

PRIME TUVEL & MICELI, LLC

14000 Horizon Way, Suite 325

Mount Laurel, New Jersey 08054

Tel: (856) 273-8300

Fax: (856) 273-8383

By: Danielle Kinback, Esq., Attorney ID# 000732011

Jason R. Tuvel, Esq. Attorney ID# 028142004

Email: dkinback@primelaw.com

Attorneys for Defendant/Interested Parties 23 S Passaic Owner LLC

and 33 South Passaic Owner LLC

<p>IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF CHATHAM</p>	<p>SUPERIOR COURT OF NEW JERSEY MORRIS COUNTY LAW DIVISION</p> <p>DOCKET NO. L-000238-25</p> <p><u>CIVIL ACTION</u></p> <p><i>MOUNT LAUREL</i></p> <p>ANSWER, AFFIRMATIVE DEFENSES AND CHALLENGE OF INTERESTED PARTIES, 23 S PASSAIC OWNER LLC AND 33 SOUTH PASSAIC OWNER LLC</p>
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Defendant/Interested Parties, 23 S Passaic Owner LLC and 33 South Passaic Owner LLC (collectively, “Owner”), with a principal place of business located at 225 Millburn Avenue, Suite 101, Millburn, new Jersey, 07041 is the owner of real property within the Borough of Chatham (“Borough”) which is identified on the tax maps of the Borough as Block 121, Lots 12 and 13 and located at 23 and 33 S Passaic Avenue (the “Property”). Pursuant to N.J.S.A. 52:27D-301 et seq. and Administrative Office of the Courts Directive #14-24 (the “Directive”), by way of Answer to the Township’s Complaint in this matter, Owner says that:

BACKGROUND AND JURISDICTION

1. Admitted.

2. Admitted.

3. The allegations set forth in Paragraph 3 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

COUNT ONE

APPROVAL OF PRESENT NEED AND PROSPECTIVE NEED NUMBERS

4. Owner repeats and realleges its response to Paragraphs 1 through 3 of the Complaint as if fully set forth herein.

5. The allegations set forth in Paragraph 5 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

6. The allegations set forth in Paragraph 6 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

7. Admitted.

8. The Report referenced in Paragraph 8 of the Complaint is a document in writing that speaks for itself. To the extent a response is required, Owner leaves the Borough to its proofs.

9. The allegations set forth in Paragraph 9 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

10. The allegations set forth in Paragraph 10 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

11. The allegations set forth in Paragraph 11 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

12. The allegations set forth in Paragraph 12 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

13. The allegations set forth in Paragraph 13 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

14. The allegations set forth in Paragraph 14 of the Complaint state legal conclusions to which a response is not required. To the extent a response is required, Owner leaves the Borough to its proofs.

WHEREFORE, Owner respectfully requests that the Court grant the following relief:

- a. DENYING all relief sought by the Borough in its Complaint;
- b. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low- and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;
- c. DECLARING the Borough's Housing Element and Fair Share Plan ("HEFSP") is not compliant with the New Jersey Fair Housing Act and the Mount Laurel Doctrine;

- d. ORDERING the Borough to rezone sites for inclusionary development or in other ways that would result in the construction of Borough's fair share of housing affordable to, and reserved for, low- and moderate-income households;
- e. APPOINTING a Special Adjudicator, at the expense of the Borough, as authorized by the Administrative Order of the Courts Directive #14-2024;
- f. ALLOWING Owner to participate in discovery and motion practice in accordance with Court rules;
- g. DENYING the Borough's request for immunity from exclusionary zoning suits, including builder's remedy suits; and
- h. ORDERING such additional relief as the Court deems just and equitable.

COUNT II

APPROVAL OF HOUSING ELEMENT AND FAIR SHARE PLAN

- 15. Owner repeats and realleges its response to Paragraphs 1 through 14 of the Complaint as if fully set forth herein.
- 16. Admitted.
- 17. Owner lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the complaint and leaves the Borough to its proofs.
- 18. Owner lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the complaint and leaves the Borough to its proofs.

WHEREFORE, Owner respectfully requests that the Court grant the following relief:

- a. DENYING all relief sought by the Borough in its Complaint;
- b. DECLARING that the Borough is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing

affordable to low- and moderate-income families to satisfy the Borough's fair share of the unmet regional need for such housing;

- c. DECLARING the Borough's Housing Element and Fair Share Plan ("HEFSP") is not compliant with the New Jersey Fair Housing Act and the Mount Laurel Doctrine;
- d. ORDERING the Borough to rezone sites for inclusionary development or in other ways that would result in the construction of Borough's fair share of housing affordable to, and reserved for, low- and moderate-income households;
- e. APPOINTING a Special Adjudicator, at the expense of the Borough, as authorized by the Administrative Order of the Courts Directive #14-2024;
- f. ALLOWING Owner to participate in discovery and motion practice in accordance with Court rules;
- g. DENYING the Borough's request for immunity from exclusionary zoning suits, including builder's remedy suits; and
- h. ORDERING such additional relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

By way of further response in support of these Affirmative Defenses and in objection to the Borough's Complaint and the Borough's HEFSP pursuant to N.J.S.A. 52:27D-301 et seq., Owner asserts that it is an interested party within the meaning of the FHA and the Directive with standing to raise a challenge to the Borough's HEFSP, and further avers as follows:

1. The Borough has not filed what is required by N.J.S.A. 52-27D-301 et. seq. (2024) to receive an award of immunity, and that request should be denied.

2. The Borough's HEFSP is not compliant with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (2024), or the Mount Laurel Doctrine as further described in the annexed report of J. Creigh Rahenkamp, P.P. ("Rahenkamp Report") and letter brief appended hereto. The Rahenkamp Report and letter brief are hereby incorporated by reference in their entirety.

3. The Borough's HEFSP violates N.J.S.A. 52-27D(f) by failing to consider land of developer who have expressed a commitment to provide low- and moderate-income housing, including the Property.

4. The City's HEFSP violates the Mount Laurel Doctrine and COAH Regulations by seeking a permanent reduction of its Prior Round and Third Round adjusted Perspective Need obligations.

Owner reserves the right to supplement this Answer with additional affirmative or other defenses that are raised in the Answer filed by any other interested party, as well as with any other affirmative defenses deemed appropriate.

PRIME TUVEL & MICELI, LLC
Attorneys for 23 S Passaic Owner LLC and 33
South Passaic Owner LLC

/s/ Danielle Kinback
Danielle Kinback, Esq.

Dated: August 27, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Danielle Kinback, Esquire, is hereby designated as trial counsel on behalf of Defendant-Interested Parties, 23 S Passaic Owner LLC and 33 South Passaic Owner LLC.

PRIME TUVEL & MICELI, LLC
Attorneys for Defendant-Interested Parties
23 S Passaic Owner LLC and 33 South Passaic
Owner LLC

/s/ Danielle Kinback
Danielle Kinback, Esq.

Dated: August 27, 2025

RULE 4:5-1 CERTIFICATION

I hereby certify that the subject matter of the within controversy does not form the basis of any other action presently pending in any court or arbitration proceeding to the best of my knowledge, information and belief and that no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in this action at the present time.

PRIME TUVEL & MICELI, LLC
Attorneys for Defendant-Interested Parties
23 S Passaic Owner LLC and 33 South Passaic
Owner LLC

/s/ Danielle Kinback
Danielle Kinback, Esq.

Dated: August 27, 2025

RULE 4:6-1 CERTIFICATION

I hereby certify that the within Answer was filed within the time period allowed by N.J.S.A. 52:27D-304.1 3f.(1)(b) and Directive #14-24.

PRIME TUVEL & MICELI, LLC
Attorneys for Defendant-Interested Parties
23 S Passaic Owner LLC and 33 South Passaic
Owner LLC

/s/ Danielle Kinback
Danielle Kinback, Esq.

Dated: August 27, 2025



New Jersey Judiciary
Civil Practice Division

Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.

For Use by Clerk's Office Only

Payment type <input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name Danielle Kinback, Esq.	Telephone Number (856) 273-8300 316	County of Venue Morris		
Firm Name (if applicable) Prime Tuvel & Miceli	Docket Number (when available) MRS-L-238-25			
Office Address - Street 14000 Horizon Way	City Suite 325	State NJ	Zip 08054	
Document Type Answer/Challenge	Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Name of Party (e.g., John Doe, Plaintiff) 23 S Passaic Owner LLC	Caption IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF CHATHAM			
Case Type Number (See page 3 for listing)	816			
Are sexual abuse claims alleged?	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Does this case involve claims related to COVID-19?	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Is this a professional malpractice case? If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Related Cases Pending? If "Yes," list docket numbers	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
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 checked="" 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? Yes No


If "Yes," is that relationship:

Employer/Employee Friend/Neighbor Familial Business

Other (explain) _____

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

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

 Do you or your client need any disability accommodations? Yes No

If yes, please identify the requested accommodation:

Will an interpreter be needed? Yes 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 Rule 1:38-7(b).

Attorney/Self-Represented Litigant Signature: /s/ Danielle Kinback

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 page 1.)

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 Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (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)

- 282 Fosamax
- 291 Pelvic Mesh/Gynecare
- 292 Pelvic Mesh/Bard
- 293 DePuy ASR Hip Implant Litigation
- 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components
- 300 Talc-Based Body Powders
- 601 Asbestos
- 624 Stryker LFIT CoCr V40 Femoral Heads
- 626 Abilify
- 627 Physiomesh Flexible Composite Mesh
- 628 Taxotere/Docetaxel
- 629 Zostavax
- 630 Proceed Mesh/Patch
- 631 Proton-Pump Inhibitors
- 633 Prolene Hernia System Mesh
- 634 Allergan Biocell Textured Breast Implants
- 635 Tassigna
- 636 Strattice Hernia Mesh
- 637 Singulair
- 638 Elmiron
- 639 Pinnacle Metal-on-Metal (MoM) Hip Implants

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

Please check off each applicable category

- Putative Class Action** **Title 59** **Consumer Fraud**
- Medical Debt Claim**



REPORT IN SUPPORT OF VERTICAL REALTY CAPITAL'S CHALLENGE TO THE BOROUGH OF CHATHAM'S HOUSING ELEMENT AND FAIR SHARE PLAN

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J. Creigh Rahenkamp, NJPP #5321
Project Number: 25039

August 19, 2025

I. INTRODUCTION & SUMMARY OF FINDINGS

I have been retained by Vertical Realty Capital (“Vertical”), who controls 23 South Passaic Owner, LLC and 33 South Passaic Owner, LLC, to work in conjunction with its counsel, Prime Tuvel & Micelli, regarding the redevelopment of Block 121, Lots 12 and 13 of approximately 0.64 acres that currently contain obsolete commercial buildings and associated parking.

Prime Tuvel & Miceli provided a letter to the Borough dated November 5, 2024 expressing the desire of Vertical to develop an inclusionary building of 43 units, including a 15% seaside which would produce 7 affordable units. The building would be a mixed use, providing streetside retail in support of the community core. Very detailed plans of the building are included in Appendix B. Though not the focus of an objection, it is my view that the site is clearly available, suitable, developable and approvable.

For this report, I have been asked to review and comment on Chatham’s Housing Element & Fair Share Plan (HE&FSP)¹ to determine compliance with the amended Fair Housing Act, NJSA 52:27D-301 et. seq. (“AFHA”) and the Borough’s constitutional obligation to provide a realistic opportunity for the development of the Borough’s fair share of the regional affordable housing need. As more fully explained in the sections that follow, it is my view that the HE&FSP is deficient in three (3) primary ways:

1. The HE&FSP fails to properly account for unmet need flowing from the Third Round into Fourth Round compliance planning.
2. The HE&FSP fails to adequately address unmet need and the enhanced 25% requirement to provide zoning that will create a “likely to redevelop” condition.
3. The Borough’s VLA/RDP analysis significantly underestimates the capacity of the Borough to accommodate future development by not including realistic redevelopment sites and low-balling the assigned density of future development in

¹ Fourth Round Housing Element and Fair Share Plan, Borough of Chatham, Morris County, New Jersey. Prepared by Kendra Lelie, AICP, NJPP, LLA of Kyle + McManus Associates. Adopted June 18, 2025.

the RDP assessment and ignoring a previous round VLA site.

As a result, it is my conclusion that the HE&FSP does not comply with the AFHA nor does it satisfy the Borough's constitutional affordable housing obligation.

Lastly, it is contrary to the Mount Laurel doctrine that a municipality could obtain approval for its HE&FSP that allows for hundreds of units of unmet need and simultaneously ignores a willing and feasible inclusionary development in a suitable location. As Judge Carchman warned in the trial court opinion in Toll Bros., Inc. v. Twp. of West Windsor, 303 N.J. Super. 518, 540-541 (Law Div. 1996), there is a clear difference between “paper compliance” as he described it from the bench or a “mere feint at compliance” as was expressed in the written decision and actual compliance and it is only the latter that meets the constitutional protections.

II. THE HE&FSP MISHANDLES THIRD ROUND UNMET NEED

The Borough is meant to provide the following assessment under the AFHA:

As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan. [NJSA 52:27D-304.1.f(2)(a)]

The HE&FSP reports that Third Round compliance was divided into an RDP of 71 and remaining unmet need of 266. Table 3 and the prose that follows the table, reports that the Third Round RDP has been met with some alteration of which projects would be applied, reporting that in total 77 units are “either occupied or under construction” (page 7). Two projects are listed as having inclusionary zoning to continue to address the unmet need –

AFD-4 Zoning District and 4 Watching Avenue. Unfortunately, the HE&FSP fails to review, as required, why these two districts have not successfully produced developments. Will more density be needed as an incentive, for example? Leaving aside the responses to unmet need, the result of the look back is that the total Third Round obligation was 337 and a total of 77 units have been completed with the assertion that 17 bonus credits have also been earned, leaving a net balance of 243 units that carry forward to the Fourth Round. The statement made by the HE&FSP that “there are no unfilled units that need to be accounted for from the Third Round in the Fourth Round Fair Share Plan” (page 7) is inaccurate. The Borough met its RDP for that round, but the unmet need does not fade away.

So, there remains a pool of Third Round unmet need that will be added to the Fourth Round prospective need obligation prior to the conduct of the VLA/RDP. The 243-carry forward is added to the new Fourth Round obligation of 181 for a new total going into the adjustment phase and compliance planning of 424 units. After the adjustment – the VLA/RDP – there will then be a pool of unmet need to be addressed and it is likely that mechanisms in the HE&FSP aimed at both the Third Round and Fourth Round plans will be combined into a single effort. The point is that there is not a separate pool of “Third Round unmet need” and a separate pool of “Fourth Round unmet need”, each with their own efforts to address that need. At the end of the process there is simply the remaining unmet need.

Further, there no analysis of the density offered in the unmet need response zones to serve as a sufficient incentive to actually trigger and drive the required redevelopment. The enhanced response to the 25% rule is meant to create a condition of “likely to redevelop”, a standard that the HE&FSP makes no effort to demonstrate has been complied with.

III. THE HE&FSP SIGNIFICANTLY UNDERCOUNTS THE BOROUGH’S RDP

The core element of the Borough’s Fourth Round compliance plan is a VLA/RDP analysis that results in a prospective need of only 5 units against its allocated need of 181 units and a

combined prospective need of 424 units. The Borough correctly implements the 25% rule to require 44 units of additional unmet need compliance.

The results of the VLA/RDP are reported on page 2 of Appendix B and consists of the three sites used for compliance on Table 3 (page 13, there are two tables with the same number). The one addition to the VLA/RDP chart s 16 Walnut, a Borough owned lot generating 1 additional unit of RDP.

As a start in performing a proper analysis, the AFHA provides that adjustments can be made to prospective need based on lack of vacant land pursuant to NJSA 52:27D-310.1 and explicitly provides that COAH regulations will be applied to determine adjustments to prospective need. NJSA. 52:27D-311.m provides that:

All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute... or binding court decisions”.

This provision is helpful because it resolves issues relating to the expiration of COAH’s regulations, which are no longer in effect. However, it provides little guidance on how to treat the various versions of COAH’s rules. For purposes of this review, I rely on NJAC 5:93 and NJAC 5:97. In particular, with respect to NJAC 5:97, while the allocation system of “Growth Share” was overturned, the Supreme Court explicitly provided that parties could continue to look to the rules for guidance during the Third Round as many aspects of the invalidated rules were found to be valid.² In analyzing a VLA/RDP NJAC 5:97, adopted in 2008, reflected practice as it had evolved due to a series of court decisions that had occurred after the 1994 regulations (NJAC 5:93) had been adopted.

² In re Adoption of NJAC 5:96 and 5:97, 221 N.J. 1, 30 (2015).

First, performing a VLA/RDP is not a “right”. NJAC 5:97-5.2(b) makes it clear that the first step is assessing all of the possible approaches to achieving actual compliance and only in the face of failure in that endeavor is the VLA/RDP process to be engaged.

The municipality shall be responsible for demonstrating that the municipal response to its housing obligations is limited by the lack of land capacity. The municipality shall identify sites that are realistic for inclusionary development in order for the Council to calculate the municipality’s RDP.

Given the magnitude of the unmet need, it is likely that an RDP will be required.

Second, the “inventory” of property to be considered includes “all privately and municipally-owned vacant parcels”, sites with “relatively low-density development” that could be used for future development, and any areas “that may develop or redevelop” including “any parcel(s) that has the potential to be redeveloped.” [NJAC 5:92-5.2(c)3, 4 and 6] If the above rules aren’t clear enough that the inventory requires more than just currently vacant ground, NJAC 5:97-5.2(e) states that the Council “reserves the right to include vacant and *non vacant* sites that were excluded by the municipality” (emphasis added). The AFHA reinforces COAH’s rules. For example, NJSA 52:27D-310.10(e) requires that the housing element address the ability of the municipality to accommodate its total allocation, and this is then followed by 10(f) that requires the following:

A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and **of the existing structures most appropriate for conversion to, or rehabilitation for**, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing; [NJSA 52:27D-310(f), emphasis added]

Notwithstanding these clear requirements, the Borough’s inventory fails, as a start, to include the site offered by a willing developer – Vertical. The Borough questions the design of the project, but offers no reason why the property itself is not now available and suitable for some level of inclusionary development, particularly given the magnitude of the unmet need. Nor does the Borough describe the efforts that they have undertaken to find additional such

sites. There is no documentation that the Borough contacted landowners, particularly in the areas in which overlay zoning is proposed to address unmet need, or made any effort at all to discover if there might be other landowners willing to redevelop their properties if provided sufficient inclusionary density as a development option on their property. In short, the municipal inventory is incomplete.

Third, once the inventory is complete, under NJAC 5:97-5.2(h) the assumed density “for each site” is to be determined based on a series of factors including “the need to provide housing”, and “regulating agencies regulations”. The VLA/RDP table indicates that the 16 Walnut and 311 Main sites use a density around 12 units per acre in establishing the RDP. Given that 58 North Passaic is set at 20, and 589 Main calculates to 33.3 units per acre, the two lower density sites should be reassessed. In addition, the Vertical site has amply demonstrated that it can accommodate 67.2 units per acre and should be factored into the analysis.

The HE&FSP, therefore, does not comply with the AFHA because it does not contain a valid determination of RDP by failing to include obvious realistic development sites and failing to provide realistic site-specific determinations as to appropriate density.

APPENDIX A:

RAHENKAMP BACKGROUND MATERIAL

I am a planner that has been in the field for 44 years and a licensed professional planner in NJ for 30 years. I served as an officer of the American Planning Association – New Jersey Chapter for eight years and presently serve as the Chair of that organizations Housing Committee. My background is further described in the attachment which follows.

I have considerable experience with issues related to affordable housing, the Mount Laurel Doctrine³ and regulations adopted by the Council on Affordable Housing (“COAH”). My most notable involvements include:

- a. I authored a report that was extensively quoted by the Court in Urban League of Essex Co. v. Township of Mahwah 207 N.J. Super. 169 (Law Div. 1984), which first detailed the implementation of the Supreme Court's mandate to purge "cost generative features" from local codes for inclusionary developments;
- b. I served as the expert for the prevailing plaintiffs in RDS v. Pohatcong (unpublished, Honorable Roger Mahon, 1996), which first addressed the relationship of the *NJ State Development & Redevelopment Plan* to the Mount Laurel Doctrine; and,
- c. I served as the planning expert for a landowner in Maneely v. Township of West Windsor (consolidated and decided in Toll Bros., Inc. v. Twp. of W. Windsor, 303 N.J. Super. 518, 574-76 (Law Div. 1996), aff'd o.b., 334 N.J. Super. 109 (App. Div. 2000), certif. granted in part on limited issues, 167 N.J. 599-600 (2001), aff'd, 173 N.J. 502 (2002)), which dealt with the enduring rights of inclusionary developers through subsequent allocation rounds.

I have also served as a Court appointed Master in Saddle Brook (Honorable Daniel P. Mecca), Green Township (Honorable Reginald Stanton) and Highbridge Borough (Honorable Roger Mahon). Engagements as a planner for landowners succeeded in achieving builder’s remedies in Logan Township, Livingston Township and Fair Lawn Borough, and negotiated settlements in dozens of municipalities.

In the subfield of allocations of need in New Jersey, my first major role was gathering all of the

³ The term Mount Laurel Doctrine refers to Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (“Mount Laurel I”), Southern Burlington County NAACP, et al v. Township of Mt. Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), and its progeny, the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and its implementing regulations N.J.A.C. 5:93 and/or 5:97, to the extent they have not invalidated by the Supreme Court in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010), modified, 215 N.J. 578 (2013).

data necessary to run municipal allocations under the Consensus Methodology that had been developed by the Courts prior to the implementation of the Fair Housing Act. This data was included as an appendix in an ICLE publication in 1987.⁴ In the same publication, I also independently ran the allocation model COAH had developed for the First Round (1987-1993) based on its proposed regulations. I thereafter shared data with Dr. Robert Burchell, the chief investigator for the Center For Urban Policy Research (“CUPR”) and COAH’s consultant at the time. I served on Task Forces created by COAH to provide review and comment on the development of the allocation models for both Rounds 1 and 2. With regard to the Third Round, I reviewed each proposed model developed by COAH over the past decade and a half, and I had been invited to review and comment on Dr. David Kinsey’s work⁵ at several key points in the development of his reports. Related to the Fourth Round, I offered input on the pending AFHA with Graham Petto in “The Case for Allocation Reform: Why the 3rd Round Model with 4th Round Data Fails as Housing Policy & What to do About It” published by the American Planning Association – New Jersey Chapter, and after the publication of DCA’s 4th Round allocations, authored “Report in Support of NJBA’s Challenges to the Petitions of the New Jersey Municipalities Seeking Reductions in their Fair Share Obligations” for the New Jersey Builders Association.

On the issues of compliance in the post-COAH period I authored “Toward Compliance Standards for 1999-2025” and “Response to Reading Report: Supplemental Response on Compliance Standards” for the New Jersey Builders Association.

⁴ Mount Laurel II and the Fair Housing Act, Jeffrey R. Surenian, Esquire, NJ Institute for Continuing Legal Education, 1987.

⁵ New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology, David N. Kinsey, PhD., FAICP, NJPP, Fair Share Housing Center, April 16, 2015, revised July 17, 2015.

J. Creigh Rahenkamp, NJPP

Mr. Rahenkamp is extensively involved in research and analysis of evolving regulatory techniques and their impact on the economics of land development and social responsibility. He has frequently served as an expert witness in legal challenges, preparing reports and testimony for actions challenging inappropriate land use policies and restrictions or defending well-constructed regulations. He has been accepted as an expert by trial courts in several states, innumerable planning and zoning boards throughout the country, and has served as a Court-appointed Master in New Jersey.

As part of these services, he has been a key participant in litigation and settlement negotiations in numerous municipalities under various "fair share" doctrines in several states, including a role in the leading cases of Mount Laurel, Mahwah, Pohatcong, West Windsor, Livingston & Fair Lawn.

While litigation is a major focus of the practice, Mr. Rahenkamp regularly works with land developers through the feasibility assessment and land design process in an effort to meet the evolving needs of the market while managing regulatory risk prudently.

In addition, Mr. Rahenkamp has broad experience in the evaluation and preparation of economic development strategies for local and regional governments and site selection studies or market assessments for private industry.

Representative Projects

Larchmont, Mount Laurel Township, NJ: Preparation of expert reports detailing the feasibility of residential development under alternative regulatory constructs pursuant to Mt. Laurel I/II, including cost implications of affordable housing set-asides, fee structures, site design requirements, and procedural mechanisms leading to the adoption of Court approved ordinances and site-specific settlement agreements for several developers.

City of Harrisburg, PA: Analysis and evaluation of the restrictive role of a private redevelopment corporation which directed the redevelopment efforts in Harrisburg in support of a Federal antitrust suit which resulted in project approvals for several landowners.

Waldo Yards, Jersey City, NJ: Expert report reviewing the methodology and data prepared by the Port Authority, demonstrating its flaws and offering significant new research substantiating the choice of alternative locations for a major railcar maintenance facility. Work included community impact statements and assessments of future development potential resulting in action by the Governor of NJ to direct the Port Authority to revise their selection.

World Financial Center, Battery Park City, NY: Analysis of the impacts of Hoboken-Manhattan ferry service on the viability and function of the public spaces and corporate lobbies of the WFC. Recommendations for routing, improvements and timing of activities were created to better manage the pedestrian conflicts.

Department of Community Affairs, NJ: Preparation of site plans using the proposed Residential Site Improvement Standards to test the statewide code against a variety of design techniques and land use palettes to ensure that the code would not limit traditional PUD, TND or other mixed use design solutions. Provided additional commentary and recommendations for amendments.

Master Plans, Housing Elements and Open Space/Recreation Plans: City of Millville, NJ; City of Vineland, NJ; City of Lancaster, PA; Town of Hilton Head Island, SC; Saco, ME, Northampton County, PA; Borough of New Morgan, PA; Findlay Township, PA.

Education

Bachelor of Arts, University of Pennsylvania:
Political Science & Economics Minor,
Master of Professional Studies: Real Estate (Development),
Georgetown University:
Additional Graduate Work:
University of Wisconsin: 4 Courses in Political
Science/Economics
University of Pennsylvania, Wharton School:
Demographics, Economic Development.
Princeton University, Woodrow Wilson School:
Political Risk Analysis
Temple University, Community & Reg. Planning:
Planning Administration, Transportation
Planning, Sustainability
University of Maryland, Colvin Institute
Fundamentals of Development Finance

Employment

August 1998 – Continuing:
Creigh Rahenkamp & Associates, LLC
December 1997 – August 1998: Schoor DePalma
1995 – 1997: BartonPartners Architects & Planners
1980 – 1995: John Rahenkamp Consultants, LLC

Publications

“Key Informant Interviews,” Land Development, NAHB Fall
1998.
“Density Standards in the Post-Nollan Era,” Land Development,
NAHB, Fall 1990 (w/ John Rahenkamp & William Hengst).
“Fair Share Allocation,” and “COAH: The New Spatial Policy
for New Jersey,” in Mount Laurel II and the Fair Housing
Act, Jeffrey R. Surenian, New Jersey Institute of Continuing
Legal Education, Newark, NJ: 1987.
“Fair Share Housing in New Jersey,” in Growth Management:
Keeping on Target? Douglas Porter, editor, Urban Land
Institute, Washington, DC: 1986 (w/ John Rahenkamp).

Professional Memberships

NJ Professional Planner (August 1995, #5531)
American Institute of Certified Planners (July 1990, Lapsed)
American Planning Association
New Jersey Chapter, Vice President 2012-2017
Pennsylvania Chapter
Private Practice Division
Planning & Law Division
Urban Land Institute
Philadelphia Council
National Association of Homebuilders
New Jersey Builders Association
Builders League of South Jersey
Pennsylvania Builders Association
National Council on Seniors Housing
American Economic Association (Lapsed)
American Political Science Association (Lapsed)

Appointments & Service:

Public Sector

PA State Land Use Advisory Panel:
Member, 1999-2002 (Appointment by Governor)
NJ Department of Community Affairs:
Residential Development Ad Hoc Task Force, 1987
Residential Site Improvement Standards,
Professional Review Contract, 1995
Housing Policy Task Force, 2008
NJ Council on Affordable Housing (COAH):
Data Development Task Force, 1986
Rules Reexamination Task Force, 1991
Allocation Approaches Task Force, 1992
NJ Office of State Planning:
Environmental Assessment Tech. Advisory Cte.,
1988
Advisory Committee on Infrastructure: Impact
Assessment of the NJ Interim State Plan, 1992
Pinelands Commission: Housing Task Force, 2005-2007
Riverton Borough, NJ: Zoning Board of Adjustment,
Member, 1990.

Private Sector

LGR Examinations: "Field Expert" to Develop Questions
for the New Jersey Professional Planner Examination,
1999
American Planning Association, New Jersey Chapter
(APANJ):
Vice President of Conference Services, 2012-2018
National Association of Homebuilders:
Land Development Committee, 1996-2003
Land Planning Subcommittee, Chair 1998
Planning Policy Subcommittee, Chair 2000, Member
1996-2003, 2012-2013
National Smart Growth Working Group, 1998-2003
Smart Growth Subcommittee, Member 2006.
Pennsylvania Builders Association:
Growth Management Task Force, 1992-1994, 1999-
2000
New Jersey Builders Association:
Hall of Fame, Associate Inductee, 2007
Land Use & Planning Committee, 1988-2017
Affordable Housing Task Force, 1988-2017
(Various)
Builders League of South Jersey: Local Director, 1989-
1994
South Jersey Land Plan Coalition: Board of Directors,
1990-93
Judge/Selection Committees: NAHB Smart Growth
Awards; APANJ Annual Planning Awards;
NJBA SAM & APEX; BLSJ MAME; HBAM
Pinnacle.

Representative Presentations

American Planning Association National Conventions:
Inclusionary Zoning and Development Economics
Market-Driven Agricultural Preservation
The NJ Model Subdivision & Site Plan Ordinance
Regulating for Design: Standards for PUD/TND
Demographics & Zoning: Housing Need as Policy
Impact Fees: A Contrarian's View

APANJ Annual Conferences:
Various "How-to": Use Variance/Impact
Assessment/Expert Witness/
Commentary: COAH/State Plan
<https://www.youtube.com/watch?v=grL9BeOKmq4&feature=youtu.be>

Urban Land Institute Seminars:
Project Feasibility & Regulatory Risk Analysis
Fair Share Housing Implementation: Techniques &
History

Institute for Continuing Legal Education:
Allocation of Price Controlled Housing under COAH
Planning Locally Under the NJ State Plan
Growth Management Tools & Techniques
Redevelopment Do's and Don'ts: NJ & PA
Annual Land Use Institute: Various Panels

Continuing Legal Education International
Planning within Redevelopment Procedures
Various "How-to": COAH/State Plan/Smart Growth

Lorman Educational Services
Affordable Housing in New Jersey
Zoning, Subdivision & Land Development in New
Jersey

National Association of Home Builders Conventions:
Project Feasibility Analysis
Managing Regulatory Risk/Growth Management Issues
Workforce Housing Initiatives
Measuring/Presenting the Fiscal Impact of
Development
Impact Fees & Local Infrastructure Finance Strategies

Atlantic Builders Conventions & Seminars:
Marketing Green: Making Environmentalism Pay
Market Driven Land Planning/Practical TND Solutions
Various "How-to": COAH/State Plan/Access Code
Planning Chaos: Restoring Planning to Regulations

Various State & Local Builders Associations:
Educational Programs on the Market/Design Link, or
Regulatory Risk Assessment & Management

Regional Planning Comes of Age Conference 2006: Housing
Policy & Implementation Challenges

NJ Land Conservation Rally 2014: Non-Contiguous Cluster

APPENDIX B:

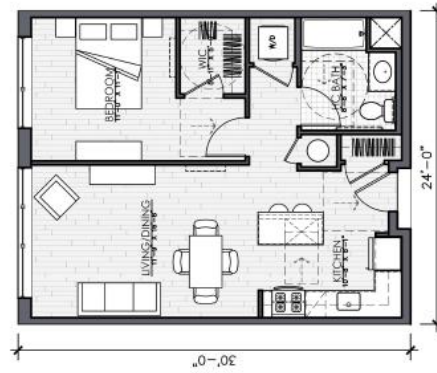
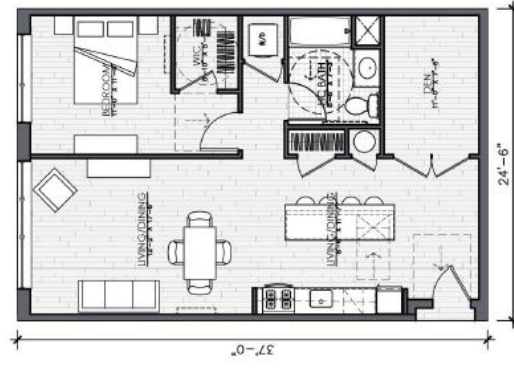
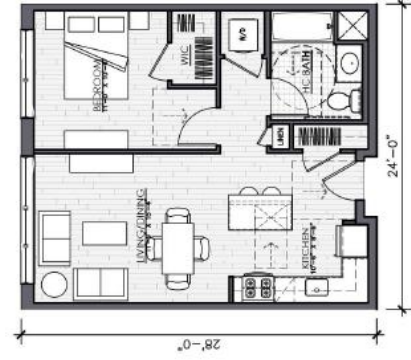
CONCEPT PLAN

PREPARED BY
MINNO WASKO
 ARCHITECTS AND PLANNERS
 200 WEST 11TH STREET, SUITE 200
 PHILADELPHIA, PA 19107
 PH: 215.593.8800
 WWW.MINNOWASKO.COM

PREPARED FOR:
S. PASSAIC AVE
 BLOCK 121, LOTS 12A & 13
 CHATHAM BOROUGH, NJ 07024
 VERTICAL REALTY CAPITAL, LLC
 200 WEST 11TH STREET, SUITE 200
 PHILADELPHIA, PA 19107

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 PROJECT & TITLE: SUTELAN

A-10
 TYPICAL UNIT PLANS
CREIGH RAHENKAMP & ASSOCIATES, LLC



PREPARED BY:
MINNO WASKO
 ARCHITECTS AND PLANNERS
100 HUNTERS LANE, SUITE 100, WESTFIELD, NJ 07090
 TEL: 908.233.8800 FAX: 908.233.8801

S. PASSAIC AVE
SCHEMATIC FOR CONDOMINIUM UNIT PLAN
 BLOCK 12, LOTS 12 & 13

PREPARED FOR:
 VERTICAL REALTY CAPITAL
200 WALLINGTON PLACE
 MILLERSBURG, VA 22654

DATE: _____
 SIZE: _____
 SHEET NO.: _____
 PROJECT NAME: _____

A-11

TYPICAL UNIT PLANS
COPYRIGHT © 2025 MINNO WASKO ARCHITECTS AND PLANNERS



02 TWO BEDROOM + DEN (1.31.55.SE)
 SCALE: 1/4" = 1'-0"



01 TWO BEDROOM (1.1.55.SE)
 SCALE: 1/4" = 1'-0"

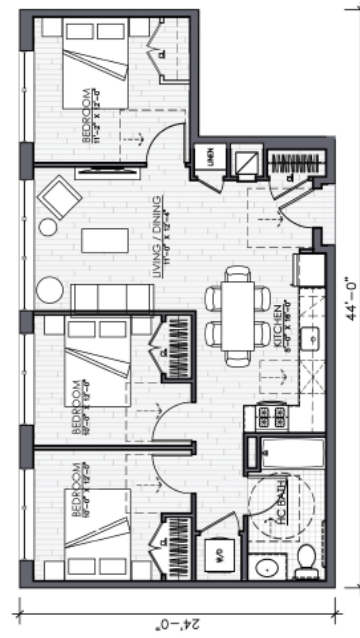
PREPARED BY
MINNO WASKO
 ARCHITECTS AND PLANNERS
PROFESSIONAL CORP. 1001 YORK STREET, SUITE 200, NEW JERSEY CITY, NJ 07310

S. PASSAIC AVE
 BOROUGH OF CHATHAM, MONMOUTH COUNTY, NEW JERSEY
 PROJECT NO. 2025-01

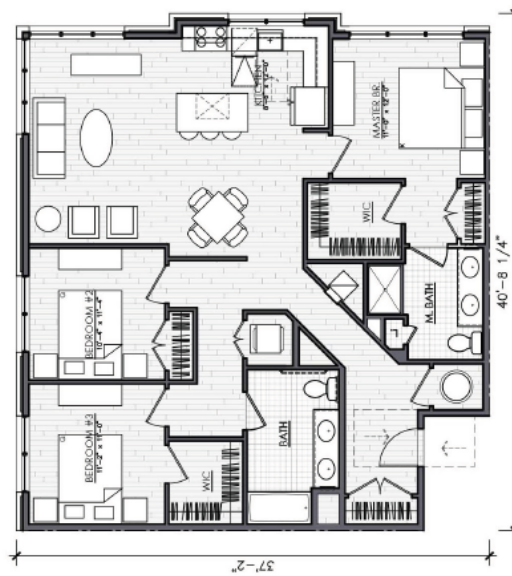
PREPARED FOR:
 VERTICAL REALTY CAPITAL
 227 AMHERST AVENUE
 MILLER, NJ 07041

DATE: 08-19-2025
 FOR: FEASIBILITY STUDY
 PROJECT: S. PASSAIC AVE. FINAL SITE PLAN

A-12
 TYPICAL UNIT PLANS
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02 THREE BEDROOM AFFORDABLE (1,055 SF)
 SCALE: 1/4" = 1'-0"



01 THREE BEDROOM (1,555 SF)
 SCALE: 1/4" = 1'-0"

PRIME TUVEL & MICELI

ATTORNEYS AT LAW

August 27, 2025

VIA ECOURTS

Hon. Janine M. Allen, J.S.C.
Sussex County Judicial Center
43-47 High Street, 3rd Floor
Newton, New Jersey 07860

**Re: In the Matter of the Application of the Borough of Chatham
Docket No. MRS-L-238-25**

Dear Judge Allen:

This office represents 23 S Passaic Owner LLC and 33 South Passaic Owner LLC (collectively, “Owner”), the owner of property within Borough of Chatham (the “Borough”), which property is officially designated on the Borough tax maps as Block 121, Lots 12 and 13 (the “Property”). Please accept this letter in support of Owner’s challenge to the Borough’s Housing Element and Fair Share Plan (“HEFSP”) filed pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b). For the reasons further explained herein, the Borough’s HEFSP does not comply with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (2024) (“FHA”), or the Mount Laurel Doctrine and should not be approved by this Court or the Program without substantial revision, including but not limited to the inclusion of Owner Property as a site for inclusionary development.

Executive Summary

As further explained below, Owner objects to Court/Program approval of the Borough’s HEFSP as it fails to address the Borough’s Fourth Round affordable housing obligation for the following reasons:

- The Borough’s HEFSP is deficient because it fails to include Owner Property, a known redevelopment opportunity, while seeking a substantial reduction of its obligation through a vacant land adjustment, contrary to established case law in In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 85 (App. Div. 2007); Fair Share Housing Center, Inc. v. Tp. of Cherry Hill, 173 N.J. 393 (2002).

14000 Horizon Way, Suite 325
Mount Laurel, NJ 08054
P 856 273 8300 | F 856 273 8383
W primelaw.com

ADDITIONAL OFFICES

Hackensack, NJ | Hoboken, NJ | Jersey City, NJ | Fort Washington, PA | New York, NY

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- The Borough attempts to permanently reduce its Third Round Unmet Need, contrary to In re Adoption of N.J.A.C. 5:94 & 5:95 By New Jersey Council On Affordable Housing, 390 N.J. Super. 1 (App. Div. 2007) and COAH Regulations.

I. THE BOROUGH IS REQUIRED TO UTILIZE OWNER'S PROPERTY AS A MECHANISM TO MEET ITS RDP OR UNMET NEED

In its initial filing of this matter, the Borough accepted the Fourth Round Present Need and Prospective Need determined by the Department of Community Affairs (“DCA”) of 8 units and 181 units, respectively, while reserving its right to take a Vacant Land Adjustment for a lack of available land. The Borough has a Third Round unmet need of 266 units and claimed for the Fourth Round, an RDP of 5 units and thus, a 176 unit unmet need for the Fourth Round, or total unmet need of 442 units.

It is well settled law that in seeking a vacant land adjustment to drastically reduce its affordable housing obligation, the Borough cannot also ignore redevelopment opportunities, such as Owner’s proposal, when presented. For the reasons stated below, the Borough cannot exclude Owner’s Property from its HEFSP.

The requirement that municipalities asserting a portion of its Mount Laurel obligation as unmet need capture additional affordable housing opportunities when development and redevelopment opportunities are presented is firmly established by New Jersey law. When the Appellate Division was called upon to review the constitutionality of COAH’s first failed attempt at valid Third Round regulations, it made clear that COAH regulations require developed municipalities “receiv[ing] a vacant land adjustment to first satisfy unmet need if redevelopment opportunities occur.” In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 85 (App. Div. 2007).

This mandate was previously expressly affirmed by the Supreme Court in Fair Share Housing Center, Inc. v. Tp. of Cherry Hill, 173 N.J. 393 (2002). In Cherry Hill, the Township of Cherry Hill received a vacant land adjustment by COAH for a lack of available land, as the Borough seeks to do in its HEFSP. As part of that vacant land adjustment, Cherry Hill did not identify the Garden State Racetrack as a site that would be utilized by the Township for inclusionary development. When the property became available for development, the Township persisted in its view that it was not required to utilize the site for the production of affordable housing and entered into a settlement agreement with the developer requiring only a payment of an affordable housing development fee. FSHC challenged that agreement, but the agreement was affirmed by the trial court. However, on direct certification, the Supreme Court reversed.

In rejecting Cherry Hill’s position that it was free to ignore the potential of the Garden State Racetrack for inclusionary development, the Supreme Court reasoned that if Cherry Hill

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Township were permitted to exclude suitable development sites, while maintaining a lack of development land to support a substantial reduction of its affordable housing obligation, it would fly in the face of the Mount Laurel objective:

Our holding here does not suggest that every available site in a municipality seeking substantive certification must be used for affordable housing. However, as COAH asserts in its brief, a Township cannot be granted substantive certification until COAH has determined that the Township is able to satisfy its allocated fair share obligation. The substantive certification process requires consideration of all appropriate sites in the municipality. The Legislature's delegation to COAH of the duty to determine a petitioning municipality's fair share obligation would be undermined irreparably if a municipality could, in effect, exempt choice parcels of land from its affordable housing obligation by the simple expedient of imposing a development fee.

Moreover, COAH regulations require in a vacant land analysis, not only an analysis of physically vacant land, but also, “other sites, that are devoted to a specific use which involves relatively low density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site’s availability for inclusionary development.” N.J.A.C. 5:93-4.2(d). Accordingly, the Borough’s exclusion of Owner’s Property from its RDP was contrary to COAH regulations, as its vacant land analysis should have the Property, which “would create an opportunity for affordable housing if inclusionary zoning was in place,” and has been offered for such.

A. Owner’s Efforts to Redevelop the Property with Inclusionary Development¹

1. The Property is approximately 0.687 acres and is currently improved with obsolescent commercial buildings and parking areas which are ripe for redevelopment. The Property is bound to the south by railroad tracks.

¹ Owner includes this background not to claim that its Property is a “better site than a site in the plan” but because the City has sought a substantial vacant land adjustment for the Fourth Round, carries forward a substantial Unmet Need from the Third Round and excludes a known redevelopment opportunity from its HEFSP.

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2. The Property is located approximately 500 feet from the Chatham Train Station.
3. The Property is located in the Borough's B-4 Zone. In the Borough's 2016 Third Round HEFSP, the B-4 Zone was proposed for overlay zoning to aid the Borough in meeting its unmet need obligation. The Third Round HEFSP provided for an overly zoning to permit mixed use development and effective density of 12 to 25 units per unconstrained acre.
4. Additionally, in 2019, the Borough adopted the Post Office Plaza Redevelopment Plan ("PO Plan"), applicable to 13 parcels totaling 5.4 acres, including the Property.
5. The PO Plan permits, or permitted, multifamily residential development.²
6. At one time, an affiliate of Owner ("Affiliate") was designated redeveloper of the Property and other parcels for a proposed inclusionary development of approximately 230 units. However, despite Affiliate's attempts to negotiate with the Borough and numerous reductions to the proposed redevelopment project, down to 118 units, Affiliate and the Borough were not able to enter into a Redevelopment Agreement for a proposed project.
7. The Borough then sought to amend its HEFSP to provide for a 15 unit 100% affordable project in the redevelopment area (but not on the Property) to address a portion of its Third Round Unmet Need. Though Affiliate and Fair Share Housing Center ("FSHC") engaged in motion practice in the Borough's Third Round Declaratory Judgement Action (Docket No. MRS-L-1906-15) on this issue, the Court ultimately approved the substitution in 2022.
8. While not having control of the entire redevelopment area but owning the Property, Owner continued to engage in discussions with Borough representatives starting in early 2024 regarding a smaller inclusionary development on the Property.
9. On June 19, 2024, Owner requested a meeting with the Borough's Affordable Housing Committee for a proposed inclusionary development on the Property consisting of 43 rental units.

² Despite the Borough having a redevelopment plan in place since 2019 that would permit inclusionary development on the Property and other parcels, the Property is not included in the HEFSP. In is unclear to Owner whether the Borough still acknowledges the PO Plan, as it was not mentioned in the HEFSP and, as further described herein, the Borough received court approval to substitute 15 affordable units that would have been produced by inclusionary development under the PO Plan with a 15 unit 100% affordable project. Regardless, the PO Plan fails to create a realistic opportunity for affordable housing on the Property.

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10. On July 18, 2024, Owner attended a virtual meeting with the Borough's Affordable Housing Committee.

11. After initial discussions, the Borough seemed receptive to the Project, but advised Owner it should submit an inclusionary request letter to be considered for the Fourth Round HEFSP in 2025.

12. On November 5, 2024, Owner sent an inclusionary request letter to the Borough requesting the Property be included in the Borough's Fourth Round HEFSP for an inclusionary development consisting of 43 rental units, with a 15% set aside for affordable housing, including a payment in lieu for the fractional set aside.

13. In the Borough's HEFSP, it asserts to have rejected inclusion of the Property because "The proposed development would have required off-site improvements and use of Borough streets and sidewalks as well as an increase in building height exceeding the ordinance requirements."

14. The off-site improvements and use of Borough streets were minimal. Owner suggested a shared on-street loading space to serve the building. Alternatively, Owner proposed a solution to offer the adjacent 100% affordable project two parking spaces, where access is currently provided to the rear of the Property, in order for Owner to utilize a small portion of their parking area, which is to be occupied by a tandem parking space per the approved site plan, for loading. Owner did discuss this option with the neighbor, who was open to the proposal, as the standard parking spaces offered by Owner are a better alternative to the approved tandem parking.

15. With respect to the proposed height, Owner proposed a 4-story building, similar to the inclusionary development located at 246 Main Street, a Third Round Unmet Need project, approximately one block away and within the same B-4 Zone.

16. The Property is currently served by public water and sewer.

17. The Property is available, developable, suitable and approvable for inclusionary development.

18. Owner remains willing to development the Property with an inclusionary development.

What the Borough is attempting to do regarding the Property has clearly been rejected by the Court, should not be permitted and demonstrates the Borough's pattern of exclusionary zoning to the detriment of the region's unhoused low and moderate income households. Accordingly, this court should require the Borough to rezone the Property for inclusionary development. To allow the Borough to avoid such a rezoning, the Court would, through the recognition of its unmet need,

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allow the Borough to enjoy an unwarranted reduction of its Mount Laurel obligation. The Property is a viable option for the Borough to address a substantial portion of its outstanding affordable housing obligation and should not be permitted to exclude it from the Borough's HEFSP.

II. THE BOROUGH MAKES NO ATTEMPT TO MEET ITS THIRD ROUND UNMET NEED DESPITE THE REDEVELOPMENT OPPORTUNITY AVAILABLE ON THE PROPERTY

As previously stated, the Borough alleges a RDP of 5 for the Fourth Round and the Borough has a combined Prior Round and Third Round unmet need of 442 units. The Borough makes no attempt to exceed its miniscule RDP and, as further explained in the report of J. Creigh Rahenkamp, P.P. ("Rahenkamp Report"), proposes dubious measures to meet 25% of its Fourth Round unmet need. The Borough completely ignores its outstanding Third Round unmet need.

It was always COAH's intent that an unmet need be revisited as redevelopment opportunities occur. COAH Regulations, at N.J.A.C. 5:93-2.18 provide that when a municipality has received a vacant land adjustment, "the calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community." The legislative history and court interpretation of COAH regulations reiterate that unmet need is not a permanent reduction and unmet need from prior rounds needs to be evaluated as redevelopment opportunities arise.

In In re Adoption of N.J.A.C. 5:94 & 5:95 By New Jersey Council On Affordable Housing, 390 N.J. Super. 1 (App. Div. 2007) the Appellate Division made clear that the only interpretation that would be constitutionally acceptable would be one that would require vacant land adjustments to be revisited when new development opportunities were presented. As the Appellate Division explained:

On appeal, ISP argues that N.J.A.C. 5:94-3.4(a) would violate the Mount Laurel doctrine if it were construed to allow unmet need to continue despite opportunities to satisfy it. COAH responds that the regulation should not be so construed. The regulation clearly requires municipalities that received a vacant land adjustment to first satisfy unmet need if redevelopment opportunities occur. In fact, COAH made it clear in adopting N.J.A.C. 5:94-3.4 that it would require developed municipalities with vacant land adjustments to meet their unmet need should redevelopment occur.

[COAH] does not consider unmet need as a permanent adjustment to municipal affordable housing obligations. Vacant land adjustments previously granted by [COAH] will

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be carried forward, provided the municipality has implemented all the terms of the substantive certification granted by [COAH] or by the Judgment of Compliance ordered by the Court. All components of these plans designed to address unmet need pursuant to N.J.A.C. 5:93-4.1(b) must continue in full force and **any affordable housing units created as a result will be credited toward unmet need until such time as the municipality has provided for its entire unmet need.** [COAH] does, in fact, require meaningful plans for unmet need. Furthermore, [COAH] intends to conduct a thorough review of second round plans for all municipalities that received a vacant land adjustment, either at the time of petition for third round substantive certification or at the time the municipality petitions for extended substantive certification pursuant to N.J.A.C. 5:95-15.2.

[36 N.J.R. 5770.]

We cannot assume that COAH will not do what it has promised to do. Indeed, COAH has reviewed the development and redevelopment opportunities in developed municipalities and recalculated the realistic development potential with the ultimate goal of requiring additional affordable housing should land become available. In re Petition for Substantive Certification of Borough of Montvale, 386 N.J. Super. 119, 122, 899 A.2d 327 (App.Div.2006).

Id. at 147-48 (emphasis added).

In light of the above holding, it is clear that the Borough should not be permitted to treat its Third Round Unmet Need as a permanent reduction of its total Mount Laurel obligation. COAH regulations and case law require that the Borough's Third Round unmet need be revisited and recalculated based on affordable housing opportunities that actually became available, such as redevelopment of the Property.

III. Conclusion

For the reasons stated herein, and in the Rahenkamp Report, the Borough's HEFSP fails to comply with the FHA and Mount Laurel Doctrine. It understates its RDP contrary to COAH regulations and seeks a substantial reduction of its Mount Laurel obligation while ignoring redevelopment opportunities. For these reasons, the Court and the Program should find the

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Borough's HEFSP in violation of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (2024) ("FHA") and the Mount Laurel Doctrine and order the Borough to include the Property in its HEFSP as an inclusionary development with a minimum density of 43 units.

Thank you for your time and attention to this matter. Should Your Honor require any further information, we are available at the Court's convenience.

Respectfully submitted,

/s/ Danielle Kinback
Danielle Kinback, Esq.