Township to prepare its Fourth Round HEFSP. The Township soon after filed its HEFSP with the Affordable Housing Dispute Resolution Program, which noted that the Township received credit for the Grande Affordable Units in the earlier three rounds.

In October 2025, the Township sent correspondence to Plaintiffs, extending offers of \$40,000 for extension of the affordability controls for thirty years.

Plaintiffs rejected those offers and brought suit in February 2026, claiming that the Township has no legal authority to extend the affordability controls.

Analysis

The framework for determining whether a regulation applies retroactively is identical to the framework used to determine whether a statute applies retroactively. State Troopers Fraternal Ass'n v. State, 149 N.J. 38, 54 (1997).

First, a court must determine whether the agency intended the statute or regulation to apply retroactively. Ibid. If so, the court next determines whether retroactive application would either create manifest injustice or an unconstitutional interference with a vested right. Ibid. Vested rights are an “elusive concept, undefined in both the federal and state constitutions, and encompass a fixed interest entitled to protection from state action.” Twiss v. State, 124 N.J. 461, 470 (1991) (quotation omitted).

A regulation is applied retroactively where either: (1) the regulation has expressed intent to do so; (2) the regulation is ameliorative or curative; (3) the expectations of the parties warrant retroactive application; or (4) manifest injustice to the adversely affected party does not result. Frank A. Greek & Sons, Inc. v. Twp. of S. Brunswick, 257 N.J. Super 94, 106 (App. Div. 1992). Retroactive effect is apparent when such need is the soundest determination of intent available or when to do otherwise produces absurd results. Rothman v. Rothman, 65 N.J. 219, 224 (1974).

UHAC's regulations generally apply retroactively to all restricted affordable housing units "regardless of the date on which the units were created." N.J.A.C. 5:80-26.1. However, that clear and express retroactivity provision is subject to limited, defined exceptions, none of which apply here.

The South Brunswick factors all weigh in favor of retroactivity.

First, UHAC expressed a clear intent to retroactively apply its rules, manifested in its broad applicability provision, which plainly extends UHAC's regulatory scheme to restricted units receiving credit from COAH regardless of the date of creation. N.J.A.C. 5:80-26.1. That provision unambiguously encompasses units created and governed under prior regulatory frameworks such as the Affordable Units here.

The Affordable Units were constructed in 1994 and 1995. At that time, COAH's 1989 regulations applied to all affordable units constructed after July 17, 1989. Because COAH was incorporated into UHAC's 2025 Rules, the original deeds of the Affordable Units merged into UHAC's governance. The 2025 UHAC applies to "the establishment and administration of affordability controls on restricted units that receive credit pursuant to the Act [. . .] Unless expressly stated otherwise herein, this subchapter applies to all restricted units described in the foregoing sentence, regardless of the date on which the units were created." N.J.A.C. 5:80-26.1 (emphases added).

Further, the Township's 1993 affordable housing plan plainly indicates resale of the Affordable Units is governed by COAH's rules "promulgated or hereafter promulgated." (Emphasis added.)

Second, the application of changing affordable housing regulations is permissibly curative. A regulation is curative if "it is designed merely to carry out or explain the intent of the original [rule], in that its purpose is to remedy a perceived imperfection in or misapplication of a [rule] and not to alter the intended scope or purposes of the original [regulatory] act." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 388 (2016) (quotation omitted; analyzing statute retroactivity).

Each successive iteration of UHAC clarified and effectuated the FHA's original intent rather than altering its scope or purpose. Specifically, the current UHAC addresses perceived ambiguities or misapplications concerning the duration and renewal of affordability-control periods, consistent with the FHA's objective of preserving New Jersey's limited affordable housing stock. Accordingly, the revisions are curative because they "carry out or explain the intent of the original [rule]" and remedy perceived imperfections in its application without changing the regulatory intent. Johnson, 226 N.J. at 388.

Third, the parties' expectation when entering into the contracts – the Township, the Affordable Units' owners, and the Developers – support retroactive application.

The Township conditioned the purchase of these units on each owner's agreement to preserve the Township's affordability-control periods and rights of first refusal if a homeowner sought to sell. Implicit was the Township's power to reinstate the affordability control period – a measure for which the Township previously offered to compensate Plaintiffs for after they enjoyed the benefit of occupying these subsidized units at reduced prices.

57 N.J.R. 2743(a) codifies this implied right: “[P]ayment of the equity share is only a condition of the extension of deed restrictions executed after the effective date of this rulemaking . . . Municipalities, however, may provide compensation to owners for the extensions of deed restrictions currently in effect, so long as the terms of extension, including compensation, are adopted through ordinance and applied uniformly to all affordable owners.”

Here, the Township offered Plaintiffs compensation for the extension of these deed restrictions – in compliance with the rule – and Plaintiffs now claim that this action is unlawful. Not so.

Fourth, manifest injustice will not result if Plaintiffs are unable to sell the Affordable Units unrestricted on the open market. Plaintiffs have already enjoyed the benefits of occupying an affordable housing unit. These same Plaintiffs have enjoyed the equity resulting from repayment of a mortgage, appreciation from indexed increases to the maximum sales price, and tax deductions synonymous

with home ownership. Plaintiffs disregard those benefits of the bargain. They had their cake. They cannot eat it too.

There is no vested rights concern either as the Township's attempt to renew the affordability control periods does not constitute an unconstitutional interference with a vested right. Contrary to Plaintiffs' assertion, they have no vested right to sell the encumbered units on the open market free from the restrictions imposed by the original deeds. Rather, their rights remain subject to the deeds express terms, which authorize the Township to retain a fifty percent recapture lien upon the first non-exempt sale, regardless of the date that sale occurs.

This recapture lien is also not an impermissible restraint on alienability. New Jersey follows the Restatement (Third) of Property: Servitudes in deciding disputes on restrictive covenants. See Citizens Voices Ass'n v. Collings Lakes Civic Ass'n, 396 N.J. Super. 432, 445-47 (App. Div. 2007). In the affordable housing context, a specific test applies: The restraint is reasonable so long as it serves a legitimate public purpose and the municipality permits a reasonable opportunity for transfer:

h. Nature of development: affordable housing. Programs designed to provide affordable housing depend on severe restraints on alienation to prevent resales at market prices. Such restraints include limitations on the price for which units can be sold, as well as limitations on permissible transferees. They may also include requirements that the owner sells when the owner ceases to be a member of the group for whom the housing is provided. Such restraints

are reasonable so long as designed to serve a legitimate purpose and so long as they permit a reasonable opportunity for the owner to transfer the unit.

[Restatement (Third) of Property § 3.4.]

Here, the restraints – i.e., the fifty percent recapture provisions – were not only a condition on them securing the affordable units, but also specifically designed to serve the legitimate purpose of preserving the State’s precious affordable housing supply. Thus, any limitation on profit is reasonable.

Plaintiffs’ theories would unravel decades of regulatory action. Effectively, such a holding would render COAH’s substantive certification erroneous, invalidate this court’s approval of the Townships’ First through Third Rounds, strip the Township’s eighty-eight affordable housing credits it has relied on for years, and expose the Township to renewed builder’s remedy liability. The breadth of those consequences illustrates that Plaintiffs’ challenge here is fundamentally incompatible with the integrated regulatory structure that has governed these units throughout their entire existence. In short, an absurd result.

Without question, the Units are subject to statewide regulations permitting municipal extension of affordability control.³

³ Piscataway and trio of unpublished cases relied on by Plaintiffs do not change the result. Soc’y Hill at Piscataway Condo. Ass’n, Inc. v. Township of Piscataway, 445 N.J. Super. 435 (Law Div. 2016); RJB Associates LP, et al. v. Johnny Murray, et al., SOM-L-696-18 (Law. Div. Oct. 9, 2018); Vena v. Borough of North Haledon,

Plaintiffs seek to benefit not only from a reduced price point for entry into homeownership, but also thirty years of reduced mortgage-related expenses, only to be able to obtain fair market value at day's end, while depriving current and future low-income families the same opportunity via the "precious resource" of affordable housing. Put another way, (1) heads, they win; (2) tails, generations of low-income families lose.

As the plain language of the Township's 1995 affordable housing plan indicates, the resale provisions for these units are governed by COAH rules "promulgated or hereafter promulgated." (Emphasis added.)

Contrary to Plaintiffs' position, the governing documents are not vague. Rather, they are flexible to account for the future unknown development of the Mount Laurel doctrine.

2017 N.J. Tax Unpub. LEXIS 33 (N.J. Tax. Ct. June 2, 2017); Errico v. Township of Mahwah, 2014 N.J. Super. Unpub. LEXIS 1928 (Law Div. July 28, 2014).

As an initial matter, Law Division and unpublished cases are not binding and are of no precedential value. R. 1:35-3. More to the point, each is distinguishable.

Errico and Piscataway both involved units constructed pursuant to agreements that predated the FHA and COAH. Here, again, the Affordable Units were constructed after the FHA's enactment and COAH's adoption of initial regulations.

Similarly, in both Murray and Vena, the municipality attempted to extend pre-COAH incorporated deeds on affordable units. Here again, the Grande's Affordable Units post-date COAH's creation. Plaintiffs proffered precedents are not binding and readily distinguishable.

Furthermore, Plaintiffs' reliance on an antiquated excerpt from Bruno v. Hanna, 63 N.J. Super. 282 (App. Div. 1960), is misguided. There – a quarter century before Mount Laurel – the court observed that restrictions on land use “are always to be strictly construed.” Id. at 235. Bruno involved private covenants created in 1907 that limited property to dwelling purposes and permitted only one residence per lot. Plaintiffs are hard pressed to equate such restrictive deeds imposed in traditional, binary litigation eighty years before Mount Laurel announced a constitutional obligation for municipalities to provide for their fair share of affordable housing and the implementing deeds in the Grande's Affordable Units. Put simply, the restrictions in Bruno are a horse of a different color.

But Bruno provides an escape hatch to Plaintiffs' otherwise restrictive reading and argument at oral argument that deed language is “sacrosanct.” The Appellate Division continued: “Of course, the rule of strict construction will not be applied to defeat the obvious purposes of a restriction.” Id. at 287. The purpose of the Affordable Units' deeds here is “obvious” – preserve the “precious resource” that is affordable housing for this and future generations. Bruno is not the panacea Plaintiffs portend it to be.

The Mount Laurel doctrine requires affirmative measures that create a realistic opportunity for such housing, and the FHA provides the statutory framework for implementing that constitutional obligation. Mount Laurel, 92 N.J.

at 264. Thus, and again, Bruno is inapposite. Applying it would improperly strip the deeds here of the flexibility inherent in the affordable housing regime and frustrate their central purpose of preserving the units as affordable housing.

Plaintiffs also cite American Dream at Marlboro, L.L.C. v. Planning Board of Marlboro, 209 N.J. 161 (2012), which similarly holds that covenants running with land cannot be modified absent a judicial determination that changed circumstances make compliance with the covenant impractical. Like Bruno, American Dream is distinguishable as it concerns the standards and equitable considerations governing modification or termination of a planning board-imposed deed restriction, not a Mount Laurel constitutional obligation to provide affordable housing.

Put another way, Plaintiffs take otherwise valid general principles governing restrictive covenants in traditional, binary disputes and seek to apply them in the Mount Laurel context – i.e., forcing a square peg into a sui generis round hole. Such an expansion would undermine the very fabric of the Mount Laurel tapestry.

Here, the Township undertook Mount Laurel compliance efforts. The Affordable Units were constructed in 1994 and 1995, after enactment of the FHA and after adoption of COAH's 1989 regulations. Because the FHA and COAH regulations preceded the 1995 completion of the Grande Affordable Units, they apply.

That chronology supports application of the Grande's original regulations governing newly constructed affordable units – particularly when the municipal plans, development approvals, and recorded restrictions incorporated those requirements. Because the 2025 UHAC regulations retroactively apply to those original deeds, the Township is well within its right to renew the affordability control period in accordance with 57 N.J.R. 2743(a): "Municipalities, however, may provide compensation to owners for the extensions of deed restrictions currently in effect, so long as the terms of extension, including compensation, are adopted through ordinance and applied uniformly to all affordable owners."

The Township's 1995 Affordable Housing Plan and the 1994 Master Deed should not be read in isolation. Rather, they must be read in conjunction with UHAC's 2025 regulations. The Township's affordable housing plan was attached to and incorporated into a broader developer agreement. Under that agreement, the Developers promised to accept reasonable amendments required by the Township pursuant to the Mount Laurel settlement, and the agreement bound successors and assigns. The thirty-year affordability control period bound the original Grande homeowners and vested the Township with the authority to renew it.

Moreover, Plaintiffs' reliance on the prospective application language from the 2001 UHAC⁴ is misplaced. That language merely established when the 2001 UHAC would replace preceding controls. It did not permanently exempt existing developments from later amendments as Plaintiffs portend and, accordingly, have no bearing on the 2025 UHAC applicable here.

Further, New Jersey courts have repeatedly recognized that private developer agreements can be modified.

Rather than an independent contractual source of obligation, it [a developers agreement] is an ancillary instrument, tethered to the conditions of approval and exists solely as a tool for the implementation of the resolution establishing the conditions. If the resolution establishing the conditions remains in effect, the developer's agreement can be enforced. If the resolution changes, the developer's agreement enjoys no independent status and must be renegotiated. In essence, the continued vitality of the resolution is an implied condition in the developer's agreement, the failure of which will nullify the agreement because it eliminates the possibility that the fundamental purpose for which the developer's agreement was created will be attained. The MLUL subjects the resolution to modification based on changed circumstances. Depending on the outcome, the developer's agreement stands or falls.

[Toll Bros., Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 229 (2008).]

⁴ “[T]he adoption of the Uniform Controls will not affect current options set forth in municipal ordinances or contractual agreements.” 33 N.J.R. 3432(b) (Oct 1, 2001).

Plaintiffs ignore such and simply point to the affordability control clause stating that the control period “shall be binding upon the owners and all heirs, successors and assigns for thirty (30) years from the initial sale or rental of each Affordable Housing Unit,” without recognizing that it can be modified. Plaintiffs’ cribbled and selective reading removes the aforementioned clause from its broader, constitutionally mandated Mount Laurel context.

What’s more, the very next sentence of the section Plaintiffs extract the affordability control clause from reads, “Unless otherwise provided for in the Affordable Housing Plan, said conditions shall automatically expire and terminate for each Affordable Housing Unit thirty (30) years from the date of the initial sale or rental of the Affordable Housing Unit.” Ibid. (emphasis added). UHAC stands in the shoes of the “unless otherwise provided” clause – the rules allow the Township to renew the affordability control period. Contrary to Plaintiffs’ position, there is no common understanding that instruments of private law or regulation may not be altered or constrained by public law under any circumstances. UHAC provides that authority.

Even if UHAC did not provide this renewal option, the plain language of the deeds indicated that in the event of the control period’s expiration, the Affordable Unit owners cannot sell them unencumbered on the open market.

After the expiration of said thirty (30) year period, the Affordable Housing unit may be sold to any purchaser

without price controls, provided that in the case of the first sale after the expiration, fifty (50%) percent of the difference between the sales price on the fair market value of the unit, whichever is greater, and the restricted sales price which could have been obtained by a Qualified Purchaser in the month before the resale controls end, shall be paid to the Township to be used for any legitimate purpose that assists in rehabilitating, maintaining erecting or meeting some other legitimate housing program for Low and Moderate Income Households.

There is no workaround in the plain language. The abrogation of the requirement to repay the municipality when exercising the repayment option of the first non-exempt sale would be a significant retroactive alteration of the contractual interests and expectations regarding covenants against alienation. The Township retains monetary reimbursement rights from Plaintiffs regardless of when the first sale takes place.

Plaintiffs' arguments fail.

Contracts Clause

Plaintiffs' contract clause claim similarly fails.

The contract clause of the United States Constitution prohibits a state from passing any "law impairing the obligation of contracts . . ." U.S. Const., art 1, § 10, cl. 1. The New Jersey Constitution provides the same protection. N.J. Const. art. IV, § 7, para. 3. Importantly, however, impairment of contract rights does not necessarily result in a constitutional violation. The Contract Clause does not deprive states of the power to regulate even if regulatory measures result in the

impairment or destruction of private contracts. In re Recycling & Salvage Corp., 246 N.J. Super. 79, 100-01 (App. Div. 1991) (citation omitted).

In determining whether a regulatory measure is constitutionally valid under the Contract Clause, courts apply a three-pronged test. Id. at 101.

The first inquiry is whether the challenged regulatory action has, in fact, caused a substantial impairment of a contractual relationship. Ibid. The second is whether the regulatory action is pursuant to a significant and legitimate public purpose. Ibid. The third is whether the adjustment of the rights and responsibilities of the contracting parties is based on reasonable conditions and whether the adjustment is sufficiently related to the appropriate governmental objective or interest. Ibid. (citation omitted).

Here, Plaintiffs claim that the Township's attempt to renew the affordability control period interferes with their state and federal contract clause rights. That position is misguided.

Assuming the original deeds here cause substantial impairment of contractual rights, they do so for a legitimate public purpose – an entirely permissible use under Recycling and Salvage Corp. Here, again, the permissible purpose is to ensure that low- and moderate-income households have the constitutionally mandated opportunity to occupy affordable units – a precious resource.

Once that legitimate public purpose is established, a court determines whether the adjustment of the rights and responsibilities of the contracting parties caused by the regulatory measure – here a renewal of the affordability control period to benefit future generations of low- and moderate- income families – is based on reasonable conditions and sufficiently related to an appropriate government interest. The answer is patent.

As to the third inquiry, there is a clear nexus between the renewal of the Grande’s affordability control periods and the Township’s interest in satisfying its constitutional obligation and providing affordable housing units to improve the general welfare of all its residents. If the Township cannot renew those controls, the affected units will cease to remain affordable, directly undermining Mount Laurel’s primary objective of providing affordable housing for current and future generations and dismantling the finite and “precious resource” of affordable housing stock.

Ultimately, the Township’s conduct falls well short of a contracts clause violation. In seeking to renew the affordability control period, the Township is merely exercising a right expressly contemplated by the deeds and long-standing regulatory schema. Plaintiffs’ claim under this theory fails.

New Jersey Civil Rights Act

Plaintiffs’ New Jersey civil rights claim equally fails.

The New Jersey Civil Rights Act authorizes a private right of action when:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

[N.J.S.A 10:6-2(c)].

The NJCRA generates two types of claims: (1) deprivation of a right; and (2) interference with rights by threats, intimidation, coercion, or force. Felicioni v. Admin. Off. of Courts, 404 N.J. Super. 382, 400 (App. Div. 2008), abrogated in part by Perez v. Zagami, LLC, 218 N.J. 202 (2014).

Plaintiffs allege a substantive due process violation. Both the federal, U.S. Const. amend XIV, § 1, and state constitutions – N.J. Const. art. I, § 1 – “protect individuals from ‘arbitrary exercises of the powers of government’ and ‘governmental power being used for the purposes of oppression.’” Felicioni, 404 N.J. Super at 392 (quotation omitted). Specifically, substantive due process “does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law.” Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 366 (1996) (quotation omitted). “Rather, substantive due process is

reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend . . . judicial notions of fairness . . . and that are offensive to human dignity.” *Ibid.* (internal citations omitted). Important here, “the denial of a property right in the context of municipal governance rarely will rise to the level of a substantive due process violation.” *Id.* at 366.

There is no reason to depart from that general rule here. Plaintiffs point only to the Township’s attempt to renew the Grande’s affordability controls and the homeowners’ inability to sell their units outside the recapture provisions to which they agreed when they executed their deeds. Those allegations fail to establish interference with any substantive right, and pale against the conscience-shocking conduct required to state a substantive due process claim.⁵

Takings Clause

Finally, Plaintiffs’ claim that enforcing the Affordable Units’ resale controls after the expiration of the affordability controls deprives them of their investment-

⁵ See, e.g., *Rochin v. California*, 342 U.S. 172-73 (1952) (pumping of suspect’s stomach to obtain evidence shocked conscience and violated “decencies of civilized conduct”); cf *Irvine v. California*, 347 U.S. 128, 133 (1954) (finding no substantive due process violation when police broke into defendant’s home and secretly placed microphone in bedroom, because trespass involved no coercion, violence, nor brutality).

backed expectations, thereby constituting an unconstitutional regulatory taking without just compensation. That argument fails for myriad reasons.

The Fifth Amendment's Takings Clause is applicable to the states through the Fourteenth Amendment, U.S. Const., amend V, see also N.J. Const. art 1.

There are two types of regulatory takings tests – the per se test and the so-called “Penn Central” test.

A per se taking “denies all economically beneficial or productive use of land” and requires compensation under the Takings Clause unless the challenged limitations “inhere . . . in the restrictions that background principles of the State’s law of property and nuisance already placed upon land ownership.” Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1046 – 47 (1992). A per se taking requires the court to find that the regulation forces the plaintiffs to “leave their property economically idle.” Id. at 1019.

The Penn Central test dispenses with that categorical approach, instead evaluating an alleged taking based on a complex set of factors including: “(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.” Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978).

“[A] regulatory limitation on the right to use and receive profits from property will not necessarily or even usually establish that there has been a taking.” Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434-435 (1982). Courts generally reject takings claims where a law imposes restrictions “substantially related to the promotion of the general welfare.” Rogin v. Bensalem Twp., 616 F.2d 680, 691 (3d Cir. 1980). Noteworthy here, states are vested with “broad power to regulate housing conditions in general . . . without paying compensation for all economic injuries that such regulation entails.” Yee v. City of Escondido, 503 U.S. 519, 528-29 (1992) (emphasis added).

Here, Plaintiffs’ taking challenge fails both.

Under Lucas, Plaintiffs cannot plausibly allege a categorical taking. The Township’s attempted renewal of the affordability control period and its exercise of the recapture lien unequivocally do not deprive Plaintiffs of all economically productive use of the Affordable Units. Plaintiffs are still entitled to sell their Affordable Units in compliance with the deeds they originally signed – to say nothing of continued occupation at a below market costs of the Affordable Units to their economic advantage.

As to the Penn Central first factor, Plaintiffs cannot establish a sufficiently severe economic impact. The recapture provision does not eliminate the Affordable Units’ economic value. Rather it only limits the resale proceeds which

Plaintiffs may obtain in the event of a sale. The economic impact inquiry evaluates the property as a whole as opposed to a single restricted interest. Murr v. Wisconsin, 582 U.S. 383, 387 (2017). Because Plaintiffs retain possession, use, and value in the Affordable Units, Penn Central's first factor weighs against them.

As to the second factor, Plaintiffs cannot claim that a recapture provision interferes with their investment backed expectations. First, Plaintiffs were on notice of that condition – as it was critical to their securing of the Affordable Units at a substantially reduced price. Second, Plaintiffs repeatedly reaped the benefits of reduced down payments, mortgage payments, taxes, and lower association fees. They cannot now selectively point to a portion of the deeds and sever such.

As to the third factor, the character of the governmental action is not at issue, nor have Plaintiffs explained how it possibly could be. Yee established that states are vested with “broad power to regulate housing conditions.” 503 U.S. 519, at 528. Rogin reaffirmed that courts generally reject takings claims where a law imposes restrictions “substantially related to the promotion of the general welfare.” 616 F.2d at 691.

There is no reason to depart from those general principles here. The renewal of the affordability control periods as well as the Township's retention of the recapture provision substantially promotes low- and moderate-income individuals'

and families' general welfare. Thus, the last factor heavily in the Township's favor. Plaintiffs' taking claims fail.⁶

Conclusion

For half a century, municipalities, developers, and property owners have participated in a subsidized, regulatory scheme to fulfill and protect the constitutional right of low-income New Jerseyans to a realistic opportunity to obtain affordable housing. Each participant is burdened. Each participant is privileged. All participated with eyes wide open, understanding those benefits and burdens. And all agreed to pay it forward to future generations.

Plaintiffs, fundamentally, seek to extract themselves from this on-going bargain after having reaped three decades of benefits and still being entitled to reap further profits on resale (albeit, limited). At bottom, in an effort to obtain an unlimited upside, they cherry pick regulatory provisions and gloom on to purported ambiguities to extract themselves from the half century old, on-going and evolving Mount Laurel doctrine. They ignore the flexibility infused into the governing

⁶ After briefing concluded, Plaintiffs submitted supplemental briefing addressing a brief filed by HMFA concerning a legal challenge to regulations. Putting aside the fact that an agency legal brief is a far cry from formal, published agency determinations such that judicial notice is improper, N.J.R.E. 201(a), the regulations concerned rental properties and, accordingly, have no relevance to the issues before the court.

documents, to say nothing of the broad police power afforded the Township to use reasonably. Plaintiffs endeavor must fail.

Plaintiffs repeatedly emphasize the vagueness of “applicable law” in the deeds. However, there is nothing vague about them. Rather, the term infused flexibility into an evolving and emerging area of the law, to account for future tweaks, modifications, and amendments. But the core of the Mount Laurel doctrine has remained unchanged.

From the FHA’s enactment to COAH’s 1989 regulations to the current UHAC, the State has repeatedly affirmed, re-affirmed, and re, re-affirmed an unassailable point: an affordable housing unit is a precious resource that benefits the public and should be retained for future generations.

Prowitz said it best. “It is not a potential benefit to any specific affordable-housing unit owner with which the resale restriction is concerned, but rather the benefit to the public that is vouchsafed by indefinitely maintaining that unit in the affordable housing stock.” 237 N.J. Super at 443. As such, “it is that public benefit which is the quid pro quo of the concomitant value-depreciating burden of the restriction. Ibid. A deed restriction limiting resale price is “a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State’s woefully inadequate inventory of affordable housing.” Ibid.

Plaintiffs' eyes were wide open. After signing the deeds and reaping the benefits of occupying the subsidized Affordable Units, they now attempt to renunciate the provisions by selectively reading the regulations and deed (to the detriment of and ignoring the broader Mount Laurel context) to gain a financial windfall at the expense of those individuals Mount Laurel seeks to protect.

A ruling in Plaintiffs' favor violates UHAC's general retroactive application, unravels decades of Mount Laurel precedent, and contradicts the very essence of affordable housing for current and future generations, to say nothing of throwing asunder prior Judgments of Compliance and Repose and three rounds of Mount Laurel approvals for the Township. The much more natural interpretation is to uphold the Township's ability, through its broad police power, to extend the affordability controls in congruence with the broader, statewide regulatory schema intended to foster the construction and regulation of affordable housing. For those reasons, the Township's motion to dismiss is granted. Plaintiffs' motions for summary judgment are denied.