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 Attorneys for Declaratory Plaintiff
 Borough of Chatham

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| <p>IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF CHATHAM</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-_____-25</p> <p>Civil Action</p> <p>AFFORDABLE HOUSING</p> <p>COMPLAINT FOR DECLARATORY RELIEF PURSUANT TO AOC DIRECTIVE #14-24</p> |
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Declaratory Plaintiff, the Borough of Chatham (the “Borough” or “Chatham”), a municipal corporation of the State of New Jersey, with principal offices located at 54 Fairmount Avenue, Chatham, NJ, 07928-2393, by way of this Declaratory Judgment Action (“DJ Action”) filed pursuant to AOC Directive # 14-24 alleges and says the following:

BACKGROUND AND JURISDICTION

1. The Borough is a municipal corporation of the State of New Jersey.

2. The Borough of Chatham Planning Board (the “Board”) is a municipal agency created and organized under the Municipal Land Use Law (the “MLUL”), specifically, N.J.S.A. 40:55D-23, and is responsible for, among other duties and obligations, adopting the Housing Plan element and Fair Share Plan element (“HPFSP”) of the Borough’s Master Plan pursuant to N.J.S.A. 40:55D-25a.

3. Through this DJ Action, the Borough seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligations: (a) secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to the Fair Housing Act as amended by P.L. 2024, c.2 (hereinafter, the “Act”) and secure the jurisdiction of the Court pursuant to AOC Directive # 14-24; (b) have the Program and the Court approve the Borough’s Fourth Round fair share present need and prospective need affordable housing obligations as set forth in the resolution adopted by the Borough, which is attached hereto as **Exhibit 1**; (c) have the Program and the Court approve an HPFSP to be adopted by the Board and endorsed by the Borough Council and issue a “Compliance Certification” pursuant to the Act or other similar declaration such as a judgment of compliance and repose; (d) to the extent it is not automatically granted pursuant to the Act, have the Program and the Court confirm the Borough’s immunity from all exclusionary zoning litigation, including but not limited to builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration

of the Fourth Round, i.e., through June 30, 2035; and (e) have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Borough receives and obtains all protections as afforded to it in complying with the requirements of the Act, including but not limited to all presumptions of validity and immunities necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

APPROVAL OF PRESENT NEED AND PROSPECTIVE NEED NUMBERS

4. The Borough repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act adopted a formula to calculate every municipality's fair share present need and prospective need affordable housing obligations for the Fourth Round and beyond.

6. The Act directed the Department of Community Affairs ("DCA") to apply the formula and to render a non-binding calculation of each municipality's fair share present need and prospective need affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

7. The DCA issued such a report on October 18, 2024. (the "DCA report").

8. Pursuant to the DCA report, the DCA calculated the Borough's fair share present need as 8 units and the Borough's fair share prospective need as 181 units.

9. Pursuant to the Act, the DCA report is non-binding, and each municipality is obligated to determine its fair share present and prospective obligations for affordable housing in accordance with the formula established in N.J.S.A. 52:27D-304.2 and -304.3 by resolution, which resolution shall describe the basis for the municipality's determination if the municipality's determination differs from the DCA calculated numbers.

10. The Act further provides that the resolution shall bind the municipality to adopt an HPFSP pursuant to the Act.

11. As the resolution which was adopted by the Borough and is attached hereto and made a part hereof as **Exhibit 1** reflects, the Borough accepts the DCA calculated present need number of 8 units and also accepts the DCA calculated prospective need number of 181 units.

12. The Borough seeks the approval of and confirmation by the Program and the Court of its fair share present and prospective need obligations for affordable housing as set forth in the resolution.

13. As set forth in the resolution, the Borough reserves all rights to amend its affordable housing obligations in the event of legislative changes to the Act, or by judicial decisions altering the Act or the meaning of the Act.

14. Additionally, the Borough reserves the right to apply as appropriate: any applicable adjustments, including but not limited to a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; an adjustment based upon any ruling in litigation involving affordable housing obligations; and any other applicable adjustment permitted in accordance with the Act and/or applicable regulations.

WHEREFORE, the Borough seeks a declaratory judgment for the following relief:

- a.** Declaring that the Borough has established jurisdiction with the Program and with the Court so as to confirm its fair share present and prospective need affordable housing obligations as set forth in the resolution attached hereto as Exhibit 1;

- b. Declaring the fair share present and prospective need affordable housing obligations of the Borough under the Act;
- c. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations, including but not limited to builder remedy lawsuits; and
- d. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable regulations.

COUNT II

APPROVAL OF HOUSING PLAN ELEMENT AND FAIR SHARE PLAN ELEMENT

15. The Borough repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

16. Pursuant to the Act, an HPFSP must be prepared and then adopted by the Board by June 30, 2025.

17. The Borough hereby commits to have an HPFSP adopted no later than June 30, 2025 to address the Borough's fair share affordable housing obligations, as determined by the Program and the Court, which HPFSP shall apply as appropriate: any applicable adjustments, including but not limited to a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; a Durational

Adjustment (whether predicated upon lack of sanitary sewer or lack of water); an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; an adjustment based upon any ruling in litigation involving affordable housing obligations; and any other applicable adjustment permitted in accordance with the Act and/or applicable regulations.

18. Upon the Board's adoption of the HPFSP, the Borough will file it with the Court and submit it to the Program prior to June 30, 2025 and will seek approval of the HPFSP and the issuance of the relief set forth below.

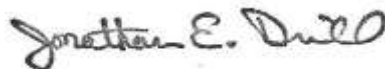
WHEREFORE, the Borough seeks a declaratory judgment for the following relief:

- a.** Declaring that the Borough has established jurisdiction with the Program and with the Court to confirm its fair share present and prospective need affordable housing obligations as set forth in the resolution attached hereto as Exhibit 1; and
- b.** Declaring the fair share present and prospective need affordable housing obligations of the Borough under the Act; and
- c.** Declaring the approval of the Borough's HPFSP, which will subsequently be adopted by the Board and filed with the Court and

submitted to the Program, including, as appropriate and applicable, any and/or all of the adjustments referenced above; and

- d.** Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations, including but not limited to builder remedy lawsuits; and
- e.** Declaring that the Borough is constitutionally compliant and issuing a compliance certification or judgment of compliance and repose or such other protections as afforded to it in complying with the requirements of the Act, including but not limited to all presumptions of validity and immunities necessary to satisfy its fair share affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation for the Fourth Round (beginning July 1, 2025 and ending June 30, 2035); and
- f.** Declaring such other relief that the Program and/or Court deems just and proper within the parameters of the Act and applicable regulations.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Borough of Chatham



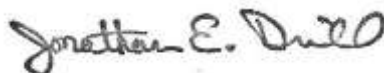
By: Jonathan E. Drill

Date: January 28, 2025

CERTIFICATIONS PURSUANT TO RULE 4:5-1(b)(2) AND -1(b)(3)

In accordance with R. 4:5-1(b)(2), I certify that the matter in controversy is not currently the subject of any other court action or arbitration proceeding now pending or contemplated. I certify that at this time I do not contemplate filing any other court action or any arbitration proceeding. I certify that at this time no additional parties should be joined in the action. In accordance with R. 4:5-1(b)(2) and -1(b)(3), 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 R. 1:38-7(b). I certify that all of 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.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Borough of Chatham



By: Jonathan E. Drill

Date: January 28, 2025

DESIGNATION OF TRIAL COUNSEL PURSUANT TO
R. 4:5-1(c) and R. 4:25-4

In accordance with R. 4:5-1(c) and R. 4:25-4, Jonathan E. Drill, Esq. of Stickel, Koenig, Sullivan & Drill, LLC is hereby designated as trial counsel for Defendant.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Borough of Chatham



By: Jonathan E. Drill

Date: January 28, 2025

EXHIBIT 1 RESOLUTION

EXHIBIT 1 RESOLUTION



Borough of Chatham

54 Fairmount Avenue • Chatham • NJ 07928
973-635-0674 • ChathamBorough.org

RESOLUTION #25-87

RESOLUTION COMMITTING TO COMPLY WITH AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment (P.L. 2024, c.2) to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter “Amended FHA”); and

WHEREAS, the Amended FHA requires the Department of Community Affairs (“DCA”) to produce non-binding calculations of fair share obligations for all municipalities on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its calculations of the obligation for all municipalities; and

WHEREAS, the DCA Report calculates the Borough’s Round 4 (2025-2035) obligations as follows: a present need fair share obligation of eight (8) units and a prospective need fair share obligation of 181 units; and

WHEREAS, while the Amended FHA provides that the DCA Report is non-binding, it requires each municipality to consider the estimated numbers contained in the DCA Report and to adopt a resolution in which it determines its present need and prospective need fair share obligations in accordance with the formula established in the Amended FHA and in which it commits to have adopted a Housing Plan element and Fair Share Plan element (“HPFSP”) of the municipal Master Plan; and

WHEREAS, in addition to the above, the Administrative Office of the Courts (“AOC”) issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance (the equivalent of a judgement of compliance and repose) with the Amended FHA shall file Declaratory Judgment action in the county in which the municipality is located within 48 hours after adoption of the resolution referenced above, with said resolution attached to the Declaratory Judgment complaint, or by February 3, 2025, whichever is sooner,” and to have the resolution referenced above submitted to the Affordable Housing Dispute Resolution Program (the “Program”) which was established in the judiciary; and

WHEREAS, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions”; and

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

WHEREAS, based on the foregoing, the Borough has determined to accept the DCA calculations of the Borough’s fair share obligations and commits to having a HPFSP adopted and submitted to the Program and to the Court, subject to any vacant land and/or durational adjustments and/or other adjustments it may seek, as provided for in the Amended FHA; and

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

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

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 present need or prospective need fair share obligations should be lower than described herein; and

WHEREAS, in light of the above, the Mayor and Council find that it is in the best interest of the Borough to determine its Round 4 present need and prospective need fair share obligations to be the numbers contained in the DCA Report subject to the reservations set forth herein; and

WHEREAS, in light of the above, the Mayor and Council find that it is also in the best interest of the Borough to commit to having a HPFSP adopted and submitted to the Program and to the Court, subject to any vacant land and/or durational adjustments and/or other adjustments it may seek, as provided for in the Amended FHA; and

WHEREAS, the Borough seeks a certification of compliance with the Amended FHA and, therefore, directs its Affordable Housing Counsel to file a Declaratory Judgment action within 48 hours of the adoption of this resolution in the Morris County Superior Court.

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


1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Borough hereby accepts the DCA Round 4 present need fair share obligation of eight (8) units and a prospective need fair share obligation of 181 units described in this resolution and determines that the aforesaid DCA numbers are the Borough's fair share affordable housing present need and prospective need obligations for Round 4.
3. The Borough hereby commits to having a HPFSP adopted based on the above determination of its fair share affordable housing obligations as may be adjusted in accordance to the reservations of rights set forth above and in accordance with the Amended FHA.
4. The Borough hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint in the Morris County Superior Court within 48 hours after adoption of the within resolution.
5. The Borough hereby directs its Affordable Housing Counsel to attach the within resolution as an exhibit to the Declaratory Judgment complaint that is filed and to submit and/or file this resolution with the DCA and any other entity as may be determined to be appropriate.
6. This resolution shall take effect immediately, according to law.

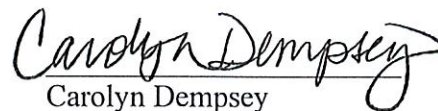
| Name | Motion | Second | Yes | No | Abstain | Absent |
|--------------|--------|--------|-----|----|---------|--------|
| Mathiasen | X | | X | | | |
| Hargrove | | | X | | | |
| Hay | | | X | | | |
| Koronkiewicz | | X | X | | | |
| Strickland | | | X | | | |
| Treloar | | | X | | | |

Adopted: January 27, 2025

Attest:

BOROUGH OF CHATHAM


 Vanessa L. Nienhouse, RMC, CMC
 Borough Clerk


 Carolyn Dempsey
 Mayor

CERTIFICATION

I, Vanessa L. Nienhouse, Borough Clerk for the Borough of Chatham, County of Morris, State of New Jersey, do hereby certify this is a true and correct copy of the resolution adopted by the Borough Council at its Regular Meeting held on January 27, 2025.


 Vanessa L. Nienhouse, Borough Clerk

