

FAIR SHARE HOUSING CENTER
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Fair Share Housing Center
By: Kevin D. Walsh, Esq. (030511999)

**In the Matter of the Application
of the Township of Moorestown,
County of Burlington,**

SUPERIOR COURT
Law Division
Monmouth County

DOCKET NO: BUR-L-1604-15

CIVIL ACTION

**FAIR SHARE HOUSING CENTER'S
COUNTERCLAIMS AGAINST MOORESTOWN
TOWNSHIP**

Defendant, Fair Share Housing Center, Inc. ("FSHC" or "Defendant") has been designated an interested party by the New Jersey Supreme Court in Third Round declaratory judgment proceedings, such as the instant matter. FSHC, which represents the interests of lower-income New Jerseyans in Mount Laurel proceedings, has its principal office at 510 Park Blvd., Cherry Hill, New Jersey. FSHC, which intervened as a defendant in this matter, by way of counterclaims in intervention against the Township of Moorestown, County of Burlington, State of New Jersey (the "Township"), says:

Counterclaims as to Plaintiff Moorestown Township

The Parties

1. FSHC, defendant- intervenor and through this pleading a counterclaimant, is a non-profit organization founded in 1975 dedicated to advocating for affordable housing in New Jersey.

2. The Plaintiff is the Township of Moorestown, a municipal entity of the State, created pursuant to and required to act consistent with and in furtherance of the Constitution and laws of the State and the United States.

Facts

3. This matter involves the issue of whether Moorestown has satisfied its fair share of the regional need for affordable housing for the Third Round. The facts relevant to that issue include both what Moorestown has done for the past 15 year and its proposed fair share plan filed with the court on November 6, 2015.

4. Moorestown has not proceeded in good faith with regard to its Third Round obligation in the fifteen years since the Third Round started.

5. Moorestown included 99 credits for extension of expiring controls and 99 bonuses in its 2008 Third Round plan.

6. None of the 99 units for which expiring controls were planned to be extended have been extended.

7. Moorestown thus cannot claim credit for any of the 99 credits for expiring controls and none of the related 99 claims

to bonuses.

8. Moorestown claimed credit for 180 units and 95 bonuses at the "Maybury Tract and/or Nagle Tract" in its 2008 plan.

9. In seven years since that plan was adopted, none of the 180 units planned for the "Maybury Tract and/or Nagle Tract" has been developed.

10. While other municipalities around the state and in Burlington County took actions to comply with the Mount Laurel doctrine, since 2000, it appears Moorestown has done nothing.

11. For 15 years, Moorestown allowed and encouraged other forms of development to occur and allowed the use of resources that could have been used to comply with the Mount Laurel doctrine, but took no actions or nearly no actions that resulted in the provision of affordable housing.

12. The New Jersey Supreme Court required municipalities to file fair share plans within 5 months of the filing of their declaratory judgment complaints.

13. On November 6, 2015, Moorestown filed its fair share plan with the court in compliance with that requirement, which was memorialized by order entered by Judge Bookbinder.

14. The November 6, 2015 fair share plan filed by Moorestown addressed two fair share calculations: (1) the fair share obligation prepared by the Council on Affordable Housing in 2014 in rules designated N.J.A.C. 5:99 that were proposed but never

adopted and (2) the fair share obligations calculated by David N. Kinsey, PhD, PP, FAICP for and in collaboration with Fair Share Housing Center.

15. Proposed N.J.A.C. 5:99 was not based on the Prior Round methodology.

16. Proposed N.J.A.C. 5:99 substantially deviated from the Prior Round methodology with regard to all three of the steps required to assign fair share obligations: (1) calculating the regional need; (2) allocating that regional need; and (3) ensuring that need is met with a realistic opportunity for low- and moderate-income housing.

17. Moorestown indicated that it could not comply with the obligation calculated by Dr. Kinsey because of an absence of vacant land. Moorestown's fair share plan indicates that the municipality "lacks the vacant and developable land resources to address either the 1,477 uncapped or the 1,000 unit limits of the FSHC numbers. This was determined from an analysis of vacant land and calculation of its Realistic Development Potential of 406 units."

18. But, the realistic development potential analysis prepared by the municipality did not comply with applicable law in numerous ways.

19. Large parts of the municipality were excluded from the analysis because of sewer unavailability, an approach that is

not permitted by any source of law.

20. No consideration was given to the redevelopment potential of parcels in the municipality, which may increase the municipality's realistic development potential.

21. And, most egregiously, the municipality, in refusing to provide any mechanisms to meet unmet need, proposed to ignore the needs of hundreds of households that have formed or will form in the region.

22. Moorestown has done nothing to comply with the Mount Laurel doctrine for nearly two decades and now proposes to meet its fair share obligations in ways that ignore numerous requirements of state law.

23. The municipality has encouraged the development of million dollar mansions, but when it comes to providing opportunities for working families and people with disabilities suddenly found that it does not have enough land and relies on bureaucratic loopholes of its own making in an attempt to exclude.

FIRST COUNT

N.J.A.C. 5:99 INCONSISTENT WITH PRIOR ROUND METHODOLOGY

24. The Supreme Court required that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. The parties should demonstrate to the court computations of housing need and municipal obligations based on

those methodologies." In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (citing In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 620 (2013)).

25. Moorestown has calculated its Third Round obligation using a fair share methodology that is inconsistent with the Prior Round methodology and was never adopted by the Council on Affordable Housing.

26. Moorestown has violated the Mount Laurel doctrine and the Fair Housing Act of 1985, and the Supreme Court's March 10, 2015 opinion and order.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

- a. A declaration that N.J.A.C. 5:99 is inconsistent with the Prior Round methodology and unlawful.
- b. Denial of the Township's request for immunity from builder's remedy litigation.
- c. Denial of the Township's request for immunity from builder's remedy litigation for more than five months.
- d. Denial of the Township's request for declaratory relief.
- e. A declaration that the Housing Plan Element and Fair Share Plan adopted by the Township is unconstitutional, unlawful and void;
- f. An order directing the Township to adopt a constitutional, lawful and valid Housing Plan Element and Fair Share Plan;
- g. A declaration that the Township has a present need of 19 units.
- h. A declaration that the Township has a Prior Round fair

share obligation of 621 units.

- i. A declaration that the Township has a Third Round fair share obligation of 1512 units.
- j. A declaration that the Township has not provided a realistic opportunity for its fair share of the regional need of affordable housing.
- k. An order correcting the unlawful or flawed aspects of the Township's fair share plan.
- l. The appointment of a special master.
- m. Attorneys' fees, costs of litigation, court costs and interest.
- n. Such other relief as the court deems just and equitable.

**SECOND COUNT
IMMUNITY FROM BUILDER'S REMEDY LITIGATION
AND REMOVAL OF HOME RULE ZONING POWERS**

27. Defendant/Counterclaimant FSHC repeats and realleges all of the prior paragraphs of this complaint for purposes of this count as if set forth at length herein.

28. Moorestown Township seeks immunity from litigation pursuant to the Supreme Court's decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 29 (2015).

29. That decision provides courts discretion to provide immunity from builder's remedy litigation to municipalities so municipalities can retain their home rule powers.

30. The Supreme Court directed trial courts to distinguish between municipalities that had in good faith met part of their Third Round obligations and those that had not, stating

that "[i]f a town had devised a housing element and took action toward adopting ordinances in furtherance of its plan, then we would expect a reviewing court to view more favorably such actions than that of a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance."

31. The Court further recognized that a municipality that has not received substantive certification "poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed."

32. Mount Laurel II also authorizes municipalities that have filed unlawful fair share plans to lose their home rule powers and for those powers to be exercised by trial courts that directly order changes to municipal fair share plans to bring municipalities into compliance with the Mount Laurel doctrine.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

- a. Denial of the Township's request for immunity from builder's remedy litigation.
- b. An order that directs in detail what rezoning and other actions by the municipality must occur in order for the municipality to be compliant with Mount Laurel.

- c. Denial of the Township's request for immunity from builder's remedy litigation for more than five months.
- d. Denial of the Township's request for declaratory relief.
- e. A declaration that the Housing Plan Element and Fair Share Plan adopted by the Township is unconstitutional, unlawful and void;
- f. An order directing the Township to adopt a constitutional, lawful and valid Housing Plan Element and Fair Share Plan;
- g. A declaration that the Township has a present need of 19 units.
- h. A declaration that the Township has a Prior Round fair share obligation of 621 units.
- i. A declaration that the Township has a Third Round fair share obligation of 1512 units.
- j. A declaration that the Township has not provided a realistic opportunity for its fair share of the regional need of affordable housing.
- k. An order correcting the unlawful or flawed aspects of the Township's fair share plan.
- l. The appointment of a special master.
- m. Attorneys' fees, costs of litigation, court costs and interest.
- n. Such other relief as the court deems just and equitable.

**THIRD COUNT
DETERMINATION OF FAIR SHARE OBLIGATIONS**

33. Defendant/Counterclaimant FSHC repeats and realleges all of the prior paragraphs of this complaint for purposes of this count as if set forth at length herein.

34. The Supreme Court, in its March 10, 2015 decision, stated that trial courts should render "[a] preliminary judicial determination of the present and prospective need" in municipalities coming before the courts through the process authorized in that decision, since that determination "will assist in assessing the good faith and legitimacy of the town's plan." In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 29 (2015).

35. The Township has not proposed or sought a preliminary determination of its present and prospective need.

36. The Township has violated the Supreme Court's decision and acted in contravention of law.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

- a. Denial of the Township's request for immunity from builder's remedy litigation.
- b. Denial of the Township's request for immunity from builder's remedy litigation for more than five months.
- c. Denial of the Township's request for declaratory relief.
- d. A declaration that the Housing Plan Element and Fair Share Plan adopted by the Township is unconstitutional, unlawful and void;
- e. An order directing the Township to adopt a constitutional, lawful and valid Housing Plan Element and Fair Share Plan;
- f. A declaration that the Township has a present need of 19 units.
- g. A declaration that the Township has a Prior Round fair

share obligation of 621 units.

- h. A declaration that the Township has a Third Round fair share obligation of 1512 units.
- i. A declaration that the Township has not provided a realistic opportunity for its fair share of the regional need of affordable housing.
- j. An order correcting the unlawful or flawed aspects of the Township's fair share plan.
- k. The appointment of a special master.
- l. Attorneys' fees, costs of litigation, court costs and interest.
- m. Such other relief as the court deems just and equitable.

**FOURTH COUNT
FAIR SHARE OBLIGATIONS**

37. Defendant/Counterclaimant FSHC repeats and realleges all of the prior paragraphs of this complaint for purposes of this count as if set forth at length herein.

38. The Supreme Court, in its March 10, 2015 decision, stated that "[t]he parties should demonstrate to the court computations of housing need and municipal obligations based on th[e Prior Round] methodologies." In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015).

39. Moorestown has not demonstrated to the court what its obligations are and instead has sought to have the Court perform the calculations as if the Court were an administrative agency.

40. The Township has not proposed or sought a

determination of its present and prospective need.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

- a. Denial of the Township's request for immunity from builder's remedy litigation.
- b. Denial of the Township's request for immunity from builder's remedy litigation for more than five months.
- c. Denial of the Township's request for declaratory relief.
- d. A declaration that the Housing Plan Element and Fair Share Plan adopted by the Township is unconstitutional, unlawful and void;
- e. An order directing the Township to adopt a constitutional, lawful and valid Housing Plan Element and Fair Share Plan;
- f. A declaration that the Township has a present need of 19 units.
- g. A declaration that the Township has a Prior Round fair share obligation of 621 units.
- h. A declaration that the Township has a Third Round fair share obligation of 1512 units.
- i. A declaration that the Township has not provided a realistic opportunity for its fair share of the regional need of affordable housing.
- j. An order correcting the unlawful or flawed aspects of the Township's fair share plan.
- k. The appointment of a special master.
- l. Attorneys' fees, costs of litigation, court costs and interest.
- m. Such other relief as the court deems just and equitable.

FIFTH COUNT
Mt. Laurel Compliance by the Township

41. Defendant/Counterclaimant FSHC repeats and realleges all of the prior paragraphs of this complaint for purposes of this count as if set forth at length herein.

Mt. Laurel Obligation

42. At least as early as 1975, when the Supreme Court decided Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I"), all New Jersey municipalities were on notice that they were required to identify and respond to their fair share of the present and prospective municipal and regional housing needs of the Benefited Households.

43. The Township has a Prior Round new construction obligation of 621 Affordable Units.

44. The Township has a Third Round new construction obligation of 1512 Affordable Units.

45. The Township has a Third Round present need or "rehabilitation" obligation of 19 Affordable Units.

46. The Township has not met its burden of demonstrating that it has provided a realistic opportunity for its fair share of the region's need for affordable housing.

47. The Township has not met its obligation to provide a realistic opportunity for the development of its fair share of the region's need for affordable housing and to assist with the housing

needs of lower income families.

48. The Township has not satisfied its Prior Round or Third Round obligations and has not satisfied its most recently calculated Present Need obligation.

49. The Township has not has not proposed or sought a preliminary determination of its present and prospective need.

50. The Township has filed a fair share plan that relies on an invalid vacant land adjustment.

51. The Township has claimed it is entitled to a vacant land adjustment, but provided no means to meet the resulting unmet need.

52. The Township has violated the Mount Laurel doctrine.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

- a. A declaration that the Township's fair share plan violates the Mount Laurel doctrine because it does not include a valid vacant land adjustment.
- b. Denial of the Township's request for immunity from builder's remedy litigation.
- c. Denial of the Township's request for immunity from builder's remedy litigation for more than five months.
- d. Denial of the Township's request for declaratory relief.
- e. A declaration that the Housing Plan Element and Fair Share Plan adopted by the Township is unconstitutional, unlawful and void;
- f. An order directing the Township to adopt a constitutional, lawful and valid Housing Plan Element and

Fair Share Plan;

- g. A declaration that the Township has a present need of 19 units.
- h. A declaration that the Township has a Prior Round fair share obligation of 621 units.
- i. A declaration that the Township has a Third Round fair share obligation of 1512 units.
- j. A declaration that the Township has not provided a realistic opportunity for its fair share of the regional need of affordable housing.
- k. An order correcting the unlawful or flawed aspects of the Township's fair share plan.
- l. The appointment of a special master.
- m. Attorneys' fees, costs of litigation, court costs and interest.
- n. Such other relief as the court deems just and equitable.

SIXTH COUNT
New Jersey Civil Rights Act

53. Defendant/Counterclaimant FSHC repeats and realleges all of the prior paragraphs of this complaint for purposes of this count as if set forth at length herein.

54. The New Jersey Civil Rights Act, N.J.S.A 10:6-2, protects the citizens of New Jersey from being deprived of their state and federal constitutional and statutory civil rights.

55. The Township has sought immunity from litigation on terms expressly prohibited by the Supreme Court, thus seeking to interfere with the satisfaction of its Mount Laurel obligations.

56. The Township has met virtually none of its Third

Round obligations despite having 15 years to do so.

57. The Township has prepared and filed a fair share plan that violates the Mount Laurel doctrine because it does not provide a realistic opportunity for Moorestown's fair share of the regional need for affordable housing.

58. The Township is required to meet its fair share of the regional need for affordable housing, but has failed to do so.

59. The Township has failed to calculate and agree to meet its Third Round affordable housing obligations in the manner required by regulations, court rulings, and legislation.

60. The Mount Laurel doctrine and the Supreme Court's ruling in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) constitute substantive law of the State of New Jersey and provide substantive rights.

61. The Township has violated the Mount Laurel doctrine and contravened the directives of the New Jersey Supreme Court in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015).

62. The Township has violated substantive rights of lower-income households and has thus violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, by failing to comply with the Mount Laurel doctrine and other sources of law.

WHEREFORE, Defendant/Counterclaimant FSHC demands the following relief,

a. Defendant/Counterclaimant FSHC repeats and realleges all

of the prior requests for relief.

- b. A declaration that the Township has violated the New Jersey Civil Rights Act, N.J.S.A 10:6-2.
- c. Attorneys' fees, costs of litigation, court costs and interest.
- d. Such other relief as the court deems just and equitable.

FAIR SHARE HOUSING CENTER
Attorneys for Defendant/
Counterclaimant

Dated:

8/1/2016


Kevin D. Walsh, Esquire

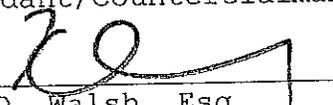
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Kevin D. Walsh, Esquire is hereby designated as trial counsel on behalf of Defendant/Counterclaimant.

Dated:

8/1/2016

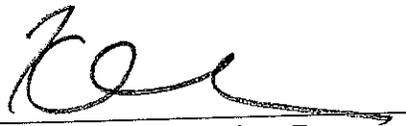
By:


Kevin D. Walsh, Esq.

R. 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-2 of the New Jersey Rules of Court, I hereby certify that this matter does not form the basis of any other action presently pending in any court or arbitration proceeding. Also, to the best of my knowledge, information and belief, no other action or arbitration proceeding is contemplated at this time, and I know of no other party who should be joined in this action.

Dated: 8/1/2014

By: 
Kevin D. Walsh, Esq.