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 Borough of Woodcliff Lake

SUPERIOR COURT BERGEN COUNTY  
 FILED

JUL 07 2015

*Laura A. Scudlone*  
 DEPUTY CLERK

	:	SUPERIOR COURT OF NEW JERSEY
	:	BERGEN COUNTY: LAW DIVISION
IN THE MATTER OF THE	:	
APPLICATION OF THE	:	
BOROUGH OF WOODCLIFF LAKE,	:	DOCKET NO. BER-L- 6221-15
a municipal corporation	:	
of the State of New Jersey,	:	<u>CIVIL ACTION</u>
	:	(Mount Laurel)
Plaintiff/Petitioner.	:	
	:	COMPLAINT FOR
	:	DECLARATORY JUDGMENT

Plaintiff/Petitioner, the Borough of Woodcliff Lake (the “Borough” or “Woodcliff Lake”), a municipal corporation and body politic organized pursuant to the borough form of government set forth in N.J.S.A. 40A:60-1, et seq., with offices located at 188 Pascack Road, Borough of Woodcliff Lake, County of Bergen, State of New Jersey 07677, by way of Complaint for Declaratory Judgment says:

**Jurisdiction**

1. Jurisdiction with the Superior Court of New Jersey, Law Division, Bergen County Vicinage (the “Court”) is established pursuant to the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50, et seq.

2. Jurisdiction with this Court is further established by the decision, and accompanying Order, issued by the Supreme Court of New Jersey (the “Supreme Court”) on March 10, 2015 in the following action: In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97

by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (the “2015 Action”).

### **Background and Prior Rounds**

3. The Borough is a body corporate and politic organized under the laws of the State of New Jersey.

4. The Mayor and Council is the Governing Body of the Borough and is responsible for, among other things, ensuring that the Borough takes all necessary actions to both achieve and maintain compliance with the Borough’s obligations relating to affordable housing.

5. The Woodcliff Lake Planning Board (the “Planning Board”) is a municipal agency responsible under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”) for formulating the Housing Element of the Borough’s Master Plan in a manner that complies with the Borough’s affordable housing obligations.

6. In 1971, the Supreme Court held in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975) (“Mount Laurel I”) that the developing municipalities in the State of New Jersey exercising their zoning power, in general, had a constitutional obligation to provide a realistic opportunity for the construction of their “fair share” of the region’s low- and moderate-income housing needs.

7. The Supreme Court subsequently refined that constitutional obligation in 1983, in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

8. The New Jersey Legislature adopted the New Jersey Fair Housing Act, N.J.S.A. 52:2D-301 et seq. (the “FHA”) in 1985, transforming the judicial doctrine, which had become known as the “Mount Laurel doctrine” based upon the decisions of the Supreme Court in Mount

Laurel I and Mount Laurel II, into a statutory one.

9. With the adoption of the FHA, the New Jersey Legislature provided an alternative administrative process in which New Jersey municipalities could elect to participate in order to develop and establish a Housing Element and Fair Share Plan (“HEFSP”) that would satisfy a municipality’s constitutional obligation to provide affordable housing units by creating an administrative agency known as the Council on Affordable Housing (“COAH”) which was charged with, among other things, developing regulations for the purpose of both defining and implementing that obligation.

10. COAH proceeded to adopt regulations for both First Round obligations, applicable from 1987 to 1993 (the First Round rules), and Second Round obligations that created a cumulative obligation from 1987 to 1999 (the Second Round rules).

#### **Borough Participation in the First and Second Rounds**

11. The Borough was sued in 1985 after COAH assigned the Borough an obligation of one hundred ninety-three (193) units.

12. The Court approved Master prepared a vacant land adjustment, which lowered the Borough’s obligation to eighty-two (82) affordable housing units.

13. The Borough was granted a Judgement of Repose by the Court on November 29, 1993, wherein the court-approved plan for eighty-two (82) units was satisfied.

14. The Borough also received Court approval of a development fee ordinance that was part of the Borough’s 1993 compliance plan. The Borough also submitted a proposed development fee spending plan to COAH. The spending plan was approved on January 18, 2000.

15. The Borough’s Second Round obligation was one hundred seventy (170) units, which superseded the prior cycle obligation of one hundred ninety-two (192) units.

16. The Borough submitted its petition to COAH seeking Second Round substantive certification on October 19, 1999.

17. The Judgement of Repose granted to the Borough by the Court on November 29, 1993 was set to expire in 1999, and COAH honored the vacant land adjustment of eighty-two (82) units.

18. COAH granted Second Round substantive certification to the Borough on November 6, 2002 with eighty-eight (88) credits.

### **Third Round Obligation**

19. COAH first proposed third round substantive and procedural rules during or about October, 2003. 35 N.J.R. 4636(a); 35 N.J.R. 4700(a).

20. COAH failed to adopt the Third Round substantive and procedural rules as proposed by COAH during or about October 2003 and COAH subsequently re-proposed both the procedural and substantive Third Round rules, memorialized in N.J.A.C. 5:94 and N.J.A.C. 5:95, in August 2004 and adopted the same effective as of December 20, 2004 (the "2004 Regulations").

21. Subsequent to adoption by COAH, the 2004 Regulations were challenged and, on January 25, 2007, the Superior Court of New Jersey, Appellate Division (the "Appellate Division") invalidated various aspects of the 2004 Regulations and remanded considerable portions of the invalidated 2004 Regulations to COAH with direction to adopt revised Third Round rules within five (5) months. See In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div.), certif. denied, 192 N.J. 72 (2007) (the "2007 Action").

22. On or about January 22, 2008, approximately one (1) year following the issuance

of the decision by the Appellate Division in the 2007 Action directing COAH to adopt revised Third Round rules, COAH finally proposed and published revised Third Round rules in the New Jersey Register. See 40 N.J.R. 237.

23. On or about May 6, 2008, COAH adopted those revised Third Round rules, previously published at in the New Jersey Register at 40 N.J.R. 237, advising that those new Third Round rules would be published in the June 2, 2008 New Jersey Register, thereby becoming effective.

24. On or about May 6, 2008, COAH simultaneously proposed amendments to the revised Third Round rules COAH had only just then adopted and which were called the “growth share methodology.”

25. The amendments simultaneously proposed on May 6, 2008 were published in the June 16, 2008 New Jersey Register. See 40 N.J.R. 3373 (Third Round procedural rules, N.J.A.C. 5:96) and 40 N.J.R. 3374 (Third Round substantive rules, N.J.A.C. 5:97).

26. Those amendments to the Third Round rules were later adopted by COAH on or about September 22, 2008 and made effective by COAH on or about October 20, 2008.

27. Because Woodcliff Lake’s Second Round substantive certification did not expire until November 6, 2008, the Borough committed to petition COAH for Third Round substantive certification on or before May 15, 2007 in order to remain under COAH’s jurisdiction.

28. The Planning Board adopted a HEFSP on October 15, 2008 (the “2008 HEFSP”) that addressed the Borough’s regional fair share of affordable housing needed in accordance with the MLUL, the FHA and the Third Round rules recently adopted by COAH.

29. The resolution of participation and the 2008 HEFSP were approved by the Borough’s Governing Body on October 20, 2008.

30. On December 3, 2008, Woodcliff Lake filed with COAH the Borough's petition for Third Round substantive certification, and submitted therewith its 2008 HEFSP along with a Spending Plan.

31. COAH deemed Woodcliff Lake's petition for Third Round substantive certification complete on February 18, 2009.

32. A public comment period followed COAH's deeming the Borough's petition for Third Round substantive certification complete and that public comment period concluded on April 9, 2009.

33. Three (3) formal objections were filed to the Borough's petition for Third Round substantive certification during that public comment period.

34. COAH thereafter, and without explanation, failed to take any further action on the Borough's petition for Third Round substantive certification.

35. Despite the failure of COAH to take any further action on the Borough's petition for Third Round substantive certification, and despite the refusal of COAH to cooperate with Woodcliff Lake in its attempts to satisfy its obligation to provide its "fair share" of regional affordable housing needs, Woodcliff Lake continued to remain active in implementing the 2008 HEFSP (the Borough's Third Round Plan) since the time of its filing with COAH on December 3, 2008.

36. By way of representation, but not limitation, of the efforts of the Borough to implement its 2008 HEFSP:

- A. The Borough's growth share obligation of five (5) units was to be met through the Borough acquisition of a 2.05 acre property on Broadway in the Borough identified as Block 2602, Lots 1 and 2

(230 Broadway), property which the Borough acquired with Affordable Housing Trust Fund monies as authorized by COAH by Resolution adopted October 29, 2008. The Borough had been in contact with the nonprofit organization CHIP to see if they would be interested in developing the site for affordable housing. Discussions with CHIP indicated that any development on the site would include rental housing units; and

- B. The Borough also planned to renew affordability controls on previously constructed units with expiring controls.

#### **The Transfer of Jurisdiction to the Courts**

37. Both N.J.A.C. 5:96, the Third Round procedural rules, and N.J.A.C. 5:97, the Third Round substantive rules, as adopted in 2008 were challenged in an appeal filed with the Appellate Division. See In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J.Super. 462 (App. Div. 2010), affirmed 215 N.J. 578 (2013) (the “2010 Action”).

38. The Appellate Division, in its decision in the 2010 Action published October 8, 2010, held, among other things, that the growth share methodology approach was invalid, invalidated other regulations which COAH had included in its second attempt at proposing Third Round regulations and, as a result of these holdings, directed COAH to adopt regulations utilizing methodologies similar to the ones utilized in the First and Second rounds, i.e. 1987-1999, which was to be accomplished by COAH within five (5) months of that decision.

39. The Supreme Court, in a decision published September 26, 2013 addressing the decision of the Appellate Division in the 2010 Action, affirmed the Appellate Division’s

invalidation of the third iteration of COAH's Third Round rules, sustained the Appellate Division's determination that the growth share methodology was invalid and directed COAH to adopt new regulations based upon the methodology utilized in the First and Second rounds, again within a five (5) month period. See 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 (2013) (the "2013 Action").

40. COAH filed a motion with the Supreme Court on February 26, 2014 – the last day for COAH to adopt new Third Round regulations as directed by the Supreme Court in the 2013 Action – requesting an extension of time to satisfy its obligation to adopt new proposed Third Round regulations.

41. The Supreme Court granted COAH's motion in part, entering an Order on March 14, 2014 requiring COAH to propose the new Third Round regulations on or before May 1, 2014 and then adopt those proposed regulations on or before October 22, 2014.

42. COAH proposed new Third Round regulations on April 30, 2014 in response to the March 14, 2014 Order of the Supreme Court, publishing those proposed Third Round regulations in the New Jersey Register on June 2, 2014.

43. A public comment period followed the June 2, 2014 publication of the newly proposed Third Round regulations during which period COAH received approximately three thousand (3,000) comments.

44. COAH, during its meeting held on October 20, 2014, considered those regulations for adoption and, when voting on whether to adopt those regulations, COAH deadlocked with a tie (3-3) vote, resulting in COAH failing to adopt the revised Third Round regulations as directed by the Supreme Court in the 2013 Action.

45. That failure of COAH to adopt revised Third Round regulations on or before October 22, 2014 was in direct violation of the March 14, 2014 Order of the Supreme Court.

46. In addition to violating the March 14, 2014 Order of the Supreme Court, COAH violated its obligation set forth and contained within the FHA, specifically N.J.S.A. 52:27D-307 requiring COAH to establish presumptive constitutional affordable housing obligations for each New Jersey municipality or to identify how a municipality would be allowed to satisfy its affordable housing obligation with its HEFSP, housing element and implementing ordinances.

47. Following its failure to adopt Third Round regulations during its October 20, 2014 meeting, COAH remained inert, failing to take any action in an attempt to comply with mandate of the March 14, 2014 Order of the Supreme Court and/or the requirements placed upon COAH by the FHA.

48. As a direct result of the failure of COAH to adopt the revised Third Round regulations during its meeting held on October 20, 2014, and the further failure of COAH to take any subsequent action in furtherance of any attempt to adopt the revised Third Round regulations, Fair Share Housing Center (“FSHC”), a party in both the 2010 Action and the 2013 Action, filed a motion with the Supreme Court (the 2015 Action) seeking to enforce litigant’s rights, requesting that the Supreme Court provide certain relief, including directing New Jersey trial court judges to take over and fulfill the statutory duties of COAH.

49. The Supreme Court issued its decision on FSHC’s motion to enforce litigant’s rights in the 2015 Action on March 10, 2015.

50. The Supreme Court found in the 2015 Action that the COAH administrative process had become non-functioning, with COAH, by failing to adopt Third Round regulations prior to October 22, 2014, being in direct violation of not only the March 14, 2014 Order of the

Supreme Court but also its statutory duties.

51. The Supreme Court further found in the 2015 Action that absent the adoption of Third Round regulations, COAH was unable to process and determine petitions of municipalities seeking Third Round substantive certification.

52. As a result of these findings in the 2015 Action, the Supreme Court returned primary jurisdiction over affordable housing matters to the trial courts.

53. The Supreme Court, in the decision issued in the 2015 Action, established a transitional process for municipalities such as Woodcliff Lake that participated in the administrative process before COAH, thereby achieving participating status (“Participating Municipalities”), to file a Declaratory Judgment action with the trial courts seeking to declare their HEFSPs as being constitutionally compliant and seeking similar protections to those protections that Participating Municipalities would have received if they had continued to proceed before COAH.

54. In explaining the judicial transitional process created by its decision in the 2015 Action, the Supreme Court equated these Participating Municipalities to those municipalities that in 1985 had sought under the FHA to transfer jurisdiction from the trial court to the newly created COAH, thereby seeking a change in forum from judicial (the trial court) to administrative (COAH) under N.J.S.A. 52:27D-316.

55. While the Supreme Court in the 2015 Action declined to adopt a specific methodology or formula to calculate the Third Round affordable housing obligations of the municipalities, instead opting to leave that determination to the fifteen (15) designated Mount Laurel Judges (one in each vicinage) that would be handling the Declaratory Judgment actions, such as this Court in the case of Woodcliff Lake, the Supreme Court did provide guidance to the

designated Mount Laurel Judges by reiterating the Supreme Court's endorsement of utilizing the prior methodologies employed in the First and Second Round rules as the template to establish Third Round affordable housing obligations of the individual municipalities and, as discussed above, by treating Participating Municipalities that opt to file Declaratory Judgment actions, such as Woodcliff Lake in filing this action, in the same way that the FHA, when originally enacted on July 2, 1985, treated municipalities transitioning from the judicial to the administrative process.

56. Based on the decision of the Supreme Court in the 2015 Action, the designated Mount Laurel Judges are required to comply with the mandatory provisions of N.J.S.A. 52:27D-307 by: i) determining regions; ii) calculating both present need and prospective regional need for the Third Round; and iii) establishing the standards with which municipalities are required to comply in order to secure the approval of the court to their HEFSP.

### COUNT ONE

#### (DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE)

57. Woodcliff Lake repeats and realleges each and every allegation as set forth in Paragraphs 1-56 of this Complaint as if more fully set forth at length herein.

58. The Supreme Court emphasized in the 2015 Action that municipalities, such as Woodcliff Lake in this action, are not to be held responsible or punished in any way as a result of the unilateral failures of COAH to adopt necessary Third Round regulations.

59. Woodcliff Lake now files this action pursuant to the decision of the Supreme Court in the 2015 Action resulting from the failure of COAH to adopt Third Round regulations and apply those regulations to the petition for Third Round final certification filed by Woodcliff Lake with COAH over six (6) years ago.

60. Pursuant to the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq., and the decision of the Supreme Court in the 2015 Action, Woodcliff Lake has a right to the entry of a Declaratory Judgment verifying and confirming full compliance by Woodcliff Lake with its constitutional affordable housing obligations.

**WHEREFORE**, Plaintiff/Petitioner, the Borough of Woodcliff Lake, respectfully requests that this Court grant the following relief:

- a. Entry of an Order exercising jurisdiction over the determination of the compliance by the Borough of Woodcliff Lake with its constitutional affordable housing obligations;
- b. Entry of an Order declaring that the Borough of Woodcliff Lake has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation;
- c. Entry of a Final Judgment of Compliance and Repose which will properly insulate the Borough of Woodcliff Lake and its Land Use Boards from any exclusionary zoning lawsuits for a period of ten (10) years from the date of entry thereof; and
- d. Entry of an Order granting such additional other relief as the Court deems equitable and just.

**COUNT TWO**

**(FIVE MONTHS TO PREPARE HEFSP)**

61. Woodcliff Lake repeats and realleges each and every allegation as set forth in Paragraphs 1-60 of this Complaint as if more fully set forth at length herein.

62. The decision of the Supreme Court in the 2015 Action permits Participating Municipalities, those municipalities that previously submitted a Third Round HEFSP with COAH in connection with their respective petitions for Third Round substantive certification (in the case of Woodcliff Lake it submitted its 2008 HEFSP on December 3, 2008), to amend and/or supplement their previously submitted HEFSP, acknowledging that as a result these Declaratory Judgment proceedings will take a significant amount of time.

63. The Supreme Court, in its decision issued in the 2015 Action, equated Participating Municipalities that file Declaratory Judgment actions, such as this action now filed by Woodcliff Lake, to those municipalities who were involved in litigated matters in 1985 at the time of adoption of the FHA and at that time successfully transferred their litigated cases to COAH, which transfer entitled the subject municipality under N.J.S.A. 52:27D-316 to a five (5) month period from the date of transfer or the date of the promulgation of criteria and guidelines by COAH, whichever occurred later, to prepare its necessary HEFSP.

64. The Supreme Court declined to establish, in either the 2013 Action or the 2015 Action, a specific methodology or formula to calculate Third Round affordable housing obligations of municipalities, instead leaving that determination to the fifteen (15) designated Mount Laurel Judges, including this Court, directing that the methodology and formula established to calculate the Third Round affordable housing obligation of a municipality should be similar to the methodology and formula that was employed in the First and Second Round rules.

65. As a result of the respective decisions of the Supreme Court in both the 2013 Action and the 2015 Action, there are insufficient established criteria and guidelines existing at this time for Woodcliff Lake to look to for guidance and follow in order to prepare a compliant

HEFSP which this Court could then evaluate in order to determine Woodcliff Lake's affordable housing constitutional compliance.

66. The decision of the Supreme Court in the 2015 Action affords wide discretion to the fifteen (15) designated Mount Laurel Judges in addressing these Declaratory Judgment actions, including this Court in this action; enabling and empowering each Mount Laurel Judge with the authority to grant to municipalities a five (5) month period within which to prepare a compliant HEFSP in accordance with the approved methodology and formula established by that Mount Laurel Judge.

67. Specifically, the Supreme Court held in the 2015 Action that, once a Participating Municipality filed a Declaratory Judgment action submitting itself to the jurisdiction of the Court, a municipality would then be provided with a five (5) month period to prepare, adopt and file its HEFSP with the Court from the date the Court establishes the "criteria and guidelines" within which Participating Municipalities must comply.

68. The FHA, specifically N.J.S.A. 52:27D-309 and N.J.S.A. 52:27D-316, provided that municipalities would be provided a five (5) month period from the adoption of "criteria and guidelines" by COAH in order to prepare a HEFSP.

69. The decision of the Supreme Court in the 2015 Action, with the providing of the above referenced five (5) month period, is therefore consistent with the FHA that would have governed had COAH not failed to fulfill its obligation to adopt Third Round regulations.

70. The decision of the Supreme Court in the 2015 Action therefore dictates that Woodcliff Lake, by the filing of this Declaratory Judgment action, is entitled to a five (5) month period from the date that this Court establishes the methodology and formula which will quantify the affordable housing obligation of Woodcliff Lake in order to provide Woodcliff Lake the

opportunity to prepare and adopt a constitutionally compliant HEFSP.

**WHEREFORE**, Plaintiff/Petitioner, the Borough of Woodcliff Lake, respectfully requests that this Court grant the following relief:

- a. Entry of an Order granting the Borough of Woodcliff Lake a five (5) month period, commencing from the date that this Court establishes a methodology and formula that will quantify the affordable housing obligation of the Borough of Woodcliff Lake, to prepare and submit to this Court a constitutionally compliant HEFSP that incorporates the formula and methodology approved by this Court;
- b. In the event this Court did not previously enter an Order granting the Borough of Woodcliff Lake immunity from any and all exclusionary zoning lawsuits filed against the Borough of Woodcliff Lake until such time as this Court issues a Final Judgment of Compliance and Repose to the Borough of Woodcliff Lake in this action, then in that event entry of an Order granting the Borough of Woodcliff Lake immunity from such exclusionary zoning lawsuits during the five (5) month time period provided by Order as requested above; and
- c. Entry of an Order granting such additional relief as this Court deems equitable and just.

### **COUNT THREE**

#### **(REQUEST FOR IMMUNITY FROM MOUNT LAUREL LAWSUITS)**

71. Woodcliff Lake repeats and realleges each and every allegation as set forth in Paragraphs 1-70 of this Complaint as if more fully set forth at length herein.

72. Voluntary compliance by a municipality with satisfying its affordable housing obligations is preferred over the achieving of municipal compliance through builder's remedy litigation. See Mount Laurel II, 92 N.J. at 214.

73. Following the decision of the Supreme Court in Mount Laurel II, however, significant numbers of exclusionary zoning actions were filed with the trial courts, with the majority of those actions being filed by developers seeking a builder's remedy.

74. By enacting the FHA, the Legislature sought to create an alternative to builder's remedy actions to accomplish the resolution of affordable housing disputes. See N.J.S.A. 52:27D-303.

75. The FHA provides that a municipality, and its planning board, could pursue voluntary compliance by: i) development and adoption of a HEFSP by the planning board as a component of the municipality's Master Plan; ii) endorsement of that HEFSP; and iii) seeking and securing approval of that HEFSP by either petitioning COAH (administrative process) or by application to the Superior Court (court process). See N.J.S.A. 52:27D-313.

76. If that HEFSP was then approved via the administrative process, COAH would grant substantive certification to the municipality, as achieved by Woodcliff Lake which received substantive certification from COAH for the Second Round. See N.J.S.A. 52:27D-314.

77. If that HEFSP was then approved via the court process, the trial court would grant the municipality a Judgment of Compliance and Repose. See Mount Laurel II, 92 N.J. at 291-92.

78. Whether a municipality's HEFSP was approved by COAH or a court, that approval insulated the municipality from exclusionary zoning lawsuits for a certain period of time, providing a benefit to a municipality that obtained approval via voluntary compliance.

79. The FHA, specifically N.J.S.A. 52:27D-313(a), provides municipalities a ten (10)

year period of repose commencing on the date of filing of a municipality's HEFSP with COAH.

80. The FHA, specifically N.J.S.A. 52:27D-309, provided municipalities, which had not been sued based upon a claim of violating its obligations to provide affordable housing, the opportunity to obtain a five (5) month period of automatic immunity from the date of adoption of "criteria and guidelines" by COAH simply by the municipality adopting a resolution confirming COAH participation within four (4) months from the effective date of the FHA.

81. N.J.S.A. 52:27D-309, along with N.J.S.A. 52:27D-316, grant further automatic immunity to municipalities which had filed their HEFSP with COAH within five (5) months of the adoption of "criteria and guidelines" by COAH as developers were obligated to exhaust their administrative remedies under the FHA prior to being afforded a trial by the court on its builder's remedy complaint.

82. Since the adoption of the FHA, our courts have utilized the entry of immunity orders to avoid unnecessary Mount Laurel lawsuits being filed against municipalities voluntarily seeking to obtain compliance.

83. Simply stated, our courts have made it clear that voluntary compliance by municipalities is preferred to further legal action by way of a builder's remedy lawsuit being filed against a municipality and the granting of immunity to a municipality promotes the preference of the courts to promote voluntary compliance over the filing of a builder's remedy lawsuit.

84. The decision of the Supreme Court in the 2015 Action again directly acknowledged the preferred judicial approach of granting immunity where a municipality is attempting to accomplish voluntary compliance, placing a prohibition on the filing of builder's remedy actions for a period of four (4) months from the issuance of its decision on March 10,

2015 and further by affording Participating Municipalities that filed a Declaratory Judgment action within that four (4) month period seeking to verify and confirm that municipality's constitutional compliance with its affordable housing obligations the right to seek temporary immunity from builder's remedy lawsuits while pursuing that Declaratory Judgment action and the development of a compliant HEFSP.

85. The Borough respectfully submits that it cannot be overlooked that this four (4) month period resulting in automatic immunity provided by the Supreme Court in the 2015 Action is the equivalent of the four (4) month automatic immunity period provided by the FHA following its enactment by the Legislature.

86. Woodcliff Lake, by virtue of the filing of the within Declaratory Judgment action within four (4) months of the March 10, 2015 decision of the Supreme Court in the 2015 Action as a Participating Municipality, is now eligible to seek and obtain from this Court the entry of an Order providing Woodcliff Lake with immunity from third party lawsuits while pursuing this Declaratory Judgment action pursuant to the Supreme Court decision in the 2015 Action.

87. The failure to grant to Woodcliff Lake the protection of immunity from builder's remedy lawsuits during this process outlined by the Supreme Court and now being pursued by Woodcliff Lake would be contrary to both the decision of the Supreme Court in the 2015 Action and contrary to the intent of the FHA by failing to provide Woodcliff Lake with any benefit for undertaking this attempt to voluntarily comply.

**WHEREFORE**, Plaintiff/Petitioner, the Borough of Woodcliff Lake, respectfully requests that this Court grant the following relief:

- a. Entry of an Order granting to the Borough of Woodcliff Lake immunity from any and all exclusionary zoning lawsuits filed against the Borough of

Woodcliff Lake from the date of the filing of the instant Declaratory Judgment action until this Court issues a Final Judgment of Compliance and Repose to the Borough of Woodcliff Lake for its HEFSP that is to be formulated, adopted by the Borough of Woodcliff Lake and approved by this Court in accordance with the applicable formula and methodology established by this Court;

- b. Entry of a Final Judgment of Compliance and Repose which will properly insulate the Borough of Woodcliff Lake and its Land Use Boards from any exclusionary zoning lawsuits for a period of ten (10) years from the date of entry thereof; and
- c. Entry of an Order granting such additional relief as the Court deems equitable and just.

#### **COUNT FOUR**

##### **(JURISDICTION OVER UNAPPROVED SPENDING PLAN)**

88. Woodcliff Lake repeats and realleges each and every allegation as set forth in Paragraphs 1-87 of this Complaint as if more fully set forth at length herein.

89. On April 9, 2015, the Appellate Division divested COAH of jurisdiction to take, and enjoined COAH from taking, any administrative action seeking to effect a forfeiture of municipal Affordable Housing Trust Funds not expended, or committed to be expended, by a municipality in accordance with the requirements of the FHA. See In re Failure of Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220 (App. Div. 2015) (the "Trust Fund Action").

90. The Appellate Division in the Trust Fund Action, “compelled by COAH inaction”, applied the decision of the Supreme Court in the 2015 Action in further holding that, pursuant to and consistent with the decision of the Supreme Court in the 2015 Action, jurisdiction over such actions and matters was to be transferred from COAH to the fifteen (15) Mount Laurel Judges designated to hear the Declaratory Judgment actions adjudicating municipal compliance with municipal affordable housing obligations.

91. The FHA permits municipalities to collect fees from developers of residential development projects and requires municipalities to collect fees from developers of non-residential development projects.

92. Those development fees, once collected by a municipality, must then be deposited into the municipality’s Affordable Housing Trust Fund.

93. Municipalities could not expend Affordable Housing Trust Fund monies without COAH approval as required by the FHA. See N.J.S.A. 52:27D-329.2.

94. The Appellate Division found in the Trust Fund Action that COAH, a no longer functioning governmental agency, violated its statutory duty as set forth and contained in the FHA, specifically, the obligation to adopt regulations providing municipalities with guidance as to the obligations of municipalities to commit to spend their Affordable Housing Trust Fund monies.

95. Upon information and belief, COAH has now taken the position that COAH no longer maintains jurisdiction to approve municipal Spending Plans that are currently pending before COAH.

96. As of the date of the filing of this Declaratory Judgment action, the Borough’s Spending Plan, submitted to COAH on December 3, 2008 at the time of submission of the 2008

HEFSP to COAH by the Borough, continues to be pending before COAH without approval by COAH.

97. Absent obtaining the approval and authorization of the Borough's Spending Plan by COAH, Woodcliff Lake continues to face procedural roadblocks with expending its municipal Affordable Housing Trust Fund monies to advance the purposes of affordable housing in the Borough.

98. COAH, by failing to act on either the 2008 HEFSP or the Borough's Spending Plan, has hampered and continues to hamper the attempts of Woodcliff Lake to commit and spend its municipal affordable housing trust funds.

99. Based upon the actions that have been taken by Woodcliff Lake to accomplish the satisfaction of its "fair share" and provide affordable housing within the Borough, Woodcliff Lake has shown that it is "committed" to expend its affordable housing trust funds by both legally enforceable agreements with third parties and by other means.

100. As a direct result of the failure of COAH to approve, or take any action on, the Borough's Spending Plan, Woodcliff Lake is compelled to now seek to have this Court, in conjunction with processing the instant Declaratory Judgment action, approve an Affordable Housing Trust Fund Spending Plan duly adopted by the Governing Body of Woodcliff Lake so that Woodcliff Lake can continue to expend its Affordable Housing Trust Fund monies to pursue planned affordable housing projects and, further, to assume jurisdiction over any amendment to said Affordable Housing Trust Fund Spending Plan once approved in order to provide Woodcliff Lake with the ability to properly utilize and expend the Borough's municipal Affordable Housing Trust Fund monies collected for the purposes of advancing and satisfying Woodcliff Lake's constitutional affordable housing obligation.

101. Consistent with the decision of the Appellate Division in the Trust Fund Action, Woodcliff Lake also requests that this Court determine when the Borough's Affordable Housing Trust Fund monies are properly "committed" and, following that determination by this Court, Woodcliff Lake further seeks the opportunity to demonstrate to this Court, as it would have to COAH, that Woodcliff Lake should not be required to forfeit any of its Affordable Housing Trust Fund monies to the State of New Jersey.

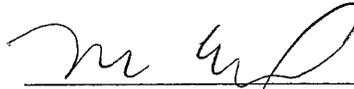
**WHEREFORE**, Plaintiff/Petitioner, the Borough of Woodcliff Lake, respectfully requests that the Court grant the following relief:

- a. Entry of an Order approving the Affordable Housing Trust Fund Spending Plan of the Borough of Woodcliff Lake and declaring that the Borough is free to expend those funds consistent with the affordable housing programs contained in and contemplated by the Borough's Affordable Housing Trust Fund Spending Plan;
- b. Entry of an Order continuing the jurisdiction of this Court over the Affordable Housing Trust Fund Spending Plan of the Borough of Woodcliff Lake in order for this Court to consider and approve any amendments to that Approved Affordable Housing Trust Fund Spending Plan;
- c. Entry of an Order defining the circumstances and proofs needed to demonstrate when the Borough of Woodcliff Lake's Affordable Housing Trust Fund monies are properly committed pursuant to N.J.S.A. 52:27D-329.2; and

- d. Entry of an Order granting such additional relief as the Court deems equitable and just.

KAUFMAN, SEMERARO & LEIBMAN, L.L.P.  
Attorney for Plaintiff/Petitioner,  
Borough of Woodcliff Lake

Dated: July 7, 2015

  
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Marc E. Leibman, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that Marc. E. Leibman, Esq., Attorney for the Plaintiff/Petitioner, the Borough of Woodcliff Lake, is designated as trial counsel in the above captioned matter.

KAUFMAN, SEMERARO & LEIBMAN, L.L.P.  
Attorney for Plaintiff/Petitioner,  
Borough of Woodcliff Lake

Dated: July 7, 2015

  
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Marc E. Leibman, Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R.4:5-1, I hereby certify that the matter in controversy is not the subject matter of any other action pending in any Court or of a pending arbitration or administrative proceeding, and that no other action or arbitration or administrative proceeding is contemplated, except that Plaintiff/Petitioner Borough of Woodcliff Lake previously submitted a Petition for Substantive Certification to the New Jersey Council on Affordable Housing, which entity, as a result of the decision of the Supreme Court in the 2015 Action, has been divested of jurisdiction which has been assumed by this Court as a result of the filing of the within Declaratory Judgment action. I further certify that it is not contemplated that any other party should be joined in this action, except for the Borough of Woodcliff Lake Planning Board.

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.

KAUFMAN, SEMERARO & LEIBMAN, L.L.P.  
Attorney for Plaintiff/Petitioner,  
Borough of Woodcliff Lake

Dated: July 7, 2015



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Marc E. Leibman, Esq.