



Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammler, Esq.  
Joshua D. Bauers, Esq.

July 5, 2016

Honorable Stephan P. Hansbury, P.J. Ch.  
Superior Court of New Jersey  
Morris County, Civil Division  
Washington and Court Streets  
Morristown, NJ 07960

**Re: In the Matter of the Application of the Township of Chatham,  
Docket No. MRS-L-1659-15**

Dear Judge Hansbury:

In accordance with the scheduling order entered by Your Honor on May 16, 2016, Fair Share Housing Center (FSHC) files these comments regarding the Housing Element and Fair Share Plan prepared by the Township of Chatham.

As a preliminary matter, we reserve the right to supplement these objections and do not intend to waive any objections simply because they are not mentioned here. We rely on our October 30, 2015 submission to the court regarding compliance standards and fair share obligations that municipalities should be required to meet as part of this declaratory judgment proceeding and incorporate that filing herein by reference. We also rely on the June 2, 2016 filing that includes several expert reports prepared by David N. Kinsey, PhD, PP, FAICP and Daniel McCue.

FSHC objects to the Township's Housing Element and Fair Share Plan and urges the court to deny any findings of compliance with Mount Laurel for the following reasons.

**1. Econsult Solutions' report dated December 30, 2015 should be rejected.**

The Supreme Court required that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (citing In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 620 (2013)). The Court did not note or sanction any deviations from those methodologies, thus holding that parties should proceed by following those methodologies with currently relevant data. It is notable that the Court, right after this passage discussed how judges have "discretion" in a different area — compliance standards — and goes on to say that "courts should employ flexibility in assessing a town's compliance." Id. at 30, 33. The Court notably did not permit "discretion" or "flexibility" as to the methodology, but rather ordered the use of "obligations based on those methodologies." Id. at 30.

As demonstrated in expert reports prepared by Dr. Kinsey and submitted in this matter, the Econsult Solutions report issued on December 30, 2015 is wholly in conflict with the Prior Round Methodology. FSHC opposes any reliance by the court on that report.

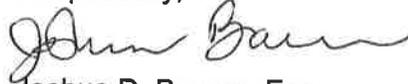
In order to receive approval for its plan, the Township should begin planning for a larger Third Round obligation. It bears noting that Chatham Township has thus far not proposed to construct any new affordable housing units and instead has only presented a plan with credits for extensions of expiring controls. The report issued by Dr. Kinsey indicates that the Township's obligation is 567 units. FSHC opposes any adjudication of the Township's obligation that does not provide FSHC with the opportunity to prove that Chatham Township's obligation is 567 units.

**2. The court should appoint a special master.**

Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 365-366 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), recognizes that "A municipality's objective is to be assigned a small fair share of lower income housing" and therefore establishes a special process for evaluating settlement between developers and municipalities. The court did so because developers and municipalities could collude to harm the public interest. In order to reduce the potential for such abuse, the Appellate Division held that "a master probably should be appointed as a matter of course in any case where a developer is the only party representing lower income persons." Id. at 371 n.2. The Appellate Division's inclination to require special masters applies with equal, if not greater, force when a municipality is the only party to a proceeding. FSHC has appeared as an interested party and attempts to represent the public interest as much as possible, but our work alone does not remove the need for a special master.

Thank you for your attention to this matter.

Respectfully,



Joshua D. Bauers, Esq.  
Counsel for Fair Share Housing Center

c: Steven A. Kunzman, Esq.