

**TOWNSHIP OF HOPEWELL
COUNTY OF MERCER, STATE OF NEW JERSEY**

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that by the filing of a Verified Complaint for Declaratory Judgment Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-313, petitioner, the Township of Hopewell (“Township”) commenced an action in the Superior Court of New Jersey, Mercer County, on July 7, 2015, entitled *In the Matter of the Application of the Township of Hopewell in Mercer County* (the Docket No. is currently unassigned). The Township brings this action seeking declaratory judgement for immunity and repose pursuant to N.J.S.A. 52:27D-313 and a judicial declaration that its housing plan (as-is or as to be supplemented) is presumptively valid because it presents a realistic opportunity for the provision of its fair share of the region’s present and prospective need for low- and moderate- income housing pursuant to the New Jersey Supreme Court’s decision and Order entered on March 10, 2015 in In re Adoption of N.J.A.C. 5:96 & 5:97 by NJ Council on Affordable Housing, 221 N.J. 1 (2015).

NOTICE IS HEREBY FURTHER GIVEN that with the filing of Petitioner’s Complaint, the Township also filed a companion Motion for Temporary Immunity Prohibiting Exclusionary Zoning Actions, seeking temporary immunity against exclusionary zoning lawsuits from the date of the filing of Petitioner’s Complaint and extending up to and including the court’s determination that the Township’s Housing Element and Fair Share affordable housing plan and implementing zoning and land development ordinances are compliant with the Township’s third round Mount Laurel affordable housing obligations. Said motion is currently scheduled to be heard by the Court on September 18, 2015 at 9:30 a.m. before the Honorable Mary C. Jacobson, A.J.S.C. Superior Court of New Jersey – Mercer County, Mercer County Courthouse, 400 South Warren Street, Trenton, New Jersey 08650.

Any party objecting to the Township’s action or motion for temporary immunity should, not later than 8 days before the return date thereof, serve and file a written objection with the Court at 175 South Broad Street, PO Box 8068, Trenton, New Jersey 08650-0068, and provide a copy to the Township Clerk and Township Attorney at the addresses below.

Copies of the Township's Complaint, Motion and companion pleadings are available upon request made to the Municipal Clerk at the Hopewell Township Municipal Building, 201 Washington Crossing – Pennington Road, Titusville, New Jersey 08560, during regular business hours.

Kevin A. Van Hise, Esq.
Mason, Griffin & Pierson, PC
101 Poor Farm Road, Princeton, NJ 08540
Attorneys for Petitioner, Township of Hopewell

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW



101 Poor Farm Road
Princeton, NJ 08540
Tel 609.921.6543
Fax 609.683.7978
www.mgplaw.com

Directors

Gordon D. Griffin
Kester R. Pierson
Edwin W. Schmierer
Kristina P. Hadinger
Valerie L. Howe*
Shawn M. Neufeld†
Kevin A. Van Hise†

Ralph S. Mason (1913-1988)
Craig H. Davis (1947-1997)

Also Admitted in:
† PA * NY * CT * FL * VA * CO * MA

Associates/Of Counsel

Edmond M. Konin†
Trishka W. Cecil†
Lisa M. Maddox†
Allison S. Zangrilli**
Joseph C. Tauriello†
Victoria D. Britton**
Valerie J. Kimson*
Nicole M. Sciotto†
Cory K. Kestner

July 7, 2015

Via Hand Delivery

Clerk, Superior Court of New Jersey
Mercer County - Law Division
Mercer County Civil Courts Building
175 South Broad Street, First Floor
Trenton, NJ 08650-0068

RE: ***In the Matter of the Application of the Township of Hopewell in Mercer County***
Docket No.:

Dear Sir / Madam:

We represent petitioner, the Township of Hopewell ("Township"), with respect to the above referenced Mount Laurel matter. Enclosed for filing on behalf of the Township, please find an original and two (2) copies of the following documents:

1. Verified Complaint for Declaratory Judgment Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-313;
2. Case Information Statement;
3. Notice of Motion for Temporary Immunity Prohibiting Exclusionary Zoning Applications;
4. Letter Brief and Certification of Francis J. Banisch, III, PP/AICP in Support of Petitioner's Motion;
5. Proposed form of Order; and
6. Certification of Service.

Kindly file same and return one copy to me in the enclosed self-addressed stamped envelope. Please charge our Superior Court Account #0066000 for any fees incurred. Should you have any questions or require any additional information, please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Kevin A. Van Hise'.

Kevin A. Van Hise

encls.

cc: Attached Service List

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO SE NAME Kevin A. Van Hise		TELEPHONE NUMBER (609) 912-0113
	COUNTY OF VENUE Mercer		DOCKET NUMBER (when available)
	FIRM NAME (if applicable) Mason, Griffin & Pierson, P.C.		OFFICE ADDRESS 101 Poor Farm Road Princeton, NJ 08540
DOCUMENT TYPE Verified Complaint		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Township of Hopewell, Petitioner		CAPTION In the Matter of the Application of the Township of Hopewell in Mercer County	
CASE TYPE NUMBER (See reverse side for listing) 303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN	
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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION This action is brought by the Township seeking declaratory judgment for immunity, repose and declaration that its affordable housing plan is presumptively valid because it meets the Township's Mount Laurel requirements, as provided for by the Court in <u>In re Adoption of N.J.A.C. 5:96 & 5:97 by NJ Council on Affordable Housing, 221 N.J. 1 (2015)</u> .			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE?		
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 <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETA/AREDIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 285 STRYKER TRIDENT HIP IMPLANTS | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 286 LEVAQUIN | 297 MIRENA CONTRACEPTIVE DEVICE |
| 287 YAZ/YASMIN/OCELLA | 601 ASBESTOS |
| 288 PRUDENTIAL TORT LITIGATION | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

MASON, GRIFFIN & PIERSON, P.C.

By: Kevin A. Van Hise, Esq. - ID #016382003

101 Poor Farm Road

Princeton, New Jersey 08540

Telephone: (609) 921-6543

Facsimile: (609) 683-7978

Email: k.vanhise@mgplaw.com

**Attorneys for Petitioner,
Township of Hopewell**

)
) SUPERIOR COURT OF NEW JERSEY
) MERCER COUNTY - LAW DIVISION
)
) DOCKET NO.: MER-L-_____
)
 IN THE MATTER OF THE APPLICATION)
 OF THE TOWNSHIP OF HOPEWELL IN) CIVIL ACTION
 MERCER COUNTY)
) **VERIFIED COMPLAINT FOR**
) **DECLARATORY JUDGMENT PURSUANT**
) **TO THE FAIR HOUSING ACT, N.J.S.A.**
) **52:27D-313**
)
)

Petitioner, the Township of Hopewell ("Petitioner" or the "Township"), a municipal corporation of the State of New Jersey, with its principal place of business located at 201 Washington Crossing - Pennington Road, Titusville, New Jersey 08560, in the County of Mercer, by way of Verified Complaint for Declaratory Judgment says:

1. The within action is brought by Petitioner seeking declaratory judgment granting it immunity and repose pursuant to N.J.S.A. 52:27D-313 and a judicial declaration that its housing plan is presumptively valid because it presents a realistic opportunity for the provision of its fair share of its housing region's present and prospective need for low- and moderate-income housing pursuant to the Court's decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1, 35-36 (2015).

2. Jurisdiction properly rests with the Superior Court, Law Division, Mercer County before the designated Mount Laurel Judge for Vicinage 7 pursuant to In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. at 336 (Implementing Order ¶10); N.J.S.A. 2A:16-53; N.J.S.A. 52:27D-313; R. 4:3-1(a)(4) and R. 4:42-3.

3. Pursuant to the New Jersey Supreme Court's "Mount Laurel" decisions, S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, *appeal dismissed and cert. denied*, 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 28 (1975) ("Mount Laurel I") and S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 159 (1983) ("Mount Laurel II"), municipalities in the State are required to provide a realistic opportunity for the construction of their fair share of the region's low and moderate income housing needs.

4. Following the Mount Laurel 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 the 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 & 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 & 5:95 ("Initial Third Round Rules"); and

its revised third round regulations covering a cumulative period through 2018, N.J.A.C. 5:96 & 5:97 ("Revised Third Round Rules").

7. Following a builder's remedy lawsuit that resulted in the development of 138 affordable housing units at an inclusionary development known as "Brandon Farms," the Township elected to participate in the COAH process and submitted a petition for substantive certification to COAH on February 23, 1995.

8. Pursuant to COAH's Second Round Rules, the Township received second round substantive certification from COAH on January 8, 1997 for a period of six years, with substantive certification due to expire on January 8, 2003.

9. Due to delays in enactment of COAH's third round regulations, the Township received extended second round substantive certification from COAH on December 4, 2002 and July 27, 2005.

10. On December 16, 2005, pursuant to COAH's Initial Third Round Rules, N.J.A.C. 5:94 and 5:95, the Township submitted a petition to COAH for third round substantive certification.

11. Before COAH acted upon the Township's 2005 petition, the Appellate Division invalidated COAH's 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).

12. On June 2, 2008, COAH adopted its Revised Third Round Rules, N.J.A.C. 5:96 and 5:97.

13. On December 31, 2008, pursuant to COAH's Revised Third Round Rules, the Township submitted an amended petition for third round substantive certification to COAH.

14. Before COAH acted upon the Township's 2008 petition, 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).

15. On September 26, 2013, the Supreme Court decided In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578 (2013), affirming the Appellate Division's invalidation of COAH's Revised Third Round Rules, finding that the "growth share methodology" utilized by COAH in the rules was inconsistent with the FHA, and requiring COAH to adopt new third round rules within five months based upon COAH's prior round rules and methodologies.

16. COAH failed to adopt new third round rules within the five month period, and on various motions, the Court issued an Order on March 14, 2014 requiring COAH to adopt new third round rules by November 17, 2014, and providing that the failure to do so would result in the Court's entertainment of an application for relief in the form of a motion in aid of litigant's rights, including but not limited to, a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313.

17. On April 30, 2014, COAH completed the preparation of, and approved for publication in the June 2, 2014 edition of the New Jersey Register, proposed new third round rules.

18. On October 20, 2014, at a meeting of the COAH Board, a motion to adopt the proposed new third round rules failed on a 3-3 tie vote.

19. With the failure of COAH to adopt new third round rules, on October 31, 2014, Fair Share Housing Center ("FSHC") filed a motion in aid of litigants' rights with the Supreme Court, seeking, among other relief sought, to lift the protections provided to municipalities through N.J.S.A. 52:27D-313.

20. On March 10, 2015, the Court issued its decision and Order granting FSHC's motion for relief in aid of litigants' rights, In re Adoption of 5:96 & 5:97, 221 N.J. 1 (2015), holding, *inter alia*, that:

- a. COAH's administrative process has become non-functioning, rendering futile the FHA's administrative remedy, 221 N.J. at 5;
- b. The FHA's exhaustion-of-administrative remedies requirement is dissolved until further order of the Court and the courts may resume their role as the forum of first resort for evaluating municipal compliance with Mount Laurel obligations, 221 N.J. at 35;
- c. A transitional process is established, and the effective date of the Order is delayed by ninety days, to effectuate an orderly transition from the COAH process to the courts, 221 N.J. at 35;
- d. Within thirty days following the effective date of the Order, municipalities that had received substantive certification of their third round plans, or had "participating" status before COAH, may file a Declaratory Judgment action seeking a judicial declaration that its housing plan is presumptively valid because it presents a realistic opportunity for the provision of its fair share of its housing region's present and prospective need for low- and moderate-income housing, 221 N.J. at 35;
- e. In all declaratory judgment and constitutional compliance cases brought before the courts, on notice and opportunity to be heard, the trial court may

grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding, as set forth in the opinion, 221 N.J. at 35;

- f. Municipalities that had "participating" status before COAH should have no more than five months in which to submit a supplemental housing element and affordable housing plan and during that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding, 221 N.J. at 27-28;
- g. The court's evaluation of a municipality's plan that had received substantive certification or that will be submitted to the court as proof of constitutional compliance may result in the municipality's receipt of the judicial equivalent of substantive certification and accompanying protection as provided under the FHA, 221 N.J. at 36; and
- h. All civil actions shall be directed to the Mount Laurel-designated judges assigned in the vicinages, 221 N.J. at 36.

21. Petitioner now files the instant action for declaratory judgment pursuant to N.J.S.A. 52:27D-313 and the Court's March 10, 2015 decision.

22. As a municipality that sought to make use of the administrative remedy offered through the FHA before COAH, the Township is a "participating" municipality before the Court. 221 N.J. at 21.

23. The Township is in Housing Region #4 - East Central, consisting of Mercer County, Monmouth County and Ocean County.

24. At present, the Township believes that its third round Mount Laurel affordable housing obligations are as follows, based upon its 2008 submitted Housing Element and Fair Share Plan ("HE&FSP"):

- a. Present Need or Rehabilitation Share of 5 units;
- b. Prospective Need or Fair Share of 483 units; and
- c. Unanswered Prior Round Obligation of -15 units (carry forward credits).

25. Pursuant to the Township's 2008 petition for substantive certification filed with COAH, the Township believes that its affordable housing plan and ordinances provide a realistic opportunity for the construction of the Township's fair share of the region's low and moderate income housing needs.

26. The Township's 2008 adopted HE&FSP is attached hereto as Exhibit A and made a part hereof.

27. The Township is currently in the process of ascertaining whether or not its obligations may change utilizing a different methodology as required by the Court in In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578 (2013).

28. The Township is in the process of retaining experts to perform research and prepare report(s) establishing its present and prospective need for purposes of establishing the Township's ultimate third round Mount Laurel affordable housing obligation.

29. While the Township proceeds with its determination of its obligation, the Township reaffirms its commitment to meet its third round Mount Laurel affordable housing obligation.

30. In the event that the Township and/or court subsequently determines that the Township's third round Mount Laurel obligations are different than currently believed, the Township

is prepared to amend its HE&FSP within the time frame set by the court to comply with its constitutional obligations and, if necessary, amend its zoning ordinances accordingly.

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

a. Declaring and establishing temporary 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 HE&FSP and implementing zoning and land development ordinances are compliant with the Township's third round Mount Laurel affordable housing obligations, or for such other time period as the court may direct;

b. Declaring and establishing the Township's third round Mount Laurel affordable housing obligation;

c. Granting the Township five months time, from the establishment of the Township's Mount Laurel affordable housing obligation, to prepare a supplemental or revised HE&FSP to address such obligation;

d. Declaring and adjudging the Township's HE&FSP and implementing ordinances – as-is or as to be supplemented – constitutionally sufficient and compliant with the Township's third round Mount Laurel affordable housing obligations;

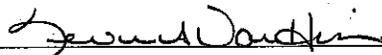
e. Approving the Township's affordable housing spending plan which will be included with the Township's HE&FSP in accordance with In re Failure of COAH to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220 (App. Div. 2015);

f. Granting the Township 90 days from the date of the declaration of the Township's HE&FSP as being compliant to adopt and/or amend any and all zoning and land development ordinances that may be necessary to implement the HE&FSP;

g. Upon the adoption of the implementing zoning and land development ordinances, granting the Township a Judgment of third round compliance and repose and immunity from exclusionary zoning lawsuits for its third round Mount Laurel affordable housing obligations for a period of 10 years; and

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

MASON, GRIFFIN & PIERSON, P.C.
Attorneys for Petitioner, Township of Hopewell

By: 
Kevin A. Van Hise

Dated: July 6, 2015.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of New Jersey Court Rule 4:25-4, Kevin A. Van Hise, Esquire is hereby designated as trial counsel for Petitioner, Township of Hopewell.

MASON, GRIFFIN & PIERSON, P.C.
Attorneys for Petitioner, Township of Hopewell

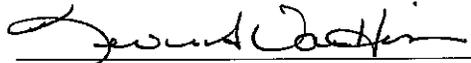
By: 
Kevin A. Van Hise

Dated: July 6, 2015.

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, P.C.
Attorneys for Petitioner, Township of Hopewell

By: 
Kevin A. Van Hise

Dated: July 6, 2015.

RULE 4:5-1 CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, 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.

MASON, GRIFFIN & PIERSON, P.C.
Attorneys for Petitioner, Township of Hopewell

By: 
Kevin A. Van Hise

Dated: July 6, 2015.

EXHIBIT A

Housing Plan Element and Fair Share Plan

Township of Hopewell
Mercer County, New Jersey

*Prepared by the Hopewell Township Planning Board
in consultation with Michael P. Bolan, AICP/PP*

Adopted by the Planning Board on
November 13, 2008

A handwritten signature in cursive script, reading "Michael P. Bolan", is written over a horizontal line.

Michael P. Bolan, PP/AICP

TABLE OF CONTENTS

Calculation of Fair Share 1

Rehabilitation Share 1

Prior Round Obligation 1

Credits/Reductions from Prior Round Obligation 1

 TABLE 1. Prior Round Credits/Reductions 1

Residential Growth Share 2

Nonresidential Growth Share 2

Total Fair Share Obligation 2

 TABLE 2. Fair Share Obligation 2

Fair Share Plan 4

 TABLE 3. Hopewell Township Fair Share Obligation, Summary of Requirements and Planned Round Three Compliance 4

Prior Round Obligation 5

Rehabilitation 5

Residential Development 8

Municipally Sponsored and 100 percent Affordable Programs 5

Accessory Apartments 7

Supportive and Special Needs Housing 7

Excess Units from Prior Round Obligation 5

Rental Housing 8

Age-Restricted Housing 8

Additional Potential Projects 8

Nonresidential Development 9

Growth Share Ordinance 9

Development Fee Ordinance 9

Implementation Schedule 9

 Table 4. Hopewell Township Implementation Phasing Plan 10

Inventory of Municipal Housing Conditions 11

 TABLE 5: Units in Structure by Tenure 11

 TABLE 6: Year Structure Built by Tenure 12

 TABLE 7: Comparison of Year of Construction for Township, County, and State 12

 TABLE 8: Household Size in Occupied Housing Units by Tenure 13

 TABLE 9: Number of Bedrooms per Unit by Tenure 13

 TABLE 10: Average Household Size for Occupied Units for Township, County, and State... 14

 TABLE 11: Percentage of All Units by Number of Bedrooms 14

 TABLE 12: Housing Quality for Township, County, and State 15

 TABLE 13: Value of Residential Units 15

 TABLE 14: Gross Rents for Specified Renter-Occupied Housing Units¹ 16

 TABLE 15: Household Income in 1999 by Gross Rent as a Percentage of Household Income in 1999¹ 16

Analysis of Demographic Characteristics	17
TABLE 16: Population by Age and Sex	17
TABLE 17: Comparison of Age Distribution for Township, County, and State (% of persons)..	
.....	18
TABLE 18: Persons in Household	18
TABLE 19: Comparison of Persons in Household for Township, County, and State (% of	
households).....	19
TABLE 20: Persons by Household Type and Relationship	20
TABLE 21: 1999 Income for Township, County, and State	21
TABLE 22: Poverty Status for Persons and Families for Township, County, and State	21
TABLE 23: Comparison of Place of Residence for Township, County, and State (1995-1998)..	
.....	21
TABLE 24: Educational Attainment for Township, County, and State Residents	22
TABLE 25: Means of Transportation to Work for Township, County and State Residents.....	22
Projection of Municipal Housing Stock	23
<i>DVRPC Population Forecast for 2015</i>	23
TABLE 26: History of Building Permit Issuance for Last 30 Years	23
TABLE 27: Forecast Dwelling Unit Growth from 2005-2015.....	24
Municipal Employment and Projections	25
<i>DVRPC Employment Estimate and Projections</i>	25
TABLE 28: DVRPC Employment Estimate and Projections.....	25

Calculation of Fair Share

The affordable housing obligation is cumulative and includes the affordable housing need for the period 1987 to 2018. The affordable housing obligation consists of three components: the rehabilitation share; the prior round obligation (1987 to 1999); and, growth share (1999 to 2018).

Rehabilitation Share

The rehabilitation share for affordable housing is the number of existing housing units as of April 1, 2000 that are old, crowded and deficient and also occupied by households of low- and moderate-income. The rehabilitation share for each municipality is provided in Appendix C of N.J.A.C. 5:97-1 et seq. (the COAH third round substantive rules). The rehabilitation share for the Township is 5 affordable units. The Township has provided 34 rehabilitated units since April 1, 2000.

Prior Round Obligation

The prior round obligation is the municipal new construction obligation from 1987 to 1999. Obligations from the first and second rounds have been recalculated to include the most recent data from the 2000 Census. The result is the Township's prior round obligation decreased from 521 affordable units to 520 affordable units.

Credits/Reductions from Prior Round Obligation

The Township is eligible for the following credits and reductions from its prior round obligation of 520 units:

TABLE 1. Prior Round Credits/Reductions				
Category/Development	Total Affordable Units	Rental Credits	Age-Restricted units	Housing Unit Credits
Regional Contribution Agreements	198			198
Pennington Pointe	5		5	5
CIFA Group Home	4	4		8
Brandon Farms	138			135
Bonus for Substantial Compliance	46			46
Hopewell Gardens	149			
Handicapped	15	15		30
Age-restricted*	134	28	85	113
Total				535

* Because of the cap on the number of age-restricted units, only 85 of the 134 age-restricted units could be counted in the prior round obligation. The 49 age-restricted rental units are excess units that can be carried to the third round.

Based on the above analysis, the Township has 15 excess units from its prior round obligation that can be carried forward to the Third Round (520 affordable units from prior round obligation and 535 housing unit credits). In addition, the Township has an excess of 49 age-restricted rental units that can be carried to the Third Round.

Residential Growth Share

In the rules published by COAH in January 2008, subsequently adopted in June 2008 and then draft revisions published in June 2008 and adopted in September 2008, the Council indicated that the Township would increase by 1,474 housing units from 2004 to 2018 (Appendix F of NJAC 5:97-1 et seq.). This estimate is in stark contrast to the projections of the Delaware Valley Regional Planning Commission (DVRPC), which is the Metropolitan Planning Organization (MPO) for the Township. The DVRPC has established that the Township will grow by 515 households in the period 2005-2015.

However, NJAC 5:97-2.4(a) permits the municipality to exclude market-rate units within inclusionary developments that are constructed after January 1, 2004 from residential growth for the purposes of projecting the growth share. Hopewell Grant, which includes the 240 market-rate units for the 149 unit Hopewell Gardens affordable project, has 182 units which have been occupied after January 1, 2004, and which can be used to reduce the household projection. In addition the 149 unit affordable project also can be deducted. Dividing the resulting household projection of 1,143 units by 5 (one affordable unit for each four market-rate units) yields a residential growth share of 228.6 affordable units based on this calculation.

Nonresidential Growth Share

The nonresidential growth share is based on one affordable unit for each new 16 jobs created in the Township. The estimate from Appendix F of the COAH rules is 4,064 new jobs over the period 2004-2018. Based on this calculation, the nonresidential growth share is 254 affordable units.

Total Fair Share Obligation

TABLE 2. Fair Share Obligation		
Category	Required units	Units provided
Rehabilitation share	5	5
Prior round obligation	520	535
Growth share obligation	483 (Estimate of future development)	
Total	1,008	540

The Township's total fair share for the period from 1987-2018 is 1,008 affordable units. The Township has provided 535 units under the prior rules (15 units in excess of the prior round obligation), and has an additional 49 units not counted in the prior round, consisting of 49 age-restricted rental units, that it will put towards its third round obligation.

Fair Share Plan

In the previous section a fair share obligation of 1,008 units has been established. The following outlines how this obligation will be addressed.

Table 3 below summarizes the Hopewell Township fair share obligation and the plan for meeting that obligation. Additional details for each component of the plan are provided in the narrative that follows the table.

TABLE 3. Hopewell Township Fair Share Obligation, Summary of Requirements and Planned Round Three Compliance		Requirement	Township Provision
Total Fair Share Obligation		1,008	--
Rounds One and Two		520	535
Rehabilitation Share		5	5
Round Three (Growth Share) Requirement		483	
Excess		--	15
Not Counted in Prior Rounds, Eligible in Round Three		--	<u>49</u>
Subtotal, Excess Applicable to Round Three Requirements		--	64
Net New Round Three Requirement After Excess from Prior Rounds		419	--
1.	Scattered Site Projects (Community Options, HomeFront, Wick Avenue, Minnietown Lane)	--	15
2.	Accessory Apartments	--	10
3.	Block 78, Lot 10.04 (Project Freedom)	--	70
4.	Block 33, Lot 1.02 (Pennytown)	--	70
5.	Block 91, Lot 3.96 (Capital Health Systems)*	--	70
6.	Block 93, Lot 5 (Burroughs tract)	--	7
7.	Block 88, Lot 5.02 (Weidel tract)	--	180
8.	Residential development (ongoing, inclusionary zoning distributed throughout Hopewell Township)	--	<u>50</u>
Total Units		--	472
Excess for Round Three Requirement		--	53

*Specifically as to CHS, the Developer's Agreement indicates the following:

“CHS will satisfy any affordable housing obligation that its project imposes on the Township, as such obligation is set forth in the Township’s affordable housing ordinances enacted in accordance with the rules and regulations of the New Jersey Council on Affordable Housing as are in effect at the time the applicant applies for a Certificate of Occupancy for the proposed development or any portion thereof, or as modified or amended by the New Jersey Council on Affordable Housing and/or a court of final jurisdiction subsequent to that time, either through on site construction or other means acceptable to the Township, or a combination of both”.

Rehabilitation

The Township has satisfied its rehabilitation obligation of five affordable units. Thirty-four units have been rehabilitated since April 1, 2000.

Prior Round Obligation

The adjusted prior round allocation of affordable units is 520 affordable units. The Township has provided 535 affordable units, resulting in an excess of 15 affordable units. In addition, the Township has 49 age-restricted rental units that could not be counted in the prior round obligation, but can be carried to the third round.

Excess Units from Prior Round Obligation

In accordance with the calculations provided in the previous section, the Township has established that it has 49 excess units consisting of age-restricted, rental units at the Hopewell Gardens facility, and 18 additional units that exceeded the prior round obligation. These excess units will be utilized to address a portion of the Township’s fair share and rental obligations, and will be applied to limit the number of new age-restricted, affordable dwellings that can be provided.

Municipally Sponsored and 100 percent Affordable Programs

The Township is proposing the use of five properties for municipally sponsored, 100 percent affordable programs (NJAC 5:97-6.7):

- Block 2, Lot 8 is a 1.1 acre parcel on Minnietown Lane and Hopewell Wertsville Roads. The Township intends to provide 2 modular units on the property. The Township owns the property, which it purchased using funds from the Township’s affordable housing trust account. The property is located in a residential zoning district where the use is permitted. The Township has prepared an analysis to provide new septic systems to support the proposed use. (Table 3, Reference Number 1)
- Block 130, Lot 77.01 on Wrick Avenue, a 0.5 acre parcel which the Township obtained through a tax foreclosure. The Township has entered a contract to construct a modular home on this property. The property is located in a residential zoning district and has a well and septic system available. (Table 3, Reference Number 1)

- Block 33, Lot 1.02 is a 25 acre parcel with frontage on Marshall's Corner-Woodsville Road, Pennington-Hopewell Road (County Route 654), and Route 31. The tract currently has an on-site wastewater treatment plant that could service up to 70 affordable units. (Table 3, Reference Number 4)
- Block 93, Lot 5 on Scotch Road, is a 34 acre parcel acquired by the Township specifically for affordable housing purposes. The Township is seeking an experienced developer of affordable housing to provide 30 to 50 units on this property, and intends to prepare a Request for Proposals (RFP) to solicit such a developer. However, wastewater treatment limitations may only permit seven units if conventional on-site disposal is utilized. If possible, wastewater treatment will be provided through an on-site community wastewater treatment system or connection to ELSA, and potable water through a public water supply system or an on-site well. The property is adjacent to major employers and in close proximity to the municipal complex, and is located in a residential zoning district. (Table 3, Reference Number 6)
- Block 88, Lot 5.02 is a 72 acre parcel located on Route 31 and the Denow Road extension. The Township purchased this property for approximately \$5.2 million, and is selling a 16 acre tract to Mercer County as open space for approximately \$1.25 million. The tract requires a contract from the Ewing Lawrence Sewerage Authority (ELSA) for sewer service and a permit from the DEP for access to Reed Road from Denow Road. The Township plans to construct approximately 200 affordable units on the tract, utilizing an experienced developer of affordable housing and subject to a forthcoming Request for Proposals. (Table 3, Reference Number 7)

Municipally sponsored affordable housing projects require additional documentation, beyond site control as noted above. The housing sites satisfy the following criteria:

- The selected sites are suitable pursuant to NJAC 5:97-3.13 in that they are either in Planning Area 2 or are consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan (SDRP);
- The Township has the capability to administer the projects in accordance with the Uniform Housing Affordability Controls (NJAC 5:80-26). The Township has a municipal housing liaison to administer the projects, and will seek administrative help if needed;
- The units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls (UHAC), providing at least 50% of the units for low-income households and no more than 50% for moderate-income households;
- The units will be affirmatively marketed by the Township's municipal housing liaison or another agency in accordance with the UHAC rules ;
- The units will have the appropriate controls on affordability in accordance with the COAH and UHAC rules;

- The units will have the appropriate bedroom distribution, providing a mix of one-, two- and three-bedroom units for the municipal construction project;
- The municipality has adequate funding capabilities through the use of development fees, payments in lieu of construction, or bonding capability if necessary;
- The construction will begin within 2 years of the grant of substantive certification.

Accessory Apartments

The revised Third Round rules permit a deed restriction on affordability controls of 10 years, rather than the 30 year restriction that was proposed in the prior Third Round rules. The 30 year restriction was a deterrent to the program. In addition, the minimum payment to the property owner is now \$25,000 for the creation of a low-income dwelling, and \$20,000 for the creation of a moderate-income dwelling. The Township is including 10 units in its Third Round compliance plan, but if the program is successful can provide up to 50 units through this mechanism. (Table 3, Reference Number 2)

Supportive and Special Needs Housing

The Township is proposing the use of two group homes on property owned by the Township to address its fair share obligation (NJAC 5:97-6.10) concerning supportive and special needs housing. The first of these is designated as Lot 5 in Block 93 and is located on Scotch Road. Currently on the 34 acre property are a 2-family dwelling and a single-family dwelling, yielding three affordable dwelling units (one 3-bedroom and two 2-bedroom). The property will be leased to Home Front for 3 family rental units. (Table 3, Reference Number 1)

Block 26, Lot 4.03 on Harbourton Rocktown Road, a 1 acre parcel which includes an existing dwelling and outbuildings. The existing dwelling will be demolished and replaced. The Township owns the property, which it purchased using funds from the Township's affordable housing trust account. The property will be conveyed to Community Options for the construction of a 4 bedroom group home for individuals with learning disabilities. The property is located in a residential zoning district and the use is permitted. A new septic system has been provided. (Table 3, Reference Number 1)

Block 78, Lot 10.04 is a 22 acre parcel located on Denow Road east of Route 31. The Township is proposing to lease the land to Project Freedom for the development of approximately 100 units, the majority of which will be for the developmentally disabled. The tract currently has a sewage treatment allocation from ELSA. (Table 3, Reference Number 3)

The Township has control of these properties through fee simple ownership. The Township's contribution is the property and any assistance it may provide in securing approvals and additional ancillary funds. The interested organizations are to provide sources of funding beyond that available from the Township. The agencies have indicated that adequate funding can be provided.

The Municipal Land Use Law (MLUL, NJSA 40:55D-66.1) indicates that community residences (group homes) shall be a permitted use in all residential zoning districts of a municipality, and the requirements shall be the same as for single family dwelling units located within such districts. Both of the proposed group homes are located within a residential zoning district.

Residential Development

The Township's build-out analysis identifies properties that can meet COAH's requirement of one affordable unit per four market-rate units, i.e. a five lot subdivision is possible. This analysis of the R-150, VRC and MRC zoning districts indicates that 145 affordable units may be provided in these residential districts. However, the Township is taking credit for only 50 affordable units from this category, as it is unlikely the build-out will occur by 2018, and not all subdivided lots will contribute to growth share. In addition, the Township intends to incorporate COAH's standard for a 20 percent affordable housing set-aside into the zoning provisions for all residential and mixed-use districts. (Table 3, Reference Number 8)

Rental Housing

The COAH rules indicate that at least 25 percent of a municipality's growth share obligation shall be addressed with rental housing (NJAC 5:97-3.10(b)3), and that at least 50% of the rental housing obligation addressed within the municipality must be family housing units (NJAC 5:97-3.9). Given the Township's growth share obligation of 483 units, 121 units must be rental housing, and no more than 60 units may be addressed through age-restricted housing. The Township has a prior cycle credit of 49 age-restricted rental units. Thus, 72 additional rental units are required, 11 of which could be age-restricted units. The three units on Block 93, Lot 5 to be developed under the auspices of Home Front will satisfy some of the family unit rental obligation. With the Project Freedom project of approximately 70 units, and the municipally constructed, 100 percent affordable developments that are contemplated, the Township will well exceed its rental obligation, and thus should be eligible for additional rental credits.

Age-Restricted Housing

The COAH rules indicate that not more than 25 percent of the growth share obligation addressed within a municipality may be met with age-restricted housing (NJAC 5:97-3.10(c)2). Thus, the Township can provide up to 120 affordable units for age-restricted households. The Township has 49 excess age-restricted units that it is carrying forward to the third round. Therefore, the Township has the option to supply 71 age-restricted units in the Municipally Sponsored and 100 percent Affordable Programs to address the growth share obligation.

Additional Potential Projects

An individual has also expressed an interest in developing a 9 unit affordable assisted living project. As the Township's growth share obligation evolves over the next decade, and the individual is in a position to present firm plans, this project may also benefit the Township's affordable housing inventory.

Nonresidential Development

With regard to nonresidential development, the Township is considering a number of options to address the growth share component created by nonresidential development, which is projected to be the bulk of the Township's growth share. The Township is amending its development fee ordinance to require a 2.5 percent contribution of the equalized assessed value of new development to the affordable housing trust fund. Some nonresidential developers have committed to addressing whatever the prospective affordable housing need entails. For example, Capital Health Systems (CHS) has committed to fulfill its affordable housing requirement, and even though the bulk of the CHS development is exempt from the growth share calculation, CHS has identified a 10 acre site that is suitable for affordable housing. A preliminary site plan for 80 affordable units has been prepared, but the short-term obligation should range between 26 and 52 units. (Table 3, Reference Number 5)

Growth Share Ordinance

The Township has prepared a draft growth share ordinance to address potential residential and nonresidential development. The draft growth share ordinance requires for residential development either construction of the affordable housing obligation on-site or off-site, or a payment in lieu of construction. The payments in lieu of construction will be utilized to fund affordable housing activities within the Township, such as the municipally sponsored construction projects.

Development Fee Ordinance

The Township has prepared an amended development fee ordinance that increases the fee to 1.5% of the equalized assessed value for residential development and 2.5% of the equalized assessed value for nonresidential development. The Township will utilize these funds to contribute to the municipally sponsored and 100% affordable projects.

Implementation Schedule

The following Table 4 identifies the implementation phasing plan for the Hopewell Township compliance plan.

Table 4. Hopewell Township Implementation Phasing Plan

2009-2010	2011-2012	2013-2014	2015-2016	2017-2018
<ul style="list-style-type: none"> • Municipal property acquisition • Project site planning and permitting • Provider agreements • Non-municipal financing secured • 64 units for excess units from prior round obligation • 15 units at scattered sites • 2 units for accessory apartments • 9 units for Inclusionary residential developments • 70 units for Project Freedom • Compliance assessed 	<ul style="list-style-type: none"> • Project site planning and permitting • Provider agreements • Additional non-municipal financing secured • 2 units for accessory apartments • 6 units for inclusionary residential developments • 70 units at Pennytown • Master Plan reviewed • Housing Plan reviewed • Compliance assessed • CHS COs issued 	<ul style="list-style-type: none"> • Project site planning and permitting • Provider agreements • Additional non-municipal financing secured • 26 units for CHS • 2 units for accessory apartments • 12 units for inclusionary residential development • 40 units for Weidel tract • Compliance assessed 	<ul style="list-style-type: none"> • 44 units for CHS • 7 units for Burroughs tract • 2 units for accessory apartments • 13 units for Inclusionary residential development • 90 units for Weidel tract • Compliance assessed 	<ul style="list-style-type: none"> • 50 units for Weidel tract • 2 units for accessory apartments • 10 units for inclusionary residential development • Compliance assessed • Master Plan reviewed • Housing Plan reviewed
Cumulative Round III Units	160	238	318	474
				536

Inventory of Municipal Housing Conditions

The primary source of information for the inventory of the Township's housing stock is the 2000 U.S. Census, with data reflecting conditions in 2000.

According to the 2000 Census, the Township had 5,629 housing units, of which 5,498 (98%) were occupied. Table 5 identifies the units in a structure by tenure; as used throughout this Plan Element, "tenure" refers to whether a unit is owner-occupied or renter-occupied. While the Township largely consisted of one-family, detached dwellings (86% of the total, compared to 49% in the County), there were 791 units in attached or multi-family structures. The Township had a relatively low percentage of renter-occupied units, 7%, compared to 33% in Mercer County and 34% in the State.

TABLE 5: Units in Structure by Tenure

Units in Structure	Vacant Units	Occupied Units		
		Total	Owner	Renter
1, detached	99	4,731	4,481	250
1, attached	7	549	528	21
2	13	85	21	64
3 or 4	6	23	0	23
5+	6	102	71	31
Other	0	0	0	0
Mobile home or trailer	0	8	8	0
Total	131	5,498	5,109	389

Source: 2000 U.S. Census, Summary Tape File 3 (STF-3) for Township, QT-H10.

Table 6 indicates the year housing units were built by tenure, while Table 7 compares the Township to Mercer County and the State. Approximately 79% of the owner-occupied units in the Township have been built since 1950, and 93% of the units built since 1950 were owner-occupied. Interestingly, the highest rate of renter occupied units was built before 1950.

TABLE 6: Year Structure Built by Tenure

Year Built	Vacant Units	Occupied Units		
		Total	Owner	Renter
1990-2000	13	1,672	1,639	20
1980-1989	0	531	531	0
1970-1979	6	537	514	17
1960-1969	41	864	789	34
1950-1959	22	873	746	105
1940-1949	0	282	226	56
Pre-1940	49	870	664	157

Source: 2000 U.S. Census, STF-3 for Township, QT-H7.

Table 7 compares the year of construction for all dwelling units in the Township to Mercer County and the State. The Township had a much larger percentage of units built between 1990-2000 than did the County or State, and a smaller percentage of units built before 1950, although the Township was very similar to the County and State in the 1950s and 1960s. These differences are highlighted further by the median year of construction.

TABLE 7: Comparison of Year of Construction for Township, County, and State

Year Built	%		
	Hopewell Township	Mercer County	New Jersey
1990 – 2000	29.7	10.2	10.5
1980 – 1989	9.4	12.4	12.4
1970 – 1979	9.5	12.5	14.0
1960 – 1969	15.3	15.2	15.9
1950 – 1959	15.5	16.6	17.1
1940 – 1949	5.0	9.6	10.1
Pre-1940	15.5	23.5	20.1
Median Year	1969	1960	1962

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.

The 2000 Census documented household size in occupied housing units by tenure, and the number of bedrooms per unit by tenure; these data are reported in Tables 8 and 9, respectively. Table 4 indicates that renter-occupied units generally housed smaller households, with 68% of renter-occupied units having 2 persons or fewer compared to 50% of owner-occupied units. Table 5 indicates that renter-occupied units generally had fewer bedrooms, with 55% having two bedrooms or fewer, compared to 13% of owner-occupied units.

TABLE 8: Household Size in Occupied Housing Units by Tenure

Household Size	Total Units	Owner-occupied Units	Renter-occupied Units
1 person	878	740	138
2 persons	1960	1834	126
3 persons	978	915	63
4 persons	1105	1069	36
5 persons	442	420	22
6 persons	103	100	3
7+ persons	32	31	1
Total	5498	5109	389

Source: 2000 U.S. Census, SF-3 for Township, H-17.

TABLE 9: Number of Bedrooms per Unit by Tenure

Number of Bedrooms	Total Units	(%)	Vacant Units	Occupied Units		
				Total	Owner	Renter
No bedroom	0	0	0	0	0	0
1 bedroom	216	3.8	13	203	97	106
2 bedrooms	783	13.9	19	764	589	175
3 bedrooms	2126	37.8	49	2077	2013	64
4 bedrooms	2010	35.7	40	1970	1939	31
5+ bedrooms	494	8.8	10	484	471	13

Source: 2000 U.S. Census, SF-3 for Township, QT-H8.

Table 10 compares the Township's average household size for all occupied units, owner-occupied units, and renter-occupied units in 2000 to those of the County and State. The Township's average household size for owner-occupied units was the same as those of the State, and higher than those in Mercer County. The average household size for renter-occupied units was lower than for the State or County.

TABLE 10: Average Household Size for Occupied Units for Township, County, and State

Jurisdiction	All Occupied Units	Owner-occupied units	Renter-occupied units
Hopewell Township	2.77	2.81	2.21
Mercer County	2.62	2.75	2.37
New Jersey	2.68	2.81	2.43

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-1.

The distribution of bedrooms per unit, shown in Table 11, indicates that the Township contained fewer small units (no or one bedroom) than the County or State and significantly more large units (four or more bedroom) than either the County or State in 2000. The State and County had similar patterns with two or three bedroom units being the most prevalent.

TABLE 11: Percentage of All Units by Number of Bedrooms

Jurisdiction	None or one	Two or Three	Four or More
Hopewell Township	3.8	51.7	44.5
Mercer County	17.3	57.6	25.1
New Jersey	18.3	59.2	22.6

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H4.

In addition to data concerning occupancy characteristics, the 2000 Census includes a number of indicators, or surrogates, which relate to the condition of the housing stock. These indicators are used by the Council on Affordable Housing (COAH) in calculating a municipality's deteriorated units and indigenous need. In the first Two Rounds of COAH's fair share allocations (1987-1999), COAH used seven indicators to calculate indigenous need: age of dwelling; plumbing facilities; kitchen facilities; persons per room; heating fuel; sewer; and, water. In the Round Three rules, COAH has reduced this to three indicators, which in addition to age of unit (Pre-1940 units in Table 6), are the following, as described in COAH's rules.

Plumbing Facilities Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

Kitchen Facilities Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

Table 12 compares the Township, County, and State for the above indicators of housing quality. The Township has less units with inadequate plumbing and kitchen facilities than the County and State.

TABLE 12: Housing Quality for Township, County, and State

Condition	%		
	Hopewell Township	Mercer County	New Jersey
Inadequate plumbing ¹	0	.4	.5
Inadequate kitchen ¹	.1	.3	.5

Notes: ¹The universe for these factors is all housing units.

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H8 and QT-H4.

The last factors used to describe the municipal housing stock are the housing values and gross rents for residential units. With regard to values, the 2000 Census offers a summary of housing values, seen in Table 13, which indicate that 72% of all residential properties in the Township were valued at \$200,000 or more.

TABLE 13: Value of Residential Units

Value	Number of Units	%
\$0 – 50,000	60	1.3
\$50,000 – 99,999	73	1.6
\$100,000 – 149,999	227	4.9
\$150,000 – 199,999	898	19.4
\$200,000 – 299,999	1774	38.4
\$300,000 – 499,999	1073	23.2
\$500,000 – 999,999	476	10.3
\$1,000,000 +	44	1

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.

The data in Table 14 indicate that in 2000 virtually all housing units rented for more than \$500/month, with the largest percentage, 51%, found between \$500 and \$999 per month, and 38% of the units renting for \$1,000/ month or more.

TABLE 14: Gross Rents for Specified Renter-Occupied Housing Units¹

Monthly Rent	Number of Units	-----%-----
Under \$200	0	0
\$200 - 299	0	0
\$300 - 499	9	2.6
\$500 - 749	99	28.9
\$750 - 999	76	22.2
\$1,000 - 1,499	76	22.2
\$1,500 or more	54	15.7

Note: Median gross rent for Hopewell Township is \$833.

Source: 2000 U.S. Census, SF-3 for Township, QT-H12.

The data in Table 15 indicate that in 2000 there were 90 renter households earning less than \$35,000 annually. At least 76 of these households were paying more than 30% of their income for rent; a figure of 30% is considered the limit of affordability for rental housing costs. All 8 renter households that make between \$10,000 and \$19,999 annually were paying more than 35% for gross rent.

TABLE 15: Household Income in 1999 by Gross Rent as a Percentage of Household Income in 1999¹

Income	Number of Households	Percentage of Household Income					Not computed
		0 - 19%	20 - 24%	25 - 29%	30 - 34%	35% +	
< \$10,000	0	0	0	0	0	0	0
\$10,000 - 19,999	8	0	0	0	0	8	0
\$20,000 - 34,999	82	6	0	8	16	52	0
\$35,000 +	253	135	72	8	0	9	29

Note: ¹The universe for this Table is specified renter-occupied housing units.

Source: 2000 U.S. Census, SF-3 for Township, QT-H13.

Analysis of Demographic Characteristics

As with the inventory of the municipal housing stock, the primary source of information for the analysis of the demographic characteristics of the Township's residents is the 2000 U.S. Census. The Census data provide a wealth of information concerning the characteristics of the Township's population in 2000.

The 2000 Census indicates that the Township had 16,105 residents, or 4,515 more residents than in 1990, representing a population increase of approximately 28%. The Township's 28% increase in the 1990's compares to a 7% increase in Mercer County and an 8% increase in New Jersey.

The age distribution of the Township's residents is shown in Table 16. The younger age classes (0-4, 5-19) were relatively evenly split between males and females, while males predominated in the 18-24, 25-44 and 45-64 classes, and females predominated in the 65+ classes. The disproportionate population figures for the 18-24 and 25-44 male categories represented, in large part, the all-male population at the Mercer County Corrections Center, which housed 847 persons in 2000.

TABLE 16: Population by Age and Sex

Age	Total Persons	Male	Female
0-4	1,076	553	523
5 - 19	3,499	1,797	1,702
20 - 34	2,201	1,244	957
35 - 54	5,903	2,960	2,943
55 - 69	2,162	1,085	1,077
70 +	1,264	569	695
Total	16,105	8,208	7,897

Source: 2000 U.S. Census, SF-3 for Township, QT-P1.

Table 17 compares the Township to the County and State for the same age categories. The principal differences among the Township, County, and State occur in the 20-34 and 35-54 age categories. The Township had a lower percentage of 20-34 year olds than the County or State, while the Township's 35-54 year old category was higher than the County and State. The Township also had a lower percentage of those over the age of 70. In the 5 to 19 age category, the school age category, the Township slightly exceeded the County and State.

TABLE 17: Comparison of Age Distribution for Township, County, and State (% of persons)

Age	Hopewell Township	Mercer County	New Jersey
0-4	6.7	6.3	6.7
5 - 19	21.8	21	20.4
20 - 34	13.7	21.1	19.9
35 - 54	36.6	30.6	30.9
55 - 69	13.4	11.9	12.4
70 +	7.8	9.3	9.7
Median	100	100	100

Source: 2000 U.S. Census, SF-3 for Township, County, and State. QT-P1.

Table 18 provides the Census data on household size for the Township, while Table 19 compares household sizes in the Township to those in Mercer County and the State. The Township differed from the County and State in terms of the distribution of household sizes by having fewer households of one person and more households of 4 and 5 persons. The Township also had more households of two persons than the County or State.

TABLE 18: Persons in Household

Household Size	Number of Households
1 person	878
2 persons	1,960
3 persons	978
4 persons	1,105
5 persons	442
6 persons	103
7 or more persons	32

Source: 2000 U.S. Census, STF-3 for Township, QT-P10.

TABLE 19: Comparison of Persons in Household for Township, County, and State (% of households)

Household Size	Hopewell Township	Mercer County	State
1 person	16	25.6	24.5
2 persons	35.6	30.9	30.3
3 persons	17.8	17.2	17.3
4 persons	20.1	15.4	16
5 persons	8	6.9	7.5
6 persons	1.9	2.5	2.7
7 or more persons	.6	1.6	1.7
Persons per household	2.77	2.62	2.68

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-P10.

Table 20 presents a detailed breakdown of the Township's population by household type and relationship. There were 4,429 family households in the Township and 1,069 non-family households; a family household includes a householder living with one or more persons related to him or her by birth, marriage, or adoption, while a non-family household includes a householder living alone or with non-relatives only. In terms of the proportion of family and non-family households, the Township had more family households than the County or State (80.6% for the Township, 68.6% for the County, and 70.3% for the State).

TABLE 20: Persons by Household Type and Relationship

	Total
In family Households:	
Householder	4,429
Spouse	3,983
Child	2,230
In Non-Family Households:	
Male householder:	431
Living alone	327
Not living alone	104
Female householder:	638
Living alone	551
Not living alone	87
In group quarters:	
Institutionalized:	
Correctional institution	847
Nursing homes	21
Mental hospitals	0
Juvenile institutions	0
Other institutions	0
Non-institutionalized	13

Source: 2000 U.S. Census, SF-3 for Township, QT-P11 and QT-P12.

Table 21 provides 1999 income data for the Township, County, and State. The Township's per capita and median incomes were higher than those of the State and the County. The definitions used for households and families in Table 21 are similar to those identified in the description of Table 20, so that the households figure in Table 21 includes families.

TABLE 21: 1999 Income for Township, County, and State

Jurisdiction	Per Capita Income	Median Income	
		Households	Families
Hopewell Township	43,947	93,640	101,579
Mercer County	27,914	56,613	68,494
New Jersey	27,006	55,146	65,370

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.

Table 22 addresses the lower end of the income spectrum, providing data on poverty levels for persons and families in 2000. The determination of poverty status and the associated income levels is based on the cost of an economy food plan and ranges from an annual income of \$9,039 for a one-person household to \$29,140 for an eight-person family (three-person family is \$14,255). According to the data in Table 22, the Township had proportionately has fewer persons and families qualifying for poverty status than the County or State. However, the percentages in Table 22 translate to 173 persons, but only 38 families, in poverty status. Thus, the non-family households had a much larger share of the population in poverty status.

**TABLE 22: Poverty Status for Persons and Families for Township, County, and State
(% with 1999 income below poverty)**

Jurisdiction	Persons (%)	Families (%)
Hopewell Township	1.1	.9
Mercer County	8.6	5.9
New Jersey	8.5	6.3

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.

The U.S. Census includes a vast array of additional demographic data that provide interesting insights into an area's population. For example, Table 23 provides a comparison of the percent of persons who moved into their homes between the years 1995-1998; this is a surrogate measure of the mobility/stability of a population. The data indicate that the percentage of year 2000 Township residents residing in the same house as in 1995 exceeded that of the County and State.

**TABLE 23: Comparison of Place of Residence for Township, County, and State
(1995-1998)**

Jurisdiction	Percent living in same house in 1995-1998
Hopewell Township	32
Mercer County	27
New Jersey	28

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H7.

Table 24 compares the educational attainment for Township, County, and State residents. These data indicate that Township residents exceeded State and County residents in educational attainment. It is interesting to note that among the State's 21 Counties, Mercer County is sixth in the State in college graduates.

**TABLE 24: Educational Attainment for Township, County, and State Residents
(Persons 25 years and over)**

Jurisdiction	Percent (%) high school graduates or higher	Percent (%) with bachelor's degree or higher
Hopewell Township	93	55.8
Mercer County	81.9	34
New Jersey	82.2	29.8

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-2.

The 2000 Census also provides data on the means of transportation which people use to reach their place of work. Table 25 compares the Census data for the Township, County, and State relative to driving alone, carpooling, using public transit, and using other means of transportation. The Township had a relatively high percentage of those who drive alone, and a relatively low percentage of workers who carpool or use public transit. Of the 6.8% of workers who resided in the Township and used other means of transportation to reach work, 87% (or 438 workers) worked at home and 4% (or 24 workers) walked to work.

**TABLE 25: Means of Transportation to Work for Township, County and State Residents
(Workers 16 years old and over)**

Jurisdiction	Percent who drive alone	Percent in carpools	Percent using public transit	Percent using other means
Hopewell Township	83.3	5.5	4.4	6.8
Mercer County	73.3	11	6.9	8.8
New Jersey	73	10.6	9.6	6.7

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.

Projection of Municipal Housing Stock

As part of the mandatory contents of a housing element, the township is required to produce “a projection of the municipality’s housing stock, including the probable future construction of low and moderate income housing, for the next six years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands.” (N.J.S.A. 52:27D-310b.)

DVRPC Population Forecast for 2015

In order to forecast a 2015 population for the Township, it is necessary to consider past history, current zoning, and some expectation as to what might happen in the future; the last element obviously is the most problematic.

The DVRPC, which is the Metropolitan Planning Organization (MPO) for Mercer County, also provided draft population forecasts through the year 2030. The Township analysis of these forecasts, as reflected in the January 31, 2005 letter to the County and detailed below, has been accepted by Mercer County and the DVRPC has accepted the revision.

The following table identifies the number of housing units that were authorized by building permits over the last 30 years.

TABLE 26: History of Building Permit Issuance for Last 30 Years

Decade	Total residential units authorized by building permits	Annual range (units)- Low and high years	Average year (units)
1970 to 1979	590	28 (1975) to 97 (1973)	59
1980 to 1989	525	14 (1981) to 108 (1987)	52.5
1990 to 1999	1,794 *	24 (1991) to 442 (1993)	179.4

* This figure includes 1,293 building permits issued for the various projects at Brandon Farms.

If Brandon Farms is excluded from the above data, which is legitimate since the development resulted from the Township’s past affordable housing obligation, the number of building permits issued for the 1990-1999 period is reduced to 501 building permits. Thus, the three decades show a fairly consistent development pattern of 501 to 590 units every ten years, or an average of 539 residential units every ten years. The lowest ten-year period was 1975-1984, when 370 residential units were authorized by building permits. During the ten-year period from 1983-1992, which included both boom and bust times, there were 552 residential units authorized by building permits, which closely approximates the average decade over the last three decades.

We also note that since this time period the Township has gone through a rezoning that has reduced the development potential substantially. Many of the units noted above were developed

under the two-acre zoning that prevailed in the R-200 District, which no longer exists. Given the zoning changes, we can anticipate a slower rate of growth. If the growth period of 1975-1984 prevails in the future, as might be expected considering the rezoning, we would anticipate a total of 370 units for single-family residential growth in the 2005-2015 period, excluding the ongoing construction of a townhouse development and an age-restricted development, which include 116 and 46 units, respectively. Adding those units to the forecast population growth produces the following:

TABLE 27: Forecast Dwelling Unit Growth from 2005-2015

Type of Unit	Number of Units
Single-family detached	370
Townhouse	116
Age-restricted	46
Total	532

This forecast is consistent with the history of building permit issuance in the Township, current approvals and current zoning.

Municipal Employment and Projections

As part of the mandatory contents of a housing element, the Township is to provide “an analysis of the existing and probable future employment characteristics of the community.” (N.J.S.A. 52:27D-310d) In COAH’s First Round (1987-1993), COAH used employment data, in terms of how many people worked within a municipal border, as an allocation factor for its affordable housing need allocations. In the Second Round (1993-1999) COAH changed this allocation factor to the value of non-residential ratables. Now in the proposed Third Round rules COAH is using the growth in non-residential jobs as a component of the growth share formula for the determination of a municipality’s affordable housing obligation.

DVRPC Employment Estimate and Projections

The DVRPC also estimates and projects employment from the years 2000 to 2030. These figures are depicted below (the figure for the year 2000 is an estimate, the other years are projections):

TABLE 28: DVRPC Employment Estimate and Projections

Year	Employment
2000	8,025
2005	9,475
2010	12,125
2015	12,593
2020	13,403
2025	14,339
2030	14,893

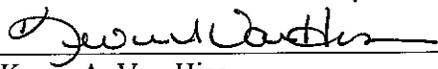
These figures were examined relative to known employment in the Township, and the DVRPC employment in 2005 appears accurate. While an independent projection has not been prepared for the year 2015, the DVRPC numbers are reasonable. As to the DVRPC projection for 2030, again an independent projection has not been prepared, but it appears that this number is likely to underestimate the employment as of that date, given the extended approvals that have been granted to the Township’s 4 major office/research employers. Thus, Mercer County notified the DVRPC that the employment projections are acceptable.

In support thereof, Petitioner shall rely upon the supporting letter brief and Certification of Francis J. Banisch III, PP/AICP, submitted herewith, as well as all other pleadings on file in this matter.

Oral argument is requested in the event that this motion is opposed.

A proposed form of Order is attached hereto.

MASON, GRIFFIN & PIERSON, P.C.
Attorneys for Petitioner, Township of Hopewell

By: 
Kevin A. Van Hise

Dated: July 6, 2015.

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW



101 Poor Farm Road
Princeton, NJ 08540
Tel 609.921.6543
Fax 609.683.7978
www.mgplaw.com

Directors

Gordon D. Griffin
Kester R. Pierson
Edwin W. Schmierer
Kristina P. Hadinger
Valerie L. Howe*
Shawn M. Neufeld†
Kevin A. Van Hise†

Ralph S. Mason (1913-1988)
Craig H. Davis (1947-1997)

Also Admitted in:
† PA * NY * CT * FL * VA * CO * MA

Associates/Of Counsel

Edmond M. Konin†
Trishka W. Cecil†
Lisa M. Maddox†
Allison S. Zangrilli*
Joseph C. Tauriello†
Victoria D. Britton*
Valerie J. Kimson*
Nicole M. Sciotto†
Cory K. Kestner

July 6, 2015

The Honorable Mary C. Jacobson, A.J.S.C.
Superior Court of New Jersey - Mercer County
Mercer County Court House
175 South Broad Street, PO Box 8068
Trenton, NJ 08650-0068

RE *In the Matter of the Application of the Township of Hopewell in Mercer County*
Docket No. MER-L-_____

Dear Judge Jacobson:

This office represents petitioner, the Township of Hopewell ("Township") with respect to the above-captioned Mount Laurel matter. Please accept this letter in lieu of a more formal brief in support of the Township's Motion for entry of an Order granting the Township Temporary Immunity Prohibiting Exclusionary Zoning Actions in accordance with the New Jersey Supreme Court's opinion in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1, 35-36 (2015). Specifically, the Township seeks a protective order granting temporary immunity from any and all exclusionary zoning lawsuits, commencing from the date of the filing of the Township's Verified Complaint and remaining in effect until such time that the court reviews and either approves or disapproves the Township's Third Round Housing Plan Element and Fair Share Plan.

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

July 6, 2015

Page 2

PRELIMINARY STATEMENT

In accordance with the Court's March 10, 2015 decision and Order in In re Adoption of N.J.A.C. 5:96 & 5:97, Id., the Township instituted the present action by the filing of a Verified Complaint for Declaratory Judgment seeking relief pursuant to the Fair Housing Act, N.J.S.A. 52:27D-313. In this companion motion, the Township respectfully requests that during the pendency of the action, the court grant the Township a period of temporary immunity prohibiting the filing of any exclusionary zoning lawsuits, including "builder's remedy" lawsuits, from the date of the filing of the Township's Complaint extending up to and including the court's determination that the Township's Housing Element and Fair Share affordable housing plan and implementing ordinances are compliant with the Township's third round Mount Laurel obligations. As the Court held, "as part of the court's review [of a municipality's Third Round Housing Plan Element and Fair Share Plan], . . . we authorize . . . a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings." Id at 24. Further, "the trial court may enter temporary periods of immunity prohibiting exclusionary zoning actions from proceeding pending the court's determination of the municipality's presumptive compliance with its affordable housing obligations." Id at 28.

Despite the uncertainty that has surrounded the Council on Affordable Housing ("COAH") process since 1999, the Township has been, and continues to remain, compliant with its affordable housing obligations. As such, temporary immunity is warranted in order to provide the Township

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

July 6, 2015

Page 3

with a brief period of time to: (a) permit the Court to determine its municipal fair share obligation, and (b) allow the Township an opportunity to prepare and file a supplemental housing element and affordable housing plan, if necessary.

STATEMENT OF FACTS

For the sake of brevity and avoiding repetition, the Township incorporates and adopts the statement of facts set forth in its Verified Complaint and the attached Certification of Francis J. Banisch, III, PP/AICP ("Banisch Certification"), filed in support of the within motion.

LEGAL ARGUMENT

In its March 10, 2015 decision, the New Jersey Supreme Court found that COAH's failure to enact valid third round regulations has led to great uncertainty for New Jersey's municipalities engaged in the COAH process. In re Adoption of N.J.A.C. 5:96 and 5:97, Id. at 21. Faced with the uncertainty of whether or not COAH would be able to enact valid third round regulations (or act at all), the Court established a transitional process for municipalities to seek the protections of the courts that they should have been afforded under the administrative process provided by the Fair Housing Act, N.J.S.A. 52:27D-301 to -329 ("FHA") and COAH. Id. at 25-29. This process will provide municipalities with the ability to demonstrate the constitutional compliance of their affordable housing plans and allow them to establish their baseline obligations as developed in accordance with the accepted first and second round methodology. Id. at 29.

One of the fundamental purposes behind the Mount Laurel doctrine is to encourage municipalities to voluntarily comply with their affordable housing obligations. S. Burlington County

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

July 6, 2015

Page 4

NAACP v. Twp. of Mount Laurel, 92 N.J. 158, 214 (1983) ("Mount Laurel II"); see also In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. at 23, stating that the "goal is to establish an avenue by which towns can demonstrate their constitutional compliance to the courts through submission of a housing plan and use of processes, where appropriate, that are similar to those which would have been available through COAH for the achievement of substantive certification." In order to encourage voluntary compliance, the courts have routinely allowed municipalities to benefit from temporary immunity from Mount Laurel lawsuits while they are in the process of developing their affordable housing plans. J.W. Field Co., Inc. v. Franklin Twp., 204 N.J. Super. 445, 456 (Law Div. 1985). The courts have recognized that temporary immunity can be an effective tool to address the practical issues faced by municipalities and the Judiciary when attempting to voluntarily develop and comply with an affordable housing obligation. Ibid.

The New Jersey Supreme Court sought to further the goal of voluntary compliance when it established the current declaratory judgment action framework in its March 2015 opinion. In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 24. The Court recognized two types of municipalities that will be affected by its opinion: 1) those previously granted substantive certification by COAH; and 2) those that "participated" in the COAH process but did not receive substantive certification. Id. at 24-29.

The transitioning COAH municipalities were granted the option of doing nothing – thereby risking a Mount Laurel challenge by an interested party or developer – or utilizing the process established by the Court by the filing of a Declaratory Judgment action as an affirmative means to

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

July 6, 2015

Page 5

seek an immunity order from the court. For municipalities that received substantive certification from COAH, the Court stated that the trial courts "should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during that necessary review process. . ." and the courts will give the highest level of deference and presumptions of validity to the municipality. Id. at 26. Similarly, for "participating" municipalities, the Court identified that it will take its lead from the FHA, and as under the COAH process, participating municipalities

... received insulating protection due to COAH's jurisdiction provided that they prepared and filed a housing element and fair share plan within five months. Similarly, towns that were in "participating" status before COAH and that now affirmatively seek to obtain a court declaration that their affordable housing plans are presumptively valid should have no more than five months in which to submit their supplemental housing element and affordable housing plan.

[Id. at 27.]

Based upon the foregoing, it is clear from the Court's decision that municipalities should be permitted an opportunity to have their fair share obligations determined and be given time to prepare a supplemental plan to ensure their constitutional compliance. During that time, the municipality should be immunized from defending against exclusionary zoning or other Mount Laurel lawsuits. To allow otherwise would essentially punish the municipality for COAH's failure to act, which is in direct contravention to the Supreme Court's expressed direction that its process is not intended to punish, but to move forward towards municipal compliance. Id. at 33. As the Court stated, "the trial court's orders in furtherance of establishing municipal affordable housing obligations and compliance

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

July 6, 2015

Page 6

should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance." Id. at 28.

As detailed in the attached Banisch Certification, the Township undertook significant efforts to meet its second round obligations. Additionally, during the pendency of the COAH process, the Township strove to meet the shifting obligations arising from COAH's rule changes and the decisions rendered by the courts. Now, with a process established that will permit the Township to finally determine what its affordable housing obligations are, the Township is at a point that it will be able to revise its affordable housing plan to fulfill its obligations. Subjecting the Township to unnecessary exclusionary zoning and builder's remedy litigation during this period will advance no public purpose and will only serve to divert the Township's time and limited resources to defending baseless litigation, rather than planning to accommodate its affordable housing needs.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Township of Hopewell is entitled to temporary immunity from the filing and service of any exclusionary zoning and builder's remedy lawsuits while a determination of the municipal fair share obligation is determined and the Township has an opportunity to develop, adopt and file a supplemental housing element and affordable housing plan. In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. at 27-28.

Respectfully submitted,



Kevin A. Van Hise

encl.

MASON, GRIFFIN & PIERSON, P.C.
By: Kevin A. Van Hise, Esq. - ID #016382003
101 Poor Farm Road
Princeton, New Jersey 08540
Telephone: (609) 921-6543
Facsimile: (609) 683-7978
Email: k.vanhise@mgplaw.com
Attorneys for Petitioner,
Township of Hopewell

)
) SUPERIOR COURT OF NEW JERSEY
) MERCER COUNTY - LAW DIVISION
)
) DOCKET NO.: MER-L-_____

IN THE MATTER OF THE APPLICATION)
OF THE TOWNSHIP OF HOPEWELL IN)
MERCER COUNTY)
)
) CIVIL ACTION
)
) **CERTIFICATION OF**
) **FRANCIS J. BANISCH, III, PP/AICP, IN**
) **SUPPORT OF THE TOWNSHIP OF**
) **HOPEWELL'S MOTION FOR**
) **TEMPORARY IMMUNITY FROM**
) ***MOUNT LAUREL LAWSUITS***

I, Francis J. Banisch, III, PP/AICP, of full age, do hereby certify as follows:

1. I am a licensed Professional Planner in the State of New Jersey and a member of the American Institute of Certified Planners, the national certification for professional planners. I am president of Banisch Associates, Inc., (BAI) a professional planning consulting firm primarily serving municipalities in New Jersey. BAI currently provides professional planning consulting services to 23 New Jersey municipalities. I have served as a court-appointed special master for Mount Laurel declaratory judgment actions filed prior to the Supreme Court's March 10, 2015 decision. I serve as the Planner for the Township of Hopewell (hereinafter "Township" or "Hopewell") as well as serve as the Planner for the Township's Planning and Zoning Boards.

2. As Hopewell's Planner I am involved in the preparation of the Township's Master Plan, including its affordable housing fair share plan and housing element and as such, I maintain a working knowledge of the Township's affordable housing documents.

3. This certification is made in support of Hopewell's Declaratory Judgment action, including Hopewell's Motion for Temporary Immunity, prepared pursuant to *N.J.S.A. 52:27D-313* to address the New Jersey Supreme Court's March 10, 2015 decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by NJ Council on Affordable Housing, 221 N.J. 1 (2015). As Hopewell's Planner, I am fully familiar with the facts set forth below as they relate to this matter based on my personal knowledge, review of the Township's records, review of records of the New Jersey Council on Affordable Housing ("COAH"), and my review of laws adopted by the legislature and regulations proposed and adopted by COAH.

4. Following a builder remedy lawsuit that resulted in the development of 138 affordable units at Brandon Farms, Hopewell Township elected to participate in the COAH process and submitted a petition for substantive certification, along with a Housing Element and Fair Share Plan to COAH. The petition was submitted to COAH on February 23, 1995 and received substantive certification on January 8, 1997.

5. Hopewell Township's substantive certification was extended to July 27, 2005, with a second round expiration date of December 20, 2005.

6. BAI assisted the Planning Board in preparation of affordable housing compliance plans for Hopewell Township in 2005 and 2008 to address the changing third round obligations identified by COAH.

7. Hopewell Township's 2005 Housing Element and Fair Share Plan identified the Township's eligibility for 541 affordable unit credits and reductions against the prior round obligation of 565 units, leaving a shortfall of 24 units to be addressed as part of the 2005 third round plan.

8. The growth share calculations required by COAH in 2005 indicated a third round obligation for 186 additional affordable units. However, 47 excess age-restricted credits, not usable in the prior round due to COAH rule limits, were to be applied toward the third round obligation along with another 140 affordable units from regional contribution agreements (93 units), group homes (12 units) and municipally sponsored construction (35 units).

9. Hopewell Township prepared another petition for substantive certification, which was filed with COAH on December 31, 2008. This petition was deemed complete on February 20, 2009 with a comment period that ended on April 13, 2009.

10. The 2008 Housing Element and Fair Share Plan found the Township to be eligible for 535 affordable unit credits and reductions from its recalculated prior round obligation of 520 units, as outlined below:

Hopewell Township, Mercer County - Prior Round Credits / Reductions				
<i>Category/Development</i>	<i>Total Affordable Units</i>	<i>Rental Credits</i>	<i>Age-Restricted Units</i>	<i>Housing Units / Credits</i>
Regional Contribution Agreements	198			198
Pennington Pointe	5		5	5
CIFA Group Home	4	4		8
Brandon Farms	138			135

Bonus for Substantial Compliance	46			46
Hopewell Gardens	149			
Handicapped	15	15		30
Age-Restricted*	134	28	85	113
Total				535

11. The 2008 petition for substantive certification, which was not approved by COAH after objector comments were received during the public comment period, was nonetheless eligible for substantive certification by COAH.

12. In fact, in its 2008 plan, Hopewell Township was entitled to apply 64 affordable units toward the third round including 15 excess units from its prior round (535 housing unit credits minus 520-affordable unit prior round obligation equals 15 units) and an excess of 49 age-restricted rental units that could be carried to the Third Round.

13. As a result, while Hopewell Township's 2008 Housing Element and Fair Share Plan, was eligible for substantive certification by COAH, it did not achieve certification as a result of the involvement of objectors and a breakdown in the COAH process.

14. Hopewell Township adopted and implemented housing elements and fair share plans which were submitted for substantive certification by COAH, and in the earlier rounds, received certification.

15. Hopewell Township should be afforded a period of immunity from builder remedy lawsuits, as provided by the Supreme Court, to allow development of a revised and updated housing element and fair share plan.

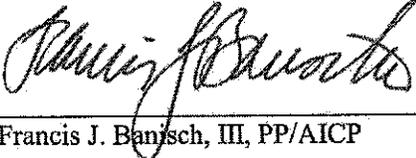
16. The time to plan for the new third round obligation, should begin only after the court establishes the Township's fair share obligation.

17. As part of its Declaratory Judgment action, the Township is also requesting temporary immunity from builder's remedy lawsuits. This temporary immunity will provide the Township with the necessary time to update some of the basic data in the 2008 Housing Plan such as demographic and housing characteristics, as well as address whatever affordable housing obligation and/or methodology the Court deems is appropriate for the Township.

18. Additionally, the Township requests time to complete its ongoing survey of vacant land in the Township in order to calculate a vacant land adjustment, Realistic Development Potential (RDP) and Unmet Need.

19. Based on the foregoing facts, the Township is committed to address its third round present need once established by this court, the Township has fully addressed its prior round fair share obligation, the Township has previously prepared and submitted for certification a proposed third round affordable housing plan, and the Township is committed to address the future third round fair share obligation once established by this court.

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


Francis J. Bansch, III, PP/AICP

Date: July 7, 2015.

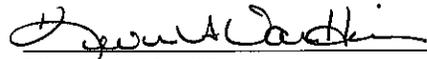
CERTIFICATION PURSUANT TO RULE 1:4-4

Kevin A. Van Hise, Esquire, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey, and I am a Director of the law firm of Mason, Griffin & Pierson, PC, attorneys for Petitioner in the above referenced action.

2. Pursuant to R. 1:4-4, I certify that Francis J. Banisch, PP/AICP, has acknowledged the genuineness of his signature and that the original signature will be filed if requested by the court.

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.


Kevin A. Van Hise

Dated: July 7, 2015

2. The Township is hereby granted temporary immunity against any and all exclusionary zoning lawsuits, including but not limited to "builder's remedy" suits, from the date of the filing of Petitioner's Complaint and extending up to and including the court's determination that the Township's Housing Element and Fair Share affordable housing plan and implementing zoning and land development ordinances are compliant with the Township's third round Mount Laurel affordable housing obligations.
3. A case management conference shall be held on _____, 20__
at _____ a.m. / p.m.
4. A copy of this Order shall be served on all counsel within seven days of receiving this Order by counsel for Petitioner, Township of Hopewell.

Honorable Mary C. Jacobson, A.J.S.C.

Unopposed

Opposed

2. On this date, I further caused one copy of the above-referenced documents to be served, via certified mail and email transmission, upon the following:

Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
kevinwalsh@fairsharehousing.org

Geraldine Callahan, Esq.
Deputy Attorney General
Office of the Attorney General
25 West Market Street, PO Box 112
Trenton, NJ 08625
geraldine.callahan@dol.lps.state.nj.us

Jonathan E. Drill, Esq.
Stickel, Koenig, Sullivan & Drill, LLC
571 Pompton Avenue
Cedar Grove, NJ 07009
jdrill@sksdlaw.com

Jeffrey R. Surenian, Esq.
Michael A. Jedziniak, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
irs@surenian.com

Edward J. Buzak, Esq.
The Buzak Law Group, LLC
Montville Office Park
150 River Road, Suite N-4
Montville, NJ 07045
ejbuzak@buzaklawgroup.com

Jeffrey Kantowitz, Esq.
Law Office of Abe Rappaport
195 Route 46 West, Suite 6
Totowa, NJ 07512
jkantowitz@rappaport-law.com

Stephen Eisdorfer, Esq.
Hill Wallack, LLP
202 Carnegie Center, PO Box 5226
Princeton, NJ 08543
seisdorfer@hillwallack.com

3. I have prepared the attached notice advising of the filing of the present action and companion motion for temporary immunity and have made arrangements for service of the notice to be provided to other interested parties via certified mail. A supplemental certification of service will be provided upon the completion of mailings of the attached notice.

4. I hereby certify that the foregoing statements made by me are true. I am aware that should any of the foregoing statements made be me be wilfully false, I am subject to punishment.

Dated: July 7, 2015


Kevin A. Van Hise

**TOWNSHIP OF HOPEWELL
COUNTY OF MERCER, STATE OF NEW JERSEY**

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that by the filing of a Verified Complaint for Declaratory Judgment Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-313, petitioner, the Township of Hopewell ("Township") commenced an action in the Superior Court of New Jersey, Mercer County, on July 7, 2015, entitled *In the Matter of the Application of the Township of Hopewell in Mercer County* (the Docket No. is currently unassigned). The Township brings this action seeking declaratory judgement for immunity and repose pursuant to N.J.S.A. 52:27D-313 and a judicial declaration that its housing plan (as-is or as to be supplemented) is presumptively valid because it presents a realistic opportunity for the provision of its fair share of the region's present and prospective need for low- and moderate- income housing pursuant to the New Jersey Supreme Court's decision and Order entered on March 10, 2015 in In re Adoption of N.J.A.C. 5:96 & 5:97 by NJ Council on Affordable Housing, 221 N.J. 1 (2015).

NOTICE IS HEREBY FURTHER GIVEN that with the filing of Petitioner's Complaint, the Township also filed a companion Motion for Temporary Immunity Prohibiting Exclusionary Zoning Actions, seeking temporary immunity against exclusionary zoning lawsuits from the date of the filing of Petitioner's Complaint and extending up to and including the court's determination that the Township's Housing Element and Fair Share affordable housing plan and implementing zoning and land development ordinances are compliant with the Township's third round Mount Laurel affordable housing obligations. Said motion is currently scheduled to be heard by the Court on September 18, 2015 at 9:30 a.m. before the Honorable Mary C. Jacobson, A.J.S.C. Superior Court of New Jersey – Mercer County, Mercer County Courthouse, 400 South Warren Street, Trenton, New Jersey 08650.

Any party objecting to the Township's action or motion for temporary immunity should, not later than 8 days before the return date thereof, serve and file a written objection with the Court at 175 South Broad Street, PO Box 8068, Trenton, New Jersey 08650-0068, and provide a copy to the Township Clerk and Township Attorney at the addresses below.

Copies of the Township's Complaint, Motion and companion pleadings are available upon request made to the Municipal Clerk at the Hopewell Township Municipal Building, 201 Washington Crossing – Pennington Road, Titusville, New Jersey 08560, during regular business hours.

Kevin A. Van Hise, Esq.
Mason, Griffin & Pierson, PC
101 Poor Farm Road, Princeton, NJ 08540
Attorneys for Petitioner, Township of Hopewell