

Attorney ID: 012731981
Our File No.: C22169(SAK)

**DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.**

15 Mountain Boulevard
Warren, New Jersey 07059-5686
(908) 757-7800
Attorneys for Borough of Rocky Hill

In the Matter of the Borough
of Rocky Hill for a Judgment
of Compliance of its Third
Round Housing Element and
Fair Share Plan

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: SOMERSET COUNTY
: Docket No.: SOM-L-901-15
:
:
: (Mount Laurel)
:
: *Civil Action*
:
: **NOTICE OF MOTION FOR GRANT
: OF IMMUNITY TO BOROUGH
: OF ROCKY HILL**

COUNSEL:

PLEASE TAKE NOTICE that on Friday, August 7, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned, DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for plaintiff Borough of Rocky Hill, shall apply to the Superior Court of New Jersey, Somerset County, Somerville, New Jersey, for an Order granting the following relief:

FOR AN ORDER granting the Borough of Rocky Hill temporary immunity from exclusionary zoning litigation.

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the Brief of Steven A. Kunzman, Esq. in support of said application which is being submitted to the Court pursuant to R. 1:6-2. This office requests **oral argument** pursuant to R.1:6-2(d).

A proposed form of Order is attached.

Calendar Call: None
Conference: None
Trial Date: None
DED: None

DIFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.
Attorneys for Defendant, Borough of Rocky Hill

Dated: July 14, 2015

By: _____
Steven A. Kunzman, Esq.

CERTIFICATION

I hereby certify that the within Notice of Motion and supporting moving papers have been served upon the appropriate Court and counsel via regular mail.

Dated: July 14, 2015

By: _____
Steven A. Kunzman, Esq.

Attorney ID: 012731981
Our File No.: C22169(SAK)

**DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.**

15 Mountain Boulevard
Warren, New Jersey 07059-5686
(908) 757-7800
Attorneys for Borough of Rocky Hill

In the Matter of the Borough	:	SUPERIOR COURT OF NEW JERSEY
of Rocky Hill for a Judgment	:	LAW DIVISION: SOMERSET COUNTY
of Compliance of its Third	:	Docket No.: SOM-L-901-15
Round Housing Element and	:	
Fair Share Plan	:	(Mount Laurel)
	:	
	:	<i>Civil Action</i>
	:	
	:	ORDER GRANTING IMMUNITY
	:	TO BOROUGH OF ROCKY HILL
	:	

THIS MATTER having come before the Superior Court of New Jersey, Law Division, upon the application of the Borough of Rocky Hill (Steven A. Kunzman, Esq., of DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., appearing) and the Court having considered the materials supplied by the parties and other pleadings filed in this action, and good cause having been shown:

IT IS ORDERED this ____ day of _____, 2015, as follows:

The Borough of Rocky Hill is granted immunity from exclusionary zoning litigation pending further order of the Court.

IT IS FURTHER ORDERED that a copy of this Order be served upon all interested parties within seven (7) days of its receipt by counsel for the Borough of Rocky Hill.

, J.S.C.

Opposed _____

Unopposed _____

Attorney ID: 012731981
Our File No.: C22169 (SAK)

IN THE MATTER OF THE BOROUGH	:	SUPERIOR COURT OF NEW JERSEY
OF ROCKY HILL FOR A JUDGMENT	:	LAW DIVISION: SOMERSET COUNTY
OF COMPLIANCE OF ITS THIRD	:	DOCKET NO.: SOM-L-901-15
ROUND HOUSING ELEMENT AND	:	
FAIR SHARE PLAN	:	(MOUNT LAUREL)
	:	
	:	<i>Civil Action</i>
	:	

**BRIEF IN SUPPORT OF MOTION FOR GRANT
OF IMMUNITY TO BOROUGH OF ROCKY HILL
FROM EXCLUSIONARY ZONING LITIGATION**

DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059-5686
(908) 757-7800
Attorneys for Borough of Rocky Hill

Steven A. Kunzman, Esq.
On the Brief

INTRODUCTION

The New Jersey Supreme Court in In re: Adoption of N.J.A.C. 5:96 &5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“In re COAH”) developed a procedure by which the trial courts could take on the role of the Council On Affordable Housing (“COAH”) to assist the municipalities of New Jersey to develop fair share housing plans that comply with the Fair Housing Act N.J.S.A. 52:27d-301 et. seq. (“FHA”) and the Mount Laurel doctrine. The Court provided that municipalities that have been involved in the COAH process may file a declaratory judgment action to place their existing housing element and fair share plan before the trial courts. The trial courts would then make a determination of the fair share housing need for that municipality. If the existing plan failed to comply, the town would have the opportunity to supplement the plan. During this process the Supreme Court allowed the trial courts to grant the municipality immunity from exclusionary zoning litigation, including claims for a builder’s remedy, while the municipality, the court, and any appointed special master, worked to develop a plan that complies. The Court provided no standards or tests to be met for immunity to be granted. Rather, the Court stated its preference for voluntary compliance by the municipalities rather than compelled rezoning under threat of a builder’s remedy. The immunity to be granted was “temporary” and was subject to review by the trial courts to ensure that the municipality was cooperating and endeavoring to develop a plan that complies with the fair share housing obligation as determined by the court. Even though the Court did not set forth any particular standards or requirements to be met for a town to be entitled to temporary immunity, Rocky Hill provides herein a summary of its past and current efforts to comply with the FHA. Due to the

failure of COAH to develop Third Round Rules neither Rocky Hill nor any other municipality can know what is considered to be its “fair share.” Rocky Hill received Third Round Substantive Certification; therefore, it is entitled to deference in these proceedings. In re: COAH, 221 N.J. at 26. It is only after the municipality’s fair share is determined that the Borough’s current plan can be assessed and, if necessary, supplemented. In the interim, Rocky Hill should be provided immunity from fair share housing litigation, in particular the threat of a builder’s remedy, otherwise the process of achieving compliance through sound planning would be distracted if not thwarted.

STATEMENT OF FACTS¹

The Borough of Rocky Hill (“Borough” or “Rocky Hill”) is one of the smallest municipalities in the County of Somerset consisting of approximately 410 total acres, 253 housing units. The 2010 United States Census lists the Borough having 682 residents. The Borough has a history of compliance with its fair share housing obligations in accordance with the FHA, as follows:

- a. In 1986, the COAH determined that the Borough had no fair share obligation for the First Round ending in 1993.
- b. In 1993, COAH determined that the Borough had a fair share obligation for the Second Round ending in 1999 consisting of twenty-seven (27) units, twenty-five (25) new units and two (2) rehabilitation units.
- c. In 2001, COAH granted the Borough Second Round Substantive Certification as follows:

¹ The facts set forth herein are based upon the Certification of Tamara L. Lee, the professional planner for the Borough, which is submitted with this motion.

<u>Components</u>	<u>Credits or Units</u>
Rehabilitation program	2
Regional Contribution Agreement with the City of New Brunswick	9
Group home known as Eden Acres	4
Group home by the ARC of Somerset	6
Rental bonus	<u>6</u>
Total credits or units	27

- d. All of the components described above were implemented and no Second Round units remain to be addressed.
- e. The Plan included drafts of the following Ordinances:
- i) An Ordinance Amending the Development Regulations of the Borough of Rocky Hill to Permit Accessory Apartments in Fulfillment of the Borough's Revised Third Round Housing Element & Fair Share Plan;
 - ii) An Ordinance Modifying Article 8 (Affordable Housing) of the Development Regulations of the Borough of Rocky Hill so as to be in Compliance with the Rules of the New Jersey Council on Affordable Housing and State of New Jersey Uniform Housing Affordability Controls; and
 - iii) An Ordinance Repealing Article 9 of the Borough of Rocky Hill Development Regulations Ordinance Titled "Development Fees Section" and Adopting an Affordable Housing Development Fee Ordinance for the Borough of Rocky Hill.
- f. The Planning Board, on November 11, 2008, adopted a Housing Element and Fair Share Plan ("Plan") to meet the Borough's Third Round obligation under Mount Laurel and the FHA.
- g. The Borough received *Substantive Certification* under the Third Round from COAH on May 14, 2009.

- h. On June 15, 2009, the Borough adopted the Ordinances described above.
- i. On June 17, 2009, the Borough submitted copies of adopted Ordinances Nos. 6, 2009; 7, 2009; and 8, 2009 to COAH.
- j. The fair share obligation for the Third Round was calculated in the Plan as fifteen (15) units, four (4) rehabilitation units and eleven (11) Third Round new units.

The fair share obligation for the Third Round was calculated in the Plan as fifteen (15) units, four (4) rehabilitation units and eleven (11) Third Round new units.

The Borough authorized its planner, Tamra L. Lee to prepare an amendment to the Plan to include appropriate supplemental mechanisms to accommodate current conditions including the depressed real estate market that resulted in the absence of real estate development in the Borough by exploring:

- a. Special needs housing;
- b. Accessory apartments program;
- c. Residential rehabilitation program; and
- d. Affordable housing overlay zone.

Because of the Borough size, land mass, and population, the development opportunities in the Borough are limited. Notwithstanding, the Borough participated in the First, Second and Third Rounds, meeting its cumulative Second Round fair share obligation in full and was granted Third Round Substantive Certification by COAH. Accordingly, because the Borough has participated in the process to the best of its ability, acting timely, the Borough should be granted immunity.

LEGAL ARGUMENT
POINT I.

AS A MUNICIPALITY WITH THIRD ROUND SUBSTANTIVE CERTIFICATION
ROCKY HILL IS ENTITLED TO PRELIMINARY IMMUNITY
FROM EXCLUSIONARY ZONING LITIGATION.

- A. Overview: Municipalities that file for declaratory judgment are entitled to temporary immunity.

In In re: Adoption of N.J.A.C. 5:96 &5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“In re COAH”) the Supreme Court concluded that COAH had not fulfilled its duty to create acceptable Third Round Rules and directed that all fair housing matters are to be addressed by designated trial judges. Since many municipalities had already submitted fair share compliance plans based upon COAH’s Third Round Rules that were subsequently rejected by the Appellate Courts, the Supreme Court set forth a framework for municipalities to voluntarily comply with their fair share housing obligations. 221 N.J. at 29-34 The Court provided that through the filing of declaratory judgment action, a municipality can submit its current plan for review by the trial court. Id. at 25 The Court also provided that towns that avail themselves of this opportunity would be entitled to temporary immunity. Id. at 25-29. Temporary immunity provides the town and the court time to deal with the matters at hand; the development of a plan that will provide the realistic opportunity for the development of the town’s regional fair share of low and moderate income housing.

B. Procedure: The trial court must make a determination of fair share.

The first step in the process is for the municipality to file a declaratory judgment action by which it places its current fair share housing plan before the court. This submission is to be on notice to certain designated parties as well as other interested parties. Id. at 25 In order to evaluate the plans, the trial courts will need to take the next step: making a preliminarily determination of the fair share housing needs of the municipality, Id. at 28-29, which by necessity requires that the court make a determination of the fair share needs of the state, then break that down to the regions, and then the municipalities. It is only after the fair share determination has been made that the trial court and the municipality can assess whether the existing plan complies, or whether it needs to be supplemented. During this time, it is sensible and practical to provide immunity to the town. This approach is rational: it allows the town and the courts the opportunity to achieve the desired result with participation from noticed parties, but without the distraction of builders seeking preferred status in the form a claim for builder's remedy. This is consistent with the Supreme Court's long expressed preference for voluntary compliance by municipalities as opposed to a town being compelled to rezone under the builder's remedy. See, South Burlington County N.A.A.C.P v. Tp. Of Mount Laurel, 92 N.J. 158, 214 (1983) ("Mount Laurel II") ("...we intend to encourage voluntary compliance with the constitutional obligation...") and, In re COAH 221 N.J at 34, 51 (recognizing that in the FHA the legislature stated a preference for voluntary compliance over "compelled rezoning".) This is also consistent with the legislature's unequivocal "preference for the resolution of existing and future disputes involving exclusionary zoning" by means *other* than the use of the builder's

remedy. N.J.S.A 52:27d-303. Accordingly, in In re COAH, the Supreme Court endeavored to develop a procedure that “reflect[s] as closely as possible the FHA’s process and provide[s] a means for a town to transition from COAH’s jurisdiction to judicial actions to demonstrate that its housing plan satisfies Mount Laurel obligations.” 221 N.J. at 6. Further, the Court was emphatic that they were not intending to punish municipalities for “COAH’s failure to maintain the viability of the administrative remedy.” Id. At 23. In other words, the Supreme Court understands that the limbo that the parties find themselves in was not caused by the municipalities, but by COAH. Had acceptable Third Round Rules been adopted, the towns, the FSHC, the builders, and other interested parties would have had way to move forward to have plans developed, revised or supplemented to meet the requirements of the Rules.

Due to the failure of COAH to act, there was no administrative, regulatory or objective guidance for a town to determine its “fair share” so that it can develop complying fair share housing plan. Accordingly, the second step (after the filing of the declaratory judgment action) is for the trial court to make a determination of the present and prospective need of a municipality. Id. at 28-29 By necessity this requires that the court make a determination of the statewide need, the regional need and the fair share obligation of each municipality that has placed its plan before the court.² Depending on the conclusion made by the trial judge, the municipality’s plan may be acceptable “..as is, or as supplemented-...” Id. at 26 All these determinations are to be done under the jurisdiction and oversight of the designated trial judge.

² It is expected that the FSHC present an analysis of the fair share needs prepared by its expert, Dr. Kinsey. Many municipalities will be presenting an analysis that is being prepared by Dr. Burchell. It is believed there may be other experts that will provide their analysis of this issue. It is also evident, that the decision on this issue by any court will impact all of the municipalities in the county, as well as the region and the state.

C. Immunity is tied to the time for court review and supplementing of plans.

In order to be able address these issues in an orderly manner consistent with the intent and purpose of the FHA, the Supreme Court *authorized* the trial court to “provide a town whose plan is under review immunity from challenges *during the court’s review proceedings, even if supplementation of the plan is required during the proceedings.*” 221 N.J. at 24. (emphasis added) The Court provided for temporary immunity for towns that have received *Substantive Certification* under the invalidated Third Round Rules, Id. at 26, and also for towns that are *participating municipalities*, Id. at 29. The Court even stated that immunity may be provided to a town does not file a declaratory judgment action but waits to be sued. Id.

The Court specifically stated that the trial “court should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions” for towns that received *Substantive Certification* under the invalidated Third Round Rules. Id. at 26. *Participating* towns are also entitled to “initial immunity” treatment similar to that which was provided to the *participating* towns under the Fair Housing Act, N.J.S.A. 52:27D-316, such as when the cases were transferred to COAH from the courts. 221 N.J. at 27. See also, N.J.S.A. 52:27d-309 and 316. The Court specifically directed that *participating* towns should be given five months to submit their supplemental housing element and affordable housing plan during which time the trial court is permitted to provide “initial immunity” during that period. 221 N.J. at 27. The Court provided no standard for the grant of “initial immunity” other than time to allow submission of a supplemental plan.

The Court only outlined an analysis to be followed by the trial court when considering a request for immunity by towns that do not file a declaratory judgment action but wait to be sued. The Court allowed those towns to request immunity “covering any period of time during the court’s review.” Id. The trial court is to determine if immunity is to be provided to these towns based on an assessment of the extent of the town’s obligation, the steps that have been taken to comply with that obligation; including whether a housing element has been adopted, “activity that has occurred in the town affecting need” and progress that the town has made in satisfying past obligations. Id.

It is evident that the Supreme Court intends to allow the process to proceed uncluttered by builders remedy suits case; most certainly in cases where a town files for declaratory judgment during the applicable period as was done in this case. The Court intended to have the proceeding mirror to the process for compliance determinations under COAH to the extent possible. Therefore it stands to reason that immunity should be provided except in the most exceptional circumstances. Further, municipalities should be provided sufficient time to supplement their plans, if necessary, after the trial court makes a determination of the applicable fair share numbers.

It is important to place all these issues in the context of the Court’s direction that the courts that are handling these matters should be flexible, referring to J.W. Field Company, Inc. v. Township of Franklin, et. al. 204 N.J.445 (App. Div. 1985) (“J.W. Fields”. Id. In that decision the court stated that “the good or bad faith of a municipality in attempting to comply is no longer relevant,” when evaluating the proper fair share; rather, the town’s “efforts are to be measured

against the standard of whether its ordinances *in fact* provide a realistic opportunity for construction of its regional fair share obligation.” 204 N.J. Super at 452-3, *citing*, South Burlington Cty. NAACP v. Mount Laure Tp. 92 N.J. 158,220-221(1983) (Mount Laurel II). The court in J.W. Fields then stated that *immunity* from a builder’s remedy action would be appropriate “if the municipality will stipulate noncompliance and obtain the court’s approval of a proposed fair share number.” 204 N.J. Super. at 257.

There can be little question that no town can be certain at this time whether its current plan creates a realistic opportunity for the development of its fair share because the threshold issue - the fair share of the municipality - has yet to be determined. Even municipalities that received *Substantive Certification* in the Third Round under the rejected growth share methodology must have their plans evaluated based upon the court’s fair share determination and given the opportunity to supplement if necessary. 221 N.J. at 26 All this can only be accomplished after its fair share number has been determined. The fact that a municipality is presenting its plan to the court, with the understanding that the plan may need to be supplemented to achieve compliance demonstrates its recognition that its plan may not be compliant.³ Indeed, there is no way for a municipality to know until there is a determination of its Third Round obligation. Further, given the complexities of prioritizing the development of property by one particular builder over that of another, as well as the potential conflict between the builder’s remedy and the public interest in sound planning, *see*, J.W. Fields, 204 N.J. Super.

³ This is not an admission or stipulation of non-compliance since that simply cannot be determined until the court makes a fair share determination. Nevertheless, by initiating this action, Warren has placed its plan before the court for evaluation.

at 459-467, there is no reason to complicate the process by having the court give a preference to a builder before there is even a determination of a municipality's fair share, and the town is given the opportunity to supplement or adjust its plan to comply.

It is evident that the Supreme Court has favored the granting of temporary immunity to towns that have filed a declaratory judgment action. It is understood that certain parties that have been placed on notice may have the opportunity to participate in the proceedings; however, the goal is to create a path to voluntary compliance by the municipality, not compliance under threat of rezoning to favor a builder; to favor profit to one party over sound planning in the interest of the public at large.

Rocky Hill has been engaged in the Mount Laurel process and has demonstrated an intent and effort to comply with its regional fair share obligations. It has received *Substantive Certification* in all rounds, including the Third Round. The Plan follows the guidelines that were in place at the time of the petition. The Borough is prepared to address the issues in this matter and will be prepared to develop a supplemental plan if necessary to meet its obligations. Rocky Hills' willingness to participate and cooperate, as is demonstrated by the *Substantive Certification*, as well as its thorough approach to its obligation supports a reasonable basis for the court to grant temporary immunity as provided for in the Decision, particularly given the Supreme Court's directive to the trial courts to be "generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions" for towns that received *Substantive Certification* under the invalidated Third Round Rules. 221 N.J. at 26.

CONCLUSION

For the foregoing reasons, the Borough of Rocky Hill respectfully requests that the Court enter an order providing temporary immunity from builder's remedy suits or other claims challenging the Borough's Fair Share Plan and Housing Element.

DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.
Attorneys for the Borough of Rocky Hill

By: _____
STEVEN A. KUNZMAN

Dated: July , 2015

Attorney ID: 012731981
Our File No.: C22169(SAK)

**DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.**
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(908) 757-7800
Attorneys for Borough of Rocky Hill

In the Matter of the Borough
of Rocky Hill for a Judgment
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Round Housing Element and
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:SUPERIOR COURT OF NEW JERSEY
:LAW DIVISION: SOMERSET COUNTY
:Docket No.: L-901-15
:
:(Mount Laurel)
:
:Civil Action
:
:**CERTIFICATION OF TAMARA L.
: LEE IN SUPPORT OF THE BOROUGH
: OF ROCKY HILL'S MOTION FOR
: TEMPORARY IMMUNITY**
:
:

I, Tamara L. Lee, of full age, certify as follows:

1. I am a Professional Planner licensed by the State of New Jersey, License No. 4287; a Certified Planner by the American Institute of Certified Planners, Certificate No. 7077; and a Landscape Architect licensed by the State of New Jersey, License No. 551.

2. A true copy of my Curriculum Vitae is attached as Exhibit A.

3. I am the Borough of Rocky Hill's Professional Planner and I am advising the Borough on meeting its Third Round fair share obligation.

4. I make this Certification in support of the Borough's motion for immunity.

5. The Borough is one of the smallest municipalities in the County of Somerset and consists of approximately 410 total acres, 253 housing units and the 2010 United States Census lists the Borough having 682 residents.

6. I reviewed the Borough's Complaint for Declaratory Judgment, including all of the documents referenced in the Complaint.

7. Based upon my review of the allegations in the Complaint and the documents referenced in the Complaint, I believe that the Complaint accurately recites the status of the Borough's First and Second Round fair share obligations:

- a. In 1986, the Council on Affordable Housing ("COAH") determined that the Borough had no fair share obligation for the First Round ending in 1993.
- b. In 1993, COAH determined that the Borough had a fair share obligation for the Second Round ending in 1999 consisting of twenty-seven (27) units, including twenty-five (25) new units and two (2) rehabilitation units.
- c. In 2001, COAH granted the Borough Second Round Substantive Certification as follows:

<u>Components</u>	<u>Credits or Units</u>
Rehabilitation program	2
Regional Contribution Agreement with the City of New Brunswick	9

Group home known as Eden Acres	4
Group home by the ARC of Somerset	6
Rental bonus	<u>6</u>
Total credits or units	27

- d. All of the components described above were implemented and no Second Round units remain to be addressed.

8. Based upon my review of the allegations in the Complaint and the documents referenced in the Complaint, I also believe that the Complaint accurately recites the status of the Borough's Third Round fair share obligation:

- a. The Planning Board, on November 11, 2008, adopted a Housing Element and Fair Share Plan ("Third Round Plan") to meet the Borough's Third Round fair share obligation under Mount Laurel and the FHA. The Third Round Plan is attached as Exhibit B.
- b. The fair share obligation for the Third Round was calculated in the Third Round Plan as fifteen (15) units, including four (4) rehabilitation units and eleven (11) Third Round new units.
- c. The Borough's Third Round Plan included drafts of the following Ordinances:
- i) An Ordinance Amending the Development Regulations of the Borough of Rocky Hill to Permit Accessory Apartments in Fulfillment of the Borough's Revised Third Round Housing Element & Fair Share Plan;
 - ii) An Ordinance Modifying Article 8 (Affordable Housing) of the Development Regulations of the Borough of Rocky Hill so as to be in Compliance with the Rules of the New Jersey Council on Affordable Housing and State of

New Jersey Uniform Housing Affordability Controls; and

iii) An Ordinance Repealing Article 9 of the Borough of Rocky Hill Development Regulations Ordinance Titled "Development Fees Section" and Adopting an Affordable Housing Development Fee Ordinance for the Borough of Rocky Hill.

d. On May 14, 2009, COAH granted the Borough Third Round Substantive Certification as follows:

<u>Components</u>	<u>Credits or Units</u>
Rehabilitation program	4
Accessory apartment program	10
Group home (Eden Acres) expansion	<u>1</u>
Total credits or units	15

A true copy of the Third Round Substantive Certification is attached as Exhibit C.

e. On June 15, 2009, the Borough adopted the Ordinances described above.

f. On June 17, 2009, the Borough submitted copies of adopted Ordinances Nos. 6, 2009; 7, 2009; and 8, 2009 to COAH.

9. The Borough's original fair share obligation for the Third Round ending in 2018 was calculated in the Third Round Plan as fifteen (15) units, including four (4) rehabilitation units and eleven (11) Third Round new units.

10. The Borough retained the services of an expert to assist the Borough in calculating the Borough's current Third Round fair share obligation.

11. The Borough authorized that I prepare an amendment to the Third Round Plan to include appropriate supplemental mechanisms to accommodate current conditions including time lapsed and the depressed real estate market that resulted in the absence of real estate development in the Borough by exploring:

- a. Special needs housing;
- b. Accessory apartments program;
- c. Residential rehabilitation program; and
- d. Affordable housing overlay zone.

12. Because of the Borough's size, development constraints, and small population, the development opportunities in the Borough are limited. Notwithstanding, the Borough participated in the First, Second and Third Rounds, meeting its cumulative Second Round fair share obligation in full. It was also granted Third Round Substantive Certification by COAH in 2009. Accordingly, because the Borough has participated in the process to the best of its ability, acting timely, the Borough should be granted immunity.

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



Tamara L. Lee
PP(#4287), AICP(#7077)

Dated: June 30, 2015

Exhibits to Certification

- A - Curriculum Vitae
- B - 2008 Third Round Housing Element and Fair Share Plan
- C - Third Round Substantive Certification

Exhibit A

TAMARA L. LEE, PP, AICP, LLA, ASLA

Tamara Lee Consulting, LLC
156 Lindbergh Road
Hopewell, New Jersey
08525

(609)333-0678
fax: (609)333-0679
e-mail: tamaralee@tleplan.com

Curriculum Vitae

Professional Licenses

Professional Planner, State of New Jersey (#4287)
Certified Planner, American Institute of Certified Planners (#7077)
Licensed Landscape Architect, State of New Jersey (#551)

Professional Affiliations

1988 - present	American Planning Association (APA)
1988 - present	American Institute of Certified Planners (AICP)
1994 - present	American Society of Landscape Architects (ASLA)
1995 - present	New Jersey Planning Officials (NJPO)
2000 - 2012	National Recreation and Park Assoc. & National Playground Safety Institute
2000 - 2003	NJDOT Context Sensitive Design Seminars, Series Completed
1999	Main Street New Jersey, Downtown Revitalization Institute Graduate

Qualifications

For the last thirty years Ms. Lee has been performing community planning, environmental analysis and landscape architecture. In 1995 she established TAMARA LEE CONSULTING LLC (TLC) to provide land use planning and landscape architectural services to both public and private clients. With the two disciplines, Ms. Lee integrates the design talents and environmental insights inherent in her landscape architectural work, with her professional planning skills to produce innovative and environmentally sensitive site designs and land use planning solutions.

Ms. Lee generates, and provides expert testimony on matters including:

- landscape plans, both hardscape and 'softscape'
- park and recreation design and consulting
- environmental / wetlands analysis and natural resource inventories
- site plan and subdivision design
- site plans and subdivisions with use and bulk variance applications
- development / redevelopment feasibility studies
- municipal master plans and local ordinances, State Plan endorsements
- legal challenges and court testimony

Professional Experience

Ms. Lee works with public and private clients from the earliest stages of their projects through to final construction. She performs site inventories and analyses to generate feasibility studies that determine the highest and best use of undeveloped sites. Ms. Lee works easily with project engineers and other consultants to insure that the original design intent of a site plan is preserved through the engineering and construction phases of any project. Ultimately she provides effective and articulate expert testimony on design, planning and landscape architecture to planning and zoning boards, as well as New Jersey's Superior Court. She has provided the planning testimony for landmark case law involving a diverse range of issues, including under-sized lots and merger doctrine, hospital growth in a residential zone and farmland preservation.

Ms. Lee is currently the municipal planner for the Boroughs of Riverton, Hightstown and Rocky Hill. She wrote an awarding winning master plan for Riverton along with the Borough's Environmental Resource Inventory and Riverfront Design Guidelines. In Hightstown, she wrote the current Master Plan, secured Center Designation, and designed a number of public spaces in downtown. In Rocky Hill she's been involved with application reviews, designed a community park, which became home for the town's 9-11 memorial and designed a streetscape improvement project. As a certified playground safety inspector for twelve years, she worked with school districts and communities to design new, or renovate old, playgrounds while updating the sites and parks in which they were located. She's also the designer of Clawson Park in Ringoes (East Amwell), NJ.

With an intimate knowledge of how private development works, and a thorough understanding of the public planning process, Ms. Lee has long been an effective advocate for objector clients too. While TLC prides itself on its ability to guide its own private developer clients to create projects that blend with communities, not all developers are equally conscientious and occasionally local residents need an articulate voice to defend their interests. Among her successes, Ms. Lee has succeeded in stopping the expansion of two major hospitals in residential neighborhoods and secured the denial of two cell tower applications.

Common in all her work, be it public or private, developer or objector, is an unusual degree of diligence, passion and attention to detail. TLC prides itself on developing, and sometimes fighting for, land use solutions that are creative, environmentally sound and responsive to the needs of the community while achieving the objectives of prospective developers. A thorough understanding of both sides of the dais allows TLC to anticipate and effectively manage projects for both public and private clients. This comprehensive understanding of the process makes TLC a uniquely effective planning expert.

Education

9/00 – 12/03	NJ Department of Transportation, Context Sensitive Design Training
5/97 - present	Continuing Education, misc. landscape architecture and design courses.
9/84 – 12/95	Rutgers University and New York University, Continuing Education, Environmental Studies, Real Estate Law, Real Estate Finance, and others.
9/78 - 6/83	Michigan State University, Bachelor of Landscape Architecture.