



## *Township of Bedminster*

January 12, 2021

### **Declaratory Judgment - Bedminster Township Affordable Housing Program**

Dear Bedminster Resident:

The Township has received numerous questions and concerns from residents in our affordable housing program after receiving a “Summons and Complaint for Declaratory Judgment” from the Bedminster Hills Housing Corporation (“BHHC”). I appreciate the consternation that this action has had on our residents and offer this letter to provide some background and to address the questions that have been raised.

The pending Declaratory Judgment action asks a judge to confirm the enforceability of the recapture fee obligation that applies to all units within Bedminster’s affordable housing program. The Declaratory Judgment does not seek payment at this time, nor does it seek to add any new, additional or ‘after the fact’ fee, cost or charge. BHHC is asking the court to review the Master Deed for each neighborhood and to determine the enforceability of the final ‘recapture fee,’ which is owed when a unit is first sold at market value after the expiration of the affordability restrictions.

### **Summary of Bedminster’s Affordable Housing Program**

As most residents know, Bedminster’s affordable housing program arose out of protracted litigation commenced in 1970 when a developer challenged the Township’s zoning. After ten-plus years of litigation, Bedminster entered into a series of settlements and court orders to permit the development of both market-priced housing and affordable housing for low and moderate income households on the land we now refer to as “The Hills”.

As part of those court-approved stipulations, BHHC was formed for the express purpose of serving as the Township’s administrative agent for the affordable housing program. BHHC entered into a contractual relationship with Bedminster Township to formalize that arrangement. BHHC was assigned responsibility for marketing the affordable housing program, income screening to qualify applicants, enforcing the resale controls, and collecting the recapture fees through the mechanisms established in the recorded Master Deeds, Declarations of Covenants, Conditions and Restrictions and Affordable Housing Agreements that are applicable to all of the Township’s affordable housing units in the Parkside, Cortland, Timberbrooke and Village Green neighborhoods.

## **Recapture Fee Requirement**

Each Master Deed includes the following provision to determine the recapture fee: “*Resale Price (less Value of Improvements and Costs of Sale) – Purchase Price x Twenty Percent (20%).*” To be clear, the 20% recapture fee is not applied against the total sale price but rather against the net profit realized by the owner; credit is given for the owner’s purchase price, improvements made, and costs associated with the sales process. As an example, if you purchased your unit for \$100,000, put in \$20,000 of improvements, and then sold for \$160,000, your recapture fee would be determined as follows:  $[\$160,000 - \$100,000 - \$20,000] \times 20\%$ , that is 20% of \$40,000, which equals \$8,000. Further adjustments are made for the transaction costs of selling the unit. I also note that BHHC has applied a 10% yearly depreciation on improvements.

The Master Deeds specify that the recapture fee obligation applies to all transactions occurring during the time the units are subject to the affordability restrictions and at the first market sale following the expiration of the affordability restrictions. The Master Deeds are, therefore, clear that the recapture fee obligation only expires when the final recapture fee is paid at the first sale after the end of the affordability restriction. That language in the Master Deeds reads as follows:

**The recapture obligation shall expire upon its satisfaction in accordance with the provisions of Article [] when the first Resale of that Condominium Unit takes place after the expiration of the Resale Restrictions of this Declaration.**

## **BHHC Fails to Collect the Final Recapture Fees in Parkside**

In August 2017, the Parkside neighborhood was the first to have affordability restrictions expire. In the wake of that expiration, certain units were sold at market prices and no recapture fees were paid to BHHC. Over a year later, BHHC became aware of the problem and the need to ensure that sellers, purchasers, and title companies were aware of the final recapture fee obligation. BHHC’s efforts included hosting a “town-hall” session to advise residents, which was held in April of 2019.

## **The Purpose of BHHC’s Lawsuit**

Many residents have raised concerns about the purpose of BHHC’s lawsuit, which as noted above is solely to obtain a decision from the court that affirms the obligation for the final recapture fee. The pending Declaratory Judgment does not include a demand for any payment of damages. It seeks to establish a record of that obligation in order to ensure that affordable housing unit owners pay the appropriate recapture fee upon the first market sale. The Declaratory Judgment asks the court to affirm that obligation and to have the judgment appropriately recorded to provide the necessary notice to prospective purchasers and their professionals. That notice will likely read as follows:

“Pursuant to the Master Deeds of each Condominium Development, including the Declaration of Covenants, Conditions and Restrictions of Resale contained therein, each of the owners of low and moderate income housing is obligated to pay the Resale Recapture amount to Plaintiff, Bedminster Hills Housing Corporation [or its successor in interest], upon the sale of their unit, while such unit remains subject to Affordable Housing restrictions AND at the time that the first Resale of that Condominium Unit takes place after the expiration of the resale restrictions.”

### **Now That You Have Been Served, What Do You Need to Do?**

Many of you have asked the Township what you need to do in response to the lawsuit. In that regard, I cannot, nor can any Township Committee member or any Township staff, provide you with legal advice. As the Summons states, you have 35 days from the date of service to respond to BHHC’s Complaint. A response constitutes a formal filing with the court. A phone call or letter will not preserve your rights.

Owners should consider their options and may wish to consult with an attorney about the particular facts of their situation. If you cannot afford an attorney, you may wish to contact Legal Services of Northwest Jersey at (908) 231-0840, which is aware of the lawsuit and is prepared to speak about the court process.

### **If You Agree that the Final Recapture Fee Applies to Your Unit**

Some residents have indicated that they acknowledge and agree with the recapture fee obligation but still want to be kept apprised of the court proceedings without incurring the costs and spending the time to file a response with the court. Those concerns have been raised with the BHHC attorney, Salvatore DiFazio, Esq.

Mr. DiFazio has prepared a Stipulation for those who do not wish to contest the action but do want to be ensured that they will continue to receive copies of the Court’s decisions. Mr. DiFazio has provided Bedminster with a form Stipulation that is posted to Bedminster’s website under the “Government” tab and “Affordable Housing Information” submenu. If **all** of the following applies to your situation:

- (i) You are an owner of a restricted unit that is or was subject to Bedminster’s affordable housing restrictions;
- (ii) You received a copy of the Summons and Complaint for Declaratory Judgment from the BHHC;
- (iii) You are aware of and do not dispute the obligation to pay a 20% recapture fee at the time you sell your unit during the restriction period or at the first sale after the restriction period; **and**

(iv) You do not wish to participate in BHHC's lawsuit other than to receive copies of Orders, the court's final judgment and/or decision when made, then you may wish consider printing out, completing, signing and returning the Stipulation to Mr. DiFazio.

If you elect to submit the Stipulation, please do so within the 35 days following your receipt of the Summons to ensure that it is timely received and processed. I hope this accommodation adequately addresses the concerns raised about the cost and expense of responding to the BHHC's legal matter for those who do not wish to contest the action.

### **If You Wish to Contest the Final Recapture Fee**

Of course, if you wish to contest the recapture fee obligation, you should submit the appropriate response to the court. Once again, you may wish to consult with legal counsel to make sure your objections are properly voiced and timely submitted.

### **If You Chose to Take No Action**

If you do not respond to the Summons, BHHC may enter a default against you and you may not be entitled to notice of future proceedings or be given the opportunity to be heard by the court.

Please note that all parties served with the lawsuit, regardless of whether they respond to the complaint, will be bound by the court's final decision

### **The Future of Bedminster's Affordable Housing Program**

Ensuring that Bedminster has adequate affordable housing is an ongoing commitment for the Township. It is an obligation that I and the entire Township Committee take very seriously. I estimate that our affordable housing program has enabled well over a thousand people the possibility of home ownership. It has served as a vital 'first step' for some and a welcomed landing spot for others. Two of our Township Committee members have lived in affordable housing and well appreciate the opportunity the program afforded them.

I believe we on the Township Committee have a fiduciary obligation to maintain the viability of our affordable housing program and to take appropriate corrective action where necessary. Our responsibility extends to those currently in the affordable housing program and also to those who will be using it in the future. In that regard, the collection of the recapture fees is critically important to the program's success for 2021 and beyond.

The collected recapture fees will be allocated to a trust fund that is dedicated to Bedminster's affordable housing program. Those monies do not go to Bedminster's general revenues; they are not used to off-set taxes nor are they used to pay for expenses

unrelated to the affordable housing program. The affordable housing funds are used to pay for the costs of administering the affordable housing program and to provide funds for assistance to eligible homeowners according to an approved spending plan.

**CGP&H as Bedminster's New Administrative Agent for Affordable Housing**

As of January 1, 2021, the affordable housing consulting firm CGP&H assumed the day-to-day responsibilities as Bedminster's administrative agent. In addition to qualifying applicants, providing assistance on the sale of restricted units, and calculating recapture fees, CGP&H will be working with Bedminster's newly formed Affordable Housing Advisory Committee and with the Township Committee to develop a new spending plan for the affordable housing trust fund.

CGP&H is staffed with affordable housing experts who will advocate vigorously for the program. Our liaison with CGP&H is Heather Mahaley, who is a former manager with the Council on Affordable Housing (COAH) in New Jersey's Division of Community Affairs.

Our affordable housing program is in good hands with CGP&H and Heather Mahaley.

If you have any questions about the operations of the affordable housing program in Bedminster, please feel free to contact CGP&H directly at (609) 664-2769.

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I hope this letter addresses some of the concerns you may have about the pending litigation instituted by BHHC and its impact on you and your property.

Thank you for taking the time to read this letter.

Very truly yours,



Lawrence F. Jacobs  
Mayor, Bedminster Township

cc: Bedminster Township Committee  
Judith Sullivan, Township Administrator/Clerk  
Legal Services of Northwest Jersey  
CGP&H, LLC  
Salvatore DiFazio, Esq.  
John Belardo, Esq.