

File No. 30852-0001-MWH

Law Offices
PARKER McCAY P.A.
By: Michael W. Herbert, Esquire
Atty ID # 007691992
3840 Quakerbridge Road, Suite 200
Hamilton, New Jersey 08619
(609) 896-4222
Attorneys for Petitioner, Township of Hamilton

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF HAMILTON**, a Municipal Corporation
of the State of New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO.

CIVIL ACTION
(MOUNT LAUREL)

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO THE
FAIR HOUSING ACT,
N.J.S.A. 52:27D-301 ET SEQ.**

Petitioner, the Township of Hamilton (the “Petitioner” and/or “Hamilton” and/or the “Township”), a municipal corporation of the State of New Jersey, having its principal place of business at 2090 Greenwood Ave, Hamilton, New Jersey, 08650, in the County of Mercer, by way of Complaint for Declaratory Judgment as authorized under Directive #14-24 of the Administrative Office of the Courts alleges and says:

BACKGROUND

Through this Declaratory Judgment Action, Hamilton seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (the “Act”) and the Court,

pursuant to Directive #14-24; (b) to have the Program and the Court approve the Township's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Township, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve a Housing Element and Fair Share Plan ("HEFSP") to be adopted by the Planning Board of the Township of Hamilton (the "Planning Board") and endorsed by the Township Council and issue a Judgment of Compliance and Repose conditioned upon the adoption of the HEFSP, pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this Declaratory Judgment Action and binding resolution, to have the Program and the Court confirm Hamilton's immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receives and obtains all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT ONE

1. The Township is a body politic and corporate organized under the laws of the State of New Jersey, located in Mercer County in Region 4, pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (the "FHA").
2. The Planning Board is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et. seq.*, and, among other

duties and obligations, is responsible for adopting the HEFSP of Hamilton's Master Plan.

3. On March 20, 2024, the State of New Jersey adopted legislation (P.L. 2024, c.2) amending the FHA ("Amended FHA") and establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine.

4. The Amended FHA requires that the Department of Community Affairs ("DCA") perform a calculation of regional need, and municipal present and prospective affordable housing needs, in accordance with the formulas established in sections 6 and 7 of the law.

5. In order for a municipality to maintain immunity from exclusionary zoning litigation, it must either accept DCA's estimation or calculate its own present and prospective obligations pursuant to the prescribed formulas and pass a binding resolution no later than January 31, 2025.

6. Next, a municipality may pursue a determination of its present and prospective obligation before a county-level housing judge as part of a resulting declaratory judgment action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended by the Act.

7. Administrative Directive #14-24, dated December 13, 2024, provides that, "A municipality seeking a certification of compliance with the FHA shall file an action in the form of declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located."

8. Jurisdiction is proper with the Superior Court, Law Division, Mercer County before the designated Mount Laurel Judge for Region 4.

9. On October 18, 2024, the DCA released its “Affordable Housing Obligations For 2025-2035 (Fourth Round)” report (the “DCA Report”), establishing the Fourth Round (2025-2035) fair share methodology and providing its estimations of low- and moderate-income housing obligations for New Jersey’s 564 municipalities.

10. The Amended FHA provides that the DCA Report is non-binding, thereby permitting municipalities to deviate from the DCA’s estimation, provided the municipality can demonstrate that the Amended FHA would support a lower fair share calculation.

11. The DCA calculated the Prospective Need based on three allocation factors: (1) the Nonresidential Valuation Factor; (2) the Income Capacity Factor; and (3) the Land Capacity Factor.

12. The Land Capacity Factor is determined by calculating the total acreage that is developable using the most recent land use/land cover data from the New Jersey Department of Environmental Protection, MOD-IV Property Tax List data from the Division of Taxation in the Department of Treasury, and construction permit data from the Department of Community Development. Developable land was weighted based on the planning area type.

13. The DCA Report notes that the mandated datasets for use by the legislation had significant limitations, including the age of the data and inconsistencies between source datasets.

14. The DCA Report calculates the Township of Hamilton’s Round 4 obligations as follows:

- Present Need or Rehabilitation Obligation: **186 units**
- Prospective Need or New Construction Obligation: **546 units**

15. After reviewing the DCA Report and conducting an analysis based on the

approved Fourth Round methodology, the Township Affordable Housing Planner, Caroline Reiter, P.P., A.I.C.P., of T&M Associates (the “Township Planner”) recommended that the vacant land in Hamilton be reduced from 273 acres to 166.4 acres in order to account for undevelopable properties such as those categorized as preserved land, properties under construction or recently developed, and areas within the regulatory floodway.

16. Upon updating and correcting the Land Capacity Allocation Factor from 2.41% of the region’s vacant land (based on 273 acres) to 1.48% of the region’s vacant land (based on 166.4 acres), the Township Planner concluded that the Township’s Prospective Need is 504 units.

17. As a result, on January 21, 2025, the Township Council of the Township of Hamilton memorialized a resolution accepting the Present Need obligation of 186 units and a Prospective Need obligation of 504 units, based on the Township Planner’s recalculation of the Land Capacity Allocation Factor.

18. The Township brings the within declaratory judgment proceedings pursuant to the Amended FHA and the Act seeking a Judgment of Compliance and Repose, or other similar declaration and immunity from exclusionary zoning lawsuits for its Fourth Round affordable housing obligation for a period of ten (10) years based upon its present need or rehabilitation share of one hundred and eighty-six (**186**) units and prospective need of five hundred and four (**504**) units, whereupon the Township commits to prepare and submit a new Fourth Round HEFSP for the Court’s review and approval.

19. The Township seeks the grant of immunity which will facilitate the Township’s ability to voluntarily achieve constitutional compliance, to the extent it has not already done so (a) as quickly as possible; (b) with as little burden to the public as possible;

(c) without the need for duplicitous litigation; and (d) in such a manner so that all the public's attention and resources can be channeled into achieving constitutional compliance and creating affordable housing, and not expended on exclusionary zoning or builder's remedy litigation and/or other similar litigation.

20. The application of immunity in such circumstances will facilitate the primary objective of the Mount Laurel doctrine, which is to foster voluntary constitutional compliance and avoid unnecessary litigation.

21. The Township of Hamilton also seeks voluntary admission into the Affordable Housing Dispute Resolution Program.

22. At the present time, no litigation based upon Southern Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II) and/or the Fair Housing Act and/or Council on Affordable Housing ("COAH") regulations is presently pending against the Township of Hamilton.

23. Pursuant to the binding resolution, Hamilton specifically reserves the right to seek and obtain (a) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (b) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (c) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (d) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (e) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (f) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, Petitioner, Township of Hamilton, demands judgment for an order

granting the following relief:

1. Declare pursuant to the Act, that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** or to adjust such determination consistent with the Act.
2. The entry of an immunity order protecting the Township and its Planning Board from Mount Laurel lawsuits and all litigation related to its affordable housing obligations as established under the Program while (a) the Court reviews the Township's HEFSP; or (b) for such further period of time as the Court deems just and reasonable.
3. Establish the Township's fourth round prospective need affordable housing obligation from 2025 to 2035 and provide the Township with sufficient time to prepare a revised HEFSP to attempt to address its cumulative housing obligations.
4. The entry of a Judgment of Compliance and Repose, or other similar declaration upon the final review and approval of the HEFSP that insulates the Township and its Planning Board from Mount Laurel lawsuits until June 30, 2035.
5. Declaring the approval of Hamilton's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (a) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (b) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (c) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (d) an adjustment based on any future legislation that may be adopted that allows an

adjustment of the affordable housing obligations; (e) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (f) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

6. The grant of such other relief as may be just and equitable.

PARKER McCAY P.A.
Attorneys for Petitioner,
Township of Hamilton

BY: /s/Michael W. Herbert
MICHAEL W. HERBERT, ESQUIRE

Dated: January 23, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Michael W. Herbert, Esquire is hereby designated as Trial Counsel for Petitioner, Township of Hamilton.

PARKER McCAY P.A.
Attorneys for Petitioner,
Township of Hamilton

BY: /s/Michael W. Herbert
MICHAEL W. HERBERT, ESQUIRE

Dated: January 23, 2025

CERTIFICATION

Pursuant to Rule 4:5-1, it is hereby certified that the matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration or administrative proceeding to the best of knowledge and belief. To the best of our knowledge, no action, arbitration or administrative proceeding is contemplated. Furthermore, we know of no other parties that should be joined in the above action.

PARKER McCAY P.A.
Attorneys for Petitioner,
Township of Hamilton

BY: /s/Michael W. Herbert
MICHAEL W. HERBERT, ESQUIRE

Dated: January 23, 2025

**CERTIFICATION OF COMPLIANCE WITH ADMINISTRATIVE
DIRECTIVE #14-24**

I hereby certify that I caused the within Complaint for Declaratory Judgment to be filed within 48 hours after the adoption of the Municipal Resolution of Fourth Round Fair Share obligations.

PARKER McCAY P.A.
Attorneys for Petitioner,
Township of Hamilton

BY: /s/Michael W. Herbert
MICHAEL W. HERBERT, ESQUIRE

Dated: January 23, 2025

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