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June 14, 2026

Via ECourts

Hon. Janine M. Allen, J.S.C.
New Jersey Superior Court
Sussex County Judicial Center
43-47 High Street, 3rd Floor
Newton, NJ 07860
Ph. 862-397-5700 – Ext. 75395

Re: IMO the Application of the Borough of Chatham
Docket No. MRS-L-238-25

Dear Judge Allen:

I represent the Borough of Chatham (the “Borough”) in the above captioned Mount Laurel 4th Round Declaratory Judgment action.

I am writing to advise the court that the Borough and Fair Share Housing Center (“FSHC”) are at an impasse with respect to the one last remaining disputed issue that must be resolved prior to me being in a position to recommend to my client to adopt a resolution authorizing me to sign a final compliance certification consent order in the above matter.

The dispute concerns language that FSHC is insisting on being included in paragraph 10 of the consent order which I believe is not an accurate statement of the law and will bind my client to the position espoused by FSHC which I believe is contrary to Mount Laurel case law.

Specifically, FHSC proposed that paragraph 10 provide as follows:

10. The Borough and FSHC recognize that substantial changes in circumstances affecting the Borough's RDP are possible pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002) and related law. In the event such a substantial changed circumstance occurs, the Borough shall have one hundred twenty (120) days to present to the trial court and FSHC a plan to address such change in circumstances on notice and opportunity to be heard from FSHC. The Borough agrees that any additional RDP generated due to changed circumstances must be addressed in a manner that is consistent with controlling law.

I objected to the above provision on the basis that the New Jersey Supreme Court held in Mount Laurel II, 92 N.J. 158, 291-292 (1983) that compliance judgments in Mount Laurel cases “shall have a res judicata effect despite changed circumstances” so that “municipalities can enjoy the repose that the res judicata doctrine intends, free of litigious interference.” The Borough contends that the FSHC v. Cherry Hill decision did not reverse Mount Laurel II nor hold to the contrary.

As such, I proposed resolving the dispute by simply remove paragraph 10 from the consent order as the settlement agreement entered into between the Borough and FSHC does not reference this issue and does not reference the Cherry Hill opinion.

FSHC came back with the following proposed language:

10. FSHC takes the position that substantial changes in circumstances affecting the Borough’s RDP are possible pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393 (2002). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances affecting the Borough’s RDP.

Because FSHC’s proposed language did not include the Borough’s legal position, I proposed resolving the dispute by including the following as paragraph 10, and **I am submitting as Exhibit A to this letter the portion of an email chain between me and Esme Devenney, Esq., attorney for FSHC, discussing the various machinations of paragraph 10.**

You will see from the email, that the last version of paragraph 10 I suggested on June 11, 2026 was as follows (and I have not heard back from FSHC and that is why I am

writing this letter as the Borough and FSHC were supposed to enter into a form of consent order by June 15, 2026):

10. FSHC takes the position that substantial changes in circumstances can affect the Borough's RDP pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002). The Borough takes the position that substantial changes in circumstances cannot be the basis for re-opening the Borough's RDP pursuant to the holding in Mount Laurel II, 92 N.J. 158 (1983). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances.

I stress that the settlement agreement entered into between the Borough and FSHC does not reference the “changed circumstances” issue that FSHC wants to inject into the consent order. As such, there is no legitimate reason for FSHC to insist on including it in paragraph 10 of the consent order in the forms proposed by FSHC and it is holding up entry into a consent order and is preventing the Borough from obtaining a final compliance certificate.

Finally, I am submitting as Exhibit B to this letter the form of consent order I have recommend that my client authorize me to sign which contains the following from the Exhibit A email chain as paragraph 10:

10. FSHC takes the position that substantial changes in circumstances can affect the Borough's RDP pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002). The Borough takes the position that substantial changes in circumstances cannot be the basis for re-opening the Borough's RDP pursuant to the holding in Mount Laurel II, 92 N.J. 158 (1983). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances.

The Borough would very much appreciate your Honor getting involved to resolve this issue amicably.

Absent resolution by mutual consent as to this issue, the Borough requests that your Honor schedule a contested conformance hearing as the Borough wishes to obtain a final compliance certificate as it believes it is entitled to it. The Borough notes in this regard that it has complied with all provisions of the settlement agreement it entered into

with FSHC and further notes that it is one of the only municipalities that has not been required to amend the 4th Round Housing Element and Fair Share Plan it adopted and filed via eCourt.

The Borough thanks the Court for its attention to this matter.

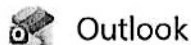
Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan E. Drill". The signature is written in a cursive style with a large, prominent "J" and "D".

JONATHAN E. DRILL

Copy via email w/enc.:

Esme Devenney, Esq. (FSHC)
Adam Gordon, Esq. (FSHC)
Josh Bauers, Esq. (FSHC)
Steve Williams (Borough Administrator)
Kendra Lelie, PP (Borough Planner)



Re: Chatham Borough - FSHC Questions and Borough Answers

From Jonathan Drill <jdrill@sksdlaw.com>

Date Thu 6/11/2026 2:48 PM

To Esmé Devenney <esmedevenney@fairsharehousing.org>

Cc Gordon Adam <adamgordon@fairsharehousing.org>; Kendra Lelie <klelie@kylemcmanus.com>; Williams Steve <swilliams@chathamborough.org>; Josh Bauers <joshbauers@fairsharehousing.org>; Laura Denker <lauradenker@fairsharehousing.org>

I would agree to the following:

FSHC takes the position that substantial changes in circumstances can affect the Borough's RDP pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002). The Borough takes the position that substantial changes in circumstances cannot be the basis for re-opening the Borough's RDP pursuant to the holding in Mount Laurel II, 92 N.J. 158 (1983). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances.

Jonathan E. Drill, Esq.

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From: Esmé Devenney <esmedevenney@fairsharehousing.org>

Sent: Thursday, June 11, 2026 2:18 PM

To: Jonathan Drill <jdrill@sksdlaw.com>

Cc: Gordon Adam <adamgordon@fairsharehousing.org>; Kendra Lelie <Klelie@kylemcmanus.com>; Williams Steve <swilliams@chathamborough.org>; Josh Bauers <joshbauers@fairsharehousing.org>; Laura Denker <lauradenker@fairsharehousing.org>

Subject: Re: Chatham Borough - FSHC Questions and Borough Answers

Jon,

Hope all is well. Please let us know if the below language is acceptable:

1. FSHC takes the position that substantial changes in circumstances affecting the Borough's RDP are possible pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances affecting the Borough's RDP.

Thank you,

Esmé

On Mon, Jun 8, 2026 at 5:21 PM Jonathan Drill <jdrill@sksdllaw.com> wrote:

If there has to be some language regarding change circumstances, then we need the language that I had initially proposed where each party sets forth it's position. My advice to the borough will be not to enter into a consent order if the borough has to acknowledge something that it thinks is legally incorrect, namely, that change circumstances under the Mount Laurel doctrine, warrants opening up of a judgment.

Sent from Jon Drill's iPhone

On Jun 8, 2026, at 4:39 PM, Esmé Devenney <esmedevenney@fairsharehousing.org> wrote:

Hi Jon,

FSHC cannot move forward without having some language that recognizes changed circumstances in the order.

Thank you,

Esmé

On Mon, Jun 8, 2026 at 4:00 PM Jonathan Drill <jdrill@sksdllaw.com> wrote:

Attached are a redlined and clean copy of draft #3.

Jonathan E. Drill, Esq.

Stickel, Koenig, Sullivan & Drill, LLC

Fair Share Housing Center

510 Park Boulevard

Cherry Hill, New Jersey 08002

P: 856-665-5444

F: 856-663-8182

Attorneys for Fair Share Housing Center

By: Esmé Devenney, Esq. (409632022)

esmedevenney@fairsharehousing.org

**IN THE MATTER OF THE
APPLICATION OF BOROUGH OF
CHATHAM, COUNTY OF MORRIS.**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—MORRIS COUNTY**

Docket No. MRS-L-238-25

Civil Action
(Mount Laurel)

**Consent Order Final Compliance
Certification (N.J.S.A. 52:27D-304(q))**

THIS MATTER having come before the Court via the joint request of the Borough of Chatham through its counsel, Jonathan E. Drill Esq., of Stickel, Koenig, Sullivan & Drill, LLC as well as Fair Share Housing Center, through its counsel Esmé M. Devenney, Esq. (on behalf of Fair Share Housing Center), seeking a certification of compliance, with conditions specified in paragraph nine, with the Fair Housing Act (“FHA”); and

WHEREAS, the Borough of Chatham (the “Borough” or “Chatham”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action on January 28, 2025; and

WHEREAS, the Borough having filed its adopted Fourth Round Housing Element and Fair Share Plan on June 24, 2026; and

WHEREAS, Fair Share Housing Center (“FSHC”) and 23 S Passaic Owner LLC and 33 South Passaic Owner LLC and Danbro Properties having filed challenges pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 31, 2025; and

WHEREAS, Danbro having withdrawn its challenge on December 10, 2025; and **WHEREAS**, the Borough, FSHC, and 23 S Passaic Owner LLC and 33 South Passaic Owner LLC having previously presented settlement agreements to the Court, which were filed on eCourts on January 29, 2025, and which settlement agreements are incorporated herein by reference; and

WHEREAS, the Court having entered an Order on February 12, 2026, accepting and adopting the Program Member’s Report and Recommendations for approval of the Borough’s HEFSP;

WHEREAS, the Borough having filed implementing ordinances and resolutions on March 10, 2026, and

WHEREAS, FSHC having reviewed the Borough’s filings in accordance with the parties’ settlement agreement and confirmed that the Borough has complied with all terms outlined in the mediation agreement; and

WHEREAS, the Court having reviewed the Borough’s attachments, and implementing ordinances and resolutions, incorporating therein any changes from the Program and Court’s prior order(s) and determined that they meet the “objective standard” and are in compliance with the Fair Housing Act and the Mount Laurel doctrine so long as the conditions set forth in this order are met; and

WHEREAS, the Court incorporates the Court’s prior orders and for good cause shown:

IT IS on this _____ day of _____, 2026, **ORDERED** as

follows:

1. The Borough’s Fourth Round HEFSP, attachments, and applicable implementing ordinances and resolutions, collectively referenced in SCHEDULE-1 hereto as Exhibit P-1 through Exhibit P-4 (inclusive) and herein as the “Implementing Ordinances & Resolutions”, are hereby admitted into evidence and entered into the record.
2. Subject to the satisfaction of the Conditions of this Order and the deadlines established therein, the Borough of Chatham’s Fourth Round HEFSP (Exhibit P-1) is hereby approved and deemed to meet the “objective standard” pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) of complying with the Fair Housing Act and the Mount Laurel doctrine and the Borough is granted a Compliance Certification and a judgment of compliance and repose as to its Rehabilitation Obligation (“Present Need”), its Prior Round Obligation (1987-1999), its Third Round Obligation (consisting of both its Gap Obligation for 1999-2015 and its Prospective Need Obligation for 2015-2025), and its Fourth Round obligation pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) (“FHA”), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court’s Mount Laurel IV decision.
3. The Borough’s Compliance Certification and judgment of compliance and repose shall remain in effect for ten (10) years beginning on July 1, 2025 and ending on June 30, 2035, and during this ten (10) year period the Borough shall have repose from exclusionary zoning litigation, including, but not limited to, Builder’s Remedy lawsuits, as provided for in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. The Borough’s Compliance Certification and judgment of compliance and repose shall remain subject, however, to revocation or other Order of the Court that does or may hereafter issue, on notice of motion to the Borough and all interested parties and good cause shown, at any time during the pendency of the Fourth Round Housing cycle.
4. As per the Borough’s HEFSP and earlier court orders, the Borough’s Present Need or Rehabilitation Obligation is 8, the Borough’s Prior Round Obligation (1987-1999) is 77, the Borough’s Third Round Obligation (1999-2025) is 337, and the Borough’s Fourth Round Prospective Need (2025-2035) is 181 units.
5. The Borough will address its Present Need of 8 units through participation in the Morris County Housing Rehabilitation Program.
6. The Borough’s Prior Round Obligation is 77. The Borough received a vacant land adjustment and has a Prior Round realistic development potential (RDP) of 23 affordable units. The Borough’s 23 unit RDP shall be addressed with the following mechanisms:

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
Chatham @ Willows (B 106, L 1.34, 11.36, 1.38, 1.40, 1.42, 1.44, 1.46, 1.48)	Family	8		For-Sale	Completed
Willows Courts	Family	2	2	Rental	Completed
River Commons	Family	2	2	Rental	Completed
Chestnut Ridge	Senior	4		Rental	Completed
Averett (B 98, L 2)	Family	1		Rental	Completed
Howardson Property	RCA	2			Completed
Total		19	4		

7. The Borough's Third Round obligation is 337. The Borough received a vacant land adjustment and has a Third Round RDP of 71 affordable units. The Borough's Third Round 71 unit RDP shall be addressed with the following mechanisms:

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
The Ivy (B 135, L 9, 10, 11, and 12)	Family	37	17	Rental	Completed
17-37 Bowers Lane (B 122, L 13 to 17)	Family	5 to 7*		Rental	Zoned
4 Watchung Avenue (B 134 L 1)	Family	6 to 8*		Rental	Zoned
Extension of Expiring Controls (Schindler Court)	Family	8		For-Sale	Completed
*The range is due to the 15% affordable set-aside for rental units and 20% set-aside for for-sale units.					
Total		56 to 60	17		

- a. The Borough's combined Third Round and Prior Round unmet need of 320 affordable units was satisfactorily addressed in accordance with the compliance mechanisms detailed in Paragraph 8 of the June 14, 2021 Settlement Agreement between the Borough and FSHC. Those mechanisms shall be maintained, including the mandatory set-aside ordinance, with the following amendments to increase the likelihood that they shall generate affordable housing to address the Borough's substantial unmet need.
- i. **23-33 South Passaic (B 121, L12 & 13).** 23 South Passaic Owners and 33 South Passaic Owners (collectively, "23-33 South Passaic") filed a challenge to the Township's Housing Element and Fair Share Plan with regard to this site on August 27, 2025. The Borough and 23-33 South Passaic have engaged in on good faith discussions to include the project in the Borough's Third Round Housing Element and Fair Share Plan so as to provide 4 affordable family units at the Property.
 - ii. **BCUW (formerly Post Office Plaza) (B 121, L 10-& 17, and B 122, L 1-2 & 13-18).** Chatham Borough has partnered with the Bergen County United Way to construct a 100% affordable 15-unit family, non-age-restricted rental development on B 121, Lot 10. This project obtained all required funding and began construction, but construction has since ceased due to actions by the Department of Community Affairs (DCA").
 - iii. **246 Main Street (B 57, L 19).** The Borough shall provide FSHC with the bedroom and income distribution, as well as evidence of UHAC-compliant deed restriction, for these three (3) affordable units created pursuant to the Borough's mandatory set-aside ordinance.

- iv. **Gateway Overlay Zones 1 & 2.** Concerns have been raised as to whether the overlay zoning currently in place for Gateway Overlay Zones 1 & 2, as detailed in the June 14, 2021 First Amendment during the Third Round between FSHC and the Borough, remains adequate to address the Borough's unmet need obligations. In the three (3) year period since the zoning was adopted, no parcel in the overlay zones has redeveloped so not affordable housing has been produced. And the nearest affordable housing redevelopment project in the Borough, The Ivy, redeveloped at a density (54 du/a) and with a redevelopment plan and PILOT for that project. The Borough's professionals take the position that the zoning is adequate but have suggested that the Borough may be willing to consider the possibility of adopting a redevelopment plan for the parcels in the overlay zones to strengthen the potential for affordable housing to be produced. To enable a public presentation and consideration of a redevelopment plan before there is litigation as to this compliance mechanism, the parties agree as follows

The Borough shall have six months from January 1, 2026, to provide public notice of a potential draft redevelopment plan for the overlays and to consider whether it would like to proceed with adopting such redevelopment plan. In other words, by July 1, 2026, the Borough would decide following a public process whether to adopt a redevelopment plan.

If the Borough decides to adopt a redevelopment plan, it shall provide notice in writing and a copy of the draft plan to FSHC and the New Jersey Superior Court on or before July 1, 2026. FSHC shall have thirty (30) days from receipt of said plan to either comment/object to its terms or to consent to its adoption. If the parties cannot resolve any objection within that thirty (30) days, the dispute shall be submitted to the New Jersey Superior Court for resolution prior to adoption of the plan.

8. If the Borough decides not to adopt a redevelopment plan, it shall provide notice in writing to FSHC and the New Jersey Superior Court on or before July 1, 2026. FSHC and any other challenger shall have thirty (30) days from receipt of such notice to object in writing with the New Jersey Superior Court to the adequacy of the existing overlay zones to address the Borough's affordable housing obligations. The New Jersey Superior Court shall resolve any such objection and issue any necessary orders. The Borough's Fourth Round Obligation is 181. The Borough received a vacant land adjustment and has a Fourth RDP of 5 affordable units. The Borough's Fourth Round 5 unit RDP shall be addressed with the following mechanisms:

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
The Ivy (B 135, L 9, 10, 11, and 12)	Family	37	17	Rental	Completed
17-37 Bowers Lane (B 122, L 13 to 17)	Family	5 to 7*		Rental	Zoned
4 Watchung Avenue (B 134 L 1)	Family	6 to 8*		Rental	Zoned
Extension of Expiring Controls (Schindler Court)	Family	8		For-Sale	Completed
*The range is due to the 15% affordable set-aside for rental units and 20% set-aside for for-sale units.					
Total		56 to 60	17		

9. The Borough and FSHC agree that following conditions remain to be met as conditions of compliance certification:
- a. The Borough shall provide a draft UHAC deed restriction for 23-33 South Passaic by May 15, 2026.
 - b. The Borough shall provide evidence that construction will resume at BCUW and provide a realistic plan to confirm that construction will be completed within 2026 by May 15, 2026.
 - c. The Borough shall provide the bedroom and income distribution, and UHAC deed restriction for 246 Main Street by May 15, 2026.
 - d. The Borough shall provide its Affordability Assistance manual by May 15, 2026.
 - e. The Borough shall provide its Rehabilitation Manual by May 15 2026.
10. FSHC takes the position that substantial changes in circumstances can affect the Borough's RDP pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002). The Borough takes the position that substantial changes in circumstances cannot be the basis for re-opening the Borough's RDP pursuant to the holding in Mount Laurel II, 92 N.J. 158 (1983). Each party reserves its rights under applicable law in the event of such substantial changes in circumstances.

11. The Borough's Compliance Certification shall be subject to required ongoing monitoring as follows:
 - a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.
 - b. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.
 - c. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.
12. The Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of this Certification of Compliance and Repose and the Borough's adopted Fourth Round HEFSP.
13. A copy of this Order shall be entered on eCourts and shall be effective as of the date of filing.

Hon. Janine M. Allen, J.S.C.

On behalf of the Borough of Chatham:

Jonathan E. Drill, Esq.

On behalf of Fair Share Housing Center:

Esmé M. Devenney, Esq.

SCHEDULE 1

- EXHIBIT P-1:** Borough's 4th Round Housing Element and Fair Share Plan ("HEFSP") filed via eCourts on June 19, 2025 (Trans ID: [LCV20251806658](#))
- EXHIBIT P-2:** Borough Planning Board Resolution adopting the HEFSP on June 18, 2025, filed via eCourts on June 19, 2025 (Trans ID: [LCV20251806678](#))
- EXHIBIT P-3:** Borough Council Resolution endorsing the HEFSP on June 23, 2025, filed via eCourts on June 24, 2025 (Trans ID: [LCV20251835735](#))
- EXHIBIT P-4:** Borough's Implementing Ordinances and Resolutions filed via eCourts on March 10, 2026 (Trans ID: [LCV2026606060](#)):

1. Ordinance 26-02 creating the AH-1 Zone (58 N. Passaic);
2. Ordinance 26-03 modifying the POP Redevelopment Plan (17 S. Passaic);
3. Ordinance 26-04 creating the AFD-6 Zone (311 Main);
4. Ordinance 26-05 creating the AFD-5 Zone (589 Main);
5. Ordinance 26-06 creating the B-AH Overlay Zone;
6. Ordinance 26-07 adopting affordable housing regulations and establishing development fees;
7. Ordinance 26-08 creating the B-4 AH (MFCB) Zone (for the 23-33 S. Passaic development);
8. Resolution R26-140 adopting the Spending Plan;
9. Resolution R26-141 adopting the Affirmative Marketing Plan; and
10. Resolution R26-142 Intent to Bond resolution.