

FILED

February 9, 2026

SOMERSET COUNTY SUPERIOR COURT
WILLIAM G. MENNEN, J.S.C.

ORDER PREPARED BY THE COURT

**IN THE MATTER OF THE
DECLARATORY JUDGMENT
ACTION OF THE TOWNSHIP
OF CLINTON, HUNTERDON
COUNTY PURSUANT TO P.L.
2024, CHAPTER 2 (N.J.S.A.
52:27D-304.1, et seq.),**

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
HUNTERDON COUNTY
DOCKET NO. HNT-L-49-25

Civil Action

Mt. Laurel Program

**AMENDED DECISION AND ORDER
FINDING THE MUNICIPAL HOUSING
ELEMENT AND FAIR SHARE PLAN
("HEFSP") FOR
THE FOURTH ROUND HOUSING CYCLE
NOT CURRENTLY COMPLIANT,
TRANSFERRING THE MATTER TO
SUPERIOR COURT, AND EXTENDING
IMMUNITY PER N.J.S.A. 52:27D-
304.1(f)(2)(d)**

**** THIS AMENDED ORDER IS ISSUED FOR THE SOLE PURPOSE OF
AMENDING THE APPOINTMENT OF THE SPECIAL ADJUDICATOR ****

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program ("Program"), pursuant to the Complaint for Declaratory Judgment filed on January 29, 2025 ("DJ Complaint") by the Petitioner, **TOWNSHIP OF CLINTON** ("Petitioner" or "Municipality" or "Township"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the "Program", seeking a certification of compliance with the FHA; and

WHEREAS, the Court entered its Decision and Order Fixing Municipal Obligations for “present need” and “prospective need” for the Fourth Round Housing Cycle on April 8, 2025 for the Municipality – specifically, a “present need” obligation of 0 affordable housing units, and a “prospective need” obligation of 150 affordable housing units (collectively, the “Fourth Round Affordable Housing Obligation”); and

WHEREAS, the Planning Board of the Municipality adopted its proposed Housing Element and Fair Share Plan (“HEFSP”) for the implementation of its Fourth Round Affordable Obligation on June 30, 2025, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended); and

WHEREAS, the governing body of the Municipality adopted Resolution #2025-134 on June 30, 2025 thereby endorsing the HEFSP for the implementation of its Fourth Round Affordable Obligation, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended), and which plan contained the elements set forth in the “Addendum” attached to Directive #14-24 (as amended); and

WHEREAS, challenges to the Municipality’s HEFSP (“Challenges”) were timely and properly filed by Fair Share Housing Center (“FSHC”), CNC Ventures , LLC (“CNC”), ExxonMobil Technology and Engineering Company (“ExxonMobil”), and CRC Communities at Headley Farms Estates, Inc. (“CRC”)¹ (each a “Challenger”, and collectively the “Challengers”) by and through their respective counsel, in accordance with the FHA and Section III.B of Directive #14-24, wherein the Challengers disputed, in whole or in part, certain compliance mechanisms and/or other aspects of the Municipality’s proposed HEFSP, as set forth in each Challenge; and

¹ CRC’s challenge was a conditional challenge as an interested party not objecting to the HEFSP, but permitting it to participate in the Challenges

WHEREAS, pursuant to the Program, the Administrative Office of the Courts (“AOC”) appointed and assigned the case to Program member, the Hon. Thomas C. Miller, A.J.S.C. (Ret.) (“Program Member”) to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC’s Directive #14-24, and that the Program Member appointed Sanyogita S. Chavan, PP, AICP, an independent affordable housing expert, as special adjudicator (“Special Adjudicator”) in this case to work with, make recommendations to and assist the Program, and who worked closely with the Program Member; and

WHEREAS, on November 14, 2025 and December 19, 2025, the Program Member conducted settlement conferences on notice to and with the participation of all parties in accordance with the statutory framework and Directive #14-24 with the goal of reaching a resolution; and

WHEREAS, the parties engaged in extensive settlement negotiations before and during the settlement conferences, with the guidance and assistance of the Program Member and the Special Adjudicator; and

WHEREAS, the settlement conferences were ultimately unsuccessful at reaching a resolution in any of the Challenges; and

WHEREAS, a session was conducted by the Program Member on December 19, 2025, at which session the Program Member heard oral argument from the Challengers, concerning their objections to the Municipality’s adopted HEFSP, and

WHEREAS, the Program Member considered the written recommendation and report of the Special Adjudicator, specifically agreeing with many of the conclusions and opinions set forth therein; and

WHEREAS, the Court received and reviewed the Program Member’s Report and Decision Recommendation and accompanying detailed Statement of Reasons contained therein, dated January 29, 2026, since posted to the eCourts jacket for this matter at Trans. ID: LCV2026234376, the findings, terms, and recommendations of which are incorporated by reference as though set forth more fully herein (the “Report”); and

WHEREAS, the Program Member has recommended a finding that the Township’s proposed amended HEFSP, in its current state, is *not in compliance* with the FHA and the Mount Laurel doctrine largely due to “complex issues” that remain unresolved due to an “[in]sufficient factual record...[precluding those] complex issues...[from] be[ing] given the analysis and consideration that is warranted.” The Program Member further cited “the Township’s late filing [which] results in a situation that simply makes it unfair for the Program to make a recommendation to the Court.” The Program Member concluded that “the Program is simply not equipped or designed to elicit and develop the factual record in order to properly address [the competing arguments offered].”; and

WHEREAS, the Program Member has further recommended that the Superior Court continue the proceedings “in a manner deemed appropriate by the Court to create the necessary record in order to evaluate the competing and seemingly irreconcilable circumstances offered by the parties”; and

WHEREAS, the Program Member has further recommended that the Challenges filed by the Challengers should continue; and

WHEREAS, the Program Member has further recommended that notwithstanding any remaining dispute(s) with any interested party, the Municipality should follow the procedure set forth in N.J.S.A. 52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 15, 2026, the Municipality shall adopt and file its proposed amended HEFSP as well as the implementing

ordinances and resolutions proposed within the amended HEFSP, which adoptions shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date or, *in the alternative*, adopt a binding resolution by March 15, 2026, to commit to adopting the implementing ordinances and resolutions following resolution of the dispute(s), with necessary adjustments to reflect the terms of said resolution; and

WHEREAS, the Program Member has further recommended that thereafter, the Court should schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by this Court, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's Amended HEFSP and the issuance of a Certification of Compliance and Repose; and

WHEREAS, the Program Member has further recommended that the Court grant the Municipality continued temporary immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Municipality's compliance with the Court's order, good faith implementation of the amended HEFSP, and good faith participation in continued settlement negotiations; and

WHEREAS, the Court has reviewed and considered the Program Member's Report and Recommendations; and

WHEREAS, the Court concurs with the Program Member's suggestion to continue the proceedings, finding that at this juncture such a process best embodies the goals, spirit, and intent of the FHA, particularly in light of the FHA's preference for mediation as opposed to litigation (see NJSA 52:27D-303); and

WHEREAS, the Court is fully cognizant of the time limitations imposed upon the Program and Program participants and finds that those limitations have, at least in part, interrupted the deliberative process and continuing and evolving efforts of the Municipality and Challengers; and

WHEREAS, based upon the Program Member's informed recognition and description of the Program's limitations and their impact on the instant matter, the Court finds that while the Municipality has been unable to resolve the remaining disputes and Challenges described herein, the Municipality has demonstrated a requisite level of determination to come into constitutional compliance.

IT IS, THEREFORE, on and as of this 9th day of February 2026 **ADJUDGED AND ORDERED**, that the Program Member's Report and Recommendations for a finding that the HEFSP of the Municipality as same currently exists is *not presently compliant* with the Fair Housing Act and the Mount Laurel doctrine is **ACCEPTED** and **ADOPTED** in its entirety, subject to and including the recommendation that the Court continue the proceedings under the jurisdiction of the Court, pursuant to the terms and conditions set forth herein, so as to enable the Court's issuance of a compliance certification; and to that end, it is further

ORDERED AND ADJUDGED, as follows:

1. The Challenges shall remain active pending further proceedings in this Court, except that any of the remaining Challengers shall be allowed to withdraw from further proceedings upon notification to this Court.

2. This Court shall direct and oversee (with the assistance of the Special Adjudicator described more fully below) continued settlement negotiations between the Municipality and the Challengers, especially with representatives of the Fair Share Housing Center, in accordance with the Program's recommendations.

3. The Court hereby appoints Francis J. Banisch, III, PP, AICP, as the Special Adjudicator in this matter. Any fees incurred by the Special Adjudicator shall be divided equally between the Municipality and all remaining Challengers, except that FSHC shall not be required

to pay a share of such fees. The specifics of said appointment shall be clarified in a separate Order of Appointment.

4. Notwithstanding any remaining dispute(s) with any remaining Challenger(s), the Municipality shall follow the procedure set forth in N.J.S.A. 52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 16, 2026,² the Municipality shall (i) adopt and file its proposed amended HEFSP as well as the implementing ordinances and resolutions proposed within the amended HEFSP, which adoption shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date or, in the alternative, (ii) adopt a binding resolution by March 16, 2026 to commit to adopting the implementing ordinances and resolutions required following resolution of the dispute(s), with necessary adjustments to reflect the terms of said resolution.

5. **Failure to meet the March 16, 2026 deadline described above shall result in a dismissal without prejudice of the Municipality's Declaratory Judgment Complaint.** Assuming, however, the Municipality's timely satisfaction of the requirements of paragraph 4(ii) above, the Court shall issue a conditional compliance certification *expressly subject to* the following, and which conditions shall be deemed to apply.

6. By no later than **July 15, 2026**, the Court shall schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by this Court, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's Amended HEFSP and the

² **Note:** The statutory deadline for municipalities to adopt all necessary implementing ordinances and resolutions for non-challenged and challenged HEFSPs, or alternatively, a binding resolution to commit to adopting the implementing ordinances and resolutions following settlement and/or resolution of a Program-submitted dispute (with necessary adjustments) was March 15, 2026. Because the deadline falls on a Sunday, the deadline became Monday, **March 16, 2026**, as the next day that was neither a Saturday, Sunday, or a legal holiday, and thus adoptions made and confirmed on and as of March 16, 2026, are deemed compliant. *See R.* 1:3-1.

issuance of an unconditional Certification of Compliance and Repose. If agreements are not reached with the Challengers, the Court will conduct a hearing concerning the Town's plan and whether it complies with the Town's obligations under the FHA and Mount Laurel doctrine. If it is determined that the plan continues to be noncompliant, the Town's immunity will be stripped so that the Challengers or any other putative developers may seek alternate relief.

8. The Municipality is granted continued temporary immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Municipality's compliance with this the terms of this Order, good faith implementation of its amended HEFSP, and good faith participation in continued settlement negotiations as contemplated herein.

9. The Municipality, remaining Challengers, and Special Adjudicator shall appear before the undersigned for a Case Management Conference on **March 24, 2026, at 3:00 p.m.** at the Somerset County Courthouse, Courtroom 304, to provide the Court with an update on the continued settlement negotiations as ordered herein. At the March 24, 2026 Case Management Conference, the Court shall schedule a subsequent Case Management Conference roughly forty-five (45) days thereafter.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Petitioner, Petitioner's counsel, and counsel for all Challengers upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:



HON. WILLIAM G. MENNEN, J.S.C.
Designated Mt. Laurel Judge – Vicinage XIII

(X) By the Court.

STATEMENT OF REASONS

[R. 1:7-4(a) – Directive #14-24, Section III.F]

Having reviewed and considered the Program Member’s Report and Recommendations dated January 29, 2026 (inclusive of the detailed report and recommendation of the Special Adjudicator referenced in the Program Member’s Decision Recommendation), and having determined there is no need to take testimony to resolve any relevant factual issue, the Court is satisfied, finds and concludes, as follows:

(i) As suggested by the Program Member, the Municipality has attempted to address and respond to concerns, objections, and challenges raised. The issues raised have been classified by the Program Member as “complex”. While recognizing the Township’s engagement and responsiveness, the Program Member laments their late filings which “makes it unfair for the Program to make a recommendation” and robs the Challengers of their opportunity properly address the issues raised. The result was an incomplete record at this stage of the proceedings which left no realistic opportunity for the Program Member to make a fair and informed decision. Thus, the Program Member was left without the ability to make a positive recommendation to the Court regarding the Town’s plan. This inability was only exacerbated by “competing... arguments as to the reasons which make [each competing party’s] approach more compelling”, particularly as it relates to Highlands conformance. While “pulling no punches” in singling out the Township’s late filings as a significant contributing factor to having run out of time, the Program Member hasn’t suggested the Court view those delays punitively. The Court concludes, then, that the efforts of the Township (such as they were) and the Challengers ran into statutory time constraints. The parties’ efforts, when coupled with the realities of the statutory timelines, gives this Court comfort in finding that while the Municipality has been unable to resolve all of the disputed issues which form the bases for the various Challenges, it has nonetheless demonstrated a “determin[ation] to come into constitutional compliance.” N.J.S.A. 52:27D-304.1(f)(2)(d).

(ii) that the Court cannot issue a determination that the current HEFSP is compliant with the Fair Housing Act and the Mount Laurel doctrine in light of the continuing efforts described and ordered herein. Rather, the Court specifically accepts and adopts the recommendation of the Program Member to continue the proceedings process with the goal of consensually resolving the disputes and Challenges this case presents, or at the very least, create the necessary record to permit evaluation of the competing arguments offered by the parties. Attainment of that goal merits continuation of the mediation process.

(iii) that the appointment of the Special Adjudicator is advisable to assist the Court in resolving the issues presented. Having the assistance of the Special Adjudicator, greatly increases the likelihood of a consensual resolution in the formulation of the Township’s HEFSP. Likewise, the Special Adjudicator’s advice to the Court regarding the Township’s planning and compliance with the Mt. Laurel doctrine will assist in the formulation and adoption of the Township’s Fourth Round HEFSP within the limited time period established herein.

Accordingly, the Court hereby adopts in full the Report and Recommendations of the Program Member and accepts the same for the detailed findings and reasons set forth therein. As a result, the Municipality retains all the protections of the above-referenced amendments to the FHA, continues to retain immunity from exclusionary zoning litigation, and that the Court retains jurisdiction so as to permit the parties to continue mediation with the guidance and assistance of the Special Adjudicator, under the auspices and supervision of the Court, so long as the Municipality timely complies with (amongst other things) its obligations under N.J.S.A. 52:27D-304.1(f)(2)(c) and/or (d).

An appropriate form of Order implementing the Program Member's Report and Recommendations accompanies this Statement of Reasons.

SO ORDERED.