

Fred Semrau, Esq.  
Dorsey & Semrau, LLC,  
714 Main Street  
P.O. Box 228  
Boonton, NJ 07005  
Phone: (973) 334-1900  
Fax: (973) 334-3408  
fsemrau@dorseysemrau.com

**FILED**

**OCT 18 2016**

**SUPREME COURT**

In the Matter of the Application  
of the Township of Andover,  
County of Sussex

SUPERIOR COURT  
Law Division  
Sussex County

DOCKET NO: SUS-L-419-15

CIVIL ACTION

ORDER GRANTING THIRD ROUND  
SUBSTANTIVE CERTIFICATION TO  
THE TOWNSHIP OF ANDOVER

This matter having been presented to the Court by Fred Semrau, Esq., Dorsey & Semrau, LLC, by way of declaratory judgment action filed on behalf of the Township of Andover, and the court having considered the municipality's request for a declaratory judgment through a hearing on October 18, 2016, for the purpose of determining Andover's compliance with its affordable housing obligation pursuant to the Mount Laurel doctrine and the Fair Housing Act; and

IT APPEARING that Andover filed the above-captioned matter on July 9, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015); and,

IT FURTHER APPEARING that a case management order was entered on April 15, 2016 scheduling a hearing to determine whether final judgment should be entered concerning the Township's Housing Element and Fair Share Plan and whether it complies with the Township's affordable housing obligations for June 16, 2016 and that the Township of Andover requested an adjournment of the fairness hearing until October 18, 2016 an order was entered on July 13, 2016 at 11:30 a.m.; and,

IT FURTHER APPEARING that a Notice of this hearing was previously provided to all parties on the service list identified on the Declaratory Judgment for this matter, including Fair Share Housing Center, and that the court received into the record evidence of said notice having been provided; and,

IT FURTHER APPEARING that the Housing Element and Fair Share Plan and related documents have been made available to the public for inspection at the Township Clerk's Office; and,

IT FURTHER APPEARING that no written objections or opposition have been filed in regard to the Township's proposed Housing Element and Fair Share Plan; and,

IT FURTHER APPEARING that the Court has heard testimony from Jessica Caldwell, PP, AICP regarding how the Township of Andover intends to meet its affordable housing obligations.

NOW THEREFORE, IT IS on this 18<sup>th</sup> day of October, 2016, ORDERED as follows:

1. The Court accepts the Township's proposed compliance mechanisms; as detailed herein, and directs the Township to prepare and file with the court, with copies to the Fair Share Housing Center, an amended, adopted fair share and housing element that conforms to the provisions of this order, consistent with the testimony of Mrs. Caldwell, within 60 days of this order.

2. The Court hereby, without objection from any party accepts the Township of Andover's proposed affordable housing obligations, as follows, which it finds to be fair and reasonable to lower-income households:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	18
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	55
Third Round (1999-2025) Prospective Need (per Kinsey Report, <del>with a 30% reduction</del> )	284

3. The municipality shall meet its Present Need of 18 units as stated in the proposed plan.

4. The court finds that the municipality is entitled to the following credits toward its Prior Round and Third Round prospective need obligations:

a. Alma Lane - 8 credits including 4 family rental units and 4 rental bonus credits.

b. Mulford Road - 8 credits including 4 family rental units and 4 rental bonus credits.

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

c. West View/ Rannou Tract - 39 credits including 15 family rental units, 18 age-restricted rental units, and 6 rental bonus credits<sup>2</sup>.

d. The Township is entitled to 55 credits toward its fair share obligations at this time.

5. The Court, based on the testimony of Mrs. Caldwell finds that the municipality has provided a valid basis for claiming a durational adjustment under the Prior Round regulations at N.J.A.C. 5:93-4.3 and determines that the Township shall receive an adjustment of 261 units, which constitutes the combination of available credits, subtracted from the combined Prior Round and Third Round obligation of 339 units (55 plus 284). Further development in the Township must await the expansion of the Sewer Service Area. Pursuant to N.J.A.C. 5:93-4.3, the Township will durationally adjust the remaining 199 units<sup>3</sup> of its obligation until water or sewer becomes available and in doing so shall to comply with the Prior Round regulations at N.J.A.C. 5:93-4.3.

6. In claiming a durational adjustment for lack of adequate sewer and lack of other infrastructure, the Township shall comply with the durational adjustment rule as specified in N.J.A.C. 5:93-4.3.

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<sup>2</sup> The Township is only taking 6 bonus credits on this project because of the cap on bonus credits, but could receive more bonus credits in the future provided that more affordable housing units are constructed within the municipality.

<sup>3</sup> Pursuant to the rules on durational adjustments at N.J.A.C. 5:93-4.3, the Township has rezoned a property known as St. Paul's Abbey located at 350 Route 206, Block 35 Lot 153 for the construction of 41 units of affordable housing. These units will be durationally adjusted until sewer becomes available on this property.

7. In meeting its Prior Round and Third Round obligations, the Township has agreed to comply with the following requirements and shall prepare a fair share plan that addresses how the municipality satisfies the following requirements:

- a. The Prior Round obligation shall be satisfied in accordance with the standards set forth in N.J.A.C. 5:93.
- b. The Township shall require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
- c. Bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- d. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- e. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
- f. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
- g. The Township shall comply with an age-restricted cap of 25%. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
- h. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
- i. All new construction units shall be adaptable in conformance with P.L.2005, c.350 and all other applicable law.

8. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this agreement. The Township shall comply with those provisions as follows:

a. For the review of very low income housing requirements required by N.J.S.A 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter.

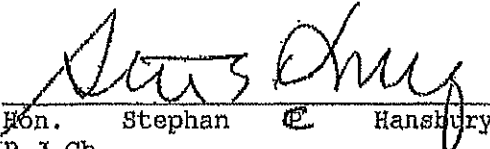
b. For the midpoint realistic opportunity review due on 7/2/20 as required pursuant to N.J.S.A 52:27D-313, the Township, on or before that date, will submit to the Court and FSHC →

9. The Court hereby grants the Township the judicial equivalent of substantive certification and accompanying protection as provided under the Fair Housing Act and in accordance with In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The accompanying protection shall remain in effect through July 1, 2025.

10. In the event that the affordable housing obligations for Sussex County are ever adjudicated by a court of competent jurisdiction - Andover may petition the court for a reduction in its obligation, but may not petition the court to change its plan.

11. Final judgement in this matter ~~will be considered upon~~ <sup>is subject to</sup> the filing of the amended, adopted, fair share plan. (P-1)

12. A copy of this order shall be served on all counsel of record and all interested parties within 5 days of receipt of it by counsel for the Township of Andover.

  
Hon. Stephan E. Hansbury,  
P.J.Ch.

a status report regarding the municipality's fair share plan and mechanisms to meet its fair share obligations, including information regarding the availability of utilities necessary for development.