

MASON, GRIFFIN & PIERSON, P.C.

By: Edwin S. Schmierer, Esq. - ID #009811974

Clayton R. Paley, Esq. – ID #440222023

101 Poor Farm Road

Princeton, New Jersey 08540

Telephone: (609) 921-6543

Facsimile: (609) 683-7978

Email: e.schmierer@mgplaw.com & c.paley@mgplaw.com

Attorneys for Petitioner, the Township of Robbinsville

_____)	
)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION – MERCER COUNTY
IN THE MATTER OF THE APPLICATION)	
OF THE TOWNSHIP OF ROBBINSVILLE)	DOCKET NO.: MER-L-
IN MERCER COUNTY,)	
)	CIVIL ACTION (<u>Mount Laurel</u>)
Petitioner.)	
)	COMPLAINT FOR DECLARATORY
)	JUDGMENT
_____)	

Petitioner, the Township of Robbinsville (“Petitioner” or “Township”), a municipal corporation of the State of New Jersey, with its principal place of business located at 2298 Route 33, Robbinsville, New Jersey 08691, in the County of Mercer, by way of Complaint for Declaratory Judgment, says:

1. The within action is brought by the Township seeking declaratory judgment granting “fourth round” compliance certification, including a judgment of compliance and repose pursuant to N.J.S.A. 52:27D-304.1, with a judicial declaration affirming the Township’s present and prospective fair share obligation for affordable housing, finding that the Township’s housing element and fair share plan, implementing ordinances, and compliance submissions, to be prepared and adopted pursuant to the provisions of the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (the “FHA” or “Act”), are presumptively valid because they present a realistic opportunity to satisfy

the Township's affordable housing obligations, and providing the Township with immunity and repose against "builder's remedy litigation and exclusionary zoning challenges" for a period of ten (10) years from the date of Final Judgment, as provided for by the Act.

2. Jurisdiction properly rests with the Superior Court, Law Division, Mercer County before the designated Mount Laurel Judge for Vicinage 7 pursuant to Directive #13-18 (Court Appointments in Mount Laurel Cases) and Directive #14-24 (Civil – Affordable Housing Dispute Resolution Program – Implementation of L. 2024, c.2).

BACKGROUND

3. Pursuant to the decisions of the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) ("Mount Laurel I") and Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), every municipality in the state within a growth area has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of its regional need for low- and moderate-income housing.

4. Following the Mount Laurel I and Mount Laurel II decisions, in 1985, the New Jersey Legislature enacted the Fair Housing Act, N.J.S.A. 52:27D-301 to 329 ("FHA"), to ensure that municipalities meet their obligation to provide a fair share of their region's need for affordable housing.

5. To implement that goal, the FHA created the Council on Affordable Housing ("COAH"), and charged it with the responsibility for determining regional needs and certifying fair share plans.

6. COAH developed regulations governing the production, funding, and administration of affordable housing units, with its first round regulations extending from 1987 through 1993, N.J.A.C. 5:91 and 5:92 (“First Round Rules”); its second round regulations covering a cumulative period from 1987 through 1999, N.J.A.C. 5:93 (“Second Round Rules”); its third round regulations covering a cumulative period through 2014, N.J.A.C. 5:94 and 5:95 (“Initial Third Round Rules”); and its revised third round regulations covering a cumulative period through 2018, N.J.A.C. 5:96 and 5:97 (“Revised Third Round Rules”).

7. Legal challenges against COAH’s Initial Third Round Rules and Revised Third Round Rules ensued, and in 2010, the Court invalidated the Revised Third Round Rules in In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J.Super. 462 (App. Div. 2010), *affirmed* 215 N.J. 578 (2013).

8. In 2015, on a motion to enforce litigants’ rights, the Court held that COAH’s administrative process for evaluating municipal compliance had become non-functioning and returned the courts to their role as the forum of first resort for evaluating municipal compliance by way of declaratory judgment. *See* In re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (“Mount Laurel IV”).

9. Through the first three affordable housing “rounds”, the Township has made good faith efforts to meet and comply with its affordable housing obligations.

- a. Pursuant to N.J.S.A. 52:27D-304.2.b(1), Petitioner is located in Housing Region 4, consisting of Mercer County, Monmouth County, and Ocean County.

- b. The Township was formerly known as “Washington Township”, with said name change approved by voter referendum on November 6, 2007, with the name change effective on January 1, 2008.
- c. Pursuant to COAH’s First Round Rules, the Township petitioned for, and received, first round substantive certification from COAH on September 6, 1988 for a period of six years.
- d. Pursuant to COAH’s Second Round Rules, the Township petitioned for substantive certification on or about March 6, 1995, and received final substantive certification from COAH on or about May 6, 1998, for a period of six years.
- e. Due to delays in exactment of COAH’s Third Round Rules, the Township received extended second round substantive certification from COAH on May 5, 2004.
- f. The Appellate Division invalidated COAH’s Initial Third Round Rules in In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J.Super. 1 (App. Div. 2007), causing COAH to adopt its Revised Third Round Rules, N.J.A.C. 5:96 and 5:97 in 2008.
- g. Pursuant to COAH’s Revised Third Round Rules, the Township petitioned for amended third round substantive certification on or about December 30, 2008, and received final substantive certification from COAH on or about October 26, 2009, for a period of ten years.
- h. Subsequent to COAH’s grant of substantive certification to the Township, the Appellate Division invalidated COAH’s Revised Third Round Rules in In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J.Super. 462 (App. Div. 2010).

- i. In accordance with the Court’s directives in Mount Laurel IV, on July 8, 2015, the Township filed a Declaratory Judgment action entitled In the Matter of the Township of Robbinsville, County of Mercer, Docket No. MER-L-1547-15.
 - j. On March 29, 2018, the Court conducted a Final Compliance Hearing and reviewed the Township’s Housing Element and Fair Share Plan, Spending Plan, implementing ordinances and compliance submissions, and found that the Township’s submissions were constitutionally compliant and satisfy the Township’s cumulative third round Mount Laurel affordable housing obligations, and having approved same, by judgment entered May 9, 2018, granted the Township a Conditional Judgment of Compliance and Repose.
 - k. On or about October 17, 2018, the Court granted the Township a *Third Round Judgment of Compliance and Repose*, and on November 2, 2018, granted the Township an *Amended Third Round Final Judgment of Compliance and Repose*.
10. On March 20, 2024, P.L.2024, c.2. was signed into law, which amended the FHA, abolished COAH, established a new framework for determining and enforcing municipal compliance with Mount Laurel affordable housing obligations, and created a new “Affordable Housing Dispute Resolution Program” (the “Program”) within the Judiciary for the purpose of efficiently resolving disputes involving the FHA.
11. Pursuant to N.J.S.A. 52:27D-304.1(d) and (e), the New Jersey Department of Community Affairs (“DCA”) is responsible for providing a report setting forth non-binding calculations of regional and municipal affordable housing need based upon the provisions of N.J.S.A. 52:27D-304.2 and 304.3.

12. Pursuant to N.J.S.A. 52:27D-304.1(f)(1)(b), each municipality must adopt a binding resolution no later than January 31, 2025, determining its present and prospective fair share obligations for the Fourth Round.

13. P.L.2024 c.2 also established the Program, tasked with overseeing disputes and issuing recommendations to the courts relative to whether present and prospective need calculations determined by municipalities are in compliance with the Fair Housing Act.

14. The New Jersey DCA issued its Report, “Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background (the “DCA Report”) on or about October 18, 2024. A copy of the DCA Report is attached hereto as **EXHIBIT A**.

15. Pursuant to the DCA Report, the Fourth Round affordable housing obligations for the Township were calculated to be:

Present Need: 40

Prospective Need: 336

16. On January 30, 2025, the Township adopted a Resolution accepting the obligations for the Township of Robbinsville set forth in the DCA Report as its affordable housing obligations for the Fourth Round. A copy of the Resolution is attached hereto as **EXHIBIT B**.

17. The Township desires that the Court review, accept and affirm the municipal fair share obligation for the Township to be and is as set forth in its Resolution attached hereto as **EXHIBIT B**.

18. In accordance with N.J.S.A. 52:27D-304.1, the Township shall timely prepare, adopt and file a Housing Element and Fair Share Plan, implementing ordinances, and compliance submissions demonstrating compliance with its Fourth Round affordable housing obligations.

19. After such filing, the Township desires that the Court review, approve and affirm its Housing Element and Fair Share Plan, implementing ordinances, and compliance submissions, and issue a compliance certification, including a judgment of compliance and repose pursuant to N.J.S.A. 52:27D-304.1.

**COUNT ONE
(DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE)**

20. The Township repeats and realleges each and every allegation set forth in Paragraphs 1 through 19 of this Complaint as if set forth at length herein.

21. Pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 *et seq.*, the Fair Housing Act, including section 3 of P.L. 2024, c.2 (N.J.S.A. 52:27D-304.1) and section 13 of P.L. 1985, c.222 (N.J.S.A. 52:27D-313), and Administrative Directive #14-24, the Township has a right to a declaratory judgment granting “fourth round” compliance certification, including a judgment of compliance and repose pursuant to N.J.S.A. 52:27D-304.1, with a judicial declaration affirming the Township’s present and prospective fair share obligation for affordable housing, finding that the Township’s Housing Element and Fair Share Plan, implementing ordinances and compliance submissions, to be prepared and adopted pursuant to the provisions of the FHA, are presumptively valid because they present a realistic opportunity to satisfy the Township’s affordable housing obligations, and providing the Township with immunity and repose against “builder’s remedy litigation and exclusionary zoning challenges” for a period of ten (10) years from the date of Final Judgment, as provided for by the FHA.

WHEREFORE, Petitioner, the Township of Robbinsville, respectfully requests that the Court enter judgment as follows:

a. Declaring and establishing continuing immunity for the Township against any and all exclusionary zoning lawsuits, including but not limited to “builder’s remedy” suits, from the date of the filing of the within Complaint and extending up to and including the court’s determination that the Township’s Housing Element and Fair Share Plan, implementing ordinances and compliance submissions are compliant with the Township’s fourth round Mount Laurel affordable housing obligations, or for such other time period as the court may direct;

b. In accordance with N.J.S.A. 52:27D-304.1(f), declaring and establishing the Township’s fourth round Mount Laurel affordable housing obligations, including the Township’s present need and prospective need obligations, to be and are as set forth in the Resolution adopted by the Township, dated January 30, 2025, attached to this Complaint as Exhibit B;

c. Declaring and finding the Township’s Housing Element and Fair Share Plan, implementing ordinances and compliance submissions, to be prepared and adopted pursuant to the provisions of the FHA, are presumptively valid because they present a realistic opportunity to satisfy the Township’s fourth round affordable housing obligations, with judgment approving same;

d. Granting the Township “fourth round” compliance certification, including a judgment of compliance and repose pursuant to N.J.S.A. 52:27D-304.1, for a period of ten (10) years from its date of entry;

e. Granting the Township immunity and repose against “builder’s remedy litigation and exclusionary zoning challenges” for a period of ten (10) years from its date of entry; and

f. Awarding such other and further relief as the Court may deem equitable and just.

MASON, GRIFFIN & PIERSON, PC

By: Clayton Paley
Clayton R. Paley

Dated: January 31, 2025.

RULE 1:38-7 CERTIFICATION

I hereby certify that confidential personal identifiers have been redacted from the documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

MASON, GRIFFIN & PIERSON, PC

By: Clayton Paley
Clayton R. Paley

Dated: January 31, 2025.

RULE 4:5-1(b)(2) CERTIFICATION

Pursuant to Rule 4:5-1(b)(2), I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action currently pending or contemplated in any court or arbitration proceeding, and that I know of no other party or parties at this time who should be joined, pursuant to Rule 4:28, or who are subject to joinder pursuant to Rule 4:29-1(b), in this action. I further acknowledge that I have a continuing obligation during the course of this litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in this certification.

MASON, GRIFFIN & PIERSON, PC

By: Clayton Paley
Clayton R. Paley

Dated: January 31, 2025.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:5-1(c) and Rule 4:25-4, Clayton R. Paley, Esquire is hereby designated as trial counsel for Petitioner, the Township of Robbinsville.

MASON, GRIFFIN & PIERSON, PC

By: *Clayton Paley*
Clayton R. Paley

Dated: January 31, 2025.