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January 24, 2025

Via eCourts and Regular Mail

Clerk, Law Division
Monmouth County Superior Court
Monmouth County Courthouse
71 Monument Street
Freehold, New Jersey 07728

**Re: In the Matter of the Application of the Township of Marlboro
Declaratory Judgment Filing Pursuant to Directive No. 14-24
Our File No.: 02.02-0005**

Dear Sir or Madam:

Please be advised that this office represents Declaratory Plaintiff, Township of Marlboro (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.

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RAINONE COUGHLIN MINCHELLO

January 24, 2025

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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*)

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Attorneys for Declaratory Plaintiff, Township of Marlboro

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MARLBORO,
COUNTY OF MONMOUTH, A Municipal
Corporation of the State of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH 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 Marlboro, a municipal corporation and body politic organized under the laws of the State of New Jersey, with principal offices located at 1979 Township Drive, Marlboro, New Jersey 07746, by way of this Declaratory Judgment Action (the “DJ Action”), alleges and says the following:

BACKGROUND

1. Declaratory Plaintiff, Township of Marlboro (the “Township” or “Marlboro”) 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 23, 2025, upon receipt of the recommendations and findings of Marlboro’s professionals, the Township Council of the Township of Marlboro adopted a duly authorized Resolution determining Marlboro’s Fair Share Obligation for the Fourth Round, which consists of a Present Need obligation of five (5) units and a Prospective Need obligation of two-hundred and seventy-nine (279). A copy of said Resolution, along with the findings of the Marlboro’s professionals, is attached to this DJ Action as **Exhibit A**.

8. Pursuant to the Amended FHA and Directive No. 14-24 of the Administrative Offices of the Courts, Marlboro has filed this DJ Action with the Program to: (a) secure the jurisdiction of the Program and the Court; (b) establish Marlboro'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 Marlboro's preparation and submission of a Housing Element and Fair Share Plan ("HEFSP"), which shall in part grant immunity to Marlboro 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 Marlboro'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 Marlboro receives and obtains all protections afforded by the Amended FHA, including but not limited to all immunities and presumptions of validity necessary to satisfy Marlboro'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 MARLBORO PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.

9. Marlboro 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., Marlboro, 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. Marlboro 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. Marlboro 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, Marlboro seeks a declaratory judgment for the following relief:

A. Declaring that Marlboro 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 Marlboro's affordable housing obligations for the Fourth Round consists of a Present Need obligation of five (5) units and a Prospective Need obligation of two-hundred and seventy-nine (279) units.

C. Declaring that Marlboro 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 THE TOWNSHIP OF MARLBORO'S HOUSING ELEMENT AND FAIR SHARE PLAN PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.

13. Marlboro 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, Marlboro 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 Marlboro, Marlboro shall file it with the Court and submit it to the Program.

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

WHEREFORE, Marlboro seeks a declaratory judgment for the following relief:

- A. Declaring the approval of Marlboro’s HEFSP.
- B. Declaring that Marlboro 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 Marlboro 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 Marlboro 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.

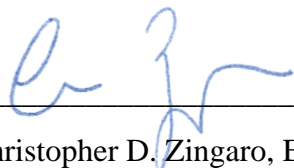
D. For such other relief as the court deems just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Louis N. Rainone, 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 Marlboro

Dated: January 24, 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).

AINONE COUGHLIN MINCHELLO, LLC
Attorneys for Declaratory Plaintiff,
Township of Marlboro

Dated: January 24, 2025

By:  _____

Christopher D. Zingaro, Esq.

EXHIBIT A
(Resolution)

RESOLUTION #2025-076

RESOLUTION OF THE TOWNSHIP OF MARLBORO, COUNTY OF MONMOUTH, ADOPTING ITS PRESENT NEED AND PROSPECTIVE NEED FOR THE FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS AS REQUIRED UNDER THE NEW JERSEY FAIR HOUSING ACT AS AMENDED BY P.L. 2024, C.2

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50, codified as P.L. 2024, c.2 (the "Amended FHA"), which 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

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, 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; and

WHEREAS, the DCA determined that the Township of Marlboro's (the "Township") present need to be 5 units and prospective need 579 units based in substantial part upon erroneous assumptions about vacant properties or otherwise developable properties within the Township; and

WHEREAS, more than 93% of the area deemed to be vacant in the analysis by the DCA was in fact not vacant or otherwise developable as affordable housing; and

WHEREAS, the Township of Marlboro, with the assistance of its professionals, has calculated 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 Marlboro (the "Township Council") has reviewed the findings of the Township's professionals, which are described in the attached Exhibit A, and adopts a Fair Share Obligation for the Fourth Round consisting of a Present Need obligation of 5 units and a Prospective Need obligation of 279 units; and

WHEREAS, in accordance with N.J.S.A. 52:27D-311(m) of the Amended FHA, the Township reserves its right to take a vacant land adjustment, which may result in a reduction to the new construction portion of its Fair Share Obligation; and

WHEREAS, the Township 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, would result in a lower calculation of an obligation for the Township; and

WHEREAS, the Amended FHA requires municipalities to satisfy various administrative and procedural requirements in connection with the adoption of a municipality's Fair Share Obligation, including but not limited to the publication of this Resolution to the Township's publicly accessible Internet website and the filing of an action with the Program through the Judiciary's electronic filing systems, within forty-eight (48) hours of the adoption of this Resolution; and

WHEREAS, the Township Council directs the Municipal Clerk to satisfy all required notice and publications requirements, and authorizes the Township and its professionals to take all actions required to file the necessary action with the Program.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Marlboro that the:

1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.
2. The Township of Marlboro's Fair Share Obligation for the Fourth Round of affordable housing obligations consists of a Present Need obligation of 5 units and a Prospective Need obligation of 279 units.
3. The Township reserves its right to take a vacant land adjustment, which may result in a reduction to the new construction portion of its Fair Share Obligation.
4. The Township 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, would result in a lower calculation of an obligation for the Township.
5. The Municipal Clerk be and is hereby directed to forward a copy of this Resolution to the Department of Community Affairs and to publish a copy to the Township's publicly accessible Internet website within forty-eight (48) hours of the adoption of this Resolution.
6. The Township be and is hereby directed to file an action with the Affordable Housing Alternative Dispute Resolution Program regarding this Resolution in compliance with the Amended FHA, and the Mayor and Municipal Clerk are authorized to execute any and all documents required for said purpose.
7. This Resolution shall take effect immediately.


SO RESOLVED, as aforesaid.

OFFERED BY: SCALEA

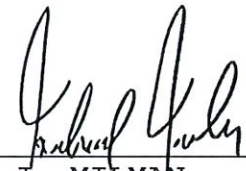
AYES: 5

SECONDED BY: VIRDI

NAYS: 0



SUSAN A. BRANAGAN,
MUNICIPAL CLERK
012325



MICHAEL J. MILMAN,
COUNCIL PRESIDENT

CERTIFICATION

I hereby certify the above to be a true and exact copy of a Resolution adopted by the Township of Marlboro at a meeting held on January 23, 2025.



SUSAN A. BRANAGAN
MUNICIPAL CLERK

LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)
 PETER R. AVAKIAN, P.E., P.L.S., P.P.
 MEHRYAR SHAFAI, P.E., P.P.
 GREGORY S. BLASH, P.E., P.P.
 LOUIS J. LOBOSCO, P.E., P.P.
 GERALD J. FREDA, P.E., P.P.
 WILLIAM D. PECK, P.E., P.P.
 RICHARD PICATAGI, L.L.A., P.P.
 JENNIFER C. BEAHM, P.P., AICP

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round obligation of 579 units. The DCA released additional data related to the Land Capacity Factor component that is one of three metrics used to determine a municipal Fourth-Round obligation in accordance with the 2024 Fair Housing Act (FHA). The Land Capacity Factor data was released on November 27, 2024, which was a month after the FHA deadline for the issuance of the non-binding obligation.

In releasing the data, the DCA recognized in the release of the Land Capacity Factor (LCF) information that the identified areas could be over or under inclusive depending on various conditions and a municipality may provide more detailed analysis and mapping to support a different LCF value. The DCA noted that any disputes could be resolved in the Affordable Housing Dispute Resolution process.

Leon S. Avakian, Inc., (LSA) examined the DCA parcel data for Marlboro which includes land areas identified as developable and found that the DCA was indeed overinclusive. LSA further found that when the land allocation factor was corrected, it resulted in a Fourth Round Prospective Need of 279 units.

Broadly speaking, there are 6 steps to determine the obligation for each municipality. Each step and commentary regarding the potential for alteration of the data input follows:

1. Identify the housing region. Marlboro Township has been and continues to be, as per the FHA, in Region 4. This region includes Monmouth, Ocean, and Mercer Counties.
2. Determine the regional (affordable housing) need. The FHA sets forth that the regional need for the 10-year round (2025-2035) shall be based on the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. The resulting change in households is divided by 2.5. The affordable housing need in Region 4 is determined to be 13,822 dwelling units.
3. Determine the regional and each municipal equalized nonresidential valuation factor. This step requires that the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be divided by the regional total change in nonresidential valuation. The FHA states the data input shall be that which is published by the Division of Local Government Services. The division annually publishes a summary of municipal tax data, including a *Non-Residential Summary of Non-Residential Value*. This data addresses the value of all commercial, industrial, and apartment properties in the municipality. However, the value of the apartment properties are not included in the nonresidential valuation factor.
4. Determine the municipal and regional income capacity factor. This step is an average of 1) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the region and 2) the municipal share of the regional sum of the differences between the

median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality. The FHA states the data input shall be American Community Survey (“ACS”) five-year estimates. The ACS publishes municipal median household incomes as part of its five-year estimates.

5. Determine the municipality’s land capacity factor. Estimate municipal developable land using the most recent land use land cover data and weighing such land based on the planning area type in which such land is located. The FHA sets forth one of three weighting factors for a variety of planning areas across the state. Developed areas of the State, such as Planning Areas 1 and 2, Centers, etc. have a weight of 1.0. Rural and environmentally sensitive planning areas have a weight of zero; the remaining areas have a weight of 0.5.

The parcels identified as developable in the DCA’s calculation of the LCF for Marlboro is overinclusive. Accordingly, I believe the developable land should be adjusted from 513 acres to 35.84 acres. The following criteria were utilized to exclude parcels as developable:

- Areas or portions of areas <25’ wide (because DCA’s methodology report states that a 25’ by 100’ area was their minimum threshold for developability).
- Areas within the regulatory floodway.
- Open space/parkland properties with deed restrictions and/or on ROSI.
- Properties under construction or recently developed.
- Sites with site plan approvals for development and/or permits issued for development.
- Public utility parcels, NJDOT/NJ Turnpike Authority parcels, DRPA parcels, railroad properties, rights-of-way, stormwater management, etc.
- Properties with easements restricting development within developable area.
- Properties that are within PA4 or PA5.

It is important to note that the LCF analysis is different from the analysis to determine a municipality’s entitlement to a vacant land adjustment. While the analysis to correct the LCF focuses on developable land, the vacant land analysis focuses on developable land suitable for inclusionary development. Therefore, just because a parcel may not be removed for purposes of calculating the LCF has no bearing on whether it should be removed for purposes of calculating a vacant land adjustment.

6. Determine the municipal obligation. The three factors (nonresidential value, income, and land capacity) are averaged and then applied to the regional need to determine how the need shall be allocated to each municipality.

As indicated below in the Methodology Summary table, the reduction in the developable acres for the LCF leads to a Fourth Round prospective need number of 279 not 579.

Marlboro Fourth Round Obligation (Rainone)
Methodology Summary

	DCA	LSA
Household Change (Region 4)	34,554	34,554
Low & Mod Home Estimate (Region 4)	13,822	13,822
Nonresidential Valuation Factor	2.25%	2.25%
Regional Income Capacity Factor	3.30%	3.30%
Land Capacity Factor	7.02%	0.49%
Average Factor	4.19%	2.01%
<i>Gross Prospective Need</i>	579	279

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-000313-25

Case Caption: IN THE MATTER OF MARLBORO TWP

Case Initiation Date: 01/24/2025

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 Marlboro

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: AFFORDABLE HOUSING

Document Type: Complaint

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 Marlboro? 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)

01/24/2025

Dated

/s/ CHRISTOPHER D ZINGARO

Signed

