

DeCOTIIS, FITZPATRICK, COLE & GIBLIN, LLP
Jason M. Hyndman, Esq. (I.D. # 014042011)
61 South Paramus Road, Suite 250
Paramus, New Jersey 07652
(201) 928-1100
Attorneys for Plaintiff, 29 E 29 Street Holdings LLC

WTFK BAYONNE PROPCO LLC and
BAYONNE/OMNI DEVELOPMENT, L.L.C.,

Plaintiffs,

v.

CITY OF BAYONNE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – HUDSON COUNTY
DOCKET NO: HUD-L-1682-20

CIVIL ACTION

**CONSENT ORDER FOR
CONDITIONAL SETTLEMENT AND
REMAND TO THE CITY COUNCIL OF
THE CITY OF BAYONNE**

THIS MATTER having been opened to the Court by way of consent by counsel for the parties, Genova Burns, LLC (Lawrence Bluestone, Esq., appearing), counsel for Bayonne/Omni Development, L.L.C. (“Bayonne/Omni”); DeCotiis FitzPatrick Cole & Giblin, LLP (Jason M. Hyndman, Esq., appearing), counsel for the 29 E 29 Street Holdings LLC (“29 E 29”); and Inglesino, Webster, Wyciskala & Taylor, LLC (Elnardo J. Webster, II, Esq.) counsel for the City of Bayonne (the “City”), the Court having considered this matter and it appearing that the parties have reached a settlement in principle of this matter, subject to formal ratification by the governing body of the City of Bayonne, and for good cause:

IT IS on this _____ day of _____, 2021, **ORDERED:**

1. This matter is remanded to the governing body of the City to conduct a hearing, pursuant to Whispering Woods at Bam Hollow, Inc. v. Planning Board, 220 N.J. Super. 161 (Law Div. 1987), for the purposes of ratifying the proposed settlement in principle, which consists of the following, subject to the negotiation and execution of a more formal

settlement agreement in a form satisfactory to all parties:

- a) 29 E 29 agrees to accept the zoning change established in Ordinance O-20-20 as it relates to its property – identified in the Complaint as 407-421 Avenue E (Block 164, Lot 5.01); 408-422 Avenue E (Block 420.02, Lot 2.01); 423 Avenue E (Block 159, Lot 14); 425-427 Avenue E (Block 159, Lot 15) (the “Bayonne Medical Center property”).
- b) For so long as the Bayonne Medical Center property is operated, or intended to be operated as the site of an acute care hospital, the City agrees not to exercise its powers of eminent domain, nor to participate, advocate, encourage, guarantee the payment of, or otherwise acquiesce to an action in condemnation by any governmental entity at any level whatsoever, over any portion of the Bayonne Medical Center property, nor will the City act as an owner, operator, landlord or lessee of such property, or otherwise assert a direct role in the operations of Bayonne Medical Center. To this extent, the City shall withdraw from consideration the two ordinances introduced and pending a second reading and vote relating to the acquisition of the Bayonne Medical Center property, and entry into a lease/purchase agreement with the Hudson County Improvement Authority (“HCIA”). Further, as part of this settlement, the City shall procure the HCIA’s agreement to, and execution of an agreement memorializing the foregoing terms, including by way of rescission of its resolution authorizing the taking of the Bayonne Medical Center property by eminent domain.
- c) 29 E 29 agrees to convey to the City a right of first refusal to acquire, at fair market value and without the need for eminent domain, the Bayonne Medical Center property, which shall become operative only upon the occurrence of any of

the following events: (1) the filing with the New Jersey Department of Health (“DOH”), by 29 E 29 or any successor entity under common ownership or control, of an application for a certificate of need to terminate operation of Bayonne Medical Center as an acute care hospital; (2) entry into a contract for the conveyance of the Bayonne Medical Center real property to an entity whose controlling ownership is separate from either the controlling ownership of 29 E 29; or (3) transfer of a controlling interest in 29 E 29 to entities or individuals who are not affiliated with, or intended to be affiliated with, the current or prospective operation of Bayonne Medical Center as an acute care hospital.

- d) 29 E 29 shall provide the City with a 60-day advance notice and negotiating window prior to the occurrence of any of the right of first refusal events referenced in Section 1(c), within which time the City must provide irrevocable written notice of its intent to execute upon the option. For purposes of determining a fair market value, the parties may agree upon an appraiser, or exchange appraisals, with any disagreement to be resolved within 60 days of the City’s notice of exercise of its option. If the parties are unable to agree upon a fair market value, then the City may file, or procure the filing of an uncontested eminent domain action in which the sole issue in dispute shall be the determination of just compensation. The City shall close upon the transaction by remittance of cash consideration, or the filing of an eminent domain action within 60 days of the exercise of the purchase option.
- e) The City and its elected officials shall support the pending application of Hudson Regional Hospital, before DOH, for a certificate of need to assume operational control of Bayonne Medical Center, and will refrain from commenting upon, or taking any position other than a positive or neutral position with respect to 29 E

29's pending lease litigation with the current operator of Bayonne Medical Center, or 29 E 29's rejection of the current operator's proposed successor operator for Bayonne Medical Center, BMC Hospital, LLC.

- f) If 29 E 29 is able to acquire the right to operate Bayonne Medical Center, through litigation or otherwise, it shall exert its utmost effort to operate Bayonne Medical Center as a first-class acute care hospital, in accordance with the operational plan set forth in its certificate of need application before DOH, which includes the investment of sufficient monies to fully upgrade the Bayonne Medical Center facilities commensurate with that which is required for a first-class facility.
2. The City of Bayonne shall have a period not to exceed 30 days from the date of entry of this Order to schedule hearings, conduct its review of the settlement in principle, negotiate a formal settlement agreement, and adopt a resolution approving the same, which time period may only be extended by written consent of the Parties.
3. Proceedings in this matter are stayed and the Court shall retain jurisdiction over the present matter during the pendency of the remand to the City.
4. Within 15 days of the adoption of a resolution approving the Settlement Plan, the parties shall notify the Court. Upon the expiration of the appeal period without an appeal having been filed, the Plaintiffs will submit a proposed form of Consent Order that dismisses this matter with prejudice.
5. In the event that the governing body of the City of Bayonne is either unable or unwilling to approve the settlement in principle within the stipulated time period set forth in Paragraph 2 above, or an appeal of the settlement approval is filed, then the parties will so notify the Court within 15 days thereof, and Case Management Conference shall be scheduled for the purpose of setting a trial date and establishing a briefing schedule.

6. Upon dismissal of the case, this Court shall have continuing jurisdiction to enforce the terms and conditions of this Consent Order or any formal settlement agreement entered thereof, including by way of specific performance or entry of an injunction.
7. A copy of this Order shall be served upon the parties to this action within seven (7) days from the date hereof, by way of eCourts notice or electronic mail.

Hon. Kimberly Espinales-Maloney, J.S.C.

The undersigned hereby consent to the form and entry of this Order.

DeCOTIIS, FITZPATRICK, COLE &
GIBLIN, LLP
Attorneys for Plaintiff, 29 E 29 Street
Holdings LLC

INGLESINO, WEBSTER, WYCISKALA &
TAYLOR, LLC
Attorneys for Defendant, City of Bayonne

Jason M. Hyndman, Esq.

Elnardo J. Webster, II, Esq.