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By: Jeffrey R. Surenian, JRS@Surenian.com; Attorney ID: 024231983
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Attorneys for Declaratory Plaintiff, Township of Millstone

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF MILLSTONE, COUNTY OF MONMOUTH, STATE OF NEW JERSEY	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION: MONMOUTH COUNTY DOCKET NO.: MON-**L-____** **CIVIL ACTION** AFFORDABLE HOUSING PER DIRECTIVE # 14-24 **COMPLAINT FOR DECLARATORY RELIEF PURSUANT TO DIRECTIVE# 14-24**

Declaratory Plaintiff, the Township of Millstone, County of Monmouth, State of New Jersey (hereinafter, "Millstone" or the "Township"), a municipal corporation of the State of New Jersey, with principal offices located at 470 Stagecoach Road Millstone, New Jersey 08510, by way of this Declaratory Judgment Action ("DJ Action") as authorized under Directive # 14-24 of the Administrative Office of the Courts, alleges and says:

Background

1. Millstone is a municipal corporation of the State of New Jersey.

2. The Planning Board of the Township of Millstone (hereinafter, "Planning Board") is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., ("MLUL"), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan ("HEFSP") of Millstone's Master Plan.

3. Through this DJ Action, Millstone seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the "Program") pursuant to P.L. 2024, c.2 (hereinafter, the "Act") and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Township of Millstone's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Township, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve a HEFSP to be adopted by the Planning Board and endorsed by the Council and issue a conditional or unconditional "Compliance Certification" pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Millstone's immunity from all exclusionary zoning litigation , including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I
ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Township of Millstone repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et seq*.

6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, "COAH"), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, "Director" and "AOC") to create a framework to process applications for a compliance certification.

7. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality's adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.

8. Millstone adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as **Exhibit 1**.

9. Based on the foregoing, Millstone has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth hereinafter.

WHEREFORE, the Township of Millstone seeks a declaratory judgment for the following relief:

a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

b. Declaring the present and prospective affordable housing obligations of the Township under the Act;

c. Declaring the approval of the Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Millstone for the period beginning July 1, 2025 and ending June 30, 2035; and

f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT II
DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF MILLSTONE

10. Millstone repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

13. The DCA issued its report on October 18, 2024.

14. Pursuant to the October 18, 2024 report, the DCA calculated Millstone's present and prospective affordable housing obligations as follows:

PRESENT NEED (REHABILITATION OBLIGATION)	**FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035)**
7	98

15. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

16. Millstone adopted a binding resolution, a copy of which is attached hereto and made a part hereof as Exhibit 1 to this DJ Action.

17. The binding resolution maintains that the Present ("Rehabilitation") Need obligation of Millstone is 7 and its Prospection Need obligation is 98.

18. Millstone seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1** or the adjustment of those obligations consistent with the Act and the applicable COAH regulations.

19. Pursuant to the binding resolution, the Township of Millstone reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

20. Pursuant to the binding resolution, Millstone specifically reserves the right to seek and obtain 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Millstone seeks a declaratory judgment for the following relief:

a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

b. Declaring the present and prospective affordable housing obligations of Millstone under the Act;

c. Declaring the approval of Millstone's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Millstone for the period beginning July 1, 2025 and ending June 30, 2035; and

f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III
HOUSING ELEMENT AND FAIR SHARE PLAN

21. The Township of Millstone repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

22. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, ("HEFSP") must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.

23. Millstone hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Millstone seeks a declaratory judgment for the following relief:

a. Declaring that Millstone has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

b. Declaring the present and prospective affordable housing obligations of Millstone under the Act;

c. Declaring the approval of Millstone's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

d. Declaring that the Township of Millstone continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Millstone for the period beginning July 1, 2025 and ending June 30, 2035; and

f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV
CONFIRMATION OF IMMUNITY

24. The Township of Millstone repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

25. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

26. The Township of Millstone has met the deadline for the adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive # 14-24) not later than January 31, 2025 by adopting the binding resolution attached to this DJ Action as Exhibit 1, and has committed to the adoption of its HEFSP by the June 30, 2025.

27. Without waiving any judicial immunity from exclusionary zoning litigation that Millstone possesses as a result of any applicable Judgment of Compliance and Repose entered in favor of the Township in Round 3, Millstone has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

WHEREFORE, the Township of Millstone seeks a declaratory judgment for the following relief:

a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

b. Declaring the present and prospective affordable housing obligations of Millstone under the Act;

c. Declaring the approval of Millstone's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

d. Declaring that Millstone continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Millstone for the period beginning July 1, 2025 and ending June 30, 2035; and

f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff

Township of Millstone

Jeffrey R. Surenian

By: _____
Jeffrey R. Surenian, Esq.

Dated: January 16, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

Jeffrey R. Surenian, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for declaratory plaintiff, Township of Millstone.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

I hereby 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.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Millstone

Jeffrey R. Surenian

By: _____
Jeffrey R. Surenian, Esq.

Dated: January 16, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Jeffrey R. Surenian, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for Declaratory Plaintiff, Township of Millstone.

2. 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 R. 1:38-7(b).

I hereby 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.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Millstone

Jeffrey R. Surenian
By: _____
Jeffrey R. Surenian, Esq.

Dated: January 16, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Jeffrey R. Surenian, Esq., attorney for the Declaratory Plaintiff, Township of Millstone is designated as trial counsel in the above captioned matter.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Millstone

Jeffrey R. Surenian
By: _____
Jeffrey R. Surenian, Esq.

Dated: January 16, 2025

EXHIBIT 1

RESOLUTION NO. 25-62
MEETING DATE: 01-15-2025

RESOLUTION OF THE TOWNSHIP OF MILLSTONE, COUNTY OF MONMOUTH, COMMITTING TO COMPLY WITH AFFORDABLE HOUSING OBLIGATIONS FOR ROUND 4

C/Ziner offered the following Resolution and moved its adoption, which was second by **C/Zabrosky.**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report identifies the Township's Present Need, also referred to as its Rehabilitation Obligation, as 7 and its Round 4 Prospective Need as 98; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311 (m); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Township of Millstone accepts the DCA calculations of its fair share obligations and commits to its fair share of 7 units present need and 98 units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Element and Fair Share Plan it submits by the June 30, 2025 deadline the Amended FHA establishes and

WHEREAS, the Township of Millstone reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Township of Millstone also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Township of Millstone reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in light of the above, the Township of Millstone finds that it is in the best interest of the Township to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the foregoing, nothing in Amended FHA requires or can require an increase in the Township's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of Amended FHA is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, the Township of Millstone seeks a certification of compliance with the FHA and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution in Monmouth County and with the Program.

NOW, THEREFORE, BE IT RESOLVED on this 15th day of January, 2025 by the Township of Millstone as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Township of Millstone hereby commits to the obligations the DCA reported on October 18, 2024, 7 units for the Present Need or rehab obligation and 98 for the Round 4 Prospective Need Obligation of 98 subject to all reservations of rights, which specifically include:

a) The right to a vacant land adjustment or a durational adjustment in accordance with COAH regulations;

b) The right to comply with the NJILGA Legislation if the Legislature enacts it;

c) The right to adjust its obligation in the event of any future legislation that adjusts the obligations the DCA reported on October 18, 2024;

c) The right to comply with any future Legislation that changes its obligations under current law;

d) The right to adjust its obligations based upon any ruling in the Montvale litigation or other litigation; and

e) The right to adjust its obligations in the event of a third party challenge to the obligations of the Township of Millstone and the Township defends itself.

3. The Township of Millstone hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Monmouth County within 48 hours after adoption of this resolution attaching this resolution.

4. The Township of Millstone authorizes its Affordable Housing Counsel to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. This resolution shall take effect immediately, according to law.

ROLL CALL:
AYES: **C/Zabrosky, C/Ziner, M/Ferro**
NAYS: **None**
ABSTAIN: **None**
ABSENT: **C/Davis, DM/Morris**

I HEREBY CERTIFY the foregoing to be a true copy of the Resolution adopted by the Millstone Township Committee at its meeting of January 15, 2025.

Kathleen Hart

Kathleen Hart, RMC
Municipal Clerk