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SUPERIOR COURT BERGEN COUNTY
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L- 5912-15

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF HAWORTH, a Municipal Corporation of the State of New Jersey, For Substantive Certification	:	**Civil Action (Mount Laurel)** ***COMPLAINT FOR DECLARATORY JUDGMENT***

Plaintiff/Petitioner, the Borough of Haworth ("Plaintiff/Petitioner"), a municipal corporation and body politic organized under the laws of the State of New Jersey, with offices located at 300 Haworth Avenue, Haworth, Bergen County, New Jersey, by way of Complaint For Declaratory Judgment says:

Jurisdiction

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

2. Jurisdiction is further established as a result of the Supreme Court Decision, ***In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing,*** 221 N.J. 1 (2015) (the "2015 Case").

Background and Prior Round Obligations

3. In 1975 the Supreme Court of New Jersey in ***South Burlington County N.A.A.C.P. v. Township of Mount Laurel***, 67 N.J. 151 (1975), ruled that the developing municipalities in the State of New Jersey exercising their zoning power, in general, had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low and moderate income housing needs.

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

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

6. COAH proceeded to adopt regulations for First Round obligations applicable from 1987 to 1993 and Second Round obligations that created a

cumulative obligation from 1987 to 1999.

7. The Borough of Haworth received Substantive Certification of its Housing Element and Fair Share Plan ("HE/FSP") as to its Second Round obligation from COAH on or about March 3, 1999.

Third Round Obligation

8. COAH first proposed Third Round Substantive and Procedural Rules in October, 2003. *35 N.J.R. 4636(a); 35 N.J.R. 4700(a).*

9. Those Rules remained un-adopted and COAH re-proposed both the Substantive and Procedural Third Round Rules (*N.J.A.C. 5:94* and *5:95*) in August of 2004 and adopted the same effective on December 20, 2004. (the "2004 Regulations")

10. The 2004 Regulations were challenged and on January 25, 2007, the Appellate Division invalidated various aspects of those Regulations and remanded considerable portions of the Rules to COAH with direction to adopt revised rules. ***In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council On Affordable Housing***, 390 N.J. Super. 1 (App. Div.), certif. denied, 192 N.J. 72 (2007) (the "2007 Case").

11. On January 22, 2008, COAH proposed and published Revised Third Round Regulations in the New Jersey Register. *40 N.J.R. 237.*

12. On May 6, 2008, COAH adopted the Revised Third Round Regulations and advised that the new Regulations would be published in the June 2, 2008 *New Jersey Register*, thereby becoming effective.

13. On May 6, 2008, COAH simultaneously proposed Amendments to

the Revised Third Round Rules it had just adopted. Those Amendments were published in the June 16, 2008 *New Jersey Register, 40 N.J.R. 3373* (Procedural *N.J.A.C. 5:96*); *40 N.J.R. 3374* (Substantive *N.J.A.C. 5:97*). The Amendments were adopted on September 22, 2008 and made effective on October 20, 2008.

14. The Borough of Haworth petitioned COAH for Third Round Certification on December 30, 2008.

15. The Borough, as required for Substantive Certification, adopted an Overlay Zone on certain premises known as Block 1008, Lot 1, which is the White Beeches Golf Club Driving Range. This new A/OC Zone permits townhome developments of six (6) units per acre, with a twenty (20%) percent affordable housing set aside. The Borough has also collected developers' fees and has completed its required COAH Annual Affordable Housing Monitoring.

The Transfer of Jurisdiction to the Courts

16. *N.J.A.C. 5:96* and *5:97* as adopted in 2008 were challenged in an appeal entitled ***In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing***, 416 N.J. Super. 462 (App. Div. 2010) (the "2010 Case"). In its October 8, 2010 decision, the Appellate Division determined, among other things, that the growth share methodology was invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the First and Second Rounds, i.e. 1987-1999.

17. On September 26, 2013, the Supreme Court of New Jersey affirmed the Appellate Division's invalidation of the third iteration of the Third

Round Regulations, sustained their determination that the growth share methodology was invalid, and directed COAH to adopt new regulations based upon the methodology utilized in the first and second rounds. ***In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing***, 215 N.J. 578 (2013) (the "2013 Case").

18. COAH proceeded to propose such Regulations in accordance with the Schedule and Amended Schedule established by the New Jersey Supreme Court in the 2013 Case.

19. On October 20, 2014, COAH deadlocked with a 3-3 vote and failed to adopt the Revised Third Round Regulations.

20. Due to COAH's failure to adopt the Revised Regulations and subsequent inaction, Fair Share Housing Center ("FSHC"), a party in the 2010 Case and the 2013 Case, filed a motion with the New Jersey Supreme Court to enforce litigant's rights.

21. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC's motion to enforce litigant's rights. The Supreme Court in the 2015 Case found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. ***In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing***, 221 N.J. 1 (2015) (the "2015 Case").

22. In doing so, the Supreme Court established a transitional process for municipalities, like the Borough of Haworth, that participated in the

administrative process before COAH to file a Declaratory Judgment action with the trial courts seeking to declare their HE/FSPs as being constitutionally compliant and seeking similar protections to those that the participating municipalities would have received if they had continued to proceed before COAH.

23. In explaining the transitional process contemplated, the Supreme Court equated these "Participating Municipalities" to those municipalities in 1985 that had sought to transfer jurisdiction from the court to the newly created COAH and switch the forum from a judicial one to an administrative one under *N.J.S.A. 52:27D-316.*

24. While the Supreme Court in the 2015 Case declined to adopt a specific methodology or formula to calculate the Third Round Affordable Housing Obligations of the municipalities and instead left that determination to the fifteen (15) ***Mount Laurel*** Judges (one in each vicinage), it did provide some guidance by reiterating its endorsement of the previous methodologies employed in the First and Second Round Rules as the template to establish Third Round Affordable Housing Obligations, and as above-mentioned, by treating Participating Municipalities filing Declaratory Judgment actions in the same way that the 1985 FHA when originally enacted on July 2, 1985 treated municipalities transitioning from the judicial to the administrative process.

25. In light of the Decision in the 2013 Case and in the 2015 Case, the Borough of Haworth and its Planner have commenced drafting a revised HE/FSP that will verify full compliance with its constitutional affordable

housing obligations.

COUNT ONE

(Declaratory Relief, Constitutional Compliance)

26. The Borough of Haworth repeats and realleges each and every allegation set forth in Paragraphs 1-25 of this Complaint as if set forth herein at length.

27. Pursuant to the Declaratory Judgments Act, *N.J.S.A. 2A:16-50, et seq.*, and the 2015 Case, the Borough of Haworth has a right to a Declaratory Judgment verifying and confirming the Borough's full compliance with its constitutional affordable housing obligations

WHEREFORE, Plaintiff/Petitioner, the Borough of Haworth, respectfully seeks that the Court grant the following relief:

A. An Order exercising jurisdiction over the compliance by the Borough of Haworth with its constitutional affordable housing obligations; and

B. An Order declaring that the Borough of Haworth has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation.

C. A Judgment of Compliance and Repose for a period of ten (10) years from its date of entry.

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

COUNT TWO

(Five Months To Prepare HE/FSP)

28. The Borough of Haworth repeats and realleges each and every allegation as set forth in Paragraphs 1-27 as if set forth herein at length.

29. In the 2015 Case, the Supreme Court equated participating municipalities who file Declaratory Judgment actions such as the instant one to those municipalities who were involved in litigated matters in 1985 when the Fair Housing Act was adopted and successfully transferred their litigated cases to COAH and were entitled under *N.J.S.A. 52:27D-316* to a five (5) month period from the date of transfer **or** the date of the promulgation of criteria and guidelines by COAH, **whichever occurred later** to prepare its HE/FSP.

30. The Supreme Court in the 2013 Case and in the 2015 Case declined to establish a specific methodology or formula to calculate third round affordable housing obligations of the municipalities and instead left that determination to the fifteen (15) ***Mount Laurel*** Judges (one in each vicinage), directing that the methodology or formula established should be similar to that employed in the first and second round rules.

31. As a result of the Supreme Court's actions in the 2013 Case and the 2015 Case, there are insufficient criteria and guidelines established by the Court at this time for the Borough of Haworth to prepare a compliant HE/FSP which this Court could evaluate to determine its constitutional compliance.

32. In the 2015 Case, the Supreme Court afforded wide discretion to the fifteen (15) ***Mount Laurel*** Judges in addressing these Declaratory Judgment actions and enabled the trial judges specifically to grant municipalities a five month period within which to prepare a compliant

HE/FSP in accordance with the approved methodology and formula established by said trial judges.

33. By equating these Participating Municipalities to those municipalities who in 1985 transferred their litigated cases **from** the Court **to** COAH, and then had a five (5) month period from the date of transfer **or** the date that guidelines and regulations were **adopted** by COAH, whichever was **later**, the Borough of Haworth is entitled to the opportunity to prepare and adopt a HE/FSP within five (5) months from the date that the Court establishes the methodology and formula which will quantify the affordable housing obligation of the Borough of Haworth and allow for the preparation and adoption of a constitutionally compliant HE/FSP

WHEREFORE, Plaintiff/Petitioner, the Borough of Haworth respectfully seeks that the Court grant the following relief:

A. An Order granting the Borough of Haworth a five (5) month period from the date that a methodology or formula is established by this Court, or otherwise, to prepare a constitutionally compliant HE/FSP that incorporates the formula and methodology approved by this trial court or otherwise.

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

COUNT THREE

(Request for Imunity)

34. The Borough of Haworth repeats and realleges each and every allegation as set forth in Paragraphs 1-33 as if set forth herein at length.

35. In the 2015 Case, the Supreme Court afforded Participating Municipalities who filed Declaratory Judgment actions seeking to verify and confirm their constitutional compliance with their affordable housing obligations, the right to seek temporary immunity from third party lawsuits while pursuing these Declaratory Judgment actions and the development of compliant HE/FSP's.

36. The Borough of Haworth, by virtue of the filing of the within action, is eligible to seek and obtain immunity from third party lawsuits while pursuing their Declaratory Judgment action pursuant to the 2015 Case.

WHEREFORE, Plaintiff/Petitioner, the Borough of Haworth, respectfully seeks that the Court grant the following relief:

A. An Order granting temporary immunity from third party lawsuits against the Borough of Haworth from the date of the filing of the instant Declaratory Judgment action until this Court issues a Final Judgment of Compliance and Repose to the Borough of Haworth for its HE/FSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court.

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

COUNT FOUR

(Jurisdiction Over Unapproved Spending Plan)

37. The Borough of Haworth repeats and realleges each and every allegation as set forth in Paragraphs 1-36 as if set forth herein at length.

38. On April 9, 2015 the Appellate Division issued a Decision divesting COAH of jurisdiction to administratively effect a forfeiture of Affordable Housing Trust Funds not spent or committee in accordance with the requirements of the FHA and enjoining COAH from taking any such administrative action. ***In Re Failure of Council on Affordable Housing to Adopt Trust Fund Commitment Regulations***, 2015 WL 1582908 (App. Div. 2015) (the "Trust Fund Case").

39. In the Trust Fund Case the Appellate Division further transferred jurisdiction over such actions and matters to the fifteen (15) ***Mount Laurel*** Judges designated to hear the Declaratory Judgment Actions regarding compliance with affordable housing obligations as set forth in the 2015 Case.

40. On information and belief, COAH has taken the position that it no longer has jurisdiction to approve Spending Plans that are pending before it.

41. The Borough of Haworth has a Spending Plan that has not been approved pending before COAH and without COAH's approval and authorization is prevented from expending Affordable Housing Trust Funds to advance the purposes of affordable housing in the municipality.

42. In light of COAH's inaction on its Spending Plan, the Borough of Haworth seeks to have this Court, in conjunction with processing the instant Declaratory Judgment action, approve the Spending Plan of the Borough of Haworth that has been pending before COAH and further, to assume jurisdiction over any amendment to said Spending Plan once approved in order to give the Borough of Haworth the ability to properly utilize and expend

Affordable Housing Trust Funds collected for the purposes of advancing and satisfying its affordable housing obligation.

WHEREFORE, Plaintiff/Petitioner, the Borough of Haworth respectfully seeks that the Court grant the following relief:

A. An Order approving the Spending Plan of the Borough of Haworth heretofore pending before COAH.

B. An Order continuing the jurisdiction of this Court to consider and approve any amendments to the Approved Spending Plan.

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

COUNT FIVE

(Amendments To Approved Spending Plans)

43. The Plaintiff/Petitioner, Borough of Haworth repeats and realleges each and every allegation set forth in Paragraphs 1-42 of the Complaint as if set forth herein at length.

44. On March 2, 1999, COAH approved the Spending Plan of the Borough of Haworth.

45. As a result of the 2015 Trust Fund Case, and on information and belief, COAH has been divested of, and/or has relinquished jurisdiction over approval of any amendments to any Spending Plan of the Borough of Haworth.

46. It is anticipated that as part of the mechanism to satisfy the affordable housing obligations of the Borough of Haworth, as determined by this Court, an amendment to the Spending Plan previously approved by COAH

will be required.

47. The Borough of Haworth desires that this Court assume jurisdiction to approve any such amendment to the Spending Plan of the Borough of Haworth in order to effectuate and implement its HE/FSP approved by this Court and any future amendments pending any reversion of jurisdiction to COAH, so as to allow the Borough of Haworth the ability to utilize and expend its Affordable Housing Trust Funds to advance its affordable housing plans and satisfy its affordable housing obligation.

WHEREFORE, Plaintiff/Petitioner, the Borough of Haworth, respectfully seek that the Court grant the following relief:

A. An Order that this Court assume and assert jurisdiction for the approval of any amendment to the Spending Plan previously approved by COAH in the same manner as COAH would have considered and approved such amendments.

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

DESIGNATION OF TRIAL COUNSEL

Pursuant to *Rule 4:25-4*, notice is hereby given that Robert T. Regan, Esq., Attorney for the Plaintiff/Petitioner, is designated as trial counsel in the above captioned matter.

Dated: June 25, 2015

ROBERT T. REGAN
Attorney for Plaintiff/Petitioner

CERTIFICATION PURSUANT TO *RULE 4:5-1*

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

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

Dated: June 25, 2015

ROBERT T. REGAN
Attorney for Plaintiff/Petitioner