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January 22, 2025

Via eCourts and Regular Mail

Clerk, Law Division
Middlesex County Superior Court
Middlesex County Courthouse
56 Paterson Street
New Brunswick, New Jersey 08901

**Re: In the Matter of the Application of the Township of North Brunswick
Declaratory Judgment Filing Pursuant to Directive No. 14-24
Our File No.: 4271.95**

Dear Sir or Madam:

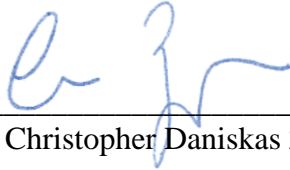
Please be advised that this office represents Declaratory Plaintiff, Township of North Brunswick (the "Township") in connection with the above referenced matter. Enclosed, please find a copy of a Declaratory Judgment Action filed by the Township with the Affordable Housing Dispute Resolution Program in connection with the Township's affordable housing obligations for the Fourth Round. The within is filed pursuant to N.J.S.A. 52:27D-304.1, et seq. and Directive No. 14-24 of the Administrative Offices of the Courts.

555 U.S. Highway One South
Suite 440
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Very truly yours,

RAINONE COUGHLIN MINCHELLO, LLC

By: 

Christopher Daniskas Zingaro, Esq.

Encls.

cc: Department of Community Affairs, Division of Local Government Services,
(via *Certified and Regular Mail*)
Fair Share Housing Center, (via *Certified and Regular Mail*)

Ronald H. Gordon, Esq. – (ID#01941979)
Christopher D. Zingaro, Esq. – (ID#264412018)
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Attorneys for Declaratory Plaintiff,
Township of North Brunswick

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF NORTH
BRUNSWICK, COUNTY OF MIDDLESEX,
A Municipal Corporation of the State of New
Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

DOCKET NO.: _____

CIVIL ACTION

**COMPLAINT FOR DECLARATORY
JUDGMENT PURSUANT TO N.J.S.A.
52:27D-301, ET SEQ. AND AOC
DIRECTIVE #14-24**

Declaratory Plaintiff, Township of North Brunswick, a municipal corporation and body politic organized under the laws of the State of New Jersey, with principal offices located at 710 Hermann Rd, North Brunswick, New Jersey 08902, by way of this Declaratory Judgment Action (the “DJ Action”), alleges and says the following:

BACKGROUND

1. Declaratory Plaintiff, Township of North Brunswick (the “Township” or “North Brunswick”) is a body politic and corporate organized under the laws of the State of New Jersey.

2. On March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c.2), which amends the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301, et seq.) (the “Amended FHA”).

3. Pursuant to the Amended FHA, municipalities are required to determine the Present Need obligation and Prospective Need obligation of their fair share of the regional need for affordable housing (“Fair Share Obligation”) during the 10-year period beginning on July 1, 2025 (the “Fourth Round”).

4. Pursuant to the Amended FHA, should a municipality determine its Fair Share Obligation by January 31, 2025, the municipality’s determination shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, unless challenged by an interested party on or before February 28, 2025.

5. Pursuant to the Amended FHA, any challenge to a municipality’s determination must be initiated through the Affordable Housing Alternative Dispute Resolution Program (the “Program”), explain with particularity how the municipality’s calculation fails to comply with N.J.S.A. 52:27D-304.2 and 52:27D-304.3, and include the challenger’s own calculation of the municipality’s Fair Share Obligation in compliance with said sections.

6. On October 18, 2024, the New Jersey Department of Community Affairs (the “DCA”) published a report with an estimate of the fair share affordable housing obligations of all municipalities, which, pursuant to the Amended FHA, shall not be binding on a municipality when calculating a municipality’s respective Fair Share Obligation (the “DCA Report”).

7. On January 21, 2025, upon receipt of the recommendations and findings of North Brunswick’s professionals, the Township Council of the Township of Brunswick adopted a duly authorized Resolution determining North Brunswick’s Fair Share Obligation for the Fourth Round,

which consists of a Present Need obligation of 130 units and a Prospective Need obligation of 212 units. A copy of said Resolution is attached to this Complaint for Declaratory Judgment as Exhibit A.

8. Pursuant to the Amended FHA and Directive No. 14-24 of the Administrative Offices of the Courts, North Brunswick has filed this DJ Action with the Program to: (a) secure the jurisdiction of the Program and the Court; (b) establish North Brunswick's presumptively valid calculation of its Present Need and Prospective Need obligations, as set forth in the duly adopted Resolution attached as **Exhibit A**; (c) obtain issuance of a "Compliance Certification" following North Brunswick's preparation and submission of a Housing Element and Fair Share Plan ("HEFSP"), which shall in part grant immunity to North Brunswick from all exclusionary zoning litigation, including builder's remedy lawsuits, for the Fourth Round, i.e. through June 30, 2035; (d) to the extent not automatically granted pursuant to the Amended FHA, confirm North Brunswick's continuing immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process established by the Amended FHA for establishing a Fair Share Obligation, preparing a HEFSP, and securing a Compliance Certification; and (e) secure all other relief appropriate to ensure North Brunswick receives and obtains all protections afforded by the Amended FHA, including but not limited to all immunities and presumptions of validity necessary to satisfy North Brunswick's affordable housing obligations voluntarily without having to endure the expense and burden of unnecessary third party litigation.

COUNT ONE

DECLARATORY RELIEF ESTABLISHING THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF NORTH BRUNSWICK PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.

9. North Brunswick repeats and incorporates herein each and every allegation set forth in the previous paragraphs as if set forth herein in full.

10. Pursuant to N.J.S.A. 52:27D-304.1, et seq., North Brunswick, by way of this DJ Action, seeks the confirmation of the Program and the Court of its Present and Prospective affordable housing obligations set forth in the binding Resolution attached hereto and made a part hereof as **Exhibit A**.

11. North Brunswick reserves its right to revise its Fair Share Obligation in the event that a decision of a court of competent jurisdiction, or an action by the New Jersey Legislature, alters the Amended FHA or the meaning of the Amended FHA.

12. North Brunswick reserves its right to take a Vacant Land Adjustment or Durational Adjustment, which may result in a reduction to the Township's Fair Share Obligation.

WHEREFORE, North Brunswick seeks a declaratory judgment for the following relief:

A. Declaring that North Brunswick is properly within the jurisdiction of Program and the Court for the purpose of establishing its Fair Share Obligation.

B. Declaring, pursuant to N.J.S.A. 52:27D-304.1(f), that North Brunswick's affordable housing obligations for the Fourth Round consists of a Present Need obligation of one-hundred and thirty (130) units and a Prospective Need obligation of two-hundred and twelve (212) units.

C. Declaring that North Brunswick is entitled to immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process

established by the Amended FHA for establishing a Fair Share Obligation, preparing a HEFSP, and securing a Compliance Certification.

D. Such other relief that the Program and Court deems just and proper.

COUNT TWO

DECLARATORY RELIEF APPROVING NORTH BRUNSWICK'S HOUSING ELEMENT AND FAIR SHARE PLAN PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.

13. North Brunswick repeats and incorporates herein each and every allegation set forth in the previous paragraphs as if set forth herein in full.

14. In compliance with the Amended FHA, North Brunswick shall prepare a HEFSP demonstrating compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, which said HEFSP shall apply, as appropriate, any applicable adjustments, including but not limited to a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; an adjustment based upon any ruling in litigation involving affordable housing obligations; and any other applicable adjustments permitted in accordance with the Act and/or applicable regulations.

15. Upon the adoption of the HEFSP by the Planning Board of the Township of North Brunswick, North Brunswick shall file it with the Court and submit it to the Program.

16. After such filing, North Brunswick will seek approval of the HEFSP and issuance of the relief set forth below.

WHEREFORE, North Brunswick seeks a declaratory judgment for the following relief:

A. Declaring the approval of North Brunswick's HEFSP.

B. Declaring that North Brunswick is constitutionally compliant and issuing a Compliance Certification, with the force and effect of a Judgment of Compliance and Repose, or such other protections as afforded to North Brunswick in complying the requirements of the Amended FHA, including but not limited to all immunities and presumption of validity, for the Fourth Round, i.e. the period beginning July 1, 2025 and ending June 30, 2035.

C. Declaring and issuing immunity to North Brunswick from all exclusionary zoning litigation, including builder's remedy lawsuits, for the Fourth Round, i.e. the period beginning July 1, 2025 and ending June 30, 2035.

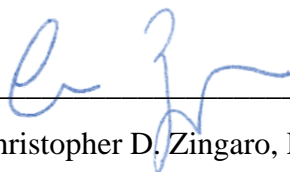
D. For such other relief as the court deems just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Ronald H. Gordon, Esq. and Christopher D. Zingaro, Esq. are designated as trial counsel in the above captioned matter.

RAINONE COUGHLIN MINCHELLO, LLC
Attorneys for Declaratory Plaintiff,
Township of North Brunswick

Dated: January 22, 2025

By:  _____
Christopher D. Zingaro, Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge: (1) the matter in controversy is not the subject of another action pending in this Superior Court; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in this litigation is presently known to counsel. Further, I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b)

RAINONE COUGHLIN MINCHELLO, LLC
Attorneys for Declaratory Plaintiff,
Township of North Brunswick

Dated: January 22, 2025

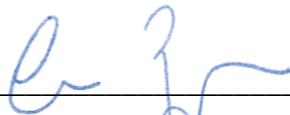
By:  _____
Christopher D. Zingaro, Esq.

EXHIBIT A
(Resolution)

69-1.25

**A RESOLUTION OF THE TOWNSHIP OF NORTH BRUNSWICK
ADOPTING ITS PRESENT NEED AND PROSPECTIVE NEED FOR THE
FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS PURSUANT TO
P.L. 2024, C.2 AND FAIR HOUSING ACT N.J.S.A. 52:27d-302**

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c.2) (the "Amended FHA"), which legislation amends the New Jersey Fair Housing Act P.L. 1985, c.222 (N.J.S.A. 52:27D-301, et seq.) and other related housing laws, and requires each municipality to provide its fair share of affordable housing obligation under the Mount Laurel Doctrine based on a new process and updated methodology; and

WHEREAS, pursuant to the Amended FHA, municipalities are required to determine the Present Need obligation (Rehabilitation) and Prospective Need obligation (New Construction) of their fair share of the regional need for affordable housing ("Fair Share Obligation") during the 10-year period beginning on July 1, 2025 (the "Fourth Round"); and

WHEREAS, pursuant to the Amended FHA, should a municipality determine its Fair Share Obligation by January 31, 2025, the municipality's determination shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, unless challenged by an interested party on or before February 28, 2025; and

WHEREAS, pursuant to the Amended FHA, any challenge to a municipality's determination must be initiated through the Affordable Housing Alternative Dispute Resolution Program (the "Program"), explain with particularity how the municipality's calculation fails to comply with N.J.S.A. 52:27D-304.2 and 52:27D-304.3 and include the challenger's own calculation of the fair share obligations in compliance with said sections; and

WHEREAS, on October 18, 2024, the New Jersey Department of Community Affairs (the "DCA") published a report with an estimate of the fair share affordable housing obligations of all municipalities, which provided that North Brunswick's Prospective Need for affordable housing in the Fourth Round would be 239 units, which, pursuant to the Amended FHA, may be taken into consideration by a municipality but shall not be binding on a municipality when calculating a municipality's respective Fair Share Obligation (the "DCA Report"); and,

WHEREAS, the Township of North Brunswick (the "Township"), with the assistance of its professionals, has determined its Fair Share Obligation for the Fourth Round based upon the methodology set forth in the Amended FHA, which included consideration of the DCA's calculations and analysis; and

WHEREAS, the Township Council of the Township of North Brunswick (the "Township Council") has reviewed the findings of the Township's professionals, which are described in Exhibit A attached hereto, and adopts a Fair Share Obligation for the Fourth Round consisting of a Present Need obligation of 130 units and a Prospective Need obligation of 212 units; and

EXHIBIT A

Report to Determine the Township of North Brunswick Fourth Round Prospective Need for Affordable Housing 2025-2035

This report is being prepared in accordance with N.J.S.A. 52:27D-301, et seq., which allows for a municipality to establish its own Prospective Need utilizing more precise locally generated data than proffered by the Department of Community Affairs (DCA).

As a regional leader in the provision of affordable housing, the Township of North Brunswick has taken many steps and utilized several resources to facilitate affordable housing. Our efforts include establishing inclusionary zoning, mitigating the cost of site acquisition, leasing land to a developer, formulating a non-profit corporation to construct housing utilizing HMFA funding, guaranteeing the mortgage resulting from a bond issue, subsidizing the rents of the lowest income residents in a 100% affordable building, and extensive housing rehabilitation efforts.

The township has performed a detailed analysis of DCA's calculations in order to determine if the local allocation of 239 Prospective Need units is reasonable, and to otherwise determine what the Prospective Need obligation should be.

Following site visits, examining municipal tax records, consulting with the Tax Assessor, and performing a detailed review of aerial photography and wetlands delineations, the township has determined that the DCA data with respect to vacant land should be adjusted to exclude:

1. Sites that have received Planning Board or Board of Adjustment approval for residential or nonresidential development;
2. Sites which are part of the Middlesex County Correctional Facility;
3. Sites which are wooded rear yards of existing single-family homes;
4. Sites comprised of undersized lots that are adjacent to developed lots and under common ownership merge by law and should be removed;
5. Sites which are owned by the township and planned for recreational use;

6. Sites that are small, isolated, and are located within existing industrial developments;
7. Sites that have utility easements or rights-of-way; and
8. Sites that are surrounded by wetlands which make access impossible given current standards and regulations.

Subsequently, the township identified for detailed analysis 27 sites on the map that were designated as vacant and developable properties by DCA. A thorough analysis of these sites was conducted in accordance with the previous site criteria. Based upon this analysis, the township identifies only five (5) of the 27 sites (Sites 8(B), 15, 17, 26 and 27), containing 13.97 acres, as developable.

Appendix A, included herein, provides detailed support for this determination.

Accordingly, the township of North Brunswick has determined that the DCA calculated Prospective Need of 239 units should be reduced by 27 units to a Prospective Need of 212 units.

METHODOLOGY

The Land Use Factor is only one of three factors used to allocate municipal affordable housing production targets. The other two factors are the Equalized Nonresidential Valuation Factor and the Income Capacity Factor. The township accepts DCA's calculation of both of these factors. The regulations call for the averaging of these three factors to come up with an Average Allocation Factor which establishes the municipality's percentage of the region's Prospective Need.

DCA averaged the Equalized Nonresidential Valuation Factor (3.29%), the Income Capacity Factor (2.07%), and the Land Capacity Factor (0.83%), resulting in an Average Allocation Factor of 2.06%. Applying this percentage to the region's Prospective Need of 11,604 units results in a Prospective Need of 239 units.

Utilizing the township calculation to determine the Land Capacity Factor, this factor is reduced from 0.83% of the region's developable land to .14% of the region's developable land which is calculated by DCA to be 10,324 acres.

Averaging these three factors utilizing the township's Land Capacity Factor results in a revised Average Allocation Factor of 1.83% and a Prospective Need of 212 units.

APPENDIX A – SITES DETERMINED TO BE DEVELOPABLE

- Site 8(B): Residential zone areas comprised of 338,891 square feet (7.78 acres) which includes areas suitable for development.
- Site 15: A Transitional Mixed-Use Zone area comprised of 70,487 square feet (1.62 acres) which permits housing and is suitable for development.
- Site 17: A Transitional Mixed-Use Zone area comprised of 81,018 square feet (1.86 acres) and suitable for development.
- Site 26: A Residential Zone area comprised of 75,483 square feet (1.73 acres) which is suitable for development.
- Site 27: Two (2) Residential Zone areas comprised of 42,893 square feet (.98 acres) featuring nearly a dozen adjacent small single-family lots which are suitable for development.

APPENDIX B – SITES DETERMINED TO BE NOT DEVELOPABLE

- Site 1: An Industrial Zone area, comprised of 216,969 square feet (4.98 acres) that is not accessible due to severe wetlands constraints.
- Site 2: An Industrial Zone area, comprised of 26,146 square feet (.60 acres), which lies between a PSE&G right-of-way and wetlands.
- Site 3: An Industrial Zone area, comprised of 29,894 square feet (.69 acres) surrounded by industrial uses and wetlands.
- Site 4: An Industrial Zone area, comprised of 106,978 square feet (2.46 acres) accessed by an undersized paper street and surrounded by the Middlesex County Correctional Facility, other industrial uses and wetlands.
- Site 5: Two (2) areas totaling 235,286 square feet (5.40 acres) which are located on the site of the Middlesex County Correctional Facility.
- Site 6: An area comprised of 32,904 square feet (.76 acres) located on the site of the Middlesex County Correctional Facility.

- Site 7: A Residential Zone area comprised of 185,976 square feet (4.27 acres) comprised of a portion of three single-family home rear yards.
- Site 8(A): Land owned by the township, comprised of 313,798 square feet (7.20 acres) which is part of a larger proposed recreation area acquired with Green Acres funding.
- Site 9: An area comprised of six (6) small Residential Zone lots totaling 77,098 square feet (1.77 acres) that are undersized and adjacent to single-family homes with common ownership that thereby merge.
- Site 10: Four (4) small Industrial Zone areas totaling 50,888 square feet (1.17 acres) surrounding a parking lot in a heavily developed Industrial area.
- Site 11: An Industrial Zone area totaling 137,686 square feet (3.16 acres) which is a buffer between the NJ Economic Development Authority property and single-family homes.
- Site 12: Two (2) small Commercial Zone irregularly shaped areas totaling 28,298 square feet (.65 acres) which are surrounded by wetlands and a hotel.
- Site 13: The rear yard of a Commercial Zone property comprised of 68,842 square feet (1.58 acres) which is surrounded by wetlands.
- Site 14: An Industrial Zone area comprised of 71,998 square feet (1.65 acres) with a current Planning Board land use approval for industrial development.
- Site 16: A Transitional Mixed-Use Zone area comprised of 137,499 square feet (3.16 acres) that is surrounded by wetlands and inaccessible.
- Site 18: A Transitional Mixed-Use Zone area comprised of 67,047 square feet (1.54 acres) which is entirely isolated by wetlands.
- Site 19: A township owned property comprised of 37,486 square feet (.86 acres) planned for recreational use.
- Site 20: Portions of 14 small Residential Zone lots totaling 77,272 square feet

(1.77 acres) that are undersized and adjacent single-family homes with common ownership that thereby merge.

Site 21: An Industrial Zone area comprised of 20,907 square feet (.48 acres) that is completely surrounded by wetlands and has no access.

Site 22: An Industrial Zone area comprised of 37,434 square feet (.86 acres) adjacent to a railroad and isolated.

Site 23: This site is owned by the township of North Brunswick, comprised of 299,688 square feet (6.88 acres), is designated for recreational use and substantially impacted by a utility easement.


Site 24: A property comprised of 299,332 square feet (6.87 acres) with a current Board of Adjustment land use approval for industrial development.

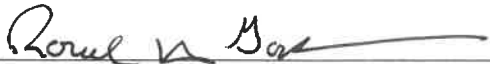
Site 25: A property comprised of 114,210 square feet (2.62 acres) with a current Board of Adjustment land use approval for commercial development.

An additional 49 miscellaneous areas comprised of 453,048 square feet (10.40 acres) that are small, irregularly shaped, and isolated with restricted or entirely no access.

7. This Resolution shall take effect immediately.


 Michael C. Hritz
 Director of Community Development


 Justine Progebin
 Business Administrator


 Ronald H. Gordon, Township Attorney
 (Approved as to legal form)

RECORDED VOTE

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
CHEID	✓			
HUTCHINSON ②	✓			
MEHTA	✓			
DAVIS ①	✓			
SOCIO	✓			
GUADAGNINO	✓			
MAYOR WOMACK				

CERTIFICATION

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on January 21, 2025.



 Lisa Russo, Township Clerk

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-000436-25

Case Caption: IN THE MATTER OF NORTH BRUNSWICK
TWP

Case Initiation Date: 01/22/2025

Attorney Name: CHRISTOPHER D ZINGARO

Firm Name: RAINONE COUGHLIN MINCHELLO, LLC

Address: 555 US HIGHWAY ONE SOUTH STE 440

ISELIN NJ 08830

Phone: 7327094182

Name of Party: PLAINTIFF : Township of North Brunswick

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: AFFORDABLE HOUSING

Document Type: Cover Letter

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Township of North Brunswick? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO **Medical Debt Claim?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

01/22/2025

Dated

/s/ CHRISTOPHER D ZINGARO

Signed

