Gregg F. Paster & Associates (Atty. ID 036951992)
18 Railroad Avenue - Suite 104
Rochelle Park, New Jersey 07662
Ph#: 201-489-0078 * Fax#: 201-489-0520
Attorneys for Defendants, Borough of Dumont and Mayor and Council of the Borough of Dumont

LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION **NOTICE OF MOTION FOR STAY OF PROCEEDINGS**

TO: Clerk of Superior Court
Superior Court of New Jersey
Law Division-Bergen County
10 Main Street
Hackensack, New Jersey 07601

Antimo A. Del Vecchio, Esq.
BEATTIE PADOVANO, LLC
50 Chestnut Ridge Road
P.O. Box 244
Montvale, New Jersey 07645
Attorney for Plaintiff

ON NOTICE TO: Mark D. Madaio, Esq.
27 Legion Drive
Bergenfield, New Jersey 07621
Attorney for Co-Defendant, Planning Board of Dumont

PLEASE TAKE NOTICE that on Friday, April 11, 2014 at 9 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned counsel for Defendants, Borough of Dumont, Borough Council for the Borough of Dumont, and the Mayor of Dumont will apply to the Judge of the Superior Court sitting in Hackensack and assigned to hear such Motion at 10 Main Street, Hackensack, New Jersey, for an Order to stay the

proceeding against the Defendant, pursuant to R. 4:69-3 and in the interest of justice and equity; and

PLEASE TAKE FURTHER NOTICE THAT, Defendant will rely upon a brief, annexed hereto, in support of this Motion. Movant requests oral argument in the event of opposition hereto.

GREGG F. PASTER & ASSOCIATES
Attorneys for Defendants, Borough of Dumont, et al

Dated: March 21, 2014

By: GREGG F. PASTER, ESQ.

Gregg F. Paster & Associates
Gregg F. Paster, Esq. (Atty. ID 036951992)
18 Railroad Avenue - Suite 104
Rochelle Park, New Jersey 07662
Ph#: 201-489-0078 * Fax#: 201-489-0520
Attorneys for Defendants, Third Party Plaintiffs

LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION **CERTIFICATION OF GREGG F. PASTER**

Gregg F. Paster, being of full age, upon his oath hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and am the duly appointed Borough Attorney of the Borough of Dumont, and represent the Borough of Dumont and the Mayor and Council of the Borough of Dumont in the above captioned action. As such, I am fully familiar with the facts and circumstances provided within this Certification. I submit this Certification in support of the said Defendants' Motion for a Stay of Proceedings which is presently being submitted to this court for consideration.

2. Attached hereto as Exhibit A is a copy of the order of the Superior Court of New Jersey-Appellate Division, dated March 7, 2014, in the matter of In Re Adoption of Revised Third Round Regulations by the New Jersey Council on Affordable Housing N.J.A.C. 5:96 & 5:97, Docket No.: A-005382-07T3, ordering the New Jersey Council on Affordable Housing ('COAH') to take affirmative steps to formulate and adopt new third round

regulations for municipalities to assess their legal obligations.

3. Attached hereto as Exhibit B is a copy of the order of the New Jersey Supreme Court dated March 14, 2014 in the same matter, matter number M-847/848 September Term 2013 067126, staying the aforementioned order of the Appellate Division and providing a slightly more protracted time frame for COAH to fulfill its mandate. In addition, the Supreme Court retained jurisdiction over the matter and will entertain further applications to reinstate the terms of Exhibit A hereto.

4. The attached documents illustrate that there is a date certain by which COAH is required to promulgate 3rd Round rules to replace the prior growth share model, and that it is not an indefinite and limitless timeframe. This bolsters the case for a stay as set forth in Defendants' moving papers.

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

Dated: March 21, 2014

Gregg F. Paster
Attorney for the Borough of Dumont, Mayor and Borough Council of Dumont

FILED, Clerk of the Appellate Division, March 07, 2014, A-005382-07

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005382-07T3
MOTION NO. M-002899-13
BEFORE PART H
JUDGE(S): JOSE L. FUENTES
MARIE P. SIMONELLI
MICHAEL J. HAAS

IN RE ADOPTION OF REVISED THIRD ROUND REGULATIONS BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING N.J.A.C. 5:96 & 5:97 (NJ LEAGUE OF MUNICIPALITIES)

MOTION FILED:	12/17/2013	BY: FAIR SHARE HOUSING
ANSWER(S) FILED:	12/27/2013	BY: LEAGUE OF MUNICIPALITIES
	12/27/2013	KINGS ROW HOMES
	01/02/2014	BERNARDS TWP
	01/06/2014	ATLANTIC HIGHLANDS
	01/07/2014	COAH

SUBMITTED TO COURT: January 16, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 7th day of March, 2014, HEREBY ORDERED AS FOLLOWS:

MOTION BY INTERVENOR:

MOTION TO ENFORCE LITIGANT'S RIGHTS — GRANTED AND OTHER

SUPPLEMENTAL: See attached.

FOR THE COURT:

JOSE L FUENTES, P.J.A.D.

UNKNOWN
STATEWIDE

SLH

EXHIBIT A

At this court's request, the parties presented oral argument on March 5, 2014, to supplement their submissions in connection with a motion in aid of litigant's rights filed by Fair Share Housing Center (Fair Share) pursuant to Rule 1:10-3, to enforce this court's order in In Re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 511 (App. Div 2010), aff'd 215 N.J. 578 (2013), directing the Council On Affordable Housing (COAH) "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." Characterizing the nature of this mandate as "straight-forward," we expected that "COAH should be able to comply with this mandate within five months without the assistance of a master or an army of outside consultants." Ibid. (Emphasis added). To date, COAH has not done anything to comply with our "straight-forward" mandate.

Fair Share seeks an order from this court appointing a special master with the authority to carry out the central requirement this court ordered on October 8, 2010, as affirmed by the Supreme Court. Alternatively, Fair Share seeks a judicial declaration from this court that COAH can no longer provide administrative protection to municipalities from Mount Laurel litigation, leaving the declaratory relief provided by the Legislature under N.J.S.A. 52:27D-313 as the exclusive means for those municipalities wishing to seek preemptive action. If we were to adopt this alternative form of relief, Fair Share further requests that this court require a municipality filing a petition for substantive certification under N.J.S.A. 52:27D-313 to provide notice to Fair Share and to other public interest entities similarly devoted to protecting the constitutional rights of low and moderate income residents of this State.

On February 26, 2014, COAH filed a motion with the Supreme Court, requesting "an extension of the time until May 1, 2014 to formally propose and publish in the June 2, 2014 New Jersey Register regulations governing the third round methodology." Thus, without specifically addressing the substantive merits or practical feasibility of Fair Share's position, COAH argues that the motion pending before the Supreme Court deprives this court of jurisdiction to enforce its October 8, 2010 mandate.

The Legislature enacted the Fair Housing Act in 1985 to confer responsibility upon COAH for the administration and enforcement of the Mount Laurel doctrine.[1] COAH has the primary responsibility to determine a

[1] S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158, (1983) (Mount Laurel II); S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (Mount Laurel I).

municipality's affordable housing obligations and to develop a mechanism for compliance with those obligations. Hills Dev. Co. v. Twp. of Bernards, 103 N.J. 1, 19-23, 31-40 (1986). In our tripartite system of governance, once a court has decided a dispute and entered a final judgment awarding relief to the aggrieved party, the executive branch is obligated to enforce the court's decree. This fundamental principle of the concept of ordered liberty applies with equal, if not greater, force when an administrative agency, as a party in a civil dispute, is ordered by the court to perform a task that is mandated by a statute that was adopted by the Legislature to fulfill a constitutional obligation. Abbott v. Burke, 206 N.J. 332, 359 (2011).

After carefully considering the record before us, WE HOLD COAH has failed to carry out this court's mandate "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds," within the timeframe established by this court and endorsed by the Supreme Court. In Re N.J.A.C. 5:96 and 5:97, supra, 416 N.J. Super. at 511. WE FURTHER HOLD COAH has failed to offer any plausible explanation for its failure to carry out this court's order.

WE THEREFORE ORDER COAH to meet as a body on Wednesday, March 12, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall direct its Executive Director, and such other staff it deems appropriate, to prepare for COAH's adoption "third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." These third round rules are to be completed and presented to COAH for formal adoption by Wednesday, March 26, 2014. Copies of these proposed new third round rules shall be posted on COAH's website and copies shall be otherwise made available to the public for review at 11:00 a.m. on Friday, March 21, 2014.

WE FURTHER ORDER COAH to meet as a body on Wednesday, March 26, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and adopt the third round rules in a manner suitable to comply with the Administrative Procedures Act, including publication in the New Jersey Register.

WE FURTHER ORDER COAH to meet as a body on Wednesday, May 14, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and consider all public comments submitted by interested parties in response to the posting of the proposed third round rule in the New Jersey Register. After giving due consideration to these public comments and any proposed

amendments suggested by the Executive Director, COAH shall adopt these rules.

WE FURTHER ORDER COAH to submit to this court and to every party to this litigation bi-weekly reports detailing the actions taken to comply with this order.

WE FURTHER ORDER that in the event COAH fails to carry out any part of this court's order, each member of the COAH Board will be ordered to personally appear before this court, at a date and time designated by this court, to show cause why he or she shall not be declared in contempt of this court's authority subject to monetary sanctions, civil detention, and such other sanctions the court may deem suitable to induce compliance with this order.

WE FURTHER ORDER that until such time that new third round rules have been formally adopted, any municipality seeking to petition the Superior Court for substantive certification under N.J.S.A. 52:27D-313, must serve copies of its pleadings to Fair Share, the local chapter of the National Association for the Advancement of Colored People, and any other organization or not-for-profit entity located within ten (10) miles of the municipality that is dedicated to provide low-income or moderate-income housing to the residents of the region.

WE FURTHER ORDER that pursuant to Rule 2:9-9 this court sua sponte directs Fair Share to submit a certification attesting to the cost of professional services rendered in connection with the prosecution of this motion in aid of litigant's rights. The court thereafter will award Fair Share counsel fees commensurate with the time and professional effort it exerted in the prosecution of this motion in aide of litigant's right.

We conclude with the following explanation concerning our decision to reject Fair Share's application for the appointment of a special master. In In Re N.J.A.C. 5:96 and 5:97, we specifically acknowledged that a number of litigants had requested "that in light of COAH's failure to adopt valid third round rules in a timely manner, this court should divest COAH of the authority to perform this statutory responsibility and adopt third round rules itself with the assistance of a master." 416 N.J. Super. at 510. We declined to adopt this approach for two principal reasons. First, we noted that our colleagues had rejected a similar request for relief made by Fair Share and the New Jersey Builders Association in In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007). Writing for this court in that case, Judge Cuff explained the reasons for denying this relief:

> Appointment of a special master by this court is unprecedented relief.

. . . .

> The Legislature has granted COAH considerable authority to adopt policies and to fashion regulations that will provide a realistic opportunity for the construction of affordable housing. The Court has stated repeatedly that it is better for COAH to address the issue than the courts. We also recognize that rule making is a dynamic process. COAH has already amended some of the third round rules, see N.J.A.C. 5:94-2.4(a)(4), and has recently proposed several others. Thus, we conclude that it is appropriate to remand to the agency to commence the process to amend N.J.A.C. 5:94, the third round rules, to conform to the constitutional and statutory mandate. Time, however, is critical. The second round rules expired in 1999. The third round rules apply from 1999-2014, but effectuation of these rules has been compressed to a ten-year period and three years have already elapsed. We, therefore, direct that the rule-making process required by this opinion must be completed within six months.
>
> [Id. at 87-88.]

Second, and perhaps most relevant here, we noted in In Re N.J.A.C. 5:96 and 5:97 that despite COAH's continued reliance on a growth share methodology to calculate and allocate prospective, we had no basis "to conclude that COAH failed to make a good faith effort to adopt this round rules in conformity with our prior opinion." 416 N.J. Super. at 510. (Emphasis added). Unfortunately, the record of inaction by COAH since we wrote those words in 2010 has cast serious doubts about this agency's good faith in complying with this court's order.

Despite these misgivings, we remain reluctant, at this time, to take the extraordinary action of declaring that this government agency is utterly incapable or unwilling to carry out its core statutory mission. We remain hopeful, however, that reasonable minds will prevail, and that the members of the COAH Board will see that this course of intransigence serves only to needlessly undermine the public's confidence in the effectiveness of public institutions. We have invalidated these rules in two prior opinions in the past seven years. In this order, we have laid a clear path for COAH to follow to fulfill its statutory obligation. If these measures prove to be ineffective, we may have no other choice but to declare that event to be COAH's third and final strike.

SUPREME COURT OF NEW JERSEY
M-847/848 September Term 2013
067126

FILED

MAR 14 2014

CLERK

IN THE MATTER OF THE ADOPTION OF N.J.A.C. 5:96 AND 5:97 BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

ORDER

This matter having come before the Court on motion by the Council on Affordable Housing (Council) seeking an extension of time (M-847-13) from the five-month period for the promulgation of Third Round Rules that this Court directed as part of its holding in In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013); and

The Council having submitted the sworn certification of its Chairman, the Commissioner of Community Affairs, Richard E. Constable, III, see N.J.S.A. 52:27D-305; and

The Chairman, having informed this Court that work has progressed on the development of new Third Round Rules so that he has certified, based on personal knowledge, that a proposed set of Third Round Rules will be approved by the Council by May 1, 2014, or earlier, for publication in the New Jersey Register, as prescribed in the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -15; and

This Court having accepted the representation of the Council, certified by its Chairman; that the Council requires

EXHIBIT B

additional time to complete its preparation and formal approval of new proposed Third Round Rules for publication; and

The Court further having accepted the representation of the Council, certified by its Chairman, that the Council will complete its preparation of a Third Round Rules proposal and will approve for publication the proposed new Third Round Rules by May 1, 2014; and

The Court having also received and considered the answers submitted by the other parties in response to the Council's motion for an extension of time as well as the moving papers and answers filed in connection with the Council's motion for stay (M-848-13);

Therefore, it is ORDERED that the motion for an extension of time is granted, subject to the following conditions:

The Council shall, by May 1, 2014, complete its actions preparing and formally approving the proposed Third Round Rules as required by this Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97;

The Council shall promptly forward the proposed rules to the Office of Administrative Law (OAL), in accordance with the OAL's Rule Publication Schedule, available at http://www.state.nj.us/oal/rules/schedule/, so that the proposed rules are published in the June 2, 2014, edition of the New Jersey Register;

The publication of the proposed rules shall commence the following schedule, pursuant to which the Council shall complete the adoption process:

The comment period shall extend to August 1, 2014, during which time the Council shall conduct a public hearing, if such a request is made to the Council within thirty (30) days following publication of the proposed Third Round Rules in the New Jersey Register; and

The Council shall adopt the proposed Third Round Rules on or before October 22, 2014, and transmit the adopted Third Round Rules to the OAL to permit publication of the adoption notice in the November 17, 2014, edition of the New Jersey Register. The adopted Third Round Rules transmitted to the OAL shall be accompanied by a report prepared by the Council listing all parties offering written or oral comments concerning the proposed Third Round Rules, summarizing the content of all comments and submissions, and providing the Council's response to the data, views, and argument contained in the submissions as required by N.J.S.A. 52:14B-4(a)(4).

It is further ORDERED that in the event that the Council does not adopt Third Round Rules by November 17, 2014, then this

Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builders remedy" challenges; and

It is further ORDERED that the Appellate Division Order filed March 7, 2014, is vacated in its entirety; and

It is further ORDERED that from this date the Court is retaining jurisdiction for the sole purpose of entertaining any and all future applications to enforce the judgment of this Court requiring the adoption of new Third Round Rules as prescribed in our decision in In re Adoption of N.J.A.C. 5:96 and 5:97 and the terms of this Order; and

It is further ORDERED that the motion by the Council for a stay (M-848-13) of the March 7, 2014, Order of the Appellate Division, is dismissed as moot.

WITNESS, the Honorable Jaynee LaVecchia, Presiding Justice, at Trenton, this 14th day of March, 2014.

CLERK OF THE SUPREME COURT

JUSTICES LaVECCHIA, PATTERSON, and FERNANDEZ-VINA, and JUDGES RODRIGUEZ and CUFF (both temporarily assigned) join in this Order. JUSTICE ALBIN filed a dissent. CHIEF JUSTICE RABNER did not participate.

JUSTICE ALBIN, dissenting.

The Court's order further postpones the building of affordable housing for the poor, housing that is required by our constitutional jurisprudence and the Fair Housing Act. For more than ten years, the Council on Affordable Housing (COAH or Council) has failed to promulgate lawful Third Round Rules to ensure that every municipality bears its fair share of providing affordable housing. This decade-long delay represents an abysmal failure of process, and the judiciary must accept its share of blame for not demanding timely compliance.

I write this dissent because the Court has failed to make the most basic inquiries to assure that the State has filed the request for an extension of time in good faith. I would have agreed to the extension request if the State had presented an adequate explanation, rather than amorphous excuses without meaningful details, for not abiding by this Court's September 26, 2013 directive. It is impossible to tell from the certification of Richard E. Constable, III, Commissioner of the Department of Community Affairs, whether any real effort was made to comply with the Court's order. The Court's granting of the State's eleventh-hour extension request on so paltry a record -- and its failure to demand answers that would explain the most recent delay -- will be disheartening to many.

History does not give me confidence that we will see compliance with the Fair Housing Act anytime soon.

On September 26, 2013, this Court insisted that rules to govern allocating fair share obligations among municipalities "cannot wait . . . . A remedy must be put in place to eliminate the limbo in which municipalities, New Jersey citizens, developers, and affordable housing interest groups have lived for too long." In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 620 (2013). "[W]e endorse[d] the Appellate Division's quick deadline for reimposing third-round obligations," ibid., and thus "remanded for the promulgation of a new set of rules within five months," id. at 595. The Appellate Division's order, which we affirmed, had been entered three years earlier on October 8, 2010. In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 511 (App. Div. 2010). That order directed COAH to adopt Third Round Rules within five months using recently available data and a methodology similar to the ones promulgated in the first two rounds. Ibid.

Significantly, when we heard oral argument on November 14, 2012 in this case, COAH's counsel represented to the Court that revised Third Round Rules would not be "incredibly difficult" to prepare because "a lot of the basics are done" and the regulations could be completed within months.

So what steps did COAH take to comply with this Court's order that required promulgation of new rules by February 26, 2014? Not once in those five months did Commissioner Constable -- who by statute is the chairman of COAH -- convene a meeting of the Council. Indeed, by all appearances, the Commissioner proceeded as a one-man COAH. It bears mentioning that in June 2011, the Governor unilaterally -- without legislative authorization -- abolished COAH, an independent agency, and transferred its responsibilities to the Department of Community Affairs. In re Plan for the Abolition of the Council on Affordable Hous., 214 N.J. 444, 448 (2013). In July 2013, however, this Court ruled that the Governor had overstepped his authority and did not have the power to eliminate COAH. Ibid. Since that ruling, COAH has never met as a body. COAH member Tim Doherty is reported to have requested, after our ruling, that Commissioner Constable convene a meeting; but Mr. Doherty never received a response. See Salvador Rizzo, "NJ Court Orders Affordable Housing Agency to Get Back to Work," Star-Ledger, Mar. 7, 2014, available at http://www.nj.com/politics/index.ssf/2014/03/nj_court_orders_affordable_housing_agency_to_get_back_to_work.html.

We have received no explanation how COAH could have met the deadline set by this Court if the Council never convened as a body. When the Fair Share Housing Center sought information

from COAH about its progress in meeting the deadline, no one deigned to respond. If COAH was unable to promulgate the regulations within a five-month period, Commissioner Constable presumably knew so early in the process. That is because adoption of the regulations requires a number of steps, beginning with the proposal of regulations, a public comment period, and final adoption by COAH. See N.J.S.A. 52:14B-4(a).

Based on the present inadequate record, it appears that Commissioner Constable permitted the clock to run out, and not until the day the regulations should have been adopted did he request an extension of the deadline. The certification submitted by Commissioner Constable offers precious little about whether COAH made good-faith efforts to comply with this Court's order. The Commissioner states that "recent, available, and reliable data has been reviewed . . . and evaluated to develop a third round methodology," but he does not say by whom. Nor does he indicate what resources were devoted to this project, why the Council that he chairs has not been convened, why counsel for COAH represented to the Court that the entire task could be completed within months, why the time goals set by the Court were unattainable, and why he waited until the day the regulations were expected to go into effect to ask for an extension that will postpone the promulgation of regulations for another eight months.

With satisfactory answers to these questions, I could join the Court's grant of an extension of the deadline. But I do not believe that this Court has done its due diligence. Instead, it has uncritically accepted Commissioner Constable's certification that tells us almost nothing. This Court deserves answers, and so does the public. The delay the Court endorses today -- without any meaningful inquiry -- is another sad chapter in the continuing saga to provide affordable housing to low- and moderate-income residents.

Because I cannot join the Court's order on the inadequate record before us, I must dissent.

The foregoing is a true copy
of the original on file in my office.

CLERK OF THE SUPREME COURT
OF NEW JERSEY

Gregg F. Paster & Associates
Gregg F. Paster, Esq. (Atty. ID 036951992)
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Attorneys for Defendants, Borough of Dumont and Mayor and Council of Dumont

LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION **CERTIFICATION OF DARLENE A. GREEN, P.P., AICP**

Darlene Green, P.P., AICP, being of full age, upon her oath hereby certifies as follows:

1. I am a licensed Professional Planner of the State of New Jersey, holding license #33LI00611400 and through Maser Consulting, P.A., am the duly appointed Planner and COAH consultant of the Borough of Dumont. As such, I am fully familiar with the facts and circumstances provided within this Certification. I submit this Certification in support of the said Defendants' Motion for a Stay of Proceedings which is presently being submitted to this court for consideration.

2. I was tasked with preparation of a Housing Element and Fair Share Plan for the Borough of Dumont, which required a comprehensive review of existing housing stock, demographics, building permits and certificates of occupancy issued, existing COAH credit-worthy facilities, and other data to be compiled in a report and application for substantive certification to the Council on Affordable Housing (COAH), which was submitted on December 18, 2013, on behalf of the Borough.

3. To the best of my knowledge, information and belief, notwithstanding the fact that an application has never been formally submitted and certified by COAH, Dumont is in compliance with all of its first and second round affordable housing obligations as previously promulgated by COAH, based upon our review of the data, understanding of the COAH 1st and 2nd round regulations, and the CTM monitoring report recently submitted as part of our COAH compliance protocols on behalf of Dumont. Attached hereto as Exhibit A is a copy of the CTM monitoring report submitted to COAH on behalf of Dumont for 2014.

4. The application for certification submitted to COAH in December of 2013 by Dumont is under review for completeness, but without 3rd Round regulations, there is no way that COAH can certify any plan, and no way to judge whether a particular municipality is in compliance with its affordable housing obligations.

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

Dated: March 24, 2014

Darlene A. Green, P.P., AICP
Dumont Planner and COAH consultant

DATE: 03/17/2014 08:58 AM

Council On Affordable Housing

Project Summary Report

DUMONT BORO,BERGEN
Round: 3.1
Version: Petition

STATUS: Submitted

Project/Program	Mechanism/ Project Type	Mechanism SubType	Credit Type	RCA/ PAR	Afford Units	Comp	Prop PR Credit	App PR Credit	Prop GS Credit	App GS Credit	Prop Bonuses	App Bonuses	Prop Total	App Total
NEW CONSTRUCTION														
Bethesda Lutheran	Supp/Spec Needs Hsg	Group Homes	Post 1986 Completed		4	4	0	0	4	0	1	0	5	0
Community Options Housing	Supp/Spec Needs Hsg	Group Homes	Post 1986 Completed		3	3	0	0	0	0	3	0	3	0
D'Angelo Inclusionary	Inclusionary Development	Incl Dev - On Site	Proposed/Zoned		17	0	0	0	17	0	7	0	24	0
David F. Roche Apartments	New Construction - 100% Afford	None	Prior Cycle		99	99	34	0	8	0	0	0	42	0
Dumont Supervised Housing	Supp/Spec Needs Hsg	Group Homes	Post 1986 Completed		5	5	0	0	0	0	5	0	5	0
Market to Affordable Program	Market to Affordable	None	Proposed/Zoned		1	0	0	0	1	0	0	0	1	0
Saint Mary's Residence	New Construction - 100% Afford	None	Post 1986 Completed		49	49	0	0	22	0	27	0	49	0
Schraalenburg Senior Housing	New Construction - 100% Afford	None	Post 1986 Completed		40	40	0	0	0	0	40	0	40	0
			Sub Total		218	200	34	0	52	0	83	0	169	0
RCA/PARTNERSHIP-SENDING														
			Sub Total		0	0	0	0	0	0	0	0	0	0
			New Construction Total		218	200	34	0	52	0	83	0	169	0
REHAB														
Bergen County Home Improvement Program	Rehab	None	Rehabilitation		7	7	0	0	2	0	0	0	2	0
			Sub Total		7	7	0	0	2	0	0	0	2	0
			Total		**225**	**207**	**34**	**0**	**54**	**0**	**83**	**0**	**171**	**0**
RCA PROJECTS IN MUNICIPALITY														
RCA/PARTNERSHIP-NEW														
			Sub Total		0	0	0	0	0	0	0	0	0	0
RTNERSHIP-REHAB														
			Sub Total		0	0	0	0	0	0	0	0	0	0
			Grand Total		225	207	34	0	54	0	83	0	171	0

CTMPRJSUM (10/09)

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LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION

BRIEF IN SUPPORT OF DEFENDANTS' BOROUGH OF DUMONT AND MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT MOTION FOR STAY OF PROCEEDINGS

Gregg F. Paster, Esq.
Of counsel and on the brief.

Alfred A. Egenhofer, Esq.
On the brief.

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INTRODUCTION

The Borough of Dumont and its Mayor and Council, (hereinafter the 'Borough') are Defendants in this Builder's Remedy lawsuit seeking various relief where a site plan application or rezoning request has not even been made. As such, the ripeness of the matter is very much in question, but that issue is not addressed herein. The Borough seeks a stay on the instant builder's remedy proceeding pending the promulgation new Third Round Rules by the Council on Affordable Housing ("COAH"), pursuant to the decision by the New Jersey Supreme Court in In the Matter of Adoption of NJAC 5:96 and 5:97 By the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013). Without new rules in place, determined by COAH, the Borough of Dumont will not be able to appropriately measure its affordable housing obligation, thereby significantly increasing the risk of future litigation, wasting public and court resources, and delay resulting from decisions made in the absence of knowledge of its obligation.

BACKGROUND AND PROCEDURAL HISTORY

The New Jersey Supreme Court recently held that the Third Round Rules as crafted by the Council on Affordable Housing did not satisfactorily meet the constitutional obligation to provide low income housing enunciated in Mount Laurel II and drafted into law in the New Jersey Fair Housing Act. Id. On December 17, 2013, the Planning Board and Borough of Dumont adopted and ratified a Housing Element and Fair Share Plan ("HEFSP") to accommodate their constitutional obligation to provide low income housing. However, the HEFSP was drafted in accordance with the growth share model propounded by COAH. That model had been rejected by the Supreme Court of New Jersey in September, 2013. Though it was rejected on specific legal grounds, the growth share model is the only viable possibility for a municipality to use as a guide for fulfilling its affordable housing obligation. The Complaint in this action cites the Borough's calculation of its fair share plan as arbitrary and capricious since it is based upon the prior, now defunct, COAH 3rd Round growth share. As such, it would be nothing short of a shot in the dark to attempt to determine what the proper fair share should be now, prior to the adoption of new 3rd Round rules.

In light of the rejection of the growth share model, Plaintiff to this action filed suit in lieu of prerogative writs to effectively require Dumont to commence with building a development according to their plans. However, logic dictates that until COAH convenes and drafts new regulations to accurately measure each municipality's actual fair share obligation in accordance with the FSA and Mount Laurel II, there is no standard for the Court to apply to determine whether the Borough has fulfilled its obligation or is subject to a

builder's remedy. The Appellate Court, in a hearing as recently as March 7, 2014, made a demand of COAH to codify new rules by as soon as March 26. In the interim, the status of various municipalities' FHA and Mount Laurel II obligations remains uncertain. Even more recently, on March 14, 2014, the Supreme Court stayed the Appellate Division's order, based upon, among other facts asserted, the expectation that a set of Third Round rules will be approved by May 1, 2014. Given the regulatory protocols in place, the Supreme Court ordered COAH to adopt the proposed Third Round Rules, following the required public comment period, by October 22, 2014, for publication in the New Jersey Register's November 17, 2014 edition. As will be illustrated below, this judicial timeline cuts sharply in favor of a stay, which will not prejudice any party, and will permit the Court to have a standard by which to judge the Defendants' actions in complying with their obligations, which it currently lacks.

LEGAL ARGUMENT

A STAY IS APPROPRIATE, BECAUSE THE ABSENCE OF A STAY WOULD RESULT IN IRREPARABLE HARM, THE BOROUGH WOULD LIKELY SUCCEED ON THE MERITS, AND GREATER HARM WOULD OCCUR IF A STAY WERE NOT GRANTED THAN IF IT WERE GRANTED

The standard governing whether to grant a motion for a stay is the same standard used by courts in deciding whether to grant injunctive relief. Garden State Equality v. Dow, 433 N.J. Super. 347 at 350 (2013). A stay application should be granted only where three criteria are met. Id. The stay must be necessary to prevent irreparable harm. Id. The applicant must show a reasonable probability of success on the merits. Id. And a balancing of relative hardships must show that "greater harm will occur if a stay is not granted than if it were." Id. (Quoting McNeil v. Legislative Apportionment Comm'n of N.J., 176 N.J. 484 (2003)).

Here, each of the relevant factors weighs in favor of granting a stay of the proceedings - especially in light of the fact that until COAH adopts new rules consistent with the FHA and Mount Laurel II, the actual municipal obligation faced by the Borough of Dumont will be unknown, rendering any decision questionable at best, and arbitrary, capricious, and unreasonable, at worst.

Should the stay not be granted, the harm to the Borough of Dumont will be irreparable. Harm is generally considered irreparable when it cannot be redressed adequately by monetary damages. Crowe v. De Gioia, 90 N.J. 126 at 132 (1982). Pecuniary damages may be inadequate because of the nature of the injury or of the right affected. Id. at 133. In the instant case, Plaintiff Landmark seeks a fast tracked development process to begin hasty rezoning and construction of two plots of land in Dumont. Compl.

If the development were to begin before the clear obligations are decided upon by COAH, the Borough would potentially have to endure lengthy and costly re-litigation to correct zoning errors made in haste without guidelines. While that litigation commences to reverse a decision made with insufficient guidelines, the plots of land might be strewn with industrial machinery, dumpsters, and general construction debris, indefinitely. The potential for damage to the real property is matched by the lost opportunity to properly zone and develop the property in accordance with the new COAH regulations. While many of the damages can be measured monetarily, the lost opportunity to develop appropriately cannot be, and as such the damages will be irreparable.

Even conducting discovery without established fair share standards would be fruitless, since experts would be basing opinions on assumptions and conjecture, and fact witnesses could not be expected to offer depositions or respond to interrogatories accurately without knowing what the goals are and how the Borough is to be expected to fulfill its obligations. Everything would be required to be, at a minimum, revised upon adoption of new Third Round regulations.

New Jersey Statute §57:27D-317 provides a municipality with the presumption of validity in exclusionary housing actions, where the municipality has a substantive certification. "To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the housing element and ordinances implementing the housing element do *not* provide a realistic opportunity for the provision of the municipality's fair share of low and moderate income housing after allowing for the implementation of any regional contribution agreement approved by the council." N.J.S.A. 57:27D-317. While Dumont does not have substantive

certification, it does have a pending application that is under review, and has been deliberately prosecuted to comply with the Fair Housing Act and Mount Laurel dictates.

The pending adoption of new Third Round Rules creates a sincere question of law. In the case before the court, the municipality's legitimate fair share is, at best, unknown. Landmark cannot possibly demonstrate that the Borough of Dumont's housing element will *not* accommodate its constitutional obligation in accordance to the FHA and Mount Laurel II because that obligation will be uncertain until COAH convenes and adopts new means of calculating obligation at the municipal level.

The Supreme Court held that the Growth Share model employed by COAH failed because they employed it on a state-wide basis rather than on a regional basis. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 By the New Jersey Council on Affordable Housing, 215 N.J. 578 at 611 (2013). Dumont's current model of development might be perfectly acceptable in as much as it applies the growth share model to the highly specific region of Dumont. The extant model might be even more apparently acceptable after COAH adopts their new model. It is also noteworthy that the Borough of Dumont successfully honored their Constitutional FHA and Mount Laurel II obligations under the First Round and the Second Round Rules. Their current effort was not a deceitful effort to undermine their Fair Share obligation, but rather one more good faith effort to honor their low income housing obligation as directed by COAH.

Therefore it is completely reasonable to believe the Borough will eventually prevail on the merits. Indeed, Dumont, being almost fully developed, may actually have its obligation *reduced* in the new 3rd Round rules, rendering its pending application for substantive certification more inclusive and in

excess of the minimum requirements. For the Court to consider a more intensive requirement as demanded in the Plaintiff's Complaint, would presuppose facts and law that simply do not exist at this time.

Lastly, the balancing of the relative hardships weighs heavily in favor of the Defendants. If a stay were to be granted in this case, all the parties would simply wait until the Borough's definitive obligations were known to all the parties. Should the stay be denied, the fast tracked rezoning and development might commence in a fashion later discovered to be wildly out of proportion to the Constitutional obligations determined by the new COAH standard. The relative balance is obviously unequal. Landmark stands to lose nothing, it does not even own the property and, thus is not even carrying the costs of ownership, while Dumont stands to endure a grievous error, disturbing the neighborhood and the property on the basis of uncertain legal requirements, and resulting in further litigation to remedy an easily avoided mistake.

This is not an issue with a great deal of precedent, given the fluid nature of the pending 3rd Round rules and that the Supreme Court has retained jurisdiction over the matter should COAH not abide by the latest Order of the Court. The risk of proceeding in a sea of uncertainty is far greater to the Borough than the prejudice to which the Plaintiff is exposed by holding the matter in abeyance until the rules are adopted and there is a standard by which to judge the Borough's actions heretofore. It is entirely possible that the instant case could be moot depending upon the outcome of the impending COAH regulations.

THE NEW JERSEY SUPREME COURT HAS OPINED THAT THE LEGISLATURE SHOULD DETERMINE HOW TO BEST DETERMINE AFFORDABLE HOUSING OBLIGATIONS

In In re Adoption of N.J.A.C. 5:96, the New Jersey Supreme Court judged that COAH's Third Round Rules failed to meet the demands of the FHA and their Mount Laurel II opinion. The Court focused significantly on two aspects of the Third Round Rules. Primarily, the Court analyzed the "Growth Share" model selected by COAH. Id. at 598. Secondarily, it evaluated COAH's belief that the FHA authorized them to draft wholly new rules for evaluating municipal and statewide affordable housing obligations. Id. at 616.

In evaluating growth share, the Court held that it was impermissibly different from the First Round and Second Round measures effectively inspired by their Mount Laurel II opinion. Those measures of assessment were met with legal challenges as well, but survived each judicial assessment. Id. at 592. The measure found acceptable by the Court was, roughly speaking, a two-step process. First, COAH would calculate the need for affordable housing in each of the state's housing regions, then COAH would allocate to each municipality its fair share of the present and prospective regional need. Id. at 593. Following that, "each municipality was assigned a proportionate fair share of the region's need for housing based on its economic projections and its capacity to accommodate affordable housing." Id. The reason the Third Round Rules were impermissible in the eye of the Court is that under the growth share model adopted in 2004, a municipality could potentially plan to restrict their own growth artificially to reduce their fair share of the affordable housing obligation. Id. at 606.

With that in mind, however, the Court still allowed for the possibility of some form of the growth share model being

utilized in a fashion that would be constitutional. Id. at 610. "Although a growth share approach might not have produced units in the same regions or municipalities where they occurred [in Round One and Round Two], we cannot say that it is anathema to consider some form of such an approach adjusted for present-day building realities." Id.

The Court further reasoned that the judicial remedy fashioned in Mount Laurel II "...should not be viewed as the only one that presently exists that presently can secure satisfaction of the constitutional obligation to curb exclusionary zoning and to promote the development of affordable housing in the housing regions of this state." Id. at 612. The Court explained that "...the Legislature should determine how best to utilize [ordered development] in the promotion of affordable housing suited for the needs of housing regions." Id.

This is pertinent to the instant matter, because COAH is currently in the process of taking measures to resolve the momentary confusion surrounding their voided Third Round Rules. As recently as last week the New Jersey Supreme Court granted COAH a stay from a previously issued edict to produce and adopt revised Third Round Rules by March 24, to allow the Council more time to develop an effective measurement model consistent with the underlying rationale in Mount Laurel II. The Court ordered COAH to prepare and formally approve new rules by May 1, 2014. Following that, COAH will open the rules to public comment, with an eye toward adopting them by October 22, 2014. The Court has held that the Legislature should be the body who determines the municipal fair share obligations, rather than make a judgment themselves. This court too, should grant the Borough of Dumont a stay, to see how their pending request for certification measures up to the newly drafted Third Round Rules.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Borough of Dumont's motion should be granted and this matter fully stayed pending the adoption of a new model for determining constitutional obligations pursuant to FHA and Mount Laurel II.

Respectfully submitted,
GREGG F. PASTER & ASSOCIATES
Attorneys for Borough of
Dumont ~~and Dumont~~ Mayor and
Council

Dated: March 21, 2014

BY: Gregg F. Paster, Esq.

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LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION **ORDER TO STAY THE PROCEEDINGS AS TO DEFENDANTS BOROUGH OF DUMONT, COUNCIL FOR THE BOROUGH OF DUMONT, AND THE MAYOR OF DUMONT**

THIS MATTER, having been brought before the Court by Gregg F. Paster & Associates, attorneys for all Borough of Dumont Defendants, by way of a Motion seeking to stay the proceedings until the Council of Affordable Housing adopts Third Round Rules consistent with the Mount Laurel II opinion and Fair Housing Act, and notice having been given to the Plaintiff, and Counsel having appeared before this Court, and the Court having considered the papers submitted in support thereof, and the Court having heard Oral Argument on the Motion, and for good cause having been shown,

IT IS THEREFORE, on this _____ of April, 2014,

ORDERED THAT:

1. This action is stayed until the Council on Affordable Housing produces rules that will enable the Parties and the Court to make a determination of the Borough's Constitutional obligations pursuant to the Fair Housing Act and Mount Laurel II or pending further order of this court; and

2. A copy of this Order shall be served upon all parties by counsel for Plaintiff within seven (7) days of the date hereof.

_____

J.S.C.

_____ Opposed

_____ Unopposed

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LANDMARK DUMONT, LLC, Plaintiff, vs. BOROUGH OF DUMONT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT; AND THE PLANNING BOARD OF THE BOROUGH OF DUMONT Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-1297-14 CIVIL ACTION **CERTIFICATION OF SERVICE**

I, Mary Stavropulos, secretary to Gregg F. Paster, Esq., of Gregg F. Paster & Associates, hereby certifies that on March 24, 2014, an original and one copy of the within Notice of Motion for Stay of Proceedings, Certification of Gregg F. Paster, Esq., Certification of Darlene A. Green, P.P., AICP, Brief in Support of Defendant's Motion, and proposed Order was forwarded, via hand delivery to the Clerk of the Superior Court of New Jersey, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey, 07601.

I further certify that on March 24, 2014, a true copy hereof was forwarded via email and First Class Mail to Antimo A. Del Vecchio, Esq., Beattie Padovano, LLC, 50 Chestnut Ridge

Road, Montvale, NJ 07645 and Mark D. Madaio, Esq., 27 Legion Drive, Bergenfield, NJ 07621.

By Mary Stavropulos
Mary Stavropulos

Dated: March 24, 2014