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Attorney for Plaintiff/Petitioner,
the Borough of Metuchen

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH
METUCHEN, a Municipality of the
State of New Jersey,

Plaintiff/Petitioner.

:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION – MIDDLESEX COUNTY
:
: DOCKET NO.:
:
: CIVIL ACTION
:
:
: COMPLAINT FOR DECLARATORY
: JUDGMENT
:

Plaintiff/Petitioner, the Borough of Metuchen (“Metuchen”), a municipality and body politic organized under the laws of the State of New Jersey, with offices located at 500 Main Street, in the Borough of Metuchen, County of Middlesex, and State of New Jersey, by way of Complaint for Declaratory Judgment says:

JURISDICTION

1. Jurisdiction is established pursuant to the New Jersey Declaratory Act, N.J.S.A. 2A:16-50, et seq.

2. Jurisdiction is further established by N.J.S.A. 52:27D-304.1(f)(1) and Administrative Directive #14-24 of the Administrative Director of the Courts.

BACKGROUND AND PRIOR ROUND OBLIGATIONS

3. In 1975 the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), ruled that the developing municipalities in the

State of New Jersey exercising their zoning power, in general, had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low and moderate income housing needs.

4. In 1983, the Supreme Court refined that constitutional obligation in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

5. In 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act ("FHA") N.J.S.A. 52:2D-301 et seq. which transformed the judicial doctrine which became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it.

6. On March 10, 2015, the New Jersey Supreme Court issued a decision 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, 221 N.J. 1 (2015) ("Mt. Laurel IV").

7. In Mt. Laurel IV, the Supreme Court established a transitional process for municipalities to file a Declaratory Judgment action with the trial courts seeking to declare their Housing Elements and Fair Share Plans ("HEFSPs") as being constitutionally compliant and seeking similar protections to those that the "Participating Municipalities" would have received if they had continued to proceed before COAH.

8. In accordance with Mt. Laurel IV, Metuchen filed a declaratory judgment action

and was ultimately granted a declaratory judgment of compliance and repose with respect to its third round affordable housing obligations through June 30, 2025.

9. With respect to a municipality' fourth round obligations covering the period July 1, 2025 to June 30, 2035, the legislature adopted and the governor approved L. 2024, c. 2, which amended the FHA, provided that COAH is abolished and further provided that, pursuant to the formulas and process established pursuant to N.J.S.A. 52:27D-304.2 and 52:27D-304.3, a municipality shall be authorized to seek approval of its fair share affordable housing obligation, adopted pursuant to binding resolution and then filed with the court, with the guidance of calculations published by the Department of Community Affairs.

10. The process so established is to be administered, in accordance with Administrative Directive #14-24 of the Administrative Director of the Courts, through the filing of an action in the form of a Declaratory Judgment Complaint and Civil Case Information Statement in the county in which the municipality is located.

11. On January 27, 2025, the Borough Council of the Borough of Metuchen adopted a resolution, attached hereto as Exhibit A, which determined Metuchen's fourth round present and prospective need fair share affordable housing obligations and directed the filing of this action.

12. In accordance with N.J.S.A. 52:27D-304.1(f)(1) and Administrative Directive #14-24 of the Administrative Director of the Courts, Metuchen now seeks a certification of compliance with the FHA.

COUNT ONE
(DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE)

13 Metuchen repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth herein at length.

14. Pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 et seq., N.J.S.A. 52:27D-304.1(f)(1), and Administrative Directive #14-24 of the Administrative Director of the Courts, Metuchen has a right to a Declaratory Judgment verifying and confirming the Township's full compliance with its constitutional affordable housing obligations.

WHEREFORE, Plaintiff/Petitioner Borough of Metuchen respectfully requests that the Court grant the following relief:

- a. An Order exercising jurisdiction over the compliance by Metuchen with its constitutional affordable housing obligations; and
- b. An Order determining Metuchen's present and prospective fair share obligations in accordance with those adopted by Metuchen by Exhibit A.
- c. An Order approving Metuchen's HEFSP, to be adopted no later than June 28, 2025.
- d. A Judgment of Compliance and Repose for the period July 1, 2025 to June 30, 2035.
- e. An Order granting such additional relief as the Court deems equitable and just.

COUNT TWO
(REQUEST FOR IMMUNITY)

15. Metuchen repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth herein at length.

16. Metuchen by virtue of the filing of the within action is immune from third party lawsuits while pursuing this Declaratory Judgment action.

WHEREFORE, Plaintiff/Petitioner Borough of Metuchen respectfully requests that the Court grant the following relief:

- a. An Order confirming temporary immunity from third party lawsuits against Metuchen from the date of the filing of the instant Declaratory Judgment action until this Court

issues a Final Judgment of Compliance and Repose to Metuchen for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court.

- b. An Order granting such additional relief as the Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Robert F. Renaud, Esq., Attorney for the Plaintiff/Petitioner Borough of Metuchen, is designated as trial counsel in the above captioned matter.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R.4:5-1, I hereby certify that the matter in controversy is not the subject matter of any other action pending in any Court or of a pending arbitration or administrative proceeding, and that no other action or arbitration or administrative proceeding is contemplated

RENAUD COLICCHIO LLC
Attorney for Plaintiff/Petitioner
Borough of Metuchen

/s/ Robert F. Renaud
Robert F. Renaud

Dated: January 28, 2025

EXHIBIT A

RESOLUTION 2025-69

*Borough of Metuchen
County of Middlesex
State of New Jersey*

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE
NEED NUMBERS**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Borough of Metuchen's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 5 and a Prospective Need or New Construction Obligation of 120; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Borough of Metuchen accepts the DCA calculations of Metuchen's fair share obligations and commits to its fair share of 5 units present need and 120 units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

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WHEREAS, the Borough of Metuchen reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Metuchen also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Metuchen reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in light of the above, the Borough Council of the Borough of Metuchen finds that it is in the best interest of the Borough of Metuchen to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough of Metuchen seeks a certification of compliance with the FHA and, therefore, directs its Affordable Housing Counsel, Renaud Colicchio LLC, to file a declaratory relief action within 48 hours of the adoption of this resolution in Middlesex County.

NOW, THEREFORE, BE IT RESOLVED on this 27th day of January 2025 by the Borough Council of the Borough of Metuchen as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Borough of Metuchen hereby commits to the DCA Round 4 Present Need Obligation of 5 units and the Round 4 Prospective Need Obligation of 120 units described in this resolution, subject to all reservations of rights set forth above.
3. The Borough of Metuchen hereby directs its Affordable Housing Counsel, Renaud Colicchio LLC, to file a declaratory judgment complaint in Middlesex County within 48 hours after adoption this resolution, attaching this resolution.

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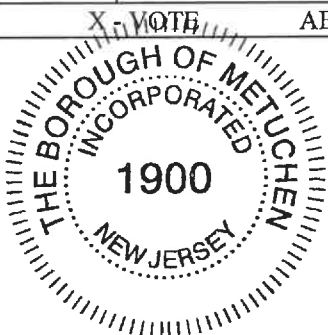
4. The Borough of Metuchen authorizes its Affordable Housing Counsel to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. This resolution shall take effect immediately, according to law.

I hereby certify the foregoing to be a true copy of a resolution adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on January 27, 2025.


Deborah Zupan, RMC, Borough Clerk

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
BRANCH	X				HYMAN	X			
DELIA	X				JETHWANI	X			
GIAMBOI	X				KANDEL				X
MOTION	DELIA			SECOND		GIAMBOI			
X - VOTE AB - ABSENT NV - NOT VOTING									



Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-000565-25

Case Caption: IN THE MATTER OF METUCHEN BORO

Case Initiation Date: 01/28/2025

Attorney Name: ROBERT F RENAUD

Firm Name: RENAUD COLICCHIO LLC

Address: 190 NORTH AVENUE E

CRANFORD NJ 07016

Phone: 9084184088

Name of Party: PETITIONER : Borough of Metuchen

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: AFFORDABLE HOUSING

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Borough of Metuchen? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Fourth Round Affordable Housing Declaratory Judgment Action.

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO **Medical Debt Claim?** NO

I certify that confidential personal identifiers have been redacted from 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)*

01/28/2025

Dated

/s/ ROBERT F RENAUD

Signed