

course of the proceedings, without interference from potential builder's remedy litigation and other lawsuits contemplated from the Mount Laurel doctrine.

2. Moorestown has demonstrated a long-standing commitment of voluntary compliance with its Mount Laurel fair share obligations. The Township voluntarily addressed its constitutional affordable housing obligation in response to the FHA and COAH's First Round, Second Round and Third Round regulations (both adopted iterations from 2004 and 2008) by submitting and obtaining substantive certifications in the First and Second Rounds and by petitioning COAH in both iterations of the adopted Third Round rules of 2004 and 2008. The following facts demonstrate the Township's voluntary commitment.

3. Following the "Mount Laurel II" decision in 1983 Moorestown became the plaintiff in several builders' remedy lawsuits. With the establishment of COAH by the Fair Housing Act, the court transferred the case to the state agency.

4. The Moorestown Planning Board and the Township Council endorsed the Housing Element and Fair Share Plan dated January 5, 1987 and filed it with COAH. The First Round Plan was subsequently amended on April 30, 1988 to address staff and mediation issues. Moorestown was granted First Round (1987-1993) substantive certification by COAH on August 15, 1988 (see Exhibit A).

5. In the First Round, the Township's pre-credited allocation consisted of an indigenous need (rehabilitation component) of 11 units, reallocated present need (a regional share of indigenous need from other municipalities with a surplus of need) of 123 units, and a prospective need (future demand) of 655 units from which various adjustments were made by COAH to arrive at a pre-credited need of 707 units. Due to some inaccuracies in COAH's calculations of employment, this amount was subsequently revised downward to 675 units by the agency.

6. The Township's First Round Housing Element and Fair Share Plan addressed this obligation with 11 credits for rehabilitated units, 16 credits from existing affordable housing, the construction of 100 new rental units, and the planned new construction of 100% affordable housing sites of 505 units and 43 rental bonus credits.

7. Moorestown's First Round Plan was amended on February 7, 1991 to add an additional senior rental project of 16 units. Township Council authorized the submission of a petition to COAH on March 25, 1991. COAH approved the petition for substantive certification on June 5, 1991 (see Exhibit B).

8. COAH issued adopted new substantive rules on May 10, 1994 (26 N.J.R. 2300), codified as N.J.A.C. 5:93, a year after the start of the Second Round in 1993. The effective date of the new rules was June 6, 1994. The procedural rules were

readopted with minor amendments (N.J.A.C. 5:91). Because of the delay, COAH adopted a process for granting interim certification that provided protection from builder's remedy lawsuit (N.J.A.C. 5:93-14.1) for nine months following their approval. Moorestown sought interim substantive certification, which was granted by COAH on September 8, 1994 (see Exhibit C).

9. Following a similar process of calculating each municipality's affordable housing obligation, Moorestown was assigned a cumulative obligation of 85 units to be rehabilitated and 621 units of new construction, (subsequently reduced to 606 units by COAH to adjust for the same miscalculated that necessitated a reduction in the first round).

10. The Moorestown Planning Board adopted a Second Round (1993-1999) Housing Element on February 23, 1995, with the Township Council adopting the Fair Share Plan and authorizing the petition for substantive certification to be filed with COAH on February 27, 1995.

11. The Township filed its petition for substantive Second Round certification with COAH on March 6, 1995. The Township addressed its cumulative 1987-1999 obligation with 16 prior cycle credits, 99 senior rentals, 59 family rentals, 338 family for sale on 100% municipally sponsored sites, 126 rental bonus credits, rehabilitation credit of 28 units at the time of certification and a program for the rehabilitation of an

additional 57 units.

12. COAH granted conditional substantive certification on April 2, 1997 and final substantive certification on July 9, 1997 (see Exhibit D).

13. In November 1998, the Township sought an amendment to the 1995 Plan, whereby the municipality would enter into Regional Contribution Agreements ("RCAs") with Mt. Holly Township and the City of Beverly for 204 units and 75 units, respectively, in lieu of constructing housing on its three 100% municipally sponsored sites. COAH approved the amendment on October 6, 1999 (see Exhibit E).

14. A second amendment to the Second Round substantive certification was filed with COAH on July 12, 2001 to obtain credit for an additional five units and a reduction of the RCA with Mt. Holly Township from 204 units to 199 units. The potential for the reduction was addressed in the original contract between the two municipalities. COAH approved the second amendment on October 3, 2001 (see Exhibit F).

15. There was a significant delay between the time that Third Round rules were supposed to be adopted in early 1999 and their actual adoption in June 2004. COAH had previously established a process for extended substantive certification (see para. 18). However, this process was overturned by the Superior Court, Appellate Division, who ruled that such

extensions had to be the subject of proper public notice to interested parties and a determination that municipalities were implementing their plans in a satisfactory manner¹.

16. Moorestown filed a motion with COAH on December 8, 2004 seeking the extension under emergency rules issued by the agency on October 31, 2004 (N.J.A.C. 5:95-15.2). On March 9, 2005, COAH granted the extension until December 20, 2005 (see Exhibit G.)

17. Based on the foregoing, Moorestown has completely implemented its prior round Housing Element and Fair Share Plan.

18. COAH's first version of the Third Round rules defined the applicable time period as 1999 to 2014 but then condensed it into an affordable housing "delivery period" from January 1, 2004 through January 1, 2014.

19. COAH's Third Round rules marked a significant departure from the affordable housing formulas utilized in COAH's two prior rounds. Previously, COAH had assigned an affordable housing obligation as an absolute number to each municipality.

20. The new Third Round rules implemented a "growth share" approach that linked the production of affordable housing with future residential and non-residential development within a municipality. Each municipality was required to project the

¹ - In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 NJ Super. 61 (App. Div. 2004)

amount of residential and non-residential growth that would occur from 2004 through 2014. Municipalities were then required to provide one affordable unit for every eight market rate housing units developed, and one affordable unit for every 25 jobs created (expressed as non-residential building square footage - actual jobs were not counted).

21. The Planning Board of Moorestown prepared a Third Round plan and adopted it on September 22, 2005 based on N.J.A.C. 5:94-1 et seq. (the first version of the Third Round rules). The Township Council endorsed the Plan and authorized the filing of a petition to COAH for initial Third Round certification on November 15, 2005 (Resolution No. 157-2005) and also at the same meeting adopted a Resolution of Intent to Bond (Resolution No. 158-2005) for any shortfall in funds (See Exhibit H). The Township filed the petition with COAH on November 25, 2005. The Township fully addressed in its Plan a rehabilitation component of zero (0) units, a prior round recalculated number of 626 units with a growth share (future new construction) of 123 units.

22. One objection to the 2005 Housing Plan was received. The Township's response was satisfactory to COAH and mediation was not undertaken.

23. The Township did not receive substantive certification of this Third Round plan. In fact, COAH only granted

substantive certification to three municipalities of the hundreds of petitions made to the agency.

JUDICIAL DECISIONS AND SUBSEQUENT COAH ACTIONS

24. On January 25, 2007, the Appellate Division issued In Re-Adoption of N.J.A.C. 5:94 and 5:95 by New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div. 2007), certif. den., 192 N.J. 72 (2007), which overturned substantial components of the rules which COAH had promulgated to guide municipal planning for the Third Round and ordered COAH to revise and re-propose those rules.

25. COAH did not issue a review of Moorestown's 2005 Third Round plan prior to the January 25, 2007 decision of the Appellate Division.

26. Nearly 17 months later, on June 2, 2008, COAH adopted certain rule amendments. However, at the same meeting, COAH simultaneously proposed additional amendments to the Third Round rules which were adopted and became effective October 2008. These rules provided residential and employment projections for the Third Round, which was expanded to encompass the years 1999 through 2018. Additionally, COAH revised its ratios to require one affordable housing unit for every four market rate housing units developed, and one affordable housing unit for every 16 jobs created.

27. Meanwhile, on July 17, 2008 (during the public comment

period on COAH's pending proposed rule amendments) Governor Corzine signed A-500 (P.L. 2008, c.46) into law, which amended the FHA and related statutes to prohibit municipalities from utilizing Regional Contribution Agreements in their Housing Elements, to require 13% of Third Round affordable housing units to be affordable to very low income households (30% of median income or below), to fix a statewide affordable housing fee at 2.5% of equalized assessed valuation on non-residential development, and to address various other issues.

28. The Planning Board of Moorestown prepared a Third Round plan and adopted it on December 29, 2008 based on N.J.A.C. 5:97-1 et seq. (the second version of the Third Round substantive rules). The Township Council endorsed the Housing Element and Fair Share Plan on December 30, 2008 and adopted Resolution No. 201-2008 memorializing its action. The Resolution also authorized the re-petitioning of COAH for substantive certification. The Township Council at the same meeting adopted a Resolution of Intent to Bond (Resolution No. 202-2008) to address any shortfall that might arise in the implementation of the housing plan (see Exhibit I). The 2008 Housing Element and Fair Share Plan, which also contained a Spending Plan, were filed with COAH on December 31, 2008. (See para. 70 for additional details of the 2008 Housing Element and Fair Share Plan, attached as Exhibit J)

29. On July 27, 2009, Governor Corzine signed P.L. 2009, c.90, the New Jersey Economic Stimulus Act of 2009, which instituted a moratorium on the imposition and collection of non-residential affordable housing development fees through July 2010.

30. On August 24, 2011, the moratorium on the collection of non-residential affordable housing development fees was extended by law through July 1, 2013. The moratorium has now expired.

31. On October 8, 2010, the Appellate Division issued its second decision concerning challenges to COAH's Third Round rules, In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462 (App. Div. 2010), which invalidated COAH's revised Third Round growth share methodology and portions of COAH's regulations. The Court directed COAH to revise its Third Round rules using a methodology for determining prospective need similar to the methodologies used in the First and Second Rounds. The decision also sustained those portions of COAH's Third Round rules which assessed municipal present and prior round need (First and Second Round allocation).

32. After the Appellate Division's October 8, 2010 decision, the Township's certified Third Round plan remained under COAH's jurisdiction by virtue of a COAH Resolution adopted on December 8, 2010, in response to a series of motions filed by

challengers. In pertinent part, the COAH Board determined that:

WHEREAS, in light of the Appellate Division decision, COAH is refraining from further review of the Third Round prospective growth share obligations of any municipal Third Round plans because there are no standards to guide COAH due to the Court's invalidation of the growth share portion of the Third Round regulations; and

BE IT FURTHER RESOLVED that going forward municipalities are not required to seek a stay from COAH proceedings concerning Third Round prospective growth share obligation; and

BE IT FURTHER RESOLVED that municipalities that have received Third Round substantive certification or have petitioned COAH pursuant to N.J.A.C. 5:96 and 5:97 continue to be under the jurisdiction of COAH.

33. On January 14, 2011, the Appellate Division entered an Order that directed the COAH Board Chair to submit bi-weekly reports on COAH's progress in adopting a revised Third Round methodology and regulations.

34. COAH filed a Motion for reconsideration of this Order and also sought a stay from the New Jersey Supreme Court of the March 8, 2011 deadline imposed by the Appellate Division for the promulgation of revised rules. On January 18, 2011, the Supreme Court granted an application for a stay of the Appellate Division's October 8, 2010 decision.

35. Subsequently, on March 31, 2011, the New Jersey Supreme Court granted petitions and cross-petitions to all of the various challenges to the Appellate Division's decision.

36. The Supreme Court heard oral argument on November 14, 2012 and, on September 26, 2013, affirmed the Appellate Division's invalidation of the growth share methodology. In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013).

37. Simultaneous with the various judicial challenges concerning COAH's Third Round rules, actions were also being taken by the Legislative and Executive branches of the State concerning the Third Round obligations, resulting in further confusion as to the ability of municipalities to ascertain their Third Round obligations.

38. On February 9, 2010, Governor Christie signed Executive Order No. 12, which established a five-member Housing Opportunity Task Force charged with review of the effectiveness of the Fair Housing Act, COAH, and COAH's regulatory structure in meeting the constitutional obligations under the Mount Laurel doctrine. The Executive Order also ordered COAH to refrain from continuing to process applications for substantive certification or from otherwise implementing the Third Round rules during the Housing Opportunity Task Force's 90-day review period.

39. On February 19, 2010, the Appellate Division issued a stay of that portion of the Executive Order that prevented COAH from processing applications and implementing its Third Round rules.

40. On March 20, 2010, Governor Christie issued Executive

Order No. 20, rescinding Executive Order No. 12. Executive Order No. 20 coincided with the release of the report prepared by the Housing Opportunity Task Force on March 20, 2010. In the report, the Task Force recommended that the Governor re-visit COAH's original growth share methodology, reinstate the use of regional contribution agreements, and eliminate prior round obligations.

41. In addition to affordable housing reform activities in the Executive branch, in 2010, the Legislature introduced several bills aimed at the reform of affordable housing law and rules that culminated in a conformed bill (S-1/A-3447) that was approved by both houses on January 10, 2011. Governor Christie conditionally vetoed the bill on January 24, 2011, however stating in a press release, "The heavily amended legislation falls far short of its original intent ... The Senate has presented a considerably different version of the legislation I originally supported in June - one that was simple and sufficiently close to the recommendations contained in the March 19, 2010 report of the Housing Opportunity Task Force." The Legislature subsequently withdrew this bill from consideration on February 7, 2011.

42. On June 29, 2011, Governor Christie filed Reorganization Plan No. 001-2011 to abolish COAH and to transfer its responsibilities to the Department of Community Affairs

("DCA"). As the Legislature took no action to reject the plan, by statute, the reorganization plan became effective after 60 days - on August 29, 2011. The Executive branch established the Local Planning Services Office in DCA to provide state agency staffing for municipal affordable housing matters.

43. Fair Share Housing Center ("FSHC") appealed the Governor's reorganization plan, claiming that COAH is not part of the Executive branch as it was created "in but not of" DCA.

44. On March 8, 2012, the Appellate Division invalidated Governor Christie's Reorganization Plan and reinstated COAH. See In re Plan for Abolition of COAH, 424 N.J. Super. 410 (App. Div. 2012). The Supreme Court granted certification to hear the State's appeal of the Appellate Division's invalidation of the Governor's Reorganization Plan. On July 10, 2013, the New Jersey Supreme Court affirmed the Appellate Division's decision, ruling that because COAH is an independent agency "in but not of" the DCA/Executive branch, the Governor did not have the authority under the Reorganization Act to abolish it and transfer its powers to DCA. Such action requires legislative action. In re Plan for the Abolition of the Council on Affordable Housing, 214 N.J. 444 (2013).

45. In a decision issued on September 26, 2013, the New Jersey Supreme Court in In re Adoption of N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 578, affirmed the Appellate Division's

2010 invalidation of the growth share methodology. The Supreme Court invalidated all of the challenged regulations, finding that the provisions related to the growth share methodology were not severable from the remaining portions of the regulations. The Supreme Court also endorsed the remedy imposed by the Appellate Division requiring COAH to revise its Third Round regulations utilizing a methodology similar to COAH's First and Second Rounds and directed COAH to adopt new regulations in five months.

46. On February 26, 2014, COAH filed a Motion for an extension of time which the Supreme Court granted with specific deadlines.

47. On April 30, 2014, COAH met to adopt revised Third Round regulations which were published in the June 2, 2014 New Jersey Register. However, COAH failed to adopt the revised Third Round regulations at its October 20, 2014 meeting, with a deadlocked vote of 3 - 3. Accordingly, these Third Round Rules were not adopted.

48. In response to COAH's failure to adopt regulations, FSHC filed a Motion in Aid of Litigant's Rights in November 2014. The Supreme Court heard oral argument on January 6, 2015 and issued its decision on March 10, 2015. In re Adoption of N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 1. As the Supreme Court found COAH to be a "moribund" agency and board, the Court

determined to dissolve the FHA's requirement to exhaust administrative remedies. Id. at 5.

49. The Court transferred the review and approval of municipal housing plans to the Superior Court. Id. at 5, 7 and 20. The effective date of the Court's decision was delayed 90 days - until June 8, 2015. Id. at 21. Between June 8 and July 8, 2015, municipalities are permitted to file declaratory judgment actions with the Superior Court. Id. at 5 and 28. Builder's remedy litigation is precluded during this 30-day time-period and, subsequently, such litigation should initially only proceed to assess constitutional compliance by the municipality of its fair share obligations. Id. at 20. The Superior Court may grant periods of temporary immunity while a municipality addresses its judicially-determined Third Round fair share obligation. Id. at 23-24 and 26.

50. Pursuant to the Supreme Court's March 10, 2015 decision, and for the reasons set forth above, the Township of Moorestown is deemed to be a "participating" municipality. Id. at 21-22.

51. As noted in the 2015 Supreme Court decision, "While reviewing for constitutional compliance the ordinances of a Township that achieved substantive certification, courts should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during the

necessary review process, unless such process is unreasonably protracted." Id. at 26. The Township seeks this immunity in the application at bar.

52. There are two entities who have prepared a calculation of Third Round statewide and municipal affordable housing obligations: COAH and FSHC.

53. The COAH allocation numbers were prepared and made a part of the third iteration of the Third Round rules (N.J.A.C. 5:99) for the time period 1999-2014.

54. FSHC also prepared statewide and municipal Third Round affordable housing calculations, dated April 2015, for the time period 1999-2015.

55. Neither set of proposed statewide/municipal Third Round calculations have been approved by a state agency or a court of competent jurisdiction.

56. As the result of COAH's inability to adopt regulations and the New Jersey Supreme Court's 2015 response thereto, every municipality's affordable housing obligation is currently unsettled.

57. Notwithstanding the unsettled nature of the municipal allocations for affordable housing, the Township of Moorestown commits to meet its affordable housing obligation using the Second Round rules and limited Third Round compliance mechanisms found constitutional by the New Jersey Supreme Court in its

March 10, 2015 decision.

58. As noted in March 10, 2015 decision, the Supreme Court's process for municipalities to transfer jurisdiction from COAH "bears emphasizing that the process established is not intended to punish the towns represented before this Court, or those that are not represented but which are also in a position of unfortunate uncertainty due to COAH's failure to maintain the viability of the administrative remedy." Id. at 23. The Supreme Court has provided guidance to municipalities and the courts in the determination of future allocation numbers, advising that "the process developed herein is one that seeks to track the processes provided for in the FHA." Id. at 29.

59. In order to address this Court's future determination of the Township's Third Round fair share obligation, the Township of Moorestown expects to amend its most recently adopted Third Round Plan.

60. As previously noted, Moorestown adopted a revised Third Round Housing Element and Fair Share Plan, dated December 29, 2008, addressing its cumulative Third Round (1987-2018) fair share obligation. The second iteration of the Third Round rules assigned a rehabilitation component of 18 units. Moorestown had completed 28 units of rehabilitation between October 2000 and March 2005. Since Moorestown had completed the number assigned to it, the program has since been wound down.

61. Moorestown addressed its prior round obligation of 606 units with units and bonuses from a variety of different compliance mechanisms, as indicated in Table 1, Satisfaction of Moorestown's Prior Round Obligation. While COAH's rules indicate 621 units, this higher number still failed to reflect the adjustment in the Township's First Round allocation (see para. 15).

Table 1. Satisfaction of Moorestown's Prior Round Obligation.

Credit Type	Project (Year Completed)	Units	Bonuses
Prior Cycle	Court House (1984)	8	
	Fire House (1985)	8	
Family For-Sale	Cedar Ct. (1992)	8	
Family Rental	Albany Acres (1987)	9	
	411 S. Lenola Rd. (1994)	1	
	528 Bethel Ave. (1993)	1	
	66-68 E. Second St. (1992)	4	
	240 Pine St. (2001)	1	
Family Rental Gut Rehabilitation	Creed (2000)	12	
	Chestertowne Village (2000)	45	
	Colonial Arms (2004-2005)	21	
	203-205 W. Second St. (2002)	2	
Senior Rental	Stokes Med. (1991)	16	(1/3 bonus
		26	

Credit Type	Project (Year Completed)	Units	Bonuses
	Linden Place (1989)	24	on 52 units) 17
	Teabury Run (1987)	33	
	Lenola School (1988)		
RCA	Beverly City (2000-02)	75	
	Mt. Holly Township (2000- 02)	199	
Subtotal		493	113
Total Credits		606	

62. In the 2008 rules, COAH established a "growth share" number of 412 units, which the Township accepted and addressed in its 2008 Housing Plan. Table 2, Summary of Moorestown's Third Round Growth Share.

Table 2. Summary of Moorestown's the Third Round Growth Share

Third Round Growth Share	412	Bonuses	Rental	Senior	Special Needs
Special Needs Housing					
A.D.E.P.T. Programs Group Home	5		5		5
Family Service Shared Living (5 bldg.)	13		13		13
Kings Hwy, Inc., Shared Living	3		3		3
Foundation for the Challenged Gr. Home	4		4		4
Extension of Expiring Controls⁽¹⁾					
Musser Court	16		16		
Clover Apartments	5		5		
Beech Street	18		18		
Lenola School	33		33	33	
Teaberry Run	24		24	24	
100% Affordable Housing					
Creed II	8	8 ⁽²⁾	8		
Maybury Tract and/or Nagle Tract	180	95 ⁽³⁾	180	46	
Subtotals	309	103	309	103	25
Total Units and Credits	412				

(1) - Originally applied for as a Market-to-Affordable program

(2) - Compliance bonuses

(3) - Rental bonuses

63. Four objections to Moorestown's 2008 Housing Element and Fair Share Plan were received within the requisite time period.

64. COAH issued a pre-mediation report on September 16, 2009 and scheduled mediation with the objectors. The pre-mediation report also requested additional information from Moorestown. A comprehensive response was made to COAH by Moorestown on December 11, 2009. Though mediation began with the objectors it was never concluded by COAH.

65. In response to the four year time limit for expending affordable housing trust fund monies in then-pending legislation, Moorestown submitted an Interim Spending Plan pursuant to N.J.A.C. 5:97-8.1(d). The Interim Spending Plan was a revision to the Spending Plan submitted to COAH as part of the municipality's Fair Share Plan on December 31, 2008. COAH approved the revised Spending Plan on July 12, 2012 (see Exhibit K).

DETERMINATION OF FAIR SHARE NUMBERS

66. In 2014, the affordable housing allocation numbers for the third iteration of the Third Round rules were prepared by Rutgers University's Center for Urban Policy Research ("CUPR").

67. CUPR has a demonstrated expertise in this field since it had calculated regional low and moderate income housing need and created a methodology for allocating it among each region's municipal constituents for COAH for the First (1987-1993) and Second (1993-1999) Rounds.

68. The 2014 methodology for the Third Round was incorporated into the rules which COAH proposed for adoption on April 30, 2014 and released for public comment in the New Jersey Register on June 2, 2014. However, as discussed above, COAH failed to adopt the revised Third Round regulations and the methodology which CUPR prepared for the State is not available to municipal parties.

69. CUPR has been retained by a consortium of municipalities, including the Township of Moorestown, to prepare revised statewide and municipal Third Round affordable housing obligation calculations. That work product is presently scheduled to be delivered by September 30, 2015.

70. Once the affordable housing numbers for the Township have been calculated and accepted by this Court, the Township will address whatever difference exists between its housing plan and the revised numbers, if any, within the five month window established by the Supreme Court for supplementing its planning documents or as directed by the trial judge.

IMMUNITY DOCTRINE

71. Pursuant to N.J.S.A. 52:27D-309, a municipality that had not been sued for violation of its obligation to provide affordable housing may automatically secure immunity until five months from when COAH adopted "criteria and guidelines" by

adopting a "resolution of participation" within four months from the effective date of the Act.

72. N.J.S.A. 52:27D-309 and -316 further provide that, if a municipality secured COAH's jurisdiction by filing its Housing Element and Fair Share Plan with the agency before an exclusionary zoning suit was instituted in court, it automatically secured protection from exclusionary zoning lawsuits while it sought substantive certification. The judicial equivalent to the statutory protections created in N.J.S.A. 52:27D-309 and -316 is commonly referred to as the "immunity doctrine."

73. In January 1986, in Hills Dev. Co. v. Tp. of Bernards, 103 N.J. 1, 64 (1986) (Mount Laurel III), the Supreme Court expressly acknowledged that the three Mount Laurel trial judges assigned following Mount Laurel II were utilizing immunity orders to protect Townships seeking to achieve compliance voluntarily. The Court in Mount Laurel III, supra, 103 N.J. at 29, also commended the trial judges on their "innovative refinement of techniques for the process of litigation."

74. Over the past three decades, trial courts throughout the state have routinely entered immunity Orders to avoid unnecessary Mount Laurel lawsuits and to facilitate voluntary compliance.

75. In their March 10, 2015 decision, the Supreme Court in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, supra, 221 N.J. at 34, expressly acknowledged and discussed the immunity doctrine, stating:

In enacting the FHA, the Legislature clearly signaled, and we recognized, that an administrative remedy that culminates in voluntary municipal compliance with constitutional affordable housing obligations is preferred to litigation that results in compelled rezoning. See Hills, supra, 103 N.J. at 21-22 ... It is our hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied.

CLAIM FOR RELIEF

76. The Township of Moorestown repeats and realleges the statements set forth above as if set forth fully herein.

77. The Township has filed the within lawsuit within the timeframe established by the Supreme Court in its March 10, 2015 decision to determine the Township's compliance with its affordable housing obligations.

78. The Township has previously received Certification of its First and Second Round Housing Elements and Fair Share Plans and has sought certification for the first and second iteration of the Third Round.

79. The Township has retained experts to update and calculate its affordable housing obligations, based on the guidance provided by recent case law.

80. Under those circumstances, Moorestown Township respectfully requests that this Court grant a period of temporary immunity from builders remedy suits while the Township proffers its affordable housing calculations, with assistance from the Township's planning consultant and the retention of CUPR, and during the pendency of the Court's consideration of those calculations.

WHEREFORE, the Township of Moorestown, as a Declaratory Plaintiff, hereby demands judgment granting the following relief:

1. The entry of an Order reaffirming the Township's and its Planning Board's Immunity from all Mount Laurel lawsuits:

(a) while the Court determines the Township's fair share obligations and the other standards with which municipalities must comply; (b) while the Township prepares, adopts, endorses, and files its amended Affordable Housing Plan and provides the required public Notice to comport with the Supreme Court's directives and intent in In re COAH; (c) while the Court and any Court appointed Master reviews the Township's amended Affordable Housing Plan and considers any comments to the Plan filed by any interested parties; (d) while the Township and its Planning

Board respond to any concerns the Court or its Master may express; and (e) for such further period of time as the Court deems just and reasonable under the circumstances; and

2. In the event that the Court declines to grant the relief set forth in Paragraph 1 above, Plaintiffs seek the entry of an Order reaffirming the Township's and its Planning Board's Immunity from all Mount Laurel lawsuits for five-months subject to periodic extensions upon application to the Court; and

3. The entry of a Judgment of Compliance and Repose upon the review and approval of the Township's amended Affordable Housing Plan as initially proposed or as may evolve over time which will properly insulate the Township and its Land Use Boards from any Mount Laurel suit for a period of 10 years from the date the amended Affordable Housing Plan is filed with the Court; and

4. The entry of an Order approving the Township's Mount Laurel Spending Plan, in its current form or as amended in the future and declaring that the Township is free to expend the funds consistent with the programs contemplated in its Spending Plan; and

5. The entry of an Order defining the circumstances and proofs needed to demonstrate when Mount Laurel funds are properly committed pursuant to N.J.S.A. 52:27D-329.2; and

6. The grant of such other relief as may be just and equitable.

CAPEHART SCATCHARD, P.A.
Attorneys for Plaintiff
Township of Moorestown

Date: 7/7/15

By: Grant.
Kelly A. Grant, Esq.

CERTIFICATION

I hereby certify that the within matter is not the subject of any other action pending in any other Court or arbitration process of which the undersigned is aware, I further certify that no other action or arbitration process is contemplated, I further certify that it is not contemplated that any other party should be joined in this action, except for the Planning Board of the Township of Moorestown.

I hereby certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CAPEHART SCATCHARD, P.A.
Attorneys for Plaintiff
Township of Moorestown

Date:

7/7/15

By:



Kelly A. Grant, Esq.