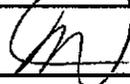


Appendix XII-B1

	<p>CIVIL CASE INFORMATION STATEMENT (CIS)</p> <p>Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY
			PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA
			CHG/CK NO.
			AMOUNT:
		OVERPAYMENT:	BATCH NUMBER:
ATTORNEY / PRO SE NAME Dennis Ritchie		TELEPHONE NUMBER (201) 840-5142	COUNTY OF VENUE Bergen
FIRM NAME (if applicable)		DOCKET NUMBER (when available)	
OFFICE ADDRESS 15 Union Avenue Rutherford, New Jersey 07070		DOCUMENT TYPE Complaint	
		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Borough of Carlstadt, Plaintiff		CAPTION IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF CARLSTADT FOR A JUDGMENT OF COMPLIANCE AND REPOSE	
CASE TYPE NUMBER (See reverse side for listing) 303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) Not applicable <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN	
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION This a "Mount Laurel" declaratory Judgment action brought pursuant to the Supreme Court's decision in 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). It is anticipated that there may be applicants for intervention during the course of this matter.			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE?		
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 <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETA/AREDIS | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 285 STRYKER TRIDENT HIP IMPLANTS | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 286 LEVAQUIN | 297 MIRENA CONTRACEPTIVE DEVICE |
| 287 YAZ/YASMIN/OCELLA | 601 ASBESTOS |
| 288 PRUDENTIAL TORT LITIGATION | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

DENNIS RITCHIE, ESQ.
Attorney No. 030201994
15 Union Avenue
Rutherford, New Jersey 07070
(201) 840-5142
Attorneys for Plaintiff Borough of Carlstadt

RECEIVED

JUL 09 2015

SUPERIOR COURT OF NEW JERSEY
COUNTY OF BERGEN
FINANCE DIVISION

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF CARLSTADT
FOR A JUDGMENT OF COMPLIANCE
AND REPOSE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-BERGEN COUNTY

DOCKET NO. : L-6392-15

Civil Action
(Mount Laurel)

SUPERIOR COURT BERGEN COUNTY
FILED

JUL - 9 2015

Laura A. Simaldoni
DEPUTY CLERK

COMPLAINT FOR A
DECLARATORY JUDGMENT
GRANTING CARLSTADT
TEMPORARY IMMUNITY FROM
EXCLUSIONARY ZONING
LAWSUITS, A PERIOD OF TIME TO
COMPLETE AN UPDATED HOUSING
ELEMENT AND FAIR SHARE PLAN
AND FOR A JUDGMENT OF
COMPLIANCE AND REPOSE

Plaintiff/Petitioner, the Borough of Carlstadt ("Carlstadt"), a municipal corporation and body politic organized under the laws of the State of New Jersey, with offices located at 500 Madison Street, Carlstadt, New Jersey 07072, by way of Complaint for Declaratory Judgment says:

Jurisdiction

1. Jurisdiction is established pursuant to the New Jersey Declaratory Act, N.J.S.A. 2A:16-50, et seq. and as a result of the Supreme Court Decision, *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 Case").

2. This declaratory judgment action has been authorized by the Carlstadt Mayor and Council pursuant to its Resolution No. 2015-162A adopted July 7, 2015. A copy of that resolution is attached as **Exhibit "A"**.

3. In the 2015 Case the Supreme Court required that notice of this action be served upon the entities on the "Service List" in the 2015 Case. In addition, Carlstadt will provide notice of this action to those entities filing objections to its adopted Housing Element and Fair Share Plan (see Paragraph 14 below) identified in the following table:

<u>Name</u>	<u>Address</u>	<u>Interest</u>
Tomu Development, Inc.	Robert Hopper, Registered Agent Sax, Macy & Fromm 855 Valley Road Clifton, NJ 07013	Holder of Builders' remedy
Avalon Bay Communities, Inc.	517 Route One South Suite 5500 Iselin, NJ 08830	Entity Expressing Interest
New Jersey Builders Association	c/o Stephen M. Eisdorfer, Esq. Hill Wallack, LLP 202 Carnegie Center Princeton, N.J. 08540	Entity Expressing Interest and 2015 Case Service List
New Jersey State League of Municipalities	c/o Edward J. Buzak, Esq. Buzak Law Group, LLC 150 River Road; Suite N4 Montville, N.J. 07045	2015 Case Service List
Borough of Atlantic Highlands	c/o Jeffrey R. Surenian, Esq. Jeffrey R. Surenian and Associates, LLC 707 Union Avenue; Suite 301 Brielle, N.J. 08730	2015 Case Service List
Bernards Township, Clinton Township, Union Township and Green Wick Township	c/o Jonathan E. Drill, Esq. Stickel, Koenig, Sullivan & Drill, LLC 571 Pompton Avenue Cedar Grove, N.J. 07009	2015 Case Service List

New Jersey Council on Affordable Housing	c/o Geraldine Callahan, Deputy Attorney General Hughes Justice Complex 25 W. Market Street Trenton, N.J. 08625	2015 Case Service List
Fair Share Housing Center	Kevin D. Walsh, Esq. Fair Share Housing Center 510 Park Boulevard Cherry Hill, NJ 08002	2015 Case Service List
Markus Associates, LLC	c/o Anne L.H. Studholme, Esq. Post, Polak, Goodsell, MacNeill & Strauchler Colonial Club of Princeton University 40 Prospect Avenue Princeton New Jersey 08540	Entity Expressway Interest

4. In the 2015 Case, the Supreme Court did not require the interested parties such as those identified in Paragraph 3 above to actually be served with the pleadings but rather they each be given notice of this action. Therefore, Carlstadt shall provide to each entity identified in Paragraph 3 with the Notice attached hereto as **Exhibit "B"** by certified and regular mail.

5. In addition to the other relief sought, this Complaint seeks Temporary Immunity from Exclusionary Zoning ("Builders' Remedy") Lawsuits (see Count Three below at Page 14).

Background and Prior Round Obligations

6. In 1975 the Supreme Court of New Jersey in *South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975)*, ruled 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. In 1983, the Supreme Court refined that constitutional obligation in *South Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 158 (1983), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

8. In 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act ("FHA") N.J.S.A. 52:2D-301 et seq. which transformed the judicial doctrine which became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation. It did so by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it.

9. COAH proceeded to adopt regulations for first round obligations applicable from 1987 to 1993 and second round obligations that created a cumulative obligation from 1987 to 1999.

10. In 2003 Tomu Development Co. filed a builders' remedy suit against the Borough of Carlstadt, its Planning Board and the New Jersey Meadowlands Commission seeking a builders' remedy. On November 28, 2005 the Honorable Jonathan Harris, J.S.C. entered an order in the matter entitled *Tomu Development Co. v. Borough of Carlstadt, et al.* ("Tomu") awarding Tomu a builder's remedy. Attached hereto as **Exhibit "C"** is a copy of that order. Attached as **Exhibit "D"** is a copy of the opinion of the court pursuant to which the order was issued.

11. On June 1, 2006 the Honorable Jonathan Harris, J.S.C. entered final judgment in the Tomu Matter which, among other things, appointed Robert T. Regan, Esq. as Mount Laurel Compliance Monitor (the "Monitor") and required the Monitor to file a petition with COAH for substantive certification of the Borough's Housing Element and Fair Share Plan. Attached hereto as **Exhibit "E"** is a copy of that Final Judgment. Attached as **Exhibit "F"** is a copy of the opinion of the court pursuant to which the Final Judgment was issued.

12. The decisions in the Tomu Matter were issued after a full trial on the merits. The decisions were affirmed by the Appellate Division in an unreported opinion, see *2008 WL 4057912*, certification was denied by the New Jersey Supreme Court, see *197 N.J. 474 (2009)* and certification was denied by the United States Supreme Court, see *130 S.Ct. 70 (2009)*.

13. On June 5, 2006 the Monitor issued a letter directive setting forth the directives of the Monitor with regards to land use procedures within the Borough of Carlstadt (the "Monitor's Directive".) Attached hereto as **Exhibit "G"** is a copy of the Monitor's Directive.

14. The Monitor's Directive required Carlstadt to develop and submit a proposed Housing Element and Fair Share Plan to him for approval. That was done and with the approval of the Monitor, Carlstadt filed its Petition for Substantive Certification with COAH on May 26, 2010 and its application was completed on September 10, 2010. Attached hereto as **Exhibit "H"** is a copy of Housing Element and Fair Share Plan (without exhibits) filed by Carlstadt.

15. Since the issuance of the Monitor's Directive, all land use applications within Carlstadt, both in and out of the Hackensack Meadowlands District, have been subject to the Monitor's review.

16. The *Tomu* court determined that Carlstadt's affordable housing obligation under the then effective "Second Round" rules to be as follows:

Indigenous Need	12 units
New Construction	186 units
Total Obligation	198 units

See Exhibit "D" at pages 12-13. The Court then determined that Carlstadt was entitled to a vacant land adjustment pursuant to *N.J.A.C. 5:93-4.1 and 4.2*. After analyzing the requirements for such an adjustment, see Exhibit "D" at pages 15 through 21, the Court found that following the "vacant land adjustment" authorized by that regulation, Carlstadt had a "Realistic Development Potential" ("RDP") of 72 units. The *Tomu* Court then awarded a builders' remedy to Tomu which permitted the following in Carlstadt:

Market Rate Units	340 units
Affordable Units	80 units
Total Units	420 units

See Exhibit D at page 27. The *Tomu* court required that the affordable housing units included in the builders' remedy be rental units thereby qualifying for an additional "bonus" credit of up to 2 times the number of actual rental units, subject to certain limitations, under the then effective Second Round rules, see *N.J.A.C. 5:93-5.15(d)(2)*.

17. In order to address its Rehabilitation need, Carlstadt performed a survey of property in the manner required by the Third Round Rules as part of its 2010 HEPSP and determined that only 6 dwelling units were substandard. Carlstadt found and reported in its 2010 HEPSP that its rehabilitation share should be reduced to 6 units. See Exhibit H at page 21.

18. The *Tomu* court determined that Carlstadt's prior round obligation was 186 units, but that Carlstadt had an RDP of 72 units. The Builder's Remedy awarded to *Tomu*, i.e., 80 units of rental housing, satisfied Carlstadt's RDP and left a surplus of 8 units to be applied to its

unmet need. Moreover, under both the Round 2 and Round 3 Rules, Carlstadt would be entitled to a rental bonus resulting in up to 2 units credit for each rental unit proposed, subject to limitations. Therefore, application of the Affordable Housing set-aside in the *Tomu* Builder's Remedy satisfied a significant part of the unmet need.

19. Since the issuance of the Monitor's Directive, affordable housing has been a consideration in every significant land use application in Carlstadt, and, as a result, the following land use developments have been approved with an affordable housing set-aside:

Development	Approved Use	Affordable Housing Set-Aside
575 Hoboken Road	10 Units	2 Units
491 Broad Street	8 Units	1 Unit

Other development applications are pending which would provide additional affordable units. In addition, a 36 unit Senior housing project projected to be all affordable, is in process through a Redevelopment Area. Not only will that project produce 36 units, but under COAH regulations, Carlstadt would be entitled to a bonus credit for that development within a redevelopment area. Carlstadt also adopted overlay zones with bonus density and mandatory affordable housing set-asides in order to provide an opportunity for affordable housing. See Exhibit H at page 47. Carlstadt has complied with its affordable housing obligation.

Third Round Obligation

20. COAH first proposed Third Round substantive and procedural rules in October, 2003. *35 N.J.R. 4636(a); 35 N.J.R. 4700(a)*.

21. Those rules remained un-adopted and COAH re-proposed both the substantive and procedural third round rules (*N.J.A.C. 5:94 and 5:95*) in August of 2004 and adopted the same effective on December 20, 2004. (the "*2004 Regulations*")

22. The *2004 Regulations* were challenged and on January 25, 2007, the Appellate Division invalidated various aspects of those regulations and remanded considerable portions of the rules to COAH with direction to adopt revised rules. *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 Case")*.

23. On January 22, 2008, COAH proposed and published revised third round regulations in the New Jersey Register. *40 N.J.R. 237*. On May 6, 2008, COAH adopted the revised third round regulations and advised that the new regulations would be published in the June 2, 2008 New Jersey Register, thereby becoming effective.

24. On May 6, 2008, COAH simultaneously proposed amendments to the revised third round rules it had just adopted. Those amendments were published in the June 16, 2008 New Jersey Register, see *40 N.J.R. 3373 (Procedural N.J.A.C. 5:96); 40 N.J.R. 3374 (Substantive N.J.A.C. 5:97)*. The amendments were adopted on September 22, 2008 and made effective on October 20, 2008.

25. As required by the Final Judgment in the *Tomu* matter and the *Monitor's Directive*, Carlstadt filed its HEFSP with COAH in a timely manner. See paragraph 14 above.

26. Since that time Carlstadt has affirmatively sought to include affordable housing in all appropriate land use developments. See paragraphs 15, 16 and 17 above.

The Transfer of Jurisdiction to the Courts

27. *N.J.A.C. 5:96 and 5:97* as adopted in 2008 were challenged in an appeal entitled *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) (the "2010 Case")*. In that decision, the Appellate Division determined, among other things, that the growth share methodology was

invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the first and second rounds, i.e. 1987-1999.

28. On September 26, 2013, the Supreme Court of New Jersey affirmed the Appellate Division's invalidation of the third iteration of the third round regulations, affirms the 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. *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 Case")*.

29. COAH proceeded to propose such regulations in accordance with the schedule and amended schedule established by the New Jersey Supreme Court in the 2013 Case.

30. On October 20, 2014, COAH, deadlocked with a 3-3 vote, failed to adopt the revised third round regulations.

31. Due to COAH's failure to adopt the revised regulations and subsequent inaction, Fair Share Housing Center ("FSHC"), a party in the 2010 Case and the 2013 Case, filed a motion with the New Jersey Supreme Court to enforce litigant's rights.

32. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC's motion to enforce litigant's rights. The Supreme Court held that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. *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. (2015) (the "2015 Case")*.

33. In doing so, the Supreme Court established a transitional process for municipalities, like Carlstadt, that participated in the administrative process before COAH to file a declaratory judgment action with the trial courts. In that action, municipalities could seek a judgment that their HEFSPs are constitutionally compliant and seek protections from exclusionary zoning (Builder's Remedy) lawsuits similar to those that a participating municipality would receive if they had continued to proceed before COAH.

34. In explaining the transitional process contemplated, the Supreme Court equated these "Participating Municipalities" to those municipalities in 1985 that had sought to transfer jurisdiction from the Court to the newly created COAH and switch the forum from a judicial one to an administrative one under *N.J.S.A. 52:27D-316*.

35. In the 2015 Case, the Supreme Court declined to adopt a specific methodology or formula to calculate the third round affordable housing obligations of the municipalities and instead left that determination to the 15 Mount Laurel Judges (one in each vicinage). The Supreme Court did provide some guidance by reiterating its endorsement of the previous methodologies employed in the First and Second Round Rules as the template to establish third round affordable housing obligations, and as abovementioned, by treating Participating Municipalities filing Declaratory Judgment actions in the same way that the 1985 FHA when originally enacted on July 2, 1985 treated municipalities transitioning from the judicial to the administrative process. See paragraphs 49 through 51 below.

36. In light of the decisions of the Supreme Court in the 2013 Case and the 2015 Case, Carlstadt, its Planning Board and its Planner are currently in the process of preparing a revised HEFSP that will verify full compliance of Carlstadt with its constitutional affordable housing obligations as directed by Carlstadt Resolution No. 2015-162A (see Exhibit A hereto.).

COUNT ONE
DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE

37. Carlstadt repeats and realleges each and every allegation set forth in Paragraphs 1-36 of this Complaint as if set forth herein at length.

38. Pursuant to the Declaratory Judgments Act, *N.J.S.A. 2A:16-50 et seq.*, and the 2015 Case, Carlstadt has a right to a declaratory judgment verifying and confirming its full compliance with its constitutional affordable housing obligations and for issuance of a Judgment of Compliance and Repeal.

COUNT TWO
FIVE MONTHS TO PREPARE HEFSP

39. Carlstadt repeats and realleges each and every allegation as set forth in Paragraphs 1-38 as if set forth herein at length.

40. In the 2015 Case, the Supreme Court equated participating municipalities who file Declaratory Judgment actions such as the instant one to those municipalities who were involved in litigated matters in 1985 when the Fair Housing Act was adopted and successfully transferred their litigated cases to COAH and were entitled under *N.J.S.A. 52:27D-316* to a five 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 HEFSP.

41. In the 2013 Case and in the 2015 Case, the Supreme Court declined to establish a specific methodology or formula to calculate third round affordable housing obligations of the municipalities. Instead, the Supreme Court left that determination to the 15 Mount Laurel Judges (one in each vicinage), directing that the methodology or formula established should be similar to that employed in the First and Second Round Rules.

42. As a result of the Supreme Court's decisions in the 2013 Case and the 2015 Case, there are insufficient criteria and guidelines established at this time for Carlstadt to prepare a compliant HEFSP which this Court could evaluate to determine its constitutional compliance.

43. In the 2015 Case, the Supreme Court afforded wide discretion to the 15 Mount Laurel Judges in addressing these Declaratory Judgment actions and enabled the trial judges specifically to grant municipalities a five month period within which to prepare a compliant HEFSP in accordance with the approved methodology and formula established by said trial judges.

44. The Supreme Court equated these Participating Municipalities to those municipalities who in 1985 transferred their litigated cases from the Court to COAH, and then had a five (5) month period from the date of transfer or the date that guidelines and regulations were adopted by COAH, whichever was later, to file a HEFSP and seek substantive certification. Carlstadt is entitled to the opportunity to prepare and adopt a constitutionally compliant HEFSP within five (5) months from the date that the Court establishes the methodology and formula which will quantify the affordable housing obligation of Carlstadt.

COUNT THREE
REQUEST FOR IMMUNITY

45. Carlstadt repeats and realleges each and every allegation as set forth in Paragraphs 1-44 as if set forth herein at length

46. In the 2015 Case, the Supreme Court afforded Participating Municipalities who filed Declaratory Judgment actions seeking to verify and confirm their constitutional compliance with their affordable housing obligations, the right to seek temporary immunity from third party lawsuits while pursuing these Declaratory Judgment actions and the development of compliant HEFSPs.

47. By virtue of the filing of the within action, Carlstadt is eligible to seek and obtain immunity from third party lawsuits while pursuing their Declaratory Judgment action pursuant to the 2015 Case.

48. The temporary immunity sought by Carlstadt is appropriate and reasonable under the circumstances. The policy announced by the Supreme Court in the 2015 Case is for the Superior Court to “establish an orderly process by which towns can have their housing plans reviewed by the courts... through processes, where appropriate, that are similar to those which would have been available through COAH.” *221 N.J. at 23*. In a matter proceeding before COAH, the Fair Housing Act prohibits exclusionary zoning lawsuits against Carlstadt until the exhaustion of COAH’S administrative requirements. *See N.J.S.A. 52:27D-316.b*.

49. The Appellate Division applied that principle to dismiss exclusionary zoning lawsuits that violated *N.J.S.A. 52:27D-316.b*. See *Elon Associates, LLC v. Township of Howell*, *370 N.J. Super. 475 (App. Div. 2004)*, *Sod Farms Associates v. Township of Springfield*, *366 N.J. Super. 116 (App. Div. 2004)* and *Wayne Property Holdings, LLC v. Township of Wayne*, *427 N.J. Super. 133 (App. Div. 2012)*.

50. The combination of the Supreme Court’s recent decision in the 2015 Case, the Court’s 90 day stay of its ruling, and the 30 day exclusivity period within which the municipality may bring an action to obtain protection against builder’s remedy suits reinforces the policy that a municipality which complied with the Fair Housing Act should be entitled to a respite from affordable housing based litigation while it is in good faith proceeds with its application for substantive certification or, in this case, its application to the Court for a Judgment of Compliance and Repose.

COUNT FOUR
APPROVAL OF DEVELOPMENT FEE ORDINANCE

51. Carlstadt repeats and realleges each and every allegation as set forth in Paragraphs 1-50 as if set forth herein at length.

52. Carlstadt's 2010 HEFSP proposed a Development Fee ordinance, see **Exhibit "I"**.

53. Carlstadt sought approval of the Development Fee ordinance from COAH as part of its HEFSP. See **Exhibit "J"**.

54. Under the Fair Housing Act, COAH's approval is required to make the Development Fee ordinance enforceable. That approval has not been issued.

55. In view of the 2015 Case divesting COAH of jurisdiction over Carlstadt's affordable housing compliance activities in light of COAH's inaction, Carlstadt seeks to have this Court, in conjunction with processing the instant Declaratory Judgment action, approve its Development Fee ordinance that has been pending before COAH and further, to assume jurisdiction over any amendment to said Ordinance once approved in order to give Carlstadt the ability to properly collect development Fees for the purposes of advancing and satisfying its affordable housing obligation.

COUNT FIVE
JURISDICTION OVER UNAPPROVED SPENDING PLAN

56. Carlstadt repeats and realleges each and every allegation as set forth in Paragraphs 1-55 as if set forth herein at length.

57. On April 9, 2015 the Appellate Division issued a decision divesting COAH of jurisdiction to administratively effect a forfeiture of Affordable Housing Trust Funds not spent or committed in accordance with the requirements of the FHA and enjoining COAH from taking

any such administrative action. See *In re Failure of Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 2015 WL 1582908 (App. Div. 2015) (the "Trust Fund Case")*.

58. In the Trust Fund Case the Appellate Division further transferred jurisdiction over such actions and matters to the 15 Mount Laurel Judges designated in the 2015 Case to hear the Declaratory Judgment Actions regarding compliance with affordable housing obligations.

59. On information and belief, COAH has taken the position that it no longer has jurisdiction to approve Spending Plans that are pending before it.

60. Carlstadt has a Spending Plan approval request pending before COAH (see **Exhibit "K"**) and without COAH's approval and authorization is prevented from expending Affordable Housing Trust Funds to advance the purposes of affordable housing in the municipality. Attached as Exhibit K is a copy of Carlstadt's Resolution requesting COAH's approval.

61. In light of COAH's inaction on its Spending Plan, Carlstadt seeks to have this Court, in conjunction with processing the instant Declaratory Judgment action, approve its Spending Plan pending before COAH. In addition, Carlstadt seeks to have the Court assume jurisdiction over any amendment to said Spending Plan once approved in order to give Carlstadt the ability to properly utilize and expend Affordable Housing Trust Funds collected for the purposes of advancing and satisfying its affordable housing obligation.

WHEREFORE, Plaintiff/Petitioner, the Borough of Carlstadt, respectfully seeks that the Court grant the following relief:

(a) An Order exercising jurisdiction over the compliance by Carlstadt with its constitutional affordable housing obligations;

(b) An Order granting Carlstadt a five month period from the date that a methodology or formula is established by this Court to prepare a constitutionally compliant HEFSP that incorporates the formula and methodology approved by this trial court or otherwise;

(c) An Order granting temporary immunity from third party exclusionary zoning lawsuits against Carlstadt from the date of the filing of this Declaratory Judgment action until this Court issues a Final Judgment of Compliance and Repose to the Borough of Carlstadt for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court;

(d) An Order declaring that Carlstadt has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation;

(e) A Judgment of Compliance and Repose for a period of ten (10) years from its date of entry;

(f) An order approving the Development Fee ordinance heretofore pending before COAH;

(g) An Order approving the Spending Plan of Carlstadt heretofore pending before COAH;

(h) An Order continuing the jurisdiction of this Court to consider and approve any amendments to the Approved Spending Plan; and

(i) An Order granting such additional relief as the Court deems equitable and just.

Dated: July 9, 2015

By: 
Dennis Ritchie
Attorney for Plaintiff/Petitioner,
BOROUGH OF CARLSTADT

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Dennis Ritchie, Esq., Attorney for the Plaintiff/Petitioner, the Borough of Carlstadt, is designated as trial counsel in the above captioned matter.

Dated: July 9, 2015

By: 
Dennis Ritchie
Attorney for Plaintiff/Petitioner,
BOROUGH OF CARLSTADT

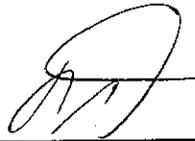
CERTIFICATION PURSUANT TO R. 4:5-1

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 has previously submitted a Petition for Substantive Certification to the New Jersey Council on Affordable Housing, which, as a result of the 2015 Case, has been divested of jurisdiction which has been delegated to the Superior Court as a result of the filing of the within Declaratory Judgment action.

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.

Dated: July 9, 2015

By: _____


Dennis Ritchie
Attorney for Plaintiff/Petitioner,
BOROUGH OF CARLSTADT

DENNIS RITCHIE, ESQ.
Attorney No. 030201994
15 Union Avenue
Rutherford, New Jersey 07070
(201) 840-5142
Attorneys for Plaintiff Borough of Carlstadt

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF CARLSTADT
FOR A JUDGMENT OF COMPLIANCE
AND REPOSE

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-BERGEN COUNTY**

DOCKET NO. :

Civil Action
(Mount Laurel)

**EXHIBITS TO
PLAINTIFF'S COMPLAINT**

Exhibit Designation	Description
A	Resolution No. 2015-162A of the Carlstadt Mayor and Council
B	Form of Notice to Interested Entities
C	Order entered on November 28, 2005 by the Hon. Jonathan N. Harris, J.S.C. in the matter entitled Tomu Development Co., Inc. v. Borough of Carlstadt, et. al.
D	November 10, 2005 Opinion of the Court in Tomu Development Co., Inc. v. Borough of Carlstadt, et. al.
E	Final Judgment entered on June 1, 2006 by the Hon. Jonathan N. Harris, J.S.C. in the matter entitled Tomu Development Co., Inc. v. Borough of Carlstadt, et. al.
F	May 19, 2006 Opinion of the Court in Tomu Development Co., Inc. v. Borough of Carlstadt, et. al.
G	June 5, 2006 letter from Mt. Laurel Compliance Monitor setting forth the Monitor's directives
H	Carlstadt Housing Element and Fair Share Plan dated May6, 2010
I	Carlstadt's 2010 HEFSP proposed Development Fee Ordinance
J	Carlstadt's Resolution Requesting Review and Approval of Development Ordinance
K	Carlstadt's Resolution Requesting Review and Approval of the Affordable Housing Trust Fund Spending Plan

Exhibit

A

Offered by: LaHullier

Seconded by: Emerson

BOROUGH OF CARLSTADT
RESOLUTION NO. 2015-162A

**RESOLUTION DECLARING THE INTENT OF THE BOROUGH
OF CARLSTADT TO FULLY COMPLY WITH ITS CURRENT AND
FUTURE MOUNT LAUREL OBLIGATIONS AND TO SERVE AS
THE "CATALYST FOR CHANGE" TO RENDER ANY
EXCLUSIONARY ZONING LAWSUITS AS "UNNECESSARY
LITIGATION"**

WHEREAS, on or about June 1, 2006, the Superior Court entered a final judgment in the matter entitled *Tomy Development Co. v. Borough of Carlstadt* (the "Tomy Decision") which, among other things, determined that the Borough failed to meet its Affordable Housing obligations, appointed a Compliance Monitor (the Monitor) to supervise the Borough's land use regulatory system and required the Borough and the Monitor to draft and submit an Affordable Housing Plan to Council on Affordable Housing ("COAH") to obtain substantive Certification from COAH of the Borough's Affordable Housing Plan; and

WHEREAS, the *Tomy* decision awarded a Builder's Remedy to *Tomes* permitting it to construct 420 units of housing in Carlstadt at the site of which 80 units would be affordable; and

WHEREAS, the Court's final judgment in *Tomy* required the Borough to seek substantive Certification of its Housing Element and Fair Share Plan ("HEFSP") through COAH and therefore the Borough brought itself under COAH's jurisdiction to permit administrative process to resolve disputes over affordable housing matters rather than litigation (see N.J.S.A. §2:27D-303); and

WHEREAS, on or about May 26, 2010, the Borough submitted a HEFSP and a Petition for Substantive Certification to the Council on Affordable Housing ("COAH"); and

WHEREAS, the Borough's Petition was deemed complete by COAH on or about September 10, 2010; and

WHEREAS, the Borough has awaited the COAH process to move forward pursuant to its duly adopted regulations; and

WHEREAS, as a result of that filing with COAH, the Borough has been protected against exclusionary zoning and builder's remedy lawsuits by the provisions of the Fair Housing Act, N.J.S.A. 52:27D-316 pending completion of COAH's process; and

WHEREAS, on September 26, 2013, the Supreme Court released *In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing*, 213 N.J. 578 (2013) which invalidated the Round 3 regulations adopted in 2008 by the New Jersey Council on Affordable Housing ("COAH"); and

WHEREAS, the HEFSP submitted by the Borough was based upon the regulatory requirements of the regulations invalidated in that case; and

WHEREAS, on March 14, 2014, the Supreme Court issued an order directing COAH to propose new Round 3 regulations on or before May 1, 2014 and to adopt them by October 22, 2014; and

WHEREAS, the March 14, 2014 Order further provided that, if COAH failed to meet these deadlines, the Court would entertain a Motion in Aid of Litigant's Rights which could include an application for the right, on a case-by-case basis, to file a builder's remedy suit against a municipality under COAH's jurisdiction, such as the Borough; and

WHEREAS, on April 30, 2014, in accordance with the March 14, 2014 Order, COAH proposed Round 3 regulations and published them in the New Jersey Register on June 2, 2014; and

WHEREAS, the proposed third round regulations again modified the regulatory basis for calculating the Borough's "fair share;" and

WHEREAS, COAH accepted public comments on the proposed Round 3 regulations until August 1, 2014, and indeed received roughly 3,000 comments; and

WHEREAS, on October 20, 2014, the COAH board met to consider adopting the proposed regulations, reached a 3-3 deadlock and therefore did not adopt the proposed regulations; and

WHEREAS, COAH therefore failed to meet the Supreme Court's October 22, 2014 deadline; and

WHEREAS, COAH's failure to adopt the proposed regulations has left the Borough in a continuing state of limbo, without knowledge of the applicable governing standards, despite its continuing commitment to satisfying its obligations voluntarily and without the need for litigation; and

WHEREAS, on October 31, 2014, Fair Share Housing Center ("FSHC") filed a Motion In Aid of Litigant's Rights urging the Supreme Court, among other things, to direct trial judges - instead of COAH - to establish standards with which municipalities must comply; and

WHEREAS, FSHC's motion included an alternative fair share calculation for each municipality, further highlighting the uncertainty of the regulatory framework with which municipalities must ultimately comply; and

WHEREAS, on March 10, 2015, the Supreme Court issued its decision which removed the immunity provided to municipalities like Carlstadt that complied with the Fair Housing Act and COAH's regulations but did so prospectively by affording those municipalities, including Carlstadt, a stay of 90 days plus a 30 day period following that stay wherein Carlstadt would have an exclusive right to seek Court approval of its HEFSP and an extension of the immunity from Mt. Laurel lawsuits; and

WHEREAS, the Supreme Court's March 10, 2015 decision did not adopt the FSHC's alternative calculations; however, as a result of future regulations, litigation, and/or legislation, it is entirely possible that the Borough's obligation may indeed differ from those proposed by COAH or advocated by FSHC; and

WHEREAS, in light of all this uncertainty, it is possible that the Borough's HEFSP may not be in compliance with the latest iteration under applicable State law of its affordable housing obligations; and

WHEREAS, regardless of whatever its obligation is ultimately assigned, the Borough remains committed to comply voluntarily with its obligations; and

WHEREAS, the Borough wishes to be in a position to complete its efforts to comply voluntarily once its obligations are defined; and

WHEREAS, in So. Burlington County N.A.A.C.P. v. Tp. Of Mount Laurel, 92 N.J. 158, 279-80 (1983) ("Mount Laurel II"), the New Jersey Supreme Court ruled, subject to several other limitations, that in order for a plaintiff to be entitled to a builder's remedy, it must "succeed in litigation;" and

WHEREAS, in Toll Bros. Inc. v. Tp. Of W. Windsor, 173 N.J. 502, 507 (2002), the Supreme Court ruled that in order for a developer to succeed in litigation, it must not only prove that the municipality failed to create a realistic opportunity to satisfy its affordable housing obligation, but also must be the "catalyst for change;" and

WHEREAS, the Borough, in cooperation with the Monitor, has complied with its obligations under the Fair Housing Act and duly adopted COAH regulations; and

WHEREAS, accordingly, the Borough wishes to seek a continuation of its immunity from the courts now that the Supreme Court has ruled that trial judges should perform COAH's functions so that the Borough can complete its efforts to comply voluntarily with whatever standards the courts may determine are appropriate; and

WHEREAS, the Borough herein intends to make its intentions to continue that voluntary compliance process inescapably clear to the public and all concerned.

NOW THEREFORE, BE IT RESOLVED as follows:

1. The Borough acknowledges that, given its reliance upon COAH's original Round 3 regulations and subsequent uncertainty in the law, it is entirely possible that the Housing Element and Fair Share Plan ("HEFSP") submitted to COAH in May of 2010 may not be in compliance with the Borough's affordable housing obligations as may need to be revised to comply with standards other than the original Round 3 regulations.

2. The Borough hereby reaffirms its commitment to satisfy its affordable housing obligations, however they may ultimately be defined, voluntarily and in the absence of any Mount Laurel lawsuits.

3. The Borough directs the Borough Attorney and Borough Planner, subject to the supervision of the Monitor, to revise the Borough's HEFSP to reflect compliance with the latest requirements and to submit that revised HEFSP to the Planning Board for further action. Once its affordable housing obligations are defined, the Borough directs its legal and planning professionals to take all reasonable and necessary action to enable it and its Planning Board to satisfy those obligations expeditiously.

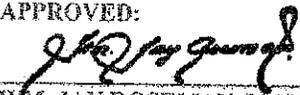
4. The Borough Attorney and Borough Planner, in cooperation with the Monitor, shall take such action as may be necessary or advisable, including the institution of an action in the Superior Court for a Judgment of Compliance and Repose granting the Borough immunity from exclusionary zoning and builder's remedy lawsuits and to rely upon this Resolution as appropriate to maintain the Borough's current immunity from exclusionary zoning suits.

5. The Borough Clerk shall forward a copy of this Resolution to the Carlstadt Planning Board and to Robert T. Regan, Esq., the Monitor and to place this Resolution on file in Borough Hall to put the public and all interested parties on notice of the formal commitments herein.

6. This Resolution shall take effect immediately.

DATED: July 7, 2015

APPROVED:


WM. JAY ROSEMAN, MAYOR

ATTEST:


CLAIRE FOY, BOROUGH CLERK

ROLL CALL VOTE

Council Member	Yes	No	Abstain	Absent
Lahullier	X			
Zimmermann	X			
Stoltz	X			
Bartlett	X			
Lenoy	X			
Emerson	X			

Exhibit B

DENNIS RITCHIE, ESQ.
Attorney No. 030201994
15 Union Avenue
Rutherford, New Jersey 07070
(201) 840-5142
Attorney for Plaintiff Borough of Carlstadt

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF CARLSTADT
FOR A JUDGMENT OF COMPLIANCE
AND REPOSE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-BERGEN COUNTY

DOCKET NO. : BER-L-_____ -15

Civil Action

**NOTICE OF FILING OF A
COMPLAINT BY THE BOROUGH
OF CARLSTADT FOR A
DECLARATORY JUDGMENT
SEEKING A JUDGMENT OF
COMPLIANCE AND REPOSE**

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the Borough of Carlstadt, acting pursuant to the authority granted by the New Jersey Supreme Court in its decision in the case captioned *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)* has filed a Complaint (with exhibits) with the Superior Court of New Jersey seeking the following relief:

(a) An Order exercising jurisdiction over the compliance by Carlstadt with its constitutional affordable housing obligations;

(b) An Order granting Carlstadt a five month period from the date that a methodology or formula is established by the Court, or otherwise, to prepare a constitutionally compliant HEFSP that incorporates the formula and methodology approved by this trial court or otherwise;

(c) An Order granting temporary immunity from third party exclusionary zoning lawsuits against Carlstadt from the date of the filing of this Declaratory Judgment action until the Court issues a Final Judgment of Compliance and Repose to the Borough of Carlstadt for its Housing element and Fair Share Plan to be formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court;

(d) An Order declaring that Carlstadt has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation;

(e) A Judgment of Compliance and Repose for a period of ten (10) years from its date of entry;

(f) An order approving the Development Fee ordinance proposed by Carlstadt;

(g) An Order approving the Spending Plan of Carlstadt heretofore pending before the Council on Affordable Housing;

(h) An Order continuing the jurisdiction of this Court to consider and approve any amendments to the Approved Spending Plan; and

(i) An Order granting such additional relief as the Court deems equitable and just.

The complaint and exhibits are available for public inspection at the office of the Borough Clerk at the Carlstadt Municipal Building, 500 Madison Street, Carlstadt, New Jersey 07072 during normal business hours.

If you have any objections or comments to the relief sought by the Borough you must make a motion before the court to intervene in this matter.

Dated: July 9, 2015



Dennis Ritchie
Carlstadt Borough Attorney

Exhibit C

ROBERT T. REGAN, ESQ.
Special Master
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675
(201) 664-3344

FILED

NOV 28 2005

JONATHAN N. HARRIS
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5894-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF CARLSTADT, PLANNING
BOARD OF CARLSTADT and NEW
JERSEY MEADOWLANDS COMMISSION,

Defendants.

Civil Action

ORDER

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF EAST RUTHERFORD,
PLANNING BOARD OF EAST
RUTHERFORD and NEW JERSEY
MEADOWLANDS COMMISSION,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5895-03

Civil Action

ORDER

THIS MATTER coming on for trial before the Honorable
Jonathan N. Harris on August 8th and 9th, 2005, September 26th, 27th,

28th and 29th, 2005 and November 2nd and 3rd, 2005, in the presence of Thomas Jay Hall, Esq. and Robert Kasuba, Esq. of the firm of Sills, Cummis, Epstein & Gross, P.C., attorneys for plaintiff Tomu Development Co., Inc. ("plaintiff" or "Tomu"); Richard J. Allen, Jr., Esq. of the firm of Kipp & Allen, LLP, attorney for defendants Borough of Carlstadt and Planning Board of Carlstadt; Beverly M. Wurth, Esq. of the firm of Calo Agostino, P.C., attorney for defendants Borough of East Rutherford and Planning Board of East Rutherford; and Robert L. Gambell, Esq., Deputy Attorney General (Peter C. Harvey, Attorney General), attorney for defendant New Jersey Meadowlands Commission ("NJMC"), upon plaintiff's Complaint for a builder's remedy pursuant to Southern Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983) (hereinafter "Mount Laurel II"), and the Court having previously entered an Order granting plaintiff's motion for partial summary judgment and determining that the land use ordinances and regulations of Carlstadt and East Rutherford are unconstitutional under Mount Laurel II, and the Court having rendered a written decision on November 10, 2005, the provisions of which are incorporated herein by reference, and good cause appearing:

IT IS on this 28 day of NOVEMBER, 2005:

ORDERED as follows:

1. Plaintiff is determined to be entitled to a builder's remedy pursuant to the decision in Mount Laurel II, and its lands in East Rutherford and Carlstadt may be developed with a mixed use project as follows:

The development in East Rutherford shall consist of no more than 420 residential units consisting of 360 market rate units and 60 affordable rental units, plus no more than 420 residential units consisting of 340 market rate units and 80 affordable rental units in Carlstadt. These units shall be located in two midrise buildings which height shall not exceed the lesser of Federal Aviation Administration elevation guidelines or 230 feet. All dimensional requirements of the NJMC shall be satisfied, as must all applicable requirements of the Residential Site Improvement Standards found in N.J.A.C. 5:21-1, et seq. In addition, there shall be no more than 38,000 square feet of "ancillary development" that shall include limited commercial facilities (such as a dry cleaner or convenience store), recreational facilities, public safety facilities, and meeting rooms. The development shall include a marina available to the public, to be overseen by the NJMC, but reserving five berths for the development or its residents. Tomu shall construct a riverwalk promenade, plus public parking, to allow access to the Hackensack River by members of the public, all as directed by the NJMC and in accordance with applicable law. The development shall comply with all other rules and regulations of the NJMC that are not inconsistent with this builder's remedy. Finally, the development shall comply with all Federal and local

statutes, regulations, development regulations or ordinances that may apply and shall also comply with all other State laws including, but not limited to, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.; the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Safe Drinking Water Act, P.L. 1977, c.224, N.J.S.A. 58:12A-1 et seq.; the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and all implementing rules.

2. The land use regulations of Carlstadt and East Rutherford remain invalid and unconstitutional insofar as such provisions continue past exclusionary practices.

3. The Carlstadt and East Rutherford Planning Boards and the respective governing bodies of these Borough (hereinafter collectively "the municipal defendants") shall immediately prepare comprehensive compliance plans (including appropriate strategies to address the indigenous and unmet needs) for each municipality, together with zoning and planning legislation to satisfy the fair share obligations of rounds one and two, and the unmet need, all in accordance with regulations adopted by the Council On Affordable Housing ("COAH").

4. The municipal defendants shall draft meaningful Housing Element and Fair Share Plans, together with fee ordinances (if appropriate) and spending plans that are consonant with COAH rules.

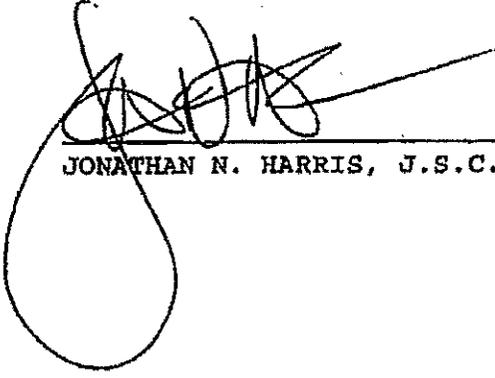
5. The municipal defendants shall exercise planning discretion in deciding whether to employ a program of rehabilitation grants, regional contribution agreements, accessory apartments, mobile homes, overlay zones, or any other incentive devices to meet the fair share and unmet need.

6. The plans of the municipal defendants shall be completed, adopted and presented to the Court no later than February 28, 2006. In default thereof, all development regulations in East Rutherford and Carlstadt, as the case may be, shall be permanently invalidated, and a scarce resource order enjoining all land use development applications in the defaulting Borough (whether before the Planning Board, Board of Adjustment or the NJMC) shall become automatically effective.

7. In the event the municipalities, or either of them, comply with the requirements hereinabove set forth, in such event the respective complying municipality will be entitled to a six (6) year judgment of repose commencing no earlier than February 28, 2006.

8. The Special Master shall regularly consult with designated representatives of both Boroughs and their Planning Boards and governing bodies during the preparation of the compliance plans and he shall provide appropriate input and constructive criticism throughout the process.

9. A copy of this Order shall be served by the Special Master upon all counsel of record within 5 days of the date hereof.



JONATHAN N. HARRIS, J.S.C.

Exhibit D

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5894-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF CARLSTADT,
PLANNING BOARD OF CARLSTADT,
and the NEW JERSEY
MEADOWLANDS COMMISSION

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5895-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF EAST RUTHERFORD,
PLANNING BOARD OF EAST
RUTHERFORD, and the NEW JERSEY
MEADOWLANDS COMMISSION

Defendants,

Decided: November 10, 2005

Robert A. Kasuba and Thomas Jay Hall (Sills
Cummis Epstein & Gross, P.C., attorneys)
tried the cause for plaintiff.

Richard J. Allen, Jr. (Kipp & Allen, LLP,
attorneys) tried the cause for defendant
Borough of Carlstadt and Planning Board of
Carlstadt.

Beverly M. Wurth (Calo Agostino, A
Professional Corporation, attorneys) tried
the cause for defendant Borough of East
Rutherford and Planning Board of East
Rutherford.

Robert L. Gambell (Peter C. Harvey, Attorney General, attorney) tried the cause for defendant New Jersey Meadowlands Commission.

JONATHAN N. HARRIS, J.S.C.

INTRODUCTION

On August 14, 2003, plaintiff filed two lawsuits alleging that two southern Bergen County municipalities -- Carlstadt and East Rutherford (see Figure 1)-- have engaged in patterns of exclusionary

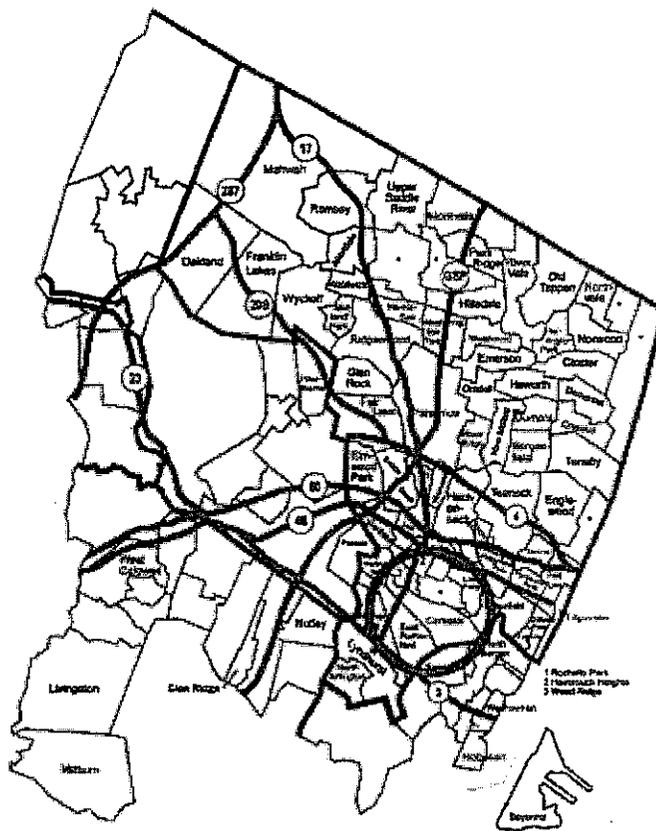


Figure 1

zoning that violate the New Jersey Constitution as interpreted

in the *Mount Laurel* cases,¹ their progeny,² and the Fair Housing Act of New Jersey (FHA).³ A builder's remedy is sought to allow plaintiff's waterfront land at the foot of historic Paterson Plank Road on the Hackensack River to be developed with 840 units of non-age-restricted housing, including 140 units of affordable rental housing. The municipalities contend that they are not responsible for the alleged abdication of constitutional responsibility because they enjoy neither the power to zone plaintiff's land nor to affect the vast acreage⁴ within their municipal boundaries that is within the preeminent zoning authority of codefendant New Jersey Meadowlands Commission (NJMC) pursuant to N.J.S.A. 13:17-11.

I conclude that the municipalities have failed to comply with their express obligations to provide realistic opportunities for affordable housing within their borders, and that the NJMC has implicitly fostered the long-standing municipal failures

¹ Southern Burlington County NAACP v. Mount Laurel Township, 67 N.J. 151, cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (*Mount Laurel I*); Southern Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983) (*Mount Laurel II*).

² Oakwood at Madison v. Township of Madison, Inc., 72 N.J. 481 (1977); Holmdel Builders Ass'n v. Township of Holmdel, 121 N.J. 550 (1990); Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502 (2002).

³ N.J.S.A. 52:27D-301 to -329.

⁴ The New Jersey Meadowlands region consists of 19,485 acres spread over 30.4 square miles in two counties and fourteen municipalities. <http://www.meadowlands.state.nj.us/commission/index.cfm> (last visited on November 4, 2005.)

through its benign neglect of the housing needs of the poor.⁵ On this subject, but perhaps not with the NJMC directly in mind, Chief Justice Wilentz, in Mount Laurel II wrote:

The basis for the constitutional obligation is simple: **the State controls the use of land, all of the land.** In exercising that control, it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. **The government that controls this land represents everyone.** While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages.

[92 N.J. at 209-210 (emphasis added).]

Additionally, plaintiff is entitled to a builder's remedy because none of the defendants has demonstrated that the site is environmentally constrained, that construction of a high-density mixed-use project would represent bad planning, or that plaintiff has prosecuted this action in bad faith.

II. FACTUAL BACKGROUND

Plaintiff Tomu Development Co., Inc. (Tomu) owns several adjoining parcels of land in Carlstadt and East Rutherford at the

⁵ NJMC regulation N.J.A.C. 19:4-3.8 purports to reflect the NJMC's commitment to affordable housing. However, it gives little more than institutionalized lip service to affordable housing obligations by merely "encouraging" municipal compliance with guidelines of the Council on Affordable Housing (COAH). Unlike the proactive posture of the former Hackensack Meadowlands Development Commission in the 1980s, the NJMC's position until very recently simply reinforced municipal inertia and maintained the status quo of a dearth of affordable housing in East Rutherford and Carlstadt.

intersection of Paterson Plank Road's eastern⁶ terminus (in Bergen County) and Outwater Lane, shoehorned between the New Jersey Turnpike's Western Spur and the Hackensack River. (See Figure 2.)



Figure 2

It appears from the record that the total land mass consists of approximately 26.9 acres, with 4.9 acres located in Carlstadt and 22 acres located in East Rutherford. Not all of this land is developable. Tomu acknowledges that in Carlstadt, only 3.584

⁶ Paterson Plank Road is commonly considered an east/west thoroughfare, at one time having been a wooden planked road through the Hackensack Meadowlands that connected Hoboken and Paterson. See State ex rel. Zimmerman v. Township Committees of Bergen, 57 N.J.L. 68 (Sup. Ct. 1894). In reality, it is skewed to a northwest/southeast alignment and at the point where it adjoins Tomu's land, it is arguably at its *southern* terminus in Bergen County. (See Figure 2.)

acres are developable uplands (not wetlands) and in East Rutherford, 5.286 acres are developable uplands (not wetlands).

In 1989, as part of a planned unit development consisting of 1,328,430 square feet of improvements proffered by then-owner Riverview Associates, the land in East Rutherford received permission from the NJMC to be developed with 350 residential units, of which 70 were required to be devoted to affordable housing. Additionally, the adjoining parcels were approved for a 100-suite hotel, 1,200-seat banquet facility, restaurants, fitness center, multi-level parking facility, and a full service 135-berth marina. Although there was to be substantial development in Carlstadt, no residential housing units were proposed for that municipality. The NJMC zoning regulations at the time designated the land as being within the Waterfront Recreation and Marshland Preservation zones.⁷ Residential uses were permitted at that time when they were included with a marina or other water-oriented recreation use at a density of 15 units per acre. Today, the NJMC's zoning regulations do not permit residential uses in the East Rutherford or Carlstadt parcels, reflecting its 21st century view of the land as most suitable primarily for recreational uses associated with access to the

⁷ Today the lands are split between the Environmental Conservation zoning district and the Waterfront Recreation zoning district. Residential use was permitted on all of Tomu's uplands until the 2004 amendment to the NJMC Master Plan, after the commencement of the instant Mount Laurel action.

Hackensack River.⁸ N.J.A.C. 19:4-5.18 ("The Waterfront Recreation zone is designated to accommodate marinas in combination with other water-oriented commercial and recreation facilities that provide and encourage public access to and visibility of the Hackensack River or its tributaries. The Waterfront Recreation zone is to be developed in such a way that views of the river are protected.").

The land was never developed according to the approvals granted in 1989. However, so-called "interim uses" were permitted by the NJMC to be established and operated on the land until the ultimate development became realistic. These interim uses include a marina, a golf driving range and putting facility, and a cafe. For ten years following the initial approval, the NJMC and its predecessor agency approved extensions keeping the approvals alive. Then, in 1999, the NJMC declined further to extend Tomu's approvals. Presently, Tomu and the NJMC are engaged in litigation in the Office of Administrative Law that revolves around whether the 1989 development approvals were unreasonably not extended by the NJMC. For reasons that are unclear, this dispute has lingered without resolution at the agency level for more than five years.

⁸ For a recent take on how another riverfront is undergoing redevelopment, see *New York Times* article of October 31, 2005, "Rooms With Views Replace Factories on Hudson's Banks," <http://www.nytimes.com/2005/10/31/nyregion/31hudson.html?ex=1131685200&en=af379e948d52a128&ei=5070> (last visited on November 9, 2005). See also *The Record* article of November 4, 2005, "Visions of Hackensack River Renaissance," <http://www.northjersey.com/page.php?qstr=eXJponk3ZjcxN2Y3dnFLZUVFexkzJmZnYmVsn2Y3dnFLZUVFexk20DA3NzA3> (last visited on November 8, 2005).

As part of its efforts in this case to secure a builder's remedy, Tomu has proposed building a mixed-use facility on its combined lands. Originally, Tomu sought a builder's remedy for 988 residential units, divided equally between the two municipalities. By the end of the trial, however, Tomu refined its proposal so that the development would consist of 420 housing units (360 market rate units (85.7%) and 60 affordable rental units (14.3%)) in East Rutherford, plus an additional 420 housing units (340 market rate units (81%) and 80 affordable rental units (19%)) in Carlstadt. In the aggregate, the final proposal offers a total of 840 housing units, of which 140 would be available for rent to low and moderate income persons.⁹ These units would be located in two midrise buildings that would not exceed Federal Aviation Administration elevation guidelines, approximately 230 feet in height. In addition, Tomu proposes approximately 38,000 square feet of "ancillary development" that would include limited commercial facilities such as a dry cleaner, recreational facilities, public safety facilities, and meeting rooms. Tomu would make a marina on the site available to the public, presumably to be overseen by the NJMC, reserving five berths for private purposes. Finally, Tomu proposes that it build a

⁹ These affordable housing units would have to comply with COAH regulations regarding distribution of incomes, N.J.A.C. 5:93-7.2 and distribution of bedroom types, N.J.A.C. 5:93-7.3. The details of compliance with these regulations were not explored at the trial. As rental units, each municipality should be able to garner bonus credits provided by N.J.A.C. 5:93-5.15(d)(1).

riverwalk promenade, plus public parking, to allow access to the Hackensack River by members of the public.

In earlier proceedings in this action, I determined that Tomu had clearly demonstrated that both East Rutherford and Carlstadt had failed to comply with their constitutional obligations regarding affordable housing opportunities.¹⁰ The municipal failures were systemic and long standing. Neither East Rutherford nor Carlstadt had done anything meaningful to fulfill their separate obligations for new affordable housing, and their response to indigenous need was a deafening silence. Although both municipalities claimed that they were utterly helpless to accommodate affordable housing by rezoning land under the jurisdiction of the NJMC -- an understandable, if crabbed, position -- they even neglected to address their obligation to rehabilitate substandard housing units. Neither municipality participated in COAH's voluntary process leading to substantive certification. Although the witnesses who testified on behalf of the municipalities vociferously trumpeted their openness to low and moderate income housing, their inaction over at least the last two decades bespeaks the opposite.

The municipalities argue that since they control the land use decisions over such little land within their borders, they

¹⁰ In granting partial summary judgment in favor of Tomu on the issue of municipal noncompliance with the *Mount Laurel* doctrine and the FHA, I appointed Robert T. Regan, Esq. to serve as Special Master to assist the parties and the court in developing a compliance plan.

should be either relieved of their *Mount Laurel* obligations or otherwise excused from constitutional compliance. Although many sounds and messages are carried by the natural breezes that flow across the Hackensack Meadowlands, I will not allow the message of *Mount Laurel* to be drowned out. The NJMC must share some of the blame for the baleful circumstances that exist in these municipalities' responses to affordable housing obligations. The NJMC has been a convenient scapegoat upon which the municipalities heap their scorn when it comes to discussions about their loss of home rule over land use decisions. The irony is not lost on me that now the municipalities seek refuge under the inaction of their former nemesis, the NJMC. What is even more distressing is the past behavior of the NJMC -- arguably inconsistent with one of its purposes to foster the use of land for new homes and residential uses¹¹ -- that has enabled the defendant-municipalities to avoid providing affordable housing opportunities, thereby perpetuating the exclusionary character of these boroughs.

III. DETERMINATIONS OF LAW

The dominant question in every *Mount Laurel* action is whether the municipality has created a realistic opportunity for the construction of its fair share of the region's needs for affordable housing. In reviewing the municipality's response to

¹¹ N.J.S.A. 13:17-1.

its constitutional duty, the judiciary should harmonize its decisions wherever possible to COAH guidelines and policy. See Hills Dev. Co. v. Bernards Twp., 103 N.J. 1, 22 (1986). Courts hearing and deciding exclusionary zoning cases should follow COAH's fair-share methodology. Id. at 63 and see Bi-County Dev. Corp. v. Mayor of Borough of Oakland, 224 N.J. Super. 455, 458-59 (Law Div. 1988); Mount Olive Complex v. Township of Mount Olive, 340 N.J. Super. 511, 527-28 (App. Div. 2001). The good faith or bad faith of the municipality is not a relevant consideration in determining the municipal obligation. Such considerations, however, may be appropriate once a remedy must be imposed.

The instant case is dramatically more complicated¹² than the ordinary contested *Mount Laurel* case (which is already complicated enough) because the lands that are the subject of the builder's remedy, together with large tracts in both municipalities, are not subject to municipal land use controls. The role of the NJMC thus becomes a focus of the action. Upon a review of the extensive record generated in this case, I conclude that there is no significant evidence in this case that any of the governmental agencies -- meaning Carlstadt, East Rutherford, and the NJMC -- took any meaningful steps to provide reasonable

¹² The trial consumed eight trial days spread over four months. In addition, I viewed the property in the presence of the attorneys under the procedures of Morris County Land Improvement Co. v. Township of Parsippany-Troy Hills, 40 N.J. 539, 548-49, (1963). A lengthy recess was taken in August and September 2005, to give the parties a final chance to try to reach a mutual accommodation and resolve their differences. Although the Special Master valiantly pursued settlement efforts, the mediation process failed.

opportunities for low and moderate income housing in East Rutherford and Carlstadt. Indeed, shortly before the trial in this case, the NJMC approved a housing development in an isolated area of East Rutherford that conspicuously omitted any obligation on the part of the developer to devote a percentage of the units to the needs of low and moderate income persons. Also, in East Rutherford's downtown -- albeit before this exclusionary zoning case was filed -- the municipality approved multi-family developments on lands within its zoning control, but made no accommodations for a set aside of low or moderate income housing units. Although at trial the NJMC attempted to eschew its prior gentle disregard of affordable housing needs, I conclude that it is as responsible for the lack of affordable housing in East Rutherford and Carlstadt as are those municipalities' elected officials. Although I can not say that the NJMC violated its duty under the constitution to provide affordable housing opportunities, it aided and abetted the municipalities' turning blind eyes to the plight of the poor, in direct violation of the municipalities' affirmative obligations under the *Mount Laurel* doctrine.

The threshold step in determining municipal compliance with the *Mount Laurel* doctrine requires calculation of fair share.

Carlstadt's current¹³ cumulative affordable housing obligation as determined by COAH is 198 units. Twelve of these units represent satisfaction of an indigenous need, or rehabilitation component. The balance of 186 units represents Carlstadt's pre-credited obligation of its region's present and prospective need, or the so-called inclusionary or new construction component. Carlstadt claims that it is land poor and therefore it is entitled to a reduction in the COAH-computed obligation for new construction because it has no sites available, including the Tomu site, which it considers unsuitable for housing. It also claims that it is entitled to credits for some of its indigenous obligation because of rehabilitation work done in the last few years. Under COAH rules, credits for rehabilitation are governed by N.J.A.C. 5:93-3.4:

(a) A municipality may receive credit for rehabilitation of low and moderate income substandard units performed subsequent to April 1, 1990.

(b) Units shall be eligible for crediting if:

1. They were rehabilitated up to the applicable code standard and that the average capital cost expended on rehabilitating the housing units was at least \$8,000; and

2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households.

¹³ This does not include Carlstadt's third round obligations as implemented by COAH's "growth share" regulations. N.J.A.C. 5:94-1.1 et seq.

(c) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

Carlstadt proved at trial that several dwelling units in the municipality were the beneficiaries of block grants exceeding \$8,000 each to be used for unspecified purposes, but presumably rehabilitative in nature. However, it did not satisfy the requirement of proving that any unit "is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households." Thus, Carlstadt is not entitled to any credits against its twelve unit obligation for indigenous need.

East Rutherford's current¹⁴ cumulative affordable housing obligation as determined by COAH is 104 units. Thirty-four of these units represent satisfaction of an indigenous need and the balance of 70 units represents East Rutherford's new construction component. Unlike Carlstadt, East Rutherford neither challenges the new construction component of its fair share obligation nor seeks a vacant land adjustment. Like Carlstadt, however, it claims entitlement to credits for recent rehabilitation efforts. However, also like Carlstadt, and for the same reasons, it has failed to satisfy the proof requirements of N.J.A.C. 5:93-3.4(b)(2). Thus, East Rutherford is not entitled to any credits against its 34 unit obligation for indigenous need.

¹⁴ This does not include East Rutherford's third round obligations as implemented by COAH's "growth share" regulations. N.J.A.C. 5:94-1.1 et seq.

Under N.J.A.C. 5:93-4.1 and -4.2, where developable land is supposedly scarce, a municipality may attempt to demonstrate that it does not have the physical capacity to address the fair share housing obligation calculated by COAH. This is known as the "lack of land" or "vacant land" adjustment. It is up to the municipality to prove its entitlement to this adjustment.

N.J.A.C. 5:93-4.2. This process involves the identification of all appropriate vacant land in the municipality and the assignment thereto of dwelling unit densities, which produces what COAH calls the municipal realistic development potential (RDP). N.J.A.C. 5:93-4.2(f). Another way of expressing this adjustment process is to recognize that a land poor municipality is entitled to a vacant land adjustment or "adjustment due to available land capacity." However, in order to obtain this adjustment, the municipality must perform an exhaustive planning analysis and convince the court of its clear entitlement to an adjustment.

The actual calculation of RDP is not subject to arithmetic precision or mathematical perfection. It is based upon an assessment of the competent factual and expert evidence, informed by the gloss of COAH rules, and ultimately distilled into a concrete number. It is neither forensic alchemy nor judicial sleight-of-hand that results in the RDP. Rather, it emerges from the overarching notion that whatever the development potential is calculated to be, it must perforce be based upon a foundation of

realism. The question to be answered is, what is the realistic (not necessarily the maximal) development capacity of the land?

The process of computing the RDP is expressly outlined in N.J.A.C. 5:93-4.2 and is supposed to begin with the municipality creating a map showing all existing land uses. Next, the municipality should prepare an inventory of all vacant parcels by block and lot. Third, the municipality may exclude certain vacant lands from the inventory based upon certain objective conditions. Fourth, the municipality must presumptively include all other vacant lands and may include underutilized, but not vacant, lands including certain golf uses, nurseries and farms, and nonconforming uses. In connection with nonvacant land, COAH may request confirmation from the owner indicating the site's availability for inclusionary development. Fifth, land may be excluded from the inventory by the municipality if it falls within any of the following categories:

1. Constrained agricultural lands.
2. Environmentally sensitive lands.
3. Historic and architecturally important sites.
4. Certain active recreational lands.
5. Certain conservation, parklands, and open space lands.
6. Other sites determined to be not suitable for low and moderate-income housing.

The final step in the RDP recipe is to assign a site-specific density and percentage set-aside for each parcel that

has survived the culling process. The *minimum* presumptive density shall be six units per acre and the *maximum* presumptive set-aside shall be 20 percent. The regulations require a consideration of "the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site." N.J.A.C. 5:93-4.2(f).

Before completing the computation of RDP, I must point out that the criteria for inclusion in RDP is not the same criteria used to determine the inclusion or exclusion of a site as part of an ultimate compliance mechanism. N.J.A.C. 5:93-5.3 provides guidance as to which sites are appropriate to be designated for inclusionary development. It includes the requirement that the site be "available, suitable, developable, and approvable, as defined in N.J.A.C. 5:93-1." These criteria -- except arguably suitability -- do not apply when RDP is computed. Rather, they play a role when the municipality's compliance plan reveals those sites to which it intends to confer incentive inclusionary zoning or other site-specific affirmative measures to meet the RDP. Thus, the only two relevant criteria for RDP purposes are 1) planning concerns and 2) affordable housing needs.

Carlstadt argues that it has neither vacant nor underutilized land that could accommodate housing, much less affordable housing, and therefore its RDP should be fixed at zero. The Special Master concurs, to the extent that he agrees that Carlstadt has scarce

land resources, but disagrees that the Tomu site is inappropriate for housing. Indeed, as the Special Master noted, the Tomu property is "the only game in town."

To make its argument, Carlstadt contends that the Tomu site is unsuitable for housing because it is located on a cul de sac and isolated from the already-residentially developed areas of Carlstadt. A careful, nuanced analysis of actual adjacent uses, the surrounding road network, and local environmental conditions was eschewed in favor of the default position that simply because the Tomu land was approximately three miles from the core of municipal services (municipal building, public safety facilities, library, and schools) it was not appropriate for housing. This undefined concept of site isolation as a basis for unsuitability for housing is belied by the recent NJMC approval of a 614 unit residential development in East Rutherford on a distant and isolated area of Route 3. This project, approved by the NJMC in May 2005, shares many of the same attributes of the Tomu land, yet it was thought fully appropriate for residential development by the NJMC. In like vein, during the trial, the NJMC virtually conceded site suitability of the Tomu site and did not seriously dispute that the Tomu land in Carlstadt could be used for housing. However, it clearly preferred that it be utilized for recreation purposes in accordance with the NJMC Master Plan and not for high density housing.

Carlstadt's position regarding site suitability is untenable and unpersuasive, even though it was expressed by the experienced expert on behalf of the municipality. I conclude that her ultimate opinion constitutes nothing more than a net opinion, the product of the personal views of the expert, untethered to objective standards and principles in the discipline of professional planning. The net opinion rule provides that an expert's "bare conclusions, unsupported by factual evidence" are inadmissible. Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). The rule often focuses upon "the failure of the expert to explain a causal connection between the act or incident complained of and the injury or damage allegedly resulting therefrom." Ibid. In this regard, the net opinion rule requires the expert witness "to give the why and wherefore of his expert opinion, not just a mere conclusion." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div.), certif. denied, 145 N.J. 374 (1996). It is insufficient for an expert simply to follow slavishly an "accepted practice" formula; there must be some evidential support offered by the expert establishing the existence of the standard. A standard that is personal to the expert is equivalent to a net opinion. Taylor v. DeLosso, 319 N.J. Super. 174, 180 (App. Div. 1999). In Kaplan v. Skoloff, 339 N.J. Super. 97 (App. Div. 2001), an attorney's expert opinion was rejected in a legal malpractice case for the following reasons:

Plaintiff's expert offered no evidential support establishing the existence of a standard of care, other than standards that were apparently personal to himself. In this regard, Ambrosio failed to reference any written document or unwritten custom accepted by the legal community recognizing what would constitute a reasonable settlement under the facts presented in this case. In this stark absence of supporting authority, Ambrosio provided only his personal view, which, as we have explained, "is equivalent to a net opinion." (quoting Taylor v. DeLosso, 319 N.J. Super. at 180).

[339 N.J. Super at 103.]

In the instant case, Carlstadt's expert opinion regarding site suitability was similarly barren of evidential support, and I reject it. In fact, using COAH parameters for suitability found in N.J.A.C. 5:93-1.3 ("[s]uitable site means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4") it appears that the Tomu land in Carlstadt is plainly suitable for housing. The land that surrounds the Tomu site is dedicated to nature preservation, river access, and benign utility uses. The Special Master described the area as positively "bucolic" in comparison to the Route 3 residential development recently approved in East Rutherford. Although it is at the end of a long cul de sac (Paterson Plank Road) that also serves as a major service road along the northern edge of facilities at the New Jersey Sports and Exposition Authority, the site has access to a significant thoroughfare that is plainly capable of handling the anticipated traffic. Carlstadt did not present any expert evidence that the capacity of the road network would be inappropriate for

the proposed housing; its best argument seemed to be that potential residents would encounter congestion when the New Jersey Sports and Exposition Authority's facilities were operating or that they might endure inconvenience if the road were closed because of an accident or other emergency. These arguments do not militate against the development of housing on the site. Even Carlstadt's argument about the land's remote location -- as compared to Carlstadt's developed "downtown" -- is unpersuasive because Paterson Plank Road provides excellent access to points north and east, including the already-residentially developed areas of Carlstadt and East Rutherford. Finally, Carlstadt did not demonstrate how the Tomu uplands, already being used for commercial purposes, would detract from, degrade, or defeat the environmental policies of the NJMC.

Table 1 summarizes my computation of RDP according to COAH methodology and results in Carlstadt's RDP of 72 units of low and moderate income housing:

**Table 1:
Summary of RDP Calculation
for Carlstadt**

Site	Unconstrained Area (In acres)	Units per Acre	Total Units	Set-Aside	RDP Units
Tomu Site	3.584	100	358	20%	72

I selected a density of 100 units per acre because it is consistent with the approximate average of the density approved on

the East Rutherford portion of the Tomu site by the NJMC in 1989 of 66¹⁵ units per acre, and the recently approved density of 146¹⁶ units per acre on the Route 3 site by the NJMC. I also took into account the Special Master's reminder that a density of 110¹⁷ units per acre was the agreed-upon density in East/West Venture v. Fort Lee, 286 N.J. Super. 311, 322 (App. Div. 1996). Tomu's final proposal for a builder's remedy results in a density of 117¹⁸ units per acre, which is not much more than the density I selected for purposes of computed Carlstadt's RDP.

A developer is entitled to a builder's remedy if: (1) it succeeds in Mount Laurel litigation; (2) it proposes a project with a substantial amount of affordable housing; and (3) the site is suitable, that is, the municipality fails to meet its burden of proving that the site is environmentally constrained or construction of the project would represent bad planning. Mount Laurel II, 92 N.J. at 279-280; Shire Inn, Inc. v. Borough of Avon-by-the-Sea, 321 N.J. Super. 462, 465 (App. Div.), certif. denied, 162 N.J. 132 (1999). "The builder's remedy is a device that rewards a plaintiff seeking to construct lower income housing for success in bringing about ordinance compliance through

¹⁵ 350 units were approved on 5.286 acres of upland.

¹⁶ 614 units were approved on 4.2 acres of upland.

¹⁷ 585 units were approved on 4.88 acres.

¹⁸ 420 units are proposed on 3.584 acres of upland.

litigation." Allan-Deane Corp. v. Bedminster Township, 205 N.J. Super. 87, 138 (Law Div. 1985).

Even if a developer satisfies these three prongs, it may still be disqualified from receiving a builder's remedy if it is found that the developer acted in bad faith or has used the *Mount Laurel* doctrine as a bargaining chip:

Care must be taken to make certain that Mount Laurel is not used as an unintended bargaining chip in a builder's negotiations with the municipality, and that the courts not be used as the enforcer for the builder's threat to bring Mount Laurel litigation if municipal approvals for projects containing no lower income housing are not forthcoming. Proof of such threats shall be sufficient to defeat Mount Laurel litigation by that developer.

[Mount Laurel II, 92 N.J. at 280.]

The loss of a builder's remedy to an otherwise-qualifying plaintiff-developer is neither novel, nor shocking. The interests of the absent class -- the unhoused poor -- for which the litigation is prosecuted, will not be prejudiced as long as the municipality's compliance mechanism is capable of satisfying the ultimate fair share obligation. Other land in the municipality that is identified as being realistically developable with affordable housing will absorb the disqualified plaintiff-developer's complement of low and moderate-income housing. In this case, however, no other land in either municipality has been proffered as being capable of providing affordable housing. Ironically, the NJMC, just a few months ago, squandered an

opportunity to inject affordable housing into East Rutherford as part of the 614-unit residential development approved for the Route 3 Service Road. Thus, even if some bad conduct exists on the part of plaintiff, it must be balanced by the needs of the absent class.

The record produced at trial does not support the conclusion that Tomu acted in bad faith or manifestly engaged in conduct prohibited by the *Mount Laurel* doctrine. Notwithstanding Tomu's conceded profit motivation, it cannot rightly be criticized as abusing *Mount Laurel* principles simply because of its incessant efforts to develop its land. The administrative proceedings that are pending in the Office of Administrative Law have little bearing on Tomu's present application. There is nothing contrary to the public interest for a land owner to attempt to keep as many of its development options open and available as possible. The doctrine of election of remedies is inapposite when the rights of the absent class of unsheltered poor are involved. Although there is some evidence in the record that suggests that Tomu representatives may have allowed the words "Mount Laurel Project" to slip from their lips during one or more discussions with, or in the presence of, municipal officials, I find those comments to be stray and harmless error, not worthy of a wholesale disenfranchisement that would redound to the detriment of the absent class.

No responsible local official is unaware of the obligations that the *Mount Laurel* doctrine has imposed. To argue seriously that the chief executive officers of the NJMC, East Rutherford, and Carlstadt were taken aback by mention of affordable housing in connection with the development of vacant land is almost laughable. The dreadful record of disaccomplishment of the NJMC, East Rutherford, and Carlstadt since Mount Laurel II and the adoption of the FHA speaks volumes more than an amateurish utterance by a Tomu representative of the new seven dirty words,¹⁹ "Mount Laurel low and moderate income housing." *Mount Laurel* litigation must not devolve into a dreaded game of gotcha, where the mere expression of proscribed words results in a disqualification. Taken in context and under the totality of the circumstances I can not say that the Tomu representatives' references to potential *Mount Laurel* litigation had any negative effect upon the public interest, other than the transient righteous indignation suffered by the officials who heard the comments.

In this case, Tomu satisfies all three prongs of the three-prong test for entitlement to a builder's remedy. First, it successfully participated in obtaining summary judgment declaring East Rutherford's and Carlstadt's development regulations

¹⁹ The original seven dirty words, of course, are attributed to comedian George Carlin. See http://en.wikipedia.org/wiki/George_Carlin (last visited on November 8, 2005). I will not repeat them here, but they may be found at FCC v. Pacifica Foundation, 438 U.S. 726, 751; 98 S. Ct. 3026, 3041; 57 L. Ed. 2d 1073, 1095 (1978).

invalid, thereby necessitating rezoning and the appointment of the Special Master. Second, it has offered to make substantial contributions to the municipalities' nonexistent stock of family-type low and moderate income housing units. Third, the municipalities have failed to demonstrate that because of substantial planning concerns, Tomu's proposed use of its land in both municipalities is clearly contrary to sound land use principles. Said another way, the competent evidence clearly establishes that the land is fully capable of being developed for Tomu's proposed development and there are neither legitimate planning concerns nor environmental constraints that would hinder a sound development. The site is qualified for affordable housing substantially in the manner proposed by Tomu.

One issue that received attention at the trial was the manner of conveying wastewater from the site. The Carlstadt inclusionary development will be serviced by the Carlstadt Sewerage Authority. The East Rutherford inclusionary development could be serviced by the East Rutherford Sewerage Authority, but Tomu wants all of the development's sewage to be serviced by the infrastructure of the Carlstadt Sewerage Authority under an inter-municipal agreement authorized by Dynasty Building Corp. v. Borough of Upper Saddle River, 267 N.J. Super. 611 (App. Div. 1993) and Samaritan Center, Inc. v. Borough of Englishtown, 294 N.J. Super. 437 (Law Div. 1996), as validated by Bi-County Dev. of Clinton, Inc. v. Borough of High Bridge, 174 N.J. 301, 327-328

(2001). Since East Rutherford enjoys its own sewer network, there is no sound reason, on the record presented in this trial, for me now to declare that Tomu is entitled to a Bi-County-like remedy. It is simply premature to engineer the wastewater management of the project, keeping in mind that Tomu has demonstrated the feasibility of dealing with its sewage discharge through either or both municipalities' infrastructure.

In light of the foregoing, I shall enter an order granting Tomu's application for a builder's remedy to allow its lands in East Rutherford and Carlstadt to be developed with a mixed use project as follows:

The development in East Rutherford shall consist of no more than 420 residential units consisting of 360 market rate units and 60 affordable rental units, plus no more than 420 residential units consisting of 340 market rate units and 80 affordable rental units in Carlstadt. These units shall be located in two midrise buildings which height shall not exceed the lesser of Federal Aviation Administration elevation guidelines or 230 feet. All dimensional requirements of the NJMC shall be satisfied, as must all applicable requirements of the Residential Site Improvement Standards found in N.J.A.C. 5:21-1 et. seq.²⁰ In addition, there shall be no more than 38,000 square feet of "ancillary development" that shall include limited commercial facilities (such as a dry cleaner or convenience store), recreational facilities, public safety facilities, and meeting rooms. The development shall include a marina available to the public, to be overseen by the NJMC, but reserving five berths for the development or its residents. Tomu shall construct a riverwalk promenade, plus public parking, to allow access to the Hackensack River by members of the public, all as directed by the NJMC and in accordance

²⁰ This decision does not prohibit Tomu from applying to the appropriate agency for variances, exceptions, waivers or other relief from applicable regulations.

with applicable law. The development shall comply with all other rules and regulations of the NJMC that are not inconsistent with this builder's remedy. Finally, the development shall comply with all Federal and local statutes, regulations, development regulations or ordinances that may apply and shall also comply with all other State laws including, but not limited to, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.; the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Safe Drinking Water Act, P.L. 1977, c.224, N.J.S.A. 58:12A-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and all implementing rules.

The order shall further declare that East Rutherford's and Carlstadt's land use regulations remain invalid and unconstitutional insofar as they continue past exclusionary practices. The East Rutherford and Carlstadt Planning Boards and the respective governing bodies shall immediately prepare comprehensive compliance plans (including appropriate strategies to address the indigenous and unmet needs) for each municipality, together with zoning and planning legislation to satisfy the fair share obligations of rounds one and two, and the unmet need, all in compliance with COAH regulations. They shall draft meaningful Housing Element and Fair Share Plans, together with fee ordinances (if appropriate) and spending plans that are consonant with COAH rules. They shall exercise planning discretion in deciding whether to employ a program of rehabilitation grants,

regional contribution agreements, accessory apartments, mobile homes, overlay zones, or any other incentive devices to meet the fair share and unmet need. This plan shall be completed, adopted, and presented to the court no later than February 28, 2006. In default thereof, all development regulations in East Rutherford and Carlstadt shall be permanently invalidated and a scarce resource order enjoining all land use development applications in East Rutherford and Carlstadt (whether before the Planning Board or Board of Adjustment or the NJMC) shall become automatically effective. On the other hand, if the municipalities, or either of them, comply, they will be entitled to a six-year judgment of repose commencing no earlier than February 28, 2006.

The Special Master shall regularly consult with designated representatives of East Rutherford and Carlstadt and their Planning Boards and governing bodies during the preparation of the compliance plans and he shall provide appropriate input and constructive criticism throughout the process.

IV. CONCLUSION

I understand that "no one wants his or her neighborhood determined by judges." Hills Dev. Co. v. Bernards, supra, 103 N.J. at 63-64. Nevertheless, this case demonstrates the risks that attend the failure of municipalities to advance proactively affordable housing opportunities. Hiding in plain sight of the

NJMC, each of the defendant-municipalities elected to turn a cold shoulder to the needs of those citizens most in need of decent and affordable shelter.²¹ In like vein, the NJMC stood mute for years while prospects for affordable housing were lost in East Rutherford and Carlstadt, and available land grew scant. The NJMC is complicit in the municipalities' commission of constitutional torts and the silent acquiescence of conditions where not one unit of identifiable affordable housing has been built in twenty years. Where other governmental actors have failed to conform their conduct to the dictates of the constitution, it becomes the duty of the judiciary to order remediation. That, simply, is what has happened here. The stark reality of the situation is that in the absence of court intervention, low and moderate income housing would remain as illusory today as it has since the inception of the NJMC and its predecessor agency more than three decades ago.

I request that the Special Master prepare the appropriate order to memorialize this decision and submit it to all counsel and to the court as soon as practicable pursuant to R. 4:42-1(c).

²¹ As I write this opinion, I am aware that France is encountering its worst civil unrest in four decades, partly because of neglecting the shelter needs of its most economically vulnerable citizens, incongruously living in the suburbs of Paris. See "France Riots Spill Into 8th Day," <http://www.cbsnews.com/stories/2005/11/03/world/main1006022.shtml> (last visited on November 8, 2005) and *New York Times* article "Inside French Housing Project, Feelings of Being the Outsiders," <http://www.nytimes.com/2005/11/09/international/europe/09projects.html> (last visited on November 9, 2005). The United States, including New Jersey, has a history of urban violence that has been mitigated, however, -- in part -- by the creation of new housing opportunities (and some better jobs and schools) for members of economic underclasses. One of the goals of the Mount Laurel doctrine is to consign such unrest and violence to the dustbin of history.

Exhibit

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ROBERT T. REGAN, ESQ.
Special Master
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675
(201) 664-3344

FILED
JUN - 1 2006
JONATHAN N. HARRIS
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5894-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF CARLSTADT, PLANNING
BOARD OF CARLSTADT and NEW
JERSEY MEADOWLANDS COMMISSION,

Defendants.

Civil Action

FINAL JUDGMENT

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF EAST RUTHERFORD,
PLANNING BOARD OF EAST
RUTHERFORD and NEW JERSEY
MEADOWLANDS COMMISSION,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5895-03

Civil Action

FINAL JUDGMENT

THIS MATTER coming on to be heard before the Honorable
Jonathan N. Harris on April 26, 2006 in the presence of Thomas Jay

Hall, Esq. and Robert Kasuba, Esq. of the firm of Sills, Cummis, Epstein & Gross, P.C., attorneys for plaintiff Tomu Development Co., Inc. ("plaintiff" or "Tomu"); Richard J. Allen, Jr., Esq. of the firm of Kipp & Allen, LLP, attorney for defendants Borough of Carlstadt and Planning Board of Carlstadt; Beverly M. Wurth, Esq. of the firm of Calo Agostino, P.C., attorney for defendants Borough of East Rutherford and Planning Board of East Rutherford; and Christine Piatek, Esq., Deputy Attorney General (Zulima V. Farber, Attorney General), attorney for defendant New Jersey Meadowlands Commission ("NJMC"), upon the application of defendants Borough of Carlstadt and Planning Board of the Borough of Carlstadt and Borough of East Rutherford and Planning Board of the Borough of East Rutherford (hereinafter collectively "municipal defendants") for entry of a Judgment of Repose pursuant to Southern Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983) (hereinafter "Mount Laurel II"), and the Court having previously entered an Order granting plaintiff a builder's remedy and determining that the land use regulations of the municipal defendants remain invalid and unconstitutional insofar as such provisions continue past exclusionary practices, which determination was memorialized in an Order dated November 28, 2005, which also obligated the municipal defendants to draft meaningful

Housing Element and Fair Share Plans and other legislation consonant with rules of the Council On Affordable Housing (hereinafter "COAH"), and the Court having rendered a written Decision dated May 19, 2006, the provisions of which are incorporated herein by reference, and good cause appearing:

IT IS on this 1 day of JUNE, 2006:

ORDERED AND ADJUDGED that effective on June 1, 2006 and continuing until further Order of this Court as follows:

1. There are hereby created, as independent judicial officers, a Mount Laurel Implementation Monitor for the Borough of East Rutherford and a Mount Laurel Implementation Monitor for the Borough of Carlstadt (collectively called "Monitor"). ~~All~~ reasonable fees, costs, and expenses of the Monitor shall be borne by the Boroughs of East Rutherford and Carlstadt in proportion to the work done on behalf of each municipality by the Monitor. The Monitor shall have no role in local government affairs except as provided in this judgment. Excluding matters within the sole jurisdiction of the New Jersey Meadowlands Commission, no zoning permit, building permit, or any other authorization to use or develop land or structures within the Borough of East Rutherford or the Borough of Carlstadt shall be valid until and unless it is reviewed and approved by the Monitor who shall have the following

additional powers:

A. The Monitor shall have unfettered access to all documents and information the Monitor determines are necessary to assist it in the execution of its duties. The Monitor shall have the authority to meet with, and require reports on any relevant subject from any officer, agent, or employee of the Boroughs of East Rutherford and Carlstadt. The Monitor shall receive advance notice of, and have the option to attend scheduled meetings of the governing bodies, planning boards, and boards of adjustment.

B. After giving due regard to the current (but now suspended) land use development legislation heretofore enacted by the municipalities, the Monitor shall forthwith adopt all necessary rules and regulations (including, if appropriate, interim or temporary rules and regulations) - in lieu of zoning, land use, and development ordinances - that will immediately provide reasonable opportunities for the creation of low and moderate income housing in accordance with the Fair Housing Act (hereinafter "FHA") and the rules and regulations of COAH. Each municipality shall immediately adopt by ordinance the Monitor's rules and regulations as the municipality's respective land use legislation. If a municipality fails or refuses to adopt the Monitor's rules and regulations as its respective land use

legislation, said rules and regulations shall nevertheless substitute for and act as the land use laws of the respective municipality, to be enforced as such by the Monitor and the municipality's agents, officers, and employees.

C. The monitor shall oversee and review all applications for development, requests for land use or building permits, requests for interpretations, and appeals that would otherwise be within the jurisdiction of the boards of adjustment, planning boards, or administrative officials' jurisdiction under the Municipal Land Use Law. In order to validate any application for development, request for land use or building permit, request for interpretation, or appeal, ~~the approval of the Monitor shall be required.~~ The Monitor shall have the authority to disapprove, reverse, or reject any application for development, application for a land use or building permit, request for an interpretation, or appeal if it would frustrate, impede, or counteract the creation of low and moderate income housing in the municipality. Similarly, the Monitor shall have the authority to overrule and reverse the denial of an application for development, request for a land use or building permit, request for an interpretation, or appeal if, in the exercise of the Monitor's discretion and judgment, such application for development, request for a land use

or building permit, request for an interpretation, or appeal would foster the creation of low and moderate income housing opportunities.

D. The Monitor shall prepare a formal Housing Element and Fair Share Plan (hereinafter "Affordability Plan") for each municipality. The Affordability Plan shall comply with the FHA and all current rules and regulations of COAH, and shall include provisions to meet all obligations relating to indigenous need, new construction, unmet need, and COAH's third round rules. The Monitor shall be permitted to utilize and implement any technique authorized by the FHA or COAH including but not limited to ~~regional contribution agreements, accessory apartments, and mobile~~ homes to achieve compliance. Each municipality shall be required to adopt the Affordability Plan of the Monitor and shall take all appropriate actions, including appropriating funds and executing all necessary documents, to implement the provisions of the Affordability Plan.

E. The Monitor shall act in the place and stead of the municipality or its designated agent (as provided by statute, regulation, or common practice) in connection with development applications, zoning and planning activities, or requests for permits that are within the jurisdiction of the New Jersey

Meadowlands Commission. In this capacity, the Monitor shall advocate, either district-wide or on an application-by-application basis, for the creation of affordable housing opportunities within each municipality even if the New Jersey Meadowlands Commission has sole jurisdiction over the matter. The Boroughs of East Rutherford and Carlstadt, together with their agents, officers, and employees, are enjoined and barred from taking any action, whether orally or in writing, in connection with development applications, zoning and planning activities, or requests for permits that are within the jurisdiction of the New Jersey Meadowlands Commission unless such action is approved by the Monitor in writing in advance.

F. The Monitor shall apply to COAH, when the instant litigation is concluded, for substantive certification pursuant to then extant statutes, rules, and regulations.

G. The Monitor shall take such other actions, including but not necessarily limited to the hiring of experts, agents, and employees, that are reasonably necessary for conducting the activities of the Monitor. Additionally, the Monitor shall have authority to require the municipalities and their agents, officers, and employees to take any actions the Monitor believes are necessary for compliance with this judgment.

2. All zoning, land use, and development ordinances of the Borough of East Rutherford and the Borough of Carlstadt, including site plan and subdivision ordinances, are hereby suspended and rendered ineffectual relating to any and all future land use, construction, or development efforts in the municipalities. Such ordinances shall be treated as advisory only and shall serve as commentary to serve the Monitor. Until the Monitor adopts the rules and regulations as required by this judgment (whether interim, temporary, or permanent) 1) no development applications shall be reviewed by the municipalities' boards of adjustment or planning boards and 2) no building or other land use permits shall be issued by any officer, agent, or employee of the defendant municipalities, except those necessary to avoid imminent peril to life or property. Said ordinances, however, shall continue in full force and effect for all uses and structures that currently exist (meaning that there is a valid certificate of occupancy or building permit in effect) in order to prevent the illegal use of land and structures. Uses and structures that have been approved by a local construction official, zoning officer, board of adjustment, or planning board but have not yet commenced operation or begun construction are prohibited from commencing operation or beginning construction until reviewed and approved by the Monitor

for compliance with this judgment.

3. The terms and conditions of the Order Imposing Scarce Resource Restraints dated May 13, 2005 (annexed to this Final Judgment) are continued until further order of the court,

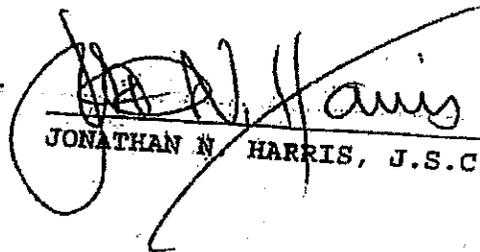
4. Robert T. Regan, Esq. is appointed the Monitor. If the Monitor resigns or is unable to serve, a successor shall be appointed by the court within thirty days. The Monitor shall serve until further order of the court or until final substantive certification is obtained from COAH, whichever is sooner.

5. All elected officials of the Boroughs of East Rutherford and Carlstadt shall be required to certify in writing, and submit ~~their certifications to the Monitor no later than December 31,~~ 2006, that they have read the Preface (pp. xi to xiv), Prologue (pp. 3 to 11), and Chapter XI (pp. 175 to 185) of Suburbs Under Siege by Charles M. Haar (Princeton University Press 1996).

6. The municipalities are not entitled to a judgment of repose because they have not met their constitutional obligations and have not complied with the FHA, including the COAH third round obligations. In lieu of a judgment of repose, upon the conclusion of this case the municipalities shall apply for and obtain substantive certification through COAH's procedures.

7. A copy of this Final Judgment shall be served by the

Special Master upon all counsel of record within 5 days of
the date hereof.


JONATHAN N. HARRIS, J.S.C.

Exhibit

F

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5894-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF CARLSTADT,
PLANNING BOARD OF CARLSTADT,
and the NEW JERSEY
MEADOWLANDS COMMISSION

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5895-03

TOMU DEVELOPMENT CO., INC.,

Plaintiff,

v.

BOROUGH OF EAST RUTHERFORD,
PLANNING BOARD OF EAST
RUTHERFORD, and the NEW JERSEY
MEADOWLANDS COMMISSION

Defendants,

Decided: May 19, 2006

Robert A. Kasuba and Thomas Jay Hall (Sills
Cummis Epstein & Gross, P.C., attorneys) argued
the cause for plaintiff.

Richard J. Allen, Jr. (Kipp & Allen, LLP,
attorneys) argued the cause for defendant Borough
of Carlstadt and Planning Board of Carlstadt.

Beverly M. Wurth (Calo Agostino, A Professional
Corporation, attorneys) argued the cause for
defendant Borough of East Rutherford and Planning
Board of East Rutherford.

Robert L. Gambell and Christine Piatek (Zulima V. Farber, Attorney General, attorney) argued the cause for defendant New Jersey Meadowlands Commission.

JONATHAN N. HARRIS, J.S.C.

PREFACE

More than six months have elapsed since I unequivocally declared that Carlstadt and East Rutherford had neglected their constitutional obligations under the *Mount Laurel*¹ doctrine and their statutory duties under the Fair Housing Act. No responsible local official is unaware of the responsibilities that these principles have imposed. Yet, ignoring my order to comply fully by February 28, 2006 (110 days from the November 10, 2005 opinion), the defendant municipalities have again disappointed the citizens of the State of New Jersey. I start my analysis of the situation with the following thoughts in mind:

If not you, who? If not now, when?

(Paraphrased from the Talmud)

Given the importance of the societal interest in the Mount Laurel obligation and the potential for inordinate delay in satisfying it, presumptive validity of an ordinance attaches but once in the face of a Mount Laurel challenge. Equal treatment requires at the very least that government be as fair to the poor as it is to the rich in the provision of housing opportunities. That is the basic justification for Mount Laurel. When that clear obligation is breached, and instructions given for its satisfaction, it is the municipality, and not the plaintiffs, that must prove every element of compliance. *It is not fair to require a poor man to prove you were wrong the second time you slam the door in his face.*

Mount Laurel, supra, 92 N.J. at 190-191.
(Emphasis added.)

¹ So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (1983).

INTRODUCTION

This is the compliance portion of a *Mount Laurel II* builder's remedy action that now requires the defendant municipalities to comply tangibly with their constitutional obligations regarding affordable housing. On November 10, 2005, in a written opinion, I declared that Carlstadt and East Rutherford had engaged in conduct unbecoming local government in New Jersey. In addition to awarding plaintiff a builder's remedy, I gave the municipal defendants one last chance each to legislate frameworks that would constitute compliance with their obligations to ensure reasonable opportunities for the actual construction of low and moderate income housing within their borders. Notwithstanding being painfully aware that such tasks would be complicated in light of the mutual exclusivity of zoning authority attributable to the New Jersey Meadowlands Commission's control of vast lands in East Rutherford and Carlstadt, they have incompletely performed. Accordingly, I must reluctantly employ drastic steps to fulfill the judiciary's duty to vouchsafe fidelity to constitutional norms. *Mount Laurel II* commands such actions in the face of such longstanding and blatant disregard for the unhoused and underhoused poor.

II. FACTUAL BACKGROUND

The factual background of this case is documented in the prior opinion dated November 10, 2005, and familiarity with that opinion

is assumed. Following the builder's remedy phase of the case, I ordered the following:

East Rutherford's and Carlstadt's land use regulations remain invalid and unconstitutional insofar as they continue past exclusionary practices. The East Rutherford and Carlstadt Planning Boards and the respective governing bodies shall immediately prepare comprehensive compliance plans (including appropriate strategies to address the indigenous and unmet needs) for each municipality, together with zoning and planning legislation to satisfy the fair share obligations of rounds one and two, and the unmet need, all in compliance with COAH regulations. They shall draft meaningful Housing Element and Fair Share Plans, together with fee ordinances (if appropriate) and spending plans that are consonant with COAH rules. They shall exercise planning discretion in deciding whether to employ a program of rehabilitation grants, regional contribution agreements, accessory apartments, mobile homes, overlay zones, or any other incentive devices to meet the fair share and unmet need. This plan shall be completed, adopted, and presented to the court no later than February 28, 2006. In default thereof, all development regulations in East Rutherford and Carlstadt shall be permanently invalidated and a scarce resource order enjoining all land use development applications in East Rutherford and Carlstadt (whether before the Planning Board or Board of Adjustment or the NJMC) shall become automatically effective. On the other hand, if the municipalities, or either of them, comply, they will be entitled to a six-year judgment of repose commencing no earlier than February 28, 2006.

For its first and second round obligations as derived by the Council on Affordable Housing (COAH) under the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (FHA), East Rutherford was obligated to provide 70 units of new construction and 34 units of rehabilitated housing. Since the builder's remedy provided for 60 affordable units on the Tomu site, East Rutherford did not have far

to stretch to find the additional ten units to fulfill its complement of new construction. Carlstadt, on the other hand, had a COAH-generated obligation of 186 units of new construction and 12 units of rehabilitated housing. The builder's remedy provided 80 affordable units in Carlstadt, thereby producing an unmet need for new construction of 106 units.

In order to meet the mandate of this court's order to rezone, both municipalities engaged in legislative activities. East Rutherford proposes three zoning changes. The first, implementing a mandatory 20% set aside for affordable units, will apply in its Neighborhood Commercial District. The second, an overlay zone providing for the redevelopment of industrial properties, will affect an 18-acre site known as the Star-Glo site and a separately owned 7.44-acre site. Third, a "Mixed Residential Overlay Zone," will affect a 4.79-acre site known as the Sequa site. The evidence presented regarding these zoning changes vis-à-vis site suitability and feasibility of development within the next six years was scanty and unpersuasive. Additionally, East Rutherford intends to implement a development fee ordinance. Conspicuously missing from East Rutherford's plan is any treatment of its rehabilitation obligation. Furthermore, East Rutherford eschews its COAH round three obligations, claiming that they are irrelevant to this proceeding.

In addition to adopting its own development fee ordinance, Carlstadt created two overlay zones in what it calls "upland Carlstadt" to fulfill its unmet need of new construction. One overlay zone affects Carlstadt's entire residential district and the other affects a light industrial area. In addition, Carlstadt claims that it has committed itself to redevelop municipally owned land (the former Washington School) to 100% affordable senior housing, but the details are conspicuously ambiguous. As with East Rutherford, Carlstadt has taken no meaningful steps to address its rehabilitation obligation and has ignored its round three obligations.

III. DETERMINATIONS OF LAW

At this stage of proceedings, the municipalities bear a tremendous burden of persuasion. Not only have they lost the builder's remedy portion of the litigation, but also their land use regulations have been found constitutionally wanting. This latter deficiency is required to be fixed as part of a unitary piece of litigation. Although the Special Master finds some salvation in East Rutherford's compliance effort, I cannot agree with him. With regard to Carlstadt, its thinly veiled half-baked offering was rightly rejected by the Special Master, a conclusion that is well supported by the record.

When a municipality has been found to have failed in its constitutional mandate to provide realistic opportunities for low

and moderate income housing within its borders, the court, as here, gives it one last chance. With that last-chance opportunity, the municipality must hew to applicable COAH regulations. At the very least, a municipality must conform its conduct to meet its new construction obligation, its rehabilitation obligation, and if a vacant land adjustment is granted (as here with Carlstadt), its unmet need. The easiest determination to make in this case relates to the utter failure and continued deafening silence of both municipalities to provide resources for their indigenous rehabilitation obligations. This is peculiarly significant because providing housing opportunities for rehabilitation purposes affects homegrown local citizens, not newcomers. Such efforts, usually to be applicable on a micro-local scale, are noteworthy for improving neighborhoods and individual qualities of life. Rehabilitation efforts do not implicate the more-feared large scale intrusions of mixed use or multifamily developments containing both market rate and affordable housing units. Although each defendant professes false piety that it is willing to participate in a recognized rehabilitation program administered by a county agency, no affirmative steps toward that end appear to have been seriously contemplated, much less planned for. This, again, is especially egregious because the rehabilitation obligation relates to existing residences and will most likely affect existing residents. The failure to address proactively a rehabilitation program for each

municipality's indigenous need leaves their current low and moderate income populace at grave risk to all of the ills associated with substandard housing.

Under past and present COAH rules, the municipalities were required, by the compliance due date of February 28, 2006, at least to designate an administrator to administer a rehabilitation program, submit a marketing plan, provide a framework of affordability controls for between six and ten years, fund up to \$10,000 per unit of rehabilitation, submit a rehabilitation manual, and agree to submit to COAH monitoring. See N.J.A.C. 5:93-5.2; N.J.A.C. 5:94-4.3. It is no answer to their default that the municipalities plan to do all of this in the future. Their obligation was to comply before this litigation even commenced, and in the face of that initial failure, to comply by the date ordered in my November 10, 2005 written opinion.

Much more provocative is the failure of East Rutherford and Carlstadt to comply adequately with their recalculated new construction obligations and unmet need. East Rutherford must identify the reasonable likelihood that at least ten affordable units can be distilled from its revamped zoning regulations. In order to do this, it must designate sites and prove that they meet the criteria of N.J.A.C. 5:93-5.3(b) (availability, suitability, developability, and approvability). Instead of that painstaking proof, East Rutherford merely casts a blanket of a 20% set-aside

upon a land mass without demonstrating the likely yield of affordable units therefrom. Anecdotal information about the plans of developers and ongoing, incomplete applications is no substitute for the firm evidence required by COAH regulations. In addition, East Rutherford's planning efforts to encourage redevelopment for affordable residential use in an industrial district ignores whether any of the hoped-for sites are qualified to be counted under N.J.A.C. 5:93-5.3(b) as likely candidates for actual construction of affordable housing.

Carlstadt's efforts toward compliance stand on a different footing than East Rutherford's because it received a vacant land adjustment, and the Tomu builder's remedy will fulfill its new construction obligation. However, under N.J.A.C. 5:93-4.1, the difference between the initial new construction obligation and the recomputed (after a vacant land adjustment) obligation must be the subject of planning initiatives to ensure that if developable land becomes available in the future, there will be a firm mechanism in place to capture affordable housing opportunities on that land. Thus, the municipality must plan for this unmet need by legislative devices such as a redevelopment ordinance, a development fee ordinance, or an apartments-in-a-developed-area ordinance. N.J.A.C. 5:93-4.1(b). None of these strategies was used. Instead, Carlstadt uses a simplistic overlay zone technique that does not reveal the likely yield of units as to any potential properties in the future.

In addition, however, Carlstadt trumpets its plan to convert a former school into an affordable housing facility for seniors. None of the details of the proposal complies with N.J.A.C. 5:93-5.5, leaving the court and poor seniors in the dark as to the nature, scope, and timetable of the not-even embryonic development.

The missing link in all of the municipalities' compliance efforts has been the land in the jurisdiction of the New Jersey Meadowlands Commission. Contrary to plaintiff's view that East Rutherford and Carlstadt are required to lobby *affirmatively* for housing within their borders but beyond their control, I think that the municipalities should not be required to advocate purposefully positions that their elected officials deem contrary to the local public interest. This is especially so if it turns out that the New Jersey Meadowlands Commission is itself someday authoritatively obligated to ensure compliance with the *Mount Laurel* doctrine. However, recalcitrant municipalities, such as the defendants here, should not be allowed to inflict damage to affordable housing opportunities by either their active discouragement of such housing opportunities or by silence. As I will outline later, as part of the remedies section of this opinion, a Mount Laurel Implementation Monitor shall be appointed to speak on behalf of each municipality on matters affecting affordable housing in the New Jersey Meadowlands District in order to ensure that the inertia engendered by each municipality will no longer impede appropriate affordable

housing opportunities on lands in these municipalities under the control of the New Jersey Meadowlands Commission.

Among the remedies available to the judiciary if a municipality fails or refuses to comply with a court-ordered *Mount Laurel* rezoning effort is to enjoin all further development within the municipal borders. Another is to suspend all legislative barriers that prohibit multi-family uses while at the same time ensuring that any such development includes affordable housing. It is no answer that the court should give East Rutherford and Carlstadt one more chance to comply; that they misunderstood the court's direction; and now they will get it right. The reason for the absence of this last bite of the apple remedy is two-fold. First, the Supreme Court in *Mount Laurel II* would not countenance such a transparent delay tactic. Second, any further lag would only increase the detriment to plaintiff and the third party beneficiaries of plaintiff's builder's remedy by delaying the entry of a final, appealable judgment, again putting off into the future the ultimate disposition of this litigation. I must act *now* to end this litigation in a way that protects and preserves the interests of all concerned. One remedy that I have considered and rejected is the use of contempt proceedings against individual governmental actors or the municipal corporations themselves. Although monetary sanctions might well incite the defendant municipalities into action, and I truly understand the power of the wallet, I intend to

avoid the replication of local government errors that were committed in the past. Another reason I have eschewed the traditional contempt mode of ensuring compliance is to avoid the martyrdom syndrome that some public officials exploit. Rather than involve those governmental actors who have failed the public in the past, I have elected to simply remove them from the process and substitute a court-appointed monitor to oversee land development activities in East Rutherford and Carlstadt for the foreseeable future.

Here is my plan, to be effective on June 1, 2006, and continuing until further order of the court:

1. There are hereby created, as independent judicial officers, a Mount Laurel Implementation Monitor for the Borough of East Rutherford and a Mount Laurel Implementation Monitor for the Borough of Carlstadt (collectively called Monitor). All reasonable fees, costs, and expenses of the Monitor shall be borne by the Boroughs of East Rutherford and Carlstadt in proportion to the work done on behalf of each municipality by the Monitor. The Monitor shall have no role in local government affairs except as provided in this judgment. Excluding matters within the sole jurisdiction of the New Jersey Meadowlands Commission, no zoning permit, building permit, or any other authorization to use or develop land or structures within the Borough of East

Rutherford or the Borough of Carlstadt shall be valid until and unless it is reviewed and approved by the Monitor who shall have the following additional powers:

- a. The Monitor shall have unfettered access to all documents and information the Monitor determines are necessary to assist it in the execution of its duties. The Monitor shall have the authority to meet with, and require reports on any relevant subject from any officer, agent, or employee of the Boroughs of East Rutherford and Carlstadt. The Monitor shall receive advance notice of, and have the option to attend, scheduled meetings of the governing bodies, planning boards, and boards of adjustment.
- b. After giving due regard to the current (but now suspended) land use development legislation heretofore enacted by the municipalities, the Monitor shall forthwith adopt all necessary rules and regulations (including, if appropriate, interim or temporary rules and regulations) -- in lieu of zoning, land use, and development ordinances -- that will immediately provide reasonable opportunities for the creation of low and moderate income housing in accordance with the FHA and the rules and regulations of COAH. Each municipality shall immediately adopt by ordinance the Monitor's rules and regulations as the municipality's respective land use legislation. If a municipality fails or refuses to adopt the Monitor's rules and regulations as its respective land use legislation, said rules and regulations shall nevertheless substitute for and act as the land use laws of the respective municipality, to

be enforced as such by the Monitor and the municipality's agents, officers, and employees.

- c. The Monitor shall oversee and review all applications for development, requests for land use or building permits, requests for interpretations, and appeals that would otherwise be within the jurisdiction of the boards of adjustment, planning boards, or administrative officials' jurisdiction under the Municipal Land Use Law. In order to validate any application for development, request for land use or building permit, request for interpretation, or appeal, the approval of the Monitor shall be required. The Monitor shall have the authority to disapprove, reverse, or reject any application for development, application for a land use or building permit, request for an interpretation, or appeal if it would frustrate, impede, or counteract the creation of low and moderate income housing in the municipality. Similarly, the Monitor shall have the authority to overrule and reverse the denial of an application for development, request for a land use or building permit, request for an interpretation, or appeal if, in the exercise of the Monitor's discretion and judgment, such application for development, request for a land use or building permit, request for an interpretation, or appeal would foster the creation of low and moderate income housing opportunities.
- d. The Monitor shall prepare a formal Housing Element and Fair Share Plan (Affordability Plan) for each municipality. The Affordability Plan shall comply with the FHA and all current rules and regulations of COAH, and shall include provisions to meet all obligations

relating to indigenous need, new construction, unmet need, and COAH's third round rules. The Monitor shall be permitted to utilize and implement any technique authorized by the FHA or COAH including but not limited to regional contribution agreements, accessory apartments, and mobile homes to achieve compliance. Each municipality shall be required to adopt the Affordability Plan of the Monitor and shall take all appropriate actions, including appropriating funds and executing all necessary documents, to implement the provisions of the Affordability Plan.

- e. The Monitor shall act in the place and stead of the municipality or its designated agent (as provided by statute, regulation, or common practice) in connection with development applications, zoning and planning activities, or requests for permits that are within the jurisdiction of the New Jersey Meadowlands Commission. In this capacity, the Monitor shall advocate, either district-wide or on an application-by-application basis, for the creation of affordable housing opportunities within each municipality even if the New Jersey Meadowlands Commission has sole jurisdiction over the matter. The Boroughs of East Rutherford and Carlstadt, together with their agents, officers, and employees, are enjoined and barred from taking any action, whether orally or in writing, in connection with development applications, zoning and planning activities, or requests for permits that are within the jurisdiction of the New Jersey Meadowlands Commission unless such action is approved by the Monitor in writing in advance.

f. The Monitor shall apply to COAH, when the instant litigation is concluded, for substantive certification pursuant to then extant statutes, rules, and regulations.

g. The Monitor shall take such other actions, including but not necessarily limited to the hiring of experts, agents, and employees, that are reasonably necessary for conducting the activities of the Monitor. Additionally, the Monitor shall have authority to require the municipalities and their agents, officers, and employees to take any actions the Monitor believes are necessary for compliance with this judgment.

2. All zoning, land use, and development ordinances of the Borough of East Rutherford and the Borough of Carlstadt, including site plan and subdivision ordinances, are hereby suspended and rendered ineffectual relating to any and all future land use, construction, or development efforts in the municipalities. Such ordinances shall be treated as advisory only and shall serve as commentary to serve the Monitor. Until the Monitor adopts the rules and regulations as required by this judgment (whether interim, temporary, or permanent) 1)no development applications shall be reviewed by the municipalities' boards of adjustment or planning boards and 2)no building or other land use permits shall be issued by any officer, agent, or employee of the defendant municipalities, except those necessary to avoid imminent peril to life or property. Said ordinances,

however, shall continue in full force and effect for all uses and structures that currently exist (meaning that there is a valid certificate of occupancy or building permit in effect) in order to prevent the illegal use of land and structures. Uses and structures that have been approved by a local construction official, zoning officer, board of adjustment, or planning board but have not yet commenced operation or begun construction are prohibited from commencing operation or beginning construction until reviewed and approved by the Monitor for compliance with this judgment.

3. The terms and conditions of the Order Imposing Scarce Resource Restraints dated May 13, 2005 (annexed to this opinion) are continued until further order of the court.
4. Robert T. Regan, Esq. is appointed the Monitor. If the Monitor resigns or is unable to serve, a successor shall be appointed by the court within thirty days. The Monitor shall serve until further order of the court or until final substantive certification is obtained from COAH, whichever is sooner.
5. All elected officials of the Boroughs of East Rutherford and Carlstadt shall be required to certify in writing, and submit their certifications to the Monitor no later than December 31, 2006, that they have read the Preface (pp. xi

to xiv), Prologue (pp. 3 to 11), and Chapter XI (pp. 175 to 185) of Suburbs Under Siege by Charles M. Haar (Princeton University Press 1996).²

6. The municipalities are not entitled to a judgment of repose because they have not met their constitutional obligations and have not complied with the FHA, including the COAH third round obligations. In lieu of a judicial judgment of repose, I contemplate that upon conclusion of this case, the municipalities will obtain substantive certification through COAH's procedures.

IV. CONCLUSION

I request that Mr. Regan prepare the appropriate final judgment to memorialize this decision and submit it to opposing counsel and to the court as soon as possible pursuant to R. 4:42-1(c).

² Available at the Ridgewood Public Library, Ridgewood, New Jersey under call number 344.73 HAA. See <http://www2.bccls.org/> (last visited on May 19, 2006) and <http://www.ridgewoodlibrary.org/> (last visited on May 19, 2006).

FILED

MAY 13 2005

JONATHAN N. HARRIS
J.S.D.

SILLS CUMMIS EPSTEIN & GROSS P.C.
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-7000
Attorneys for Plaintiff, Tomu Development Co., Inc.

TOMU DEVELOPMENT CO., INC.,
Plaintiff,

v.

BOROUGH OF CARLSTADT,
PLANNING BOARD OF CARLSTADT
and NEW JERSEY MEADOWLANDS
COMMISSION,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO: BER-L-5894-03

Civil Action

TOMU DEVELOPMENT CO., INC.,
Plaintiff,

v.

BOROUGH OF EAST RUTHERFORD,
PLANNING BOARD OF EAST
RUTHERFORD and NEW JERSEY
MEADOWLANDS COMMISSION,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. BER-L-5895-03

Civil Action

**ORDER IMPOSING
SCARC RESOURCE RESTRAINTS**

This matter has been brought to the Court upon the application of Plaintiff, Tomu Development Co., Inc. ("Tomu") for a scarce resource order in the above-captioned litigation, and the Court having heard oral argument on February 18, 2005 and requested the court-appointed Master to issue a report on this motion. The court-appointed Master has reviewed the parties' submissions and approved of the issuance of a scarce resource order as set forth in his report dated April 13, 2005, and the Court having considered the submissions of the parties regarding the master's report finds that good cause exists for this Order to be entered,

IT IS on this 13 day of May, 2005, ORDERED as follows:

4880722 v4

1. The Borough of Carlstadt's motion objecting to the report of the Special Master dated April 13, 2005 is DENIED.

2. The New Jersey Meadowlands Commission's objections to the report of the Special Master dated April 13, 2005 is DENIED in part and GRANTED in part, as set forth below.

3. The report dated April 13, 2005 of Mr. Regan, the court-appointed Master, is APPROVED except as MODIFIED below.

4. Land, public potable water supply and sewerage capacity are hereby declared to be a scarce resource within the Borough of East Rutherford ("East Rutherford") and the Borough of Carlstadt ("Carlstadt"), including the portions of both municipalities that are under the jurisdiction of the New Jersey Meadowlands Commission ("NJMC").

5. a. Subject to Paragraph 9 of this Order, public sewerage is hereby declared a scarce resource in Carlstadt and East Rutherford (collectively, "Municipal Defendants"). Any and all public sewer capacity in Carlstadt and East Rutherford, other than gallons currently allocated to serve existing uses, is hereby placed under the control of the Court. No new sanitary sewer connections can be granted for any development and/or redevelopment project in Carlstadt and/or East Rutherford, including those portions of both municipalities that are located within the jurisdiction of New Jersey Meadowlands Commission ("NJMC"), without the prior approval of the Court.

b. Notwithstanding the provisions of Paragraph 5.a above, any new sanitary sewer connection, which is estimated to generate less than 1,500 gpd of wastewater, shall be automatically exempted from the restraints on the further depletion of the sewerage system as set

forth in this Order and shall not be required to apply for relief from this Order under the provisions set forth in Paragraph 8.

6. a. Subject to Paragraph 9 of this Order, potable water is hereby declared a scarce resource in East Rutherford and Carlstadt. Any and all potable public water supply in East Rutherford and Carlstadt, other than that supply serving existing uses, is hereby placed under the control of the Court. No new connections to public water supply can be granted for any development and/or redevelopment project in East Rutherford and/or Carlstadt, including those portions of both municipalities that are located within the jurisdiction of the NJMC, without prior approval of the Court.

b. Notwithstanding the provisions of Paragraph 6.a above, any new connection to the public potable water supply, which is estimated to use less than 1,500 gpd of potable water, shall be automatically exempted from the restraints on further depletion of the public water supply as set forth in this Order and shall not be required to apply for relief from this Order under the provisions set forth in Paragraph 8.

7. a. Subject to Paragraph 9 of this Order, land whether currently vacant or redevelopable, is hereby declared a scarce resource in Carlstadt and East Rutherford, including those portions of both municipalities that are located within the jurisdiction of the NJMC. No application for development and/or redevelopment, including any application under the regulations of the NJMC (specifically N.J.A.C. 19:4-1.1 et seq. and 19:5-1.1 et seq.) of any parcel of land larger than 20,000 square feet may be approved by the NJMC or the Municipal Defendants, acting either through their Planning Boards or Zoning Boards of Adjustment, without prior approval of the Court. Prior court approval is not necessary for the approval of any application involving minor applications for existing uses related to already developed

properties, such as the addition of rooms or decks to existing housing, modifications of an existing commercial or industrial site for continuation of existing uses, or minor subdivisions of land which do not result in any new structures or uses. All other applications for development or redevelopment, not otherwise exempt under this Order, shall require the prior approval of the Court before any land use approvals may be granted by the Municipal Defendants' Planning Boards or Zoning Boards or the NJMC.

b. Notwithstanding the provisions of Paragraph 7.a above, an application for final site plan or subdivision approval shall be automatically exempted from the restraints on the development and redevelopment of land as set forth in this Order and shall not be required to apply for relief from this Order under the provisions set forth in Paragraph 8 provided that the application for final site plan or subdivision approval only seeks to ensure that the ordinance standards for final approval have been complied with and the conditions of the preliminary approval have been complied with subject to minimal deviations as set forth in N.J.S.A. 40:55D-50.a.

8. Applications for relief from any of the aforementioned scarce resource restraints shall be made as follows:

a. A full and complete description of the resource being sought to be released, along with the justification for the release of such resource shall be provided to the court-appointed Master and all parties to this litigation. An inclusionary or contributory affordable housing development, such as that sought by Tomu would be appropriate for such release.

b. The court-appointed Master may request such additional information as necessary in order to fully understand the nature of the relief requested and the impact such

request would have on the production of affordable housing within Carlstadt and East Rutherford.

c. Within thirty days following receipt of all necessary information, the court-appointed Master shall supply to the Court, all parties in the litigation and anyone requesting such relief a copy of a report and recommendation, setting forth, in detail, the Master's position with respect to any release of any said resource.

d. The entity seeking release of such restraints shall thereafter file a motion on notice of all parties in this litigation for said relief with the Court, which has jurisdiction to allocate or withhold the requested relief. Notwithstanding the foregoing, if the Master recommends that the resource be released and no party in the litigation filed an objection with the Master, a formal motion shall not be required, and the entity seeking such restraints shall submit an Order to the Court and to all parties in this litigation under the five-day rule.

c. All costs for such requested relief, production of the Master's report, and court costs shall be borne by the entity seeking to obtain such relief. No such relief can be granted if in the determination of the Court, granting the relief will impede the construction of the Municipal Defendants' fair share of affordable housing units.

9. a. Any development and/or redevelopment project located within the jurisdiction of the New Jersey Sports and Exposition Authority shall be exempt from this Order and is not required to apply for relief from this Order under the procedures set forth in paragraph B.

b. Any development and/or redevelopment project located on Block 104, Lots 1, 1.01, 1.02, 2 and 3 in the Borough of East Rutherford shall be exempt from this Order

and is not required to apply for relief from this Order under the procedures set forth under the procedures set forth in paragraph 8

10. A copy of this Order shall be served upon all counsel of record within seven (7) days of the date hereof.


JON. JONATHAN N. HARRIS, J.S.C.
Jonathan N. Harris, J.S.C.

Exhibit

G

ROBERT T. REGAN

A Professional Corporation
ATTORNEY AT LAW
STURBRIDGE COMMONS
345 KINDERKAMACK ROAD
P.O. BOX 214
WESTWOOD, NEW JERSEY 07875

C

MEMBER NEW JERSEY &
NEW YORK BARS

TEL: (201) 684-3344
FAX: (201) 684-3836
rtregan@rtreganlaw.com

June 5, 2006

BY FAX AND REGULAR MAIL

To: All Counsel On The Attached List

RE: Tomu Development Co., Inc. v.
Borough of Carlstadt, et als
Docket No. BER-L-5894-2003

Tomu Development Co., Inc. v.
Borough of East Rutherford, et als
Docket No. BER-L-5895-2003

Adoption of Rules and Regulations

Dear Counsel:

As you are aware, paragraph 1b of the decision of Judge Harris dated May 19, 2006 requires the adoption of rules and regulations "that will immediately provide reasonable opportunities for the creation of low and moderate income housing in accordance with the FHA and the rules and regulations of COAH. The following constitutes a draft of proposed rules and regulations which would be applicable in each municipality:

1. Any application for a development permit or approval pertaining to an existing one or two family residential dwelling may be reviewed and approved by the official or land use agency having jurisdiction, without the necessity for review by and approval of the Monitor, provided that such application does not propose the creation of a new residential unit or units.

2. An application pertaining to an isolated single family residential parcel which proposes to convert the use or structure to a two family dwelling, or to demolish the existing single family dwelling and to replace it with a new two family structure may be reviewed and approved by the official or land use agency having jurisdiction, without the necessity for review by and approval of the Monitor, provided that such application pertains to a single lot or parcel having an aggregate area of less than 10,000 square feet.
3. Any application for a development permit or approval for a residential development which does not meet the criteria of paragraphs 1 or 2 above may be accepted for review but shall not be processed, be certified as complete pursuant to N.J.S.A. 40:55D-10.3, be scheduled for a public hearing or be approved until such time as the Monitor has reviewed and has approved further action by the municipality. A copy of such development application together with all documents filed in connection therewith shall forthwith be forwarded, upon filing, to the Monitor.
4. An application for a development permit or approval involving an existing nonresidential structure on a parcel having a land area of less than 10,000 square feet may be reviewed and approved by the official or land use agency having jurisdiction, without the necessity for review by and approval of the Monitor, provided that such application does not propose the creation of a new residential unit or units.
5. An application for a development permit or approval involving an existing nonresidential structure on a parcel having a land area of 10,000 square feet but less than 20,000 square feet may be reviewed and approved by the official or land use agency having jurisdiction, without the necessity for review by and approval of the Monitor, provided that such application does not propose the creation of a new residential unit or units, and that the use will not generate a need for more than an additional 1,500 gpd of wastewater and more than an additional 1,500 gpd of potable water.
6. An application for a mixed use residential /nonresidential development involving an existing structure and not proposing the creation of an additional residential unit or units may be reviewed and approved by the official or land use agency having jurisdiction, without the necessity for review by and approval of the Monitor provided that the parcel comprises a land area of less than 20,000 square feet and will not generate a need for more than an additional 1,500 gpd of wastewater and more than an additional 1,500 gpd of potable water.
7. An application for a development permit or approval for a nonresidential use or mixed use which does not meet the criteria of paragraphs 5 and 6 above may be accepted for review but

shall not be processed, certified as complete pursuant to N.J.S.A. 40:55D-10.3, be scheduled for a public hearing or be approved until such time as the Monitor has reviewed and approved further action by the municipality. A copy of such development application together with all documents filed in connection therewith shall forthwith be forwarded, upon filing, to the Monitor.

8. Pursuant to paragraph 1E of the Final Judgment dated June 1, 2006 (hereinafter "Final Judgment"), the Monitor shall act in the place and stead of the municipality or its designated agent in connection with development applications, zoning and planning activities, or requests for permits that are within the jurisdiction of the New Jersey Meadowlands Commission (NJMC). In connection therewith, any application for a development permit or approval in those portions of Carlstadt and East Rutherford within the jurisdiction of the NJMC shall be provided to the Monitor upon filing, if required by statute or regulation to be provided to the respective Municipality. Notwithstanding the foregoing, such application shall also be forwarded to the Municipality, subject to the conditions set forth in paragraph 1E of the Final Judgment.

9. Notwithstanding the provisions set forth in paragraph 8, an application for a development permit or approval involving a property within the jurisdiction of the NJMC and which meets the criteria of paragraphs 4 or 5 above may be reviewed and approved by the NJMC without the necessity for review by and approval of the Monitor, provided that such application does not propose the creation of a new residential unit or units.

10. With respect to properties within the jurisdiction of the NJMC, municipal officials may continue to perform such functions as authorized pursuant to statute or regulation without the approval of the Monitor, provided that the criteria of paragraph 9 above have been satisfied. Absent compliance with such criteria, review and approval of any municipal action by the Monitor shall be required.

11. Officials of the respective municipalities shall not take action in connection with any redevelopment area, either within or outside the jurisdiction of the NJMC, without specific authorization of the Monitor.

12. Pursuant to paragraph 2 of the Final Judgment, uses and structures that have been approved by a local construction official, zoning officer, board of adjustment or planning board but have not yet commenced operation or begun construction are prohibited from commencing operation or beginning construction until reviewed and approved by the Monitor for compliance with this Judgment. Notwithstanding the foregoing, any approval which meets the criteria of paragraphs 1, 2, 4 or 5 above may commence operations without further review and approval by the Monitor.

13. Except as provided for herein, and until further notice from the Monitor, existing zoning, land use, and development ordinances of the Borough of East Rutherford and the Borough of Carlstadt, including site plan and subdivision ordinances, shall continue in force and in effect.

14. Except as modified herein, the terms and conditions of the Order Imposing Scarce Resource Restraints shall continue in force and in effect.

15. The Rules and Regulations set forth herein shall continue in force and in effect unless and until same are modified, in writing, by the Monitor, or superseded by Court Order.

Should you have any questions or comments, please contact me immediately. It is my desire that these Rules and Regulations take effect on June 7, 2006.

Very truly yours,


ROBERT T. REGAN

RTR:ru

Distribution List:

Richard J. Allen, Jr., Esq.
Kipp and Allen, LLP
52 Chestnut Street
P. O. Box 133
Rutherford, New Jersey 07070
Fax No. 201-933-4611

Beverly M. Wurth, Esq.
Calo Agostino, P.C.
The Bank House
14 Washington Place
Hackensack, New Jersey 07602
Fax No. 201-488-5855

Thomas Jay Hall, Esq.
Sills, Cummis, Epstein & Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102-5400
Fax No. 1-973-643-6500

Christine Piatek, Esq., DAG
Office of the Attorney General
Department of Law and Public Safety
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093
Fax No. 1-609-341-5030

Exhibit

H

Housing Element and Fair Share Plan

Borough of Carlstadt
County of Bergen, New Jersey

Adopted by the Planning Board:
Original Plan - April 23, 2007
Revised Plan - April 26, 2010



Endorsed by Mayor and Council as Revised: May 6, 2010

BOROUGH OF CARLSTADT, NEW JERSEY 07072

WILLIAM ROSEMAN
MAYOR

May 7, 2010

MEMORIAL MUNICIPAL BUILDING
500 MADISON STREET

TEL: 201/939-2850
FAX: 201/939-6945

Sean Thompson, Acting Executive Director
New Jersey Council on Affordable Housing
PO Box 813
Trenton, NJ 08625-0813

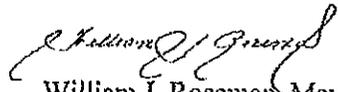
RE: Carlstadt Borough – Petition for Substantive Certification

Dear Mr. Thompson:

On behalf of the Mayor and Council of the Borough of Carlstadt, I submit this petition for third round substantive certification of the revised Housing Element and Fair Share Plan for review and certification. The petition follows the Mayor and Council's endorsement of the revised Housing Element and Fair Share Plan, as adopted by the Planning Board and endorsed by the court-appointed Mount Laurel Implementation Monitor Robert T. Regan, Esq. on April 26, 2010. As part of the petition, the Borough requests that COAH review and approve the Borough's proposed development fee ordinance.

If you or your staff should have any questions regarding the petition, please contact Linda Wills, P.P., AICP, at (201) 460-3879. In accordance with N.J.A.C. 5:96-3.5, an affidavit of Public Notice will be submitted within seven days of COAH's determination that the petition is complete.

Very truly yours,


William J. Roseman, Mayor

cc: Borough Council
Jane Fontana, Administrator
Claire Foy, Borough Clerk
Christopher Assenheimer, Planning Board Clerk
Robert T. Regan, Esq.
Robert Ceberio, NJMC
Linda Wills, NJMC

Housing Element and Fair Share Plan

Borough of Carlstadt County of Bergen, New Jersey

Mayor and Council

William J. Roseman, Mayor

David Stoltz, Council President

Joseph Crifasi

Craig Lahullier

Dennis Ritchie

Robert Zimmerman

Richard Bartlett

Jane Fontana, Borough Administrator

John J. Fahy, Esq., Borough Attorney

Claire Foy, Borough Clerk

Neglia Engineering, Borough Engineer

Planning Board

Erwin Fedkenheuer, Chairman

Nicholas Rivera, Vice Chairman

William Roseman, Mayor

Lawrence Sass, Mayor's Alternate

Walter Siri, Secretary

Dennis Ritchie, Council Liaison

Jane Fontana, Borough Administrator

David Edone

Steve Karaefthimoglu

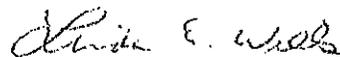
William Radzninski

Richard J. Allen, Jr., Esq., Planning Board Attorney

Christopher Assenhcimer, Planning Board Clerk

Glenn Beckmeyer, P.E., P.P., C.M.E., Planning Board Engineer

It is certified that all copies of this document are in conformance with the one that was signed and sealed by Linda E. Wills, New Jersey Professional Planner.



Linda E. Wills, P.P., AICP
Professional Planner License No. 5129
New Jersey Meadowlands Commission

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Housing Element and Fair Share Plan

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INTRODUCTION

A. Basis and Intent

This Housing Element and Fair Share Plan has been prepared to provide an overall strategy to address the Borough of Carlstadt's affordable housing need for the period of 1987 to 2018. Housing is considered by the New Jersey Council on Affordable Housing (COAH) to be "affordable" if the owner pays approximately 28% (30% for renters) or less of gross income on housing costs. Affordable housing programs generally make housing affordable to lower income households and place restrictions on affordable units to ensure that they remain affordable.

In order to be eligible for affordable housing in Carlstadt, a household's income must not exceed the income limit for COAH's Region 1, which includes the counties of Bergen, Hudson, Passaic, and Sussex. The 2009 regional income limits, still in effect, appear in the table below. A low-income household has a gross income equal to or less than 50 percent of the median gross income for a household of the same size within the housing region. A moderate-income household earns between 50 percent and 80 percent of the region's median income. COAH's third round rules add a category for very low-income households, which consists of those households earning less than 30 percent of the regional median income.

Household Size	Household Income Level		
	Very Low	Low	Moderate
1-person	\$16,925	\$28,209	\$45,134
2-person	\$19,343	\$32,238	\$51,581
3-person	\$21,761	\$36,268	\$58,029
4-person	\$24,179	\$40,298	\$64,477
5-person	\$26,113	\$43,522	\$69,635
6-person	\$28,047	\$46,746	\$74,793
7-person	\$29,982	\$49,970	\$79,951
8-person	\$31,916	\$53,193	\$85,109

Borough of Carlstadt

The Fair Housing Act of 1985 (FHA), enacted as the legislative response to the Mount Laurel decisions of the New Jersey Supreme Court, made the Housing Element a mandatory component of the municipal master plan and additionally required the preparation of a Fair Share Plan which describes how the goals of the Housing Element would be achieved. The contents of a Housing Element, as mandated by N.J.S.A. 52:27D-310, must include the following:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
- b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing;
- c. An analysis of the municipality's demographic characteristics, including, but not necessarily limited to household size, income level, and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
- f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

The FHA also created COAH as the administrative alternative to the courts. COAH's primary responsibilities are to establish housing regions, quantify regional housing need, and provide guidelines for municipalities to apply in addressing their affordable housing obligations. COAH's responsibilities are administrative only; the agency does not produce affordable housing or act as a funding source.

The Fair Share Plan must describe the completed or proposed mechanisms and funding sources that will be utilized to address a municipality's rehabilitation share, prior round obligation, and growth share obligation. The minimum

Housing Element and Fair Share Plan

required components of the Fair Share Plan, as set forth in N.J.A.C. 5:97-3.2, are summarized as follows:

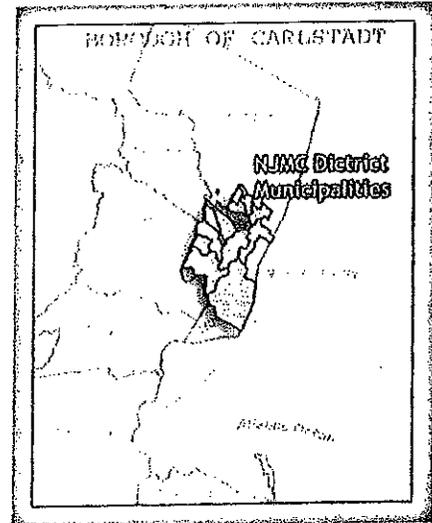
- a. Descriptions of any credits intended to address any portion of the fair share obligation;
- b. Descriptions of any adjustments to any portion of the fair share obligation;
- c. Descriptions and documentation of any mechanisms intended to address the prior round obligation, the rehabilitation share, and the growth share obligation;
- d. An implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification;
- e. Information and data to support a vacant land adjustment or a household and employment growth projection adjustment;
- f. Draft Fair Share Ordinances necessary for the implementation of the programs and projects designed to satisfy the fair share need;
- g. Demonstration that existing zoning or planned changed in zoning provide adequate capacity to accommodate any proposed inclusionary developments;
- h. Demonstration of existing or planned water and sewer capacity sufficient to accommodate all proposed mechanisms; and
- i. A spending plan, if the municipality intends to establish an affordable housing trust fund.

Upon the Planning Board's adoption of this Housing Element and Fair Share Plan and the endorsement by the Mayor and Council, the Borough intends to petition COAH for substantive certification. Substantive certification is a determination by COAH approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Fair Housing Act and the rules and criteria set forth by COAH. The municipality falls under COAH's jurisdiction and receives protection from builder's remedy litigation from the date of petition. The process leading to COAH's decision to certify includes a public comment period, a mediation process to resolve any objections, and COAH review. A grant of substantive certification may run for a period of 10 years beginning on the date that a municipality files its Housing Element and Fair Share Plan with COAH in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond December 31, 2019.

Borough of Carlstadt

B. Municipal Overview

The Borough of Carlstadt is a 4.2 square-mile, established suburban community with a resident population of approximately 6,019 persons (2008 estimate by U.S. Census Bureau). The map at right highlights the Borough's location within southwestern Bergen County and the Hackensack Meadowlands District (NJMC District Municipalities). Bergen County is located in northeastern New Jersey along the border shared by the State of New Jersey and the State of New York. The Borough is bisected by N.J. Route 17, a major north/south arterial highway with access at Hackensack Street and the Boulevard. An "Aerial Photo" map of the Borough is included in the appendices (#1).



Adjacent municipalities include East Rutherford, Ridgewood, South Hackensack, Moonachie, Wood-Ridge, and Wallington in Bergen County and Secaucus and North Bergen on the other side of the Hackensack River in Hudson County. The Borough is also located in proximity to the Garden State Parkway; the New Jersey Turnpike; Interstate 80; and Routes 3, 21 and 46. Rail and bus connections allow access to New York City, which is approximately nine miles away, and Newark Liberty International Airport, located approximately twelve miles to the south. The Meadowlands Sports Complex is located within the neighboring Borough of East Rutherford, adjacent to Carlstadt along a section of its southern border.

Existing land uses are shown on the "Existing Land Use" map included in the appendices (#2). The residential areas are located entirely to the west of Route 17.

Carlstadt's land use planning and zoning authority encompasses approximately 16.8 percent of its land area. The remaining 83.2 percent is located within the Hackensack Meadowlands District, which is within the land use jurisdiction of the New Jersey Meadowlands Commission (NJMC). The portion of the Borough located within the Meadowlands District lies to the east of the Pascack Valley rail line, continuing to the Carlstadt/Wood-Ridge municipal boundary and proceeding easterly along this municipal boundary to its intersection with the Wood-Ridge/Moonachie municipal boundary.

The following chapter provides a more detailed profile of the Borough through a review of its population, employment, and housing characteristics.

I. Population, Employment, and Housing Profiles

A. Population

According to the year 2008 population estimate by the US Census Bureau, the Borough of Carlstadt has approximately 6,019 residents, an increase of 1.7 percent to the 2000 population and a 9.2 increase to the 1990 level. The increases realized over the 18-year period from 1990 to 2008 reversed a period of decline from 1970 to 1990, during which the Borough lost 18.1 percent of its resident population. The recent gains brought the 2008 population to 89.5 percent of the 1970 level. Historic trends in total population are shown in Table I-1.

Table I-1
Total Population, 1970 to 2008

Year	1970	1980	1990	2000	2008	Change from 2000 to 2008	
						Number	Percent
Population	6,724	6,166	5,510	5,917	6,019	102	1.7%

Sources: US Census data, 1970, 1980, 1990, and 2000; US Census population estimate, 2008

Carlstadt has a population density of approximately 1,496 persons per square mile, which compares to 1,134 persons per square mile statewide. The true population density may be viewed as considerably higher, given that the Borough's residential areas lie entirely to the west of Route 17, within the relatively small portion located outside the Meadowlands District.

Average household size decreased from 1970 to 2000, the last year for which such data is available. The US Census Bureau defines a household as a person or group of people who occupy a housing unit. Carlstadt had an average household size of 2.47 persons in 2000, lower than the State's average of 2.68 persons and Bergen County's average of 2.64 persons. Table I-2 at right shows the Borough's overall downward shift in household size, which may be attributed to reduced birth rates and an aging population.

Table I-2
Average Household Size, 1970 to 2000
(persons per household)

1970	1980	1990	2000
3.09	2.67	2.51	2.47

Sources: US Census 2000 as compiled by the New Jersey Department of Labor, Division of Labor Market & Demographic Research; US Census 1970, 1980, and 1990 as compiled by the Hackensack Meadowlands Data Book, 1996

Borough of Carlstadt

The number of households in the Borough appears in Table I-3. Total households decreased almost 15 percent from 1970 to 1990, partially recovering by the year 2000 to approximately 93 percent of the 1970 level.

Table I-3
Number of Households

1970	1980	1990	2000
2,576	2,311	2,192	2,393
Sources: US Census 2000 as compiled by the New Jersey Department of Labor, Division of Labor Market & Demographic Research; US Census 1970, 1980, and 1990 as compiled by the Hackensack Meadowslands Data Book, 1996			

A data snapshot of households and families that reside in Carlstadt appears as Table I-4. As of the year 2000, two-thirds of the Borough's households consisted of families. The US Bureau of the Census defines a family as a group of two or more people residing together and related by birth, marriage, or adoption. Nonfamily households, comprising the remaining 33.4 percent of households, consist of a householder living alone or sharing the home exclusively with people to whom he or she is not related. The overall regional trends for the past three decades are fewer married couples and families with children and more female-headed households, persons living alone, and elderly households.

Table I-4
Households and Families, Year 2000

Household Type	Percent of Total Households
Family households	66.6
Married couple family	51.9
Female householder, no husband present	10.8
Families with own children under 18 years	25.7
Nonfamily households	33.4
Householder living alone	26.4
Householder living alone age 65 years and over	9.6
Source: Census 2000	

Housing Element and Fair Share Plan

Age characteristics of the population, included in Table I-5, reveal that almost one in five Borough residents are of age 18 or under, while persons of age 65 or over comprise more than 15 percent of the population. The Borough's median age of 38.9 years is higher than the state's median of 36.7 years and the national median of 35.3 years.

Table I-5
Age Characteristics, Year 2000

Total Population	Age 18 & Under		Age 65 & Over		Median Age (years)
	Number	Percent	Number	Percent	
5,917	1,233	20.8	904	15.3	38.9
<i>Source: US Census 2000</i>					

Table I-6 presents the population distribution according to racial and ethnic categories, as well as place of birth. According to the Census 2000, 1.4 percent of the resident population is Black or African-American, and 6.2 percent is Asian. A total of 8 percent of the population is Hispanic or Latino.

Table I-6
Population by Race and Ethnic Origin, 2000

Race and Ethnic Origin	Number	Percent
Total population	5,917	100.0%
One race	5,839	98.7%
White	5,260	88.9%
Black or African-American	81	1.4%
Asian	366	6.2%
Some other race	132	2.2%
Two or more races	78	1.3%
Hispanic or Latino (of any race)	473	8.0%
Not Hispanic or Latino (of any race)	5,444	92.0%
Not Hispanic or Latino (White alone)	4,970	84.0%
<i>Source: Census 2000</i>		

According to data reported in Table I-7 on the following page, approximately one in five Borough residents is foreign born. Of these foreign born residents, a total of 44.6 percent was born in Europe. Asian-born residents constitute 28.2 percent of foreign born residents.

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Table I-7
Place of Birth

Place of Birth	Number	Percent
Total population	5,917	100.0%
Native	4,704	79.5%
Born in United States	4,635	78.3%
Born in New Jersey	3,830	64.7%
Born in different state	805	13.6%
Born outside United States	69	1.2%
Foreign born	1,213	20.5%
Entered 1990 to March 2000	396	6.7%
Naturalized citizen	618	10.4%
Not a citizen	595	10.1%
<i>Source: Census 2000</i>		

Selected income characteristics for Borough households and individual residents are presented in Table I-8. In 1999, the median household income of \$55,058 was close to the State of New Jersey's median household income of \$55,146, but 15.6 percent below Bergen County's median income of \$65,241. According to the US Census Bureau, approximately 46 percent of all households received an income of less than \$50,000 annually.

Table I-8
Resident Income

Income in 1999	Number	Percent
Total Households	2,388	100.0%
Median household income	\$55,058	(X)
With earnings	1,977	82.8%
Mean earnings	\$72,753	(X)
With Social Security income	688	28.8%
Mean Social Security income	\$11,421	(X)
With Supplemental Security Income	57	2.4%
Mean Social Security Income	\$6,445	(X)
With public assistance income	60	2.5%
Mean public assistance income	\$2,000	(X)
With retirement income	400	16.8%
Mean retirement income	\$11,623	(X)
Per capita income	\$28,713	(X)
Median earnings:		
Male full-time, year-round workers	\$46,540	(X)
Female full-time, year-round workers	\$36,804	(X)
<i>Source: Census 2000, Table DP-3</i>		

Housing Element and Fair Share Plan

Resident employment measures employed persons by place of residence, as opposed to place of work. The resident labor force has two components: the employed and the unemployed populations. Employed persons are all civilians 16 years and over who were either at work in paid employment or self-employment or with a job but not at work due to temporary absence. The unemployed consists of all civilians 16 years and over who do not meet the criteria for being employed, were looking for work during the last four weeks, and were available to start a job. Also included as unemployed are civilians who did not work at all during the reference period, were waiting to be called back to a job from which they had been laid off, and were away from work except for temporary illness. People on active duty in the United States Armed Forces and those who are institutionalized are excluded from these definitions.

In the year 2000, Carlstadt had a resident labor force of 3,332 persons. A total of 83.5 percent of workers were private-sector employees. The remaining workers were government workers, self-employed, or unpaid family workers. A total of 2.2 percent of the labor force was unemployed. According to more recent data available from the New Jersey Department of Labor, the Borough's 2008 labor force had increased to 3,549 persons. The Borough's unemployment rate averaged 3.9 percent in 2008, compared to an average of 5.5 percent for the New Jersey.

Carlstadt residents are employed in a number of industry sectors. The leading sectors reported in the year 2000 were retail trade; finance, insurance, real estate, and rental and leasing; educational, health and social services; and arts, entertainment, recreation, accommodation and food services. Tables I-9 and I-10 present additional information regarding resident employment status and labor force participation by industry.

Table I-9
Resident Employment Status, 2000

Employment Status	Number	Percent
Population 16 years and over	4,915	100.0%
In labor force	3,332	67.8%
Civilian labor force	3,332	67.8%
Employed	3,223	65.6%
Unemployed	109	2.2%
Percent of civilian labor force	3	(X)
Armed forces	0	0.0%
Not in labor force	1,583	32.2%
<i>Source: Census 2000, Table DP-3</i>		

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Table I-10
Labor Force by Industry, 2000

Industry	Number	Percent
Employed civilian population 16 years and over	3,223	100.0%
Agriculture, forestry, fishing and hunting, and mining	0	0.0%
Construction	167	5.2%
Manufacturing	297	9.2%
Wholesale trade	227	7.0%
Retail trade	387	12.0%
Transportation and warehousing, and utilities	265	8.2%
Information	236	7.3%
Finance, insurance, real estate, and rental and leasing	321	10.0%
Professional, scientific, management, administrative, and waste management services	297	9.2%
Educational, health and social services	439	13.6%
Arts, entertainment, recreation, accommodation and food services	329	10.2%
Public administration	145	4.5%
Other services	113	3.5%

Source: Census 2000, Table DP-3

In the year 2000, over 82 percent of Carlstadt's employed labor force reached their jobs by car, truck, or van. The average travel time for commuters was 23.8 minutes.

Table I-11
Commuting to Work

Method	Number	Percent
Workers 16 years and over	3,136	100.0%
Drive alone in car, truck, or van	2,273	72.5%
Carpooled in car, truck, or van	302	9.6%
Public transportation (including taxicab)	322	10.3%
Walked	146	4.7%
Other means	0	0.0%
Worked at home	93	3.0%
Mean travel time to work (minutes)	23.8	(X)

Source: Census 2000, Table DP-3

The following section profiles employment within Carlstadt.

Housing Element and Fair Share Plan

B. In-Place Employment

An analysis of the economy by sectors or establishments can yield insights as to future employment characteristics. Employment within Carlstadt is influenced by events taking place throughout the region and the nation, as well as the international level. This profile of the Borough's current in-place employment and outlook is based upon information published by the New Jersey Department of Labor and Workforce Development.

Data regarding employment within Carlstadt are available by the North American Industry Classification System (NAICS) code. The NAICS was developed by the United States, Canada, and Mexico to provide comparable industrial production statistics in the three countries. Annual data for 2003, the most recent year available, are included as Table I-12. The data report a total of 549 employment establishments with 12,874 employees. Data have been suppressed for two sector industries with few establishments or where a single employer has a significant percentage of employment or wages.

Table I-12
Establishments and Employees in Carlstadt by Industry, 2003

Private Sector Industry	Annual Average Number of Establishments	Annual Average Employment	Wages	
			Weekly	Annual
Construction	32	540	\$ 1,320	\$ 68,658
Manufacturing	99	3,663	\$ 980	\$ 50,951
Wholesale trade	156	4,004	\$ 968	\$ 50,323
Retail trade	42	893	\$ 752	\$ 39,079
Transportation and warehousing	50	1,455	\$ 685	\$ 35,610
Information	7	37	\$ 733	\$ 38,138
Finance and insurance	16	322	\$ 761	\$ 39,564
Real estate & rental & leasing	11	93	\$ 1,291	\$ 67,132
Professional and technical services	27	601	\$ 1,264	\$ 65,706
Management of companies and enterprises				
Administrative & waste services	17	390	\$ 425	\$ 22,114
Educational services				
Health care & social assistance	7	91	\$ 670	\$ 34,866
Arts, entertainment, & recreation	6	40	\$ 531	\$ 27,612
Accommodation & food services	26	420	\$ 307	\$ 15,957
Other services, except public administration	28	250	\$ 635	\$ 33,005
Unclassified entries	22	30	\$ 756	\$ 39,331
Total	549	12,874	\$ 901	\$ 46,841

Source: New Jersey Department of Labor, New Jersey Employment and Wages: 2003 Annual Report

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The table indicates relative strength in the manufacturing, wholesale, retail, and transportation and warehousing sectors. Taken as a whole, the service industries also have a solid presence.

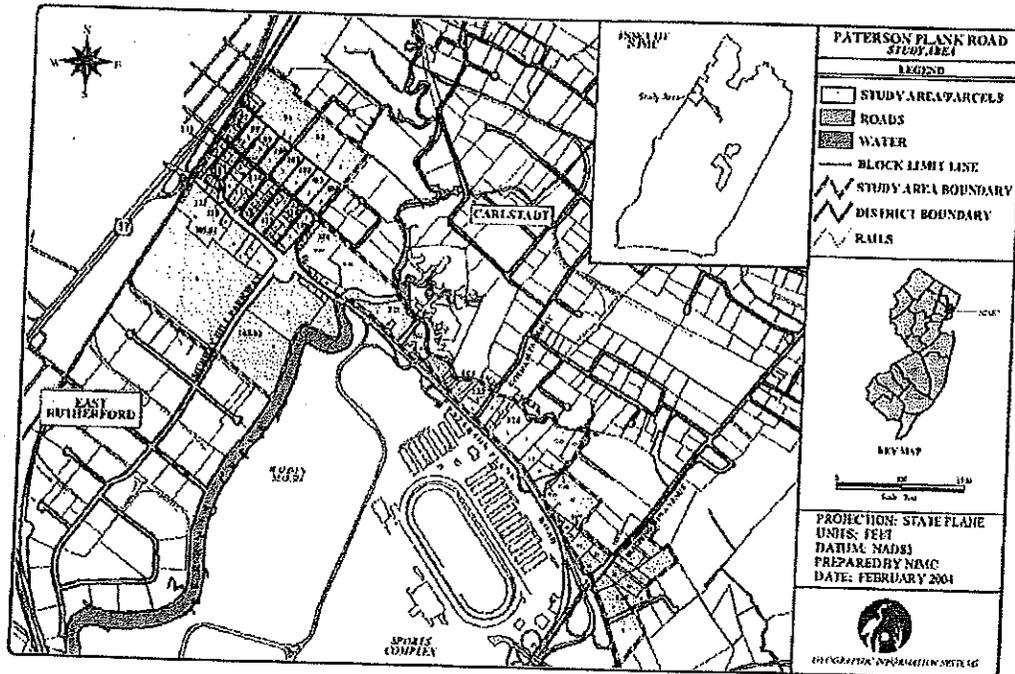
This municipal data by industry sector can suggest future employment characteristics of the Borough when considered with the impacts of the global recession and increasing global competition upon the local economy. Since the recession began in December 2007, New Jersey employment declines have been the steepest in the goods producing industries, including construction and manufacturing. These sectors constituted almost a third of Carlstadt's employment in 2003, the most recent year for which municipal employment is available. In general, economists forecast that employment at both the state and national levels will continue to decline through the end of 2009. Unemployment rates are expected to continue to rise over the same period. (New Jersey Department of Labor and Workforce Development, *New Jersey Economic Indicators*, September 2009)

The New Jersey Department of Labor and Workforce Development has prepared employment and industry projections for Bergen County to the year 2016. From 2006 to 2016, Bergen County is expected to add more jobs than any other New Jersey county, although the County will add jobs at a slower rate than the State as a whole. The County's status as the most populated in the State accounts for this seeming disparity. Factory jobs will continue to be replaced by service jobs, many requiring a lower skill level and lower wages. (New Jersey Department of Labor and Workforce Development, *Northern Regional Community Fact Book, Bergen County Edition*, July 2009)

Most of the Borough's future employment growth is expected to occur as a result of redevelopment within the 270-acre Paterson Plank Road Redevelopment Area, which includes properties along a portion of the boundary shared by Carlstadt and East Rutherford. A map of the study area appears on the following page. Through its current redevelopment plan for the area, the NJMC provides for a regional retail entertainment destination to complement the nearby Xanadu project under construction at the Sports Complex Site in East Rutherford. Xanadu is planned as a mixed-use venue including entertainment, retail, office, and hotel uses on the east site of the Sports Complex. Xanadu's opening has been delayed, and no new opening date has been announced.

The NJSEA is also sponsoring the New Meadowlands Stadium Project, in which a portion of the west side of the Meadowlands Sports Complex will provide a new stadium. Additionally, the State of New Jersey has been working to enhance road and rail connections to the Meadowlands Sports Complex and nearby employment hubs.

Housing Element and Fair Share Plan



The NJMC has commenced an update to its 2004 NJMC Master Plan. A major issue for the update revolves around the relationship of the Paterson Plank Road Redevelopment Area to activities at the Sports Complex site. Any redevelopment within Carlstadt's portion of the Paterson Plank Road Redevelopment Area will generate an affordable housing obligation to the Borough.

C. Housing

This section inventories the existing housing stock in Carlstadt and reviews basic characteristics of housing. Carlstadt's residential areas are characterized by one- and two-family dwellings located on lots measuring 50 by 100 feet. The Census 2000 reported that the Borough contains a total of 2,473 housing units. Housing has experienced small, but steady growth in recent years, resulting in a 9.5 percent change from 1970 to 2000.

The number of housing units according to type of structure is summarized in Table I-13. A total of 85 percent of the Borough's housing units are located in single and two-family structures, with the remaining 15 percent being located in multi-family dwellings. The relatively low vacancy rates reported for both owner-occupied and rental housing in the year 2000, summarized in Table I-14, are indicative of the housing shortage in the greater region.

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Table I-13
Housing Units in Structure, 2000

Structure Type	Number	Percent
Total housing units	2,473	100.0%
1-unit, detached	880	35.6%
1-unit, attached	83	3.4%
2 units	1,138	46.0%
3 or 4 units	240	9.7%
5 to 9 units	85	3.4%
10 to 19 units	17	0.7%
20 or more units	30	1.2%
Mobile home	0	0.0%
Boat, RV, van, etc.	0	0.0%

Source: Census 2000, Table DP-4

Table I-14
Housing Occupancy, 2000

Occupancy Status	Number	Percent
Total housing units	2,473	100.0%
Occupied housing units	2,393	96.8%
Vacant housing units	80	3.2%
For seasonal, recreational, or occasional use	7	0.3%
Homeowner vacancy rate	(X)	0.7%
Rental vacancy rate	(X)	2.1%

Source: Census 2000, Table DP-1

Carlstadt's homeownership rate of 57.1 percent in 2000 was somewhat lower than the corresponding rates for the State of New Jersey (66.5 percent) and the nation (67.5 percent). The tenure status of the Borough's housing stock is summarized in Table I-15.

Table I-15
Housing Tenure, 2000

Tenure Status	Number	Percent
Occupied housing units	2,393	100.0%
Owner-occupied housing units	1,366	57.1%
Renter-occupied housing units	1,027	42.9%

Source: Census 2000, Table DP-1

Housing Element and Fair Share Plan

Approximately 92 percent of the housing stock was built prior to 1990. Almost 80 percent was built before 1970. Table I-16 presents the distribution of the Borough's housing inventory according to the year built.

Table I-16
Year Structure Built

Year Built	Number	Percent
Total housing units	2,473	100.0%
1999 to March 2000	24	1.0%
1995 to 1998	130	5.3%
1990 to 1994	41	1.7%
1980 to 1989	103	4.2%
1970 to 1979	213	8.6%
1960 to 1969	296	12.0%
1940 to 1959	554	22.4%
1939 or earlier	1,112	45.0%

Source: Census 2000, Table DP-4

To foster an adequate quality of life for Borough residents, housing must not only be affordable, but of suitable size and condition. The extent to which deficient housing exists in the Borough may be assessed through the use of housing quality surrogates available from the Census 2000. The surrogate data, summarized in Table I-17 on the following page, include the following:

- **Age.** Although age alone does not make housing substandard, it is an indication that increased maintenance of major systems may be needed. Units built before 1940 are generally considered to have an age factor. A total of 45 percent of Carlstadt's housing was built prior to 1940.
- **Overcrowding.** Housing may be considered overcrowded if a unit contains more than one occupant per room. Based on this standard, a total of 2.1 percent of the units are overcrowded. The data do not provide information regarding any additional overcrowding due to inadequacies in room sizes or number of bedrooms in a unit.
- **Lacking complete plumbing.** Complete plumbing is defined as having these three facilities: 1) hot and cold piped water, 2) a flush toilet, and 3) a bathtub or shower. A small percentage of units (0.6 percent) lacked complete plumbing.
- **Lacking complete kitchen facilities.** Complete kitchen facilities must have 1) a sink with piped water, 2) a range or stove, and 3) a refrigerator. A small percentage of units (0.6 percent) lacked complete kitchen facilities.

Borough of Carlstadt

- Inadequate heating. This surrogate consists of the use of coal, coke, or wood or having no fuel at all for heating. None of the Borough's units were reported as lacking adequate heat.

Table I-17
Housing Quality Surrogates, 2000

Surrogate	Number	Percent
Total housing units	2,473	100.0%
Age (built before 1940)	1,112	45.0%
Overcrowded	50	2.1%
Lacking complete plumbing	14	0.6%
Lacking complete kitchen facilities	14	0.6%
Inadequate heating fuel	0	0.0%

Source: Census 2000, Table DP-4

COAH defines a substandard housing unit as "a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system." A unit that may not be identified as being deficient by any of the Census surrogates may be considered substandard based upon the COAH definition.

In the year 2000, 44 percent of Carlstadt's renter-occupied units had contract rents from \$750 to \$999 per month. An additional 29.4 percent of contract rents ranged from \$500 to \$749. The median monthly rent was \$839. Additional information regarding gross monthly rents is reported in Table I-18.

Table I-18
Gross Monthly Rent, 2000

Rent	Number	Percent
Renter-occupied units	1,023	100.0%
With cash rent:		
Less than \$200	8	0.8%
\$200 to \$299	7	0.7%
\$300 to \$499	15	1.5%
\$500 to \$749	301	29.4%
\$750 to \$999	450	44.0%
\$1,000 to \$1,499	182	17.8%
\$1,500 or more	32	3.1%
No cash rent	28	2.7%
Median rent	\$839	(X)

Source: Census 2000, Table DP-4

Housing Element and Fair Share Plan

Based on information provided by Carlstadt homeowners as part of the Census 2000, a total of 81.4 percent of the housing stock was valued from \$150,000 to \$299,999. The median housing value in 2000 was \$201,900. New Jersey's median housing value stood at \$171,988 and ranked fourth among the fifty states. Additional information is provided in Table I-19.

Table I-19
Values of Owner-Occupied Dwellings, 2000

Value Reported by Owner	Number	Percent
Owner-occupied units	807	100.0%
Less than \$50,000	12	1.5%
\$50,000 to \$99,999	9	1.5%
\$100,000 to \$149,999	35	4.3%
\$150,000 to \$199,999	339	42.0%
\$200,000 to \$299,999	318	39.4%
\$300,000 to \$499,999	83	10.3%
\$500,000 to \$999,999	11	1.4%
\$1,000,000 or more	0	0.0%

Median value in Carlstadt Borough	\$201,900	(X)
Median value in Bergen County	\$245,538	(X)
Median value in State of New Jersey	\$171,988	(X)
Median value in United States	\$120,496	(X)
<i>Source: Census 2000, Table DP-4 and Supplementary Survey</i>		

Housing values have softened since 2007; however, values remain significantly higher than the time of the Census 2000. As of the second quarter of 2009, the National Association of Realtors reports that the median sales price of existing single-family homes in the New York-Wayne-White Plains, NY-NJ Metropolitan Division, which includes Bergen County, stands at \$425,200. The value stands at more than 2.4 times the national median sales price of \$174,100.

As stated in the Introduction, housing is generally considered to be affordable if householders pay approximately 28% (30% for renters) or less of their gross income on housing costs. Households spending 35 percent or more of their household income on housing are considered to be housing strained. Table I-20 on the next page assesses housing affordability for households residing within the Borough, with comparisons to households in Bergen County, the state, and the nation. The five indices profile affordability for prospective homeowners and current owner and renter households through the use of Census 2000 data.

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Table I-20
Housing Affordability Profile for All Householders, 2000

	Carlstadt Borough	Bergen County	New Jersey	United States
All households:				
Median household income	\$55,058	\$65,241	\$55,146	\$41,994
Monthly median household income	\$4,588	\$5,437	\$4,596	\$3,500
Owner affordability:				
Median housing value	\$201,900	\$245,538	\$171,988	\$119,600
Median housing costs for owners with a mortgage	\$1,548	\$1,724	\$1,534	\$1,088
1. Percent median housing costs to median income for owners with a mortgage	33.7%	31.7%	33.4%	31.1%
2. Percent of owners with monthly housing costs at 30% or more of income	29.3%	30.9%	28.2%	21.8%
3. Ratio median housing value to median annual income	3.7	3.8	3.1	2.8
Renter affordability:				
Median rent	\$839	\$872	\$751	\$602
Annual income required to afford median rent	\$33,560	\$34,880	\$30,040	\$24,080
4. Percent of all households unable to afford median rent	28.4%	24.5%	30.9%	27.5%
5. Percent of households with gross rent > 30% of income	35.7%	36.6%	37.5%	36.8%
<i>Sources: Census 2000, Tables DP-3 and DP-4</i>				

The three indices regarding homeownership are described as follows:

1. Comparison of median housing costs to median household income. The first method compares median housing costs for owners with a mortgage to median household income. The comparison reveals that median housing costs in Carlstadt stood at 33.7 percent of median income, which exceeds the 28 percent limit considered to be affordable. Hence, the median income household in 2000 was unable to afford the median household expenses assumed by a householder with a mortgage. Given the significant increases in housing values since the last Census, the affordability gap is probably even greater today.

2. Proportion of owners with high housing costs relative to income. The Census 2000 reported that 29.3 percent of Carlstadt's homeowners were paying 30 percent or more of their household income on housing costs. A total of 20.9

V. Appendices (continued)

21. Deeds for Washington School properties (two)
22. Municipally Sponsored and 100 Percent Affordable Developments: 575 Hoboken Road or alternate site (COAH checklist)
23. Market to Affordable Program (COAH checklist)
24. Accessory Apartments (COAH checklist)
25. Senior Citizen Housing Zone and Affordable Housing Overlay Zones Ordinance (adopted)
26. Affordable Housing Ordinance (draft)
27. Description of any changes to the zoning ordinance during the previous two years
28. Documentation of funding for Washington School project, accessory apartment program, market to affordable program

Affordable Housing Trust Fund:

29. Development Fee Ordinance (draft)
30. Governing Body Resolution Requesting Review and Approval of Development Fee Ordinance
31. Governing Body Resolution Requesting Review and Approval of an Affordable Housing Trust Fund Spending Plan
32. Affordable Housing Trust Fund Spending Plan (draft)
33. Governing Body Resolution Appropriating Funds or Showing Intent to Bond in the Event of Shortfall of Funds

Administration of Affordable Units:

34. Governing Body Resolution Appointing a Municipal Housing Liaison
35. Ordinance Creating the Position of Municipal Housing Liaison

Note: The following documents are not included in the appendices; however, the documents are on file with COAH and the Borough of Carlstadt:

- Most recently adopted Master Plan, including the immediately preceding Housing Element and Fair Share Plan
- Redevelopment Plan for the Paterson Plank Road Redevelopment Area
- Borough of Carlstadt Tax Maps (electronic version)

Housing Element and Fair Share Plan

percent were housing strained with costs at 35 percent or more of income. These proportions include owners whose houses are not mortgaged. If the data were limited to homeowners with mortgages, the proportion with high housing costs would be even greater.

3. Ratio of housing to income. A measure of affordability for prospective homeowners is the ratio of housing value to annual income. Typically, a ratio of 2.5/1 to 3/1 is considered affordable. For Carlstadt, the 2000 ratio stood at 3.7/1.

To summarize, the gap in affordability for most lower and middle income households seeking to purchase their first homes has widened since the time of the Census 2000. Lower income homeowners continue to be burdened with high housing costs.

The remaining two indices appearing in Table I-20 assess affordability for renter households. A shortfall in affordable rental units coincided with shortfalls throughout the region and the nation:

4. Proportion of all households unable to afford median rent. Renter households in Carlstadt would have needed an annual income of \$33,560 to afford the median cash rent of \$839. An estimated 28.4 percent of all households were unable to afford to live in a dwelling rented at or above the median rent. These households would have been unable to afford at least half of the units rented for cash rent.

5. Proportion of renter households with high housing costs relative to income. For rental units to be considered affordable, the gross rent including utilities must not exceed 30 percent of income. Table I-20 indicates that 35.7 percent of Carlstadt's renter households in the year 2000 had a gross rent of 30 percent or more of household income. A total of 28.3 percent of renter households were housing strained, paying 35 percent or more of their income for rent.

Table I-21 estimates the number of owner-occupied and rental units in the Borough that were affordable to households of low- or moderate-income. Given that the Borough's average household size in 2000 was 2.47 persons, the estimates are based upon COAH's income limits in effect at the time for a three-person household. The number of households within each income level was estimated by interpolating Census income data that reported the number of households with income falling within discrete income ranges. The maximum affordable monthly rent was set at 30 percent of household income. The maximum affordable purchase price was based upon the following assumptions: a 30-year fixed rate mortgage with an Annual Percentage Rate of 7.44 percent (1999 Freddie Mac annual average), the 2000 local tax rate of \$2.18 per \$100, a 5

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percent down payment, Private Mortgage Insurance at 0.5 percent, and \$75 per month for insurance and fees.

The table indicates that there were an estimated 1,044 households with incomes at or below the maximum moderate-income limit of \$48,118. Approximately 855 rental units and 21 owner-occupied units were affordable to these households. Low-income households numbered approximately 599. For these households, an estimated 331 rental units and 16 owner units may have been considered affordable. The data suggest a significant shortfall in the number of units affordable to lower income households residing in the Borough. The current shortfall may be even greater, because housing prices have escalated in recent years. Moreover, the data do not reveal how many of these affordable units were actually occupied by persons of low- or moderate-income. Finally, there are no data to indicate how many lower income households with elderly or other special needs occupants lived in housing that met their requirements.

Table I-21
Housing Affordable to Households of Low- and Moderate-Income, 2000

Income Level	Regional Income Limit *	Estimated Number of Households	Affordable Rental Units		Affordable Owner Units	
			Affordable Monthly Rent	Est. No. of Units	Affordable Purchase Price	Est. No. of Units
Median	\$60,148	1,438	\$1,504	963	\$157,700	108
Moderate	\$48,118	1,044	\$1,203	855	\$124,300	21
Low	\$30,074	599	\$752	331	\$72,900	16

* COAH's 2000 income limit for a 3-person household.
Source: Census 2000, Table DP-3

II. Fair Share Obligation

This chapter presents the calculation of Carlstadt's total affordable housing obligation. The obligation consists of the following three components, which are described in detail in the sections below:

- Rehabilitation share
- Prior round obligation
- Growth share

A. Rehabilitation Share (2000)

The Borough's rehabilitation share is a measure of deficient housing units occupied by low- or moderate-income households. COAH has calculated the rehabilitation share as 32 units. The number is based on 2000 Census data and replaces the second round rehabilitation number of 24 units. Because the Census data is not published at the address level, the locations of these substandard units are not known. Instead, COAH has determined the rehabilitation share through a formula that takes into account 1) overcrowded units, defined as the number of units built prior to 1950 with more than one person per room; 2) dilapidated housing, measured by units that lack complete plumbing and/or kitchen facilities; and 3) the portion of overcrowded and dilapidated housing occupied by low- or moderate-income households in each housing region. Census data assessing deficient housing at the municipal level was presented on pages 15 and 16.

Carlstadt has completed a survey of the Borough's housing stock conducted in accordance with the instructions provided by COAH. The survey appears in the appendices (#7, Exhibit A). The Borough requests that COAH modify the rehabilitation share to reflect the 6 units documented by the survey data. Credits to satisfy the Borough's rehabilitation share are identified in Chapter IV., Fair Share Plan.

B. Prior Round Obligation (1987-1999)

The prior round obligation is the Borough's new construction obligation from 1987 to 1999. COAH has calculated the prior round obligation as 228 units. The obligation reflects the distribution of statewide low- and moderate-income housing need to each municipality using economic and land-use indicators. The methodology is described more fully in Appendix C of COAH's substantive rules in N.J.A.C. 5:97.

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COAH's rule in N.J.A.C. 5:97-5.1 authorizes a municipality to request an adjustment to its calculated prior round obligation due to a lack of vacant land. Chapter III demonstrates that Carlstadt does not have the available land capacity to address its entire prior round obligation and provides the basis for an adjustment to 6 units. If COAH approves the Borough's request, the Borough will need to implement suitable mechanisms to address the unmet need of 222 units.

C. Growth Share Obligation (1999-2014)

Growth share consists of the portion of a municipality's obligation that is generated by actual growth from 2004 through 2018. Growth share is based upon residential and non-residential development. For every 4 market-rate housing units built, one affordable unit must be provided. For every 16 jobs created through non-residential construction, one affordable unit must be provided. Job growth is measured by square feet of non-residential construction. For example, 9,412 square feet of retail space generates an obligation for one affordable unit. A warehouse measuring 16,000 square feet would also result in an obligation for one affordable unit.

COAH has projected the Borough's growth share as the result of 12 new households and 1110 new jobs. Applying ratios to the projected residential and non-residential growth components yields the projected affordable housing obligation of 72 units. The COAH projection may be modified based on the exclusions cited in N.J.A.C. 5:97-2.4. After applying eligible exclusions, Carlstadt's growth share obligation is reduced to 69 units. The attached Worksheet A details the calculations.

The obligation associated with new development is based on actual growth rather than the COAH projections. The obligation is incurred on the date the municipality issues the final certificate of occupancy. The Borough has not incurred a growth share obligation to date.

D. Total Affordable Housing Obligation (1987-2018)

Table II-1 on the next page summarizes the calculation of the total fair share housing obligation. The total obligation of 81 units includes 6 units to address through the rehabilitation of existing units and 72 units through new construction. Bonus credits for qualifying development may reduce the number of units to be built. Chapter III considers lands most appropriate for satisfying affordable housing needs.

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TABLE II-1
Total Fair Share Obligation, 1987-2018

Rehabilitation Share	(+)	Prior Round Obligation	(+)	Growth Share Obligation	(=)	Total Fair Share Obligation
6		6		69		81

III. Consideration of Lands Most Appropriate for Affordable Housing

Three primary approaches can be used to identify sites appropriate to address the Borough's affordable housing obligation. These approaches consist of the following:

- Identify vacant land and assess its suitability for residential development;
- Investigate the reuse potential of additional sites that may be underutilized; and
- Consider the need for changes to zoning controls to foster the development of affordable housing.

The following sections explore each of these approaches and set the stage for the Fair Share Plan by which the Borough intends to address its affordable housing obligation. Sections D and E also include an analysis of how existing zoning or planned changes in zoning provide adequate capacity to accommodate the municipality's projected population growth.

A. Options to Meet the Fair Share Obligation

COAH rules provide a number of compliance mechanisms for municipalities to meet their affordable housing obligations. When identifying sites suitable for affordable housing, it is important to consider which of these mechanisms may be appropriate to address Carlstadt's obligation. The mechanisms permitted by COAH consist of the following:

- Rehabilitation of substandard units (N.J.A.C. 5:97-6.2). The purpose is to renovate deficient housing units that are occupied by low- and moderate-income households. This option is required to address the Rehabilitation Share, to which the Borough requests an adjustment to 6 units. In addition to renovating the existing housing stock, a municipality may satisfy its rehabilitation obligation with modular units built on sites containing an existing dwelling (ECHO units).
- ECHO (elder cottage housing opportunities) housing (N.J.A.C. 5:97-6.3). ECHO units are modular, self-contained units built on sites with an existing dwelling. Occupancy is restricted to individuals aged 55 years or older and/or disabled persons. The units must be moved to another site when vacated. Many of the Borough's residential lots are too small to accommodate an ECHO unit. Other mechanisms are more suited to house these populations.

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- Zoning for inclusionary development (N.J.A.C. 5:97-6.4) may garner credits by requiring inclusionary development at all or some zones or sites. Zoning must specify a development size threshold below which the construction of affordable units will not be required on site. Zoning must include a financial incentive to produce the affordable housing, such as an increased density or reduced costs to the developer. Units may be created through an overlay zone.
- Redevelopment (N.J.A.C. 5:97-6.6) may provide a mechanism for creating affordable units if one or more areas suitable for residential use are determined as being in need of redevelopment by applying criteria in New Jersey's Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.
- Municipally sponsored new construction and 100 percent affordable developments (N.J.A.C. 5:97-6.7). The municipality or developer/sponsor must have control or the ability to control the site and meet other COAH criteria.
- Accessory apartment program (N.J.A.C. 5:97-6.8). An accessory apartment is a self-contained dwelling unit created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building. The creation of a moderate-income accessory apartment must be subsidized with at least \$20,000. The minimum subsidy for a low-income accessory apartment is \$25,000. The subsidy may fund construction costs and/or provide compensation to the landlord for the reduced rental rates.

The success of this option requires the willing participation of an adequate number of homeowners. Accessory apartments must be affirmatively marketed throughout the housing region, which would exclude participation by owners who would limit renting a part of their home to a relative or to someone else they know. In many instances, the Borough's small lot sizes would preclude the construction of an addition to an existing home or an accessory structure. Proposed leases and annual rents are subject to approval by a third party, the municipality's administrative agent charged with ensuring that the unit is rented in accordance with COAH requirements.

The table on the following page compares the maximum initial rents allowed for accessory apartments to the regional Fair Market Rents (FMRs) published by the US Department of Housing and Urban

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Development. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. Given the sizeable differences between fair market rents and the restricted rents, a long-term commitment of rent subsidies would be needed to encourage homeowners' participation. Also, each unit must be deed restricted for a minimum of 10 years, even if the property is sold or other transfer of ownership takes place. The new owner would be bound by the same terms.

Accessory Apartments: Initial Rents Compared to Fair Market Rents

Unit Size	Fair Market Rent for Bergen- Passaic, NJ	Low-Income Unit		Moderate-Income Unit	
		Maximum Initial Rent	Affordability Gap	Maximum Initial Rent	Affordability Gap
1-bedroom	\$1,230	\$665	\$565	\$907	\$323
2-bedroom	\$1,379	\$798	\$581	\$1,088	\$291
3-bedroom	\$1,703	\$922	\$781	\$1,257	\$446

Rents include rent paid to landlord plus an allowance for tenant-paid utilities.

Market to affordable program (N.J.A.C. 5:97-6.9). Units are purchased or subsidized through a written agreement with the property owner and sold or rented to low- and moderate-income households. A municipality must provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each low-income unit. Additional subsidy may be required, depending on the market prices or rents in a municipality.

- Supportive and special needs housing (N.J.A.C. 5:97-6.10). Bedrooms in certain types of group homes, residential health care facilities, and supportive shared living housing are potentially eligible for credits; however, the Borough has no such facilities.
- Assisted living residence (N.J.A.C. 5:97-6.11). Apartments in an assisted living facility are eligible for credit. Assisted living units are considered age-restricted housing for which credits are limited to 25 percent of the growth share obligation.
- Affordable housing partnership program (N.J.A.C. 5:97-6.13). Two or more municipalities can cooperate to build affordable housing units provided that the municipalities enter into a voluntary agreement, are located within the same housing region, and meet other conditions in

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COAH rules. The Borough prefers to address its obligations within its municipal boundaries.

- Extension of expiring controls (N.J.A.C. 5:97-6.14). Units under affordability controls scheduled to expire during the 1999 through 2018 period may be extended in accordance with COAH requirements. The unit must meet all code standards. Carlstadt has no eligible units.
- Other innovative approaches (N.J.A.C. 5:97-6.15). A municipality may petition COAH for credits for innovative programs or approaches.

B. Site Suitability Criteria

Regardless of whether sites are currently vacant, developed but hold the potential for reuse with residential development, or otherwise need zoning changes to provide adequate capacity to accommodate residential growth, sites ultimately selected to produce affordable housing must conform to COAH's criteria regarding site suitability. These criteria, as stated in N.J.A.C. 5:97-3.13, are listed in italics:

- (a) *Sites designated to produce affordable housing shall be available, approvable, developable and suitable, according to the following criteria:*
1. *The site has a clear title and is free of encumbrances which preclude development of affordable housing;*
 2. *The site is adjacent to compatible land uses and has access to appropriate streets;*
 3. *[The site has access to water and sewer infrastructure with sufficient capacity, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP] Adequate sewer and water capacity, as defined under N.J.A.C. 5:97-1.4, shall be available to the site or the site is subject to a durational adjustment pursuant to N.J.A.C. 5:97-5.4; and*
 4. *The site can be developed consistent with the Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.), where applicable. Deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3.*
- (b) *Sites designated to produce affordable housing shall be consistent with the State Development and Redevelopment Plan and shall be in compliance with the rules and*

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regulations of all agencies with jurisdiction over the site, including, but not limited to:

1. Sites that are located in Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for a municipality to address its growth share obligation.

The entire portion of Carlstadt located outside the Meadowlands District is located in Planning Area 1 (PA 1). PA1 is intended to provide for much of the State's future redevelopment. The remainder of the Borough is subject to the NJMC's land use policies (refer to 3. below).

2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center shall demonstrate to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council may seek a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.

The Borough does not contain land located within any of these Planning Areas.

3. Sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Division of Coastal Resources of the DEP and the New Jersey Meadowlands Commission, shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Zone Management Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable.

A total of 83.2 percent of the Borough is subject to land use regulation by the NJMC. For these lands, COAH adheres to the policies set forth by the NJMC's Zoning Regulations.

4. The portions of sites designated for construction shall adhere to wetland constraints as delineated on the New Jersey DEP Freshwater Wetlands Maps; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction as regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) or Section 404 of the Federal Clean Water Act (33 U.S.C. §§ 1251 through 1375); Category One waterway constraints pursuant to N.J.A.C. 7:9B, 7:8, 7:13 and 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and

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steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.

Wetland areas according to DEP data are indicated by the "Wetlands" map included in the appendices (#3).

The Borough does not contain any Category One waterbodies, which trigger buffer requirements for new development. However, the NJMC prohibits development in the Meadowlands District within a 50-foot buffer area bordering the Hackensack River, its tributaries, or streams (N.J.A.C. 19:4-8.7(a)1).

Portions of Carlstadt are located within the Federal Emergency Management Agency (FEMA)'s flood insurance rate zone "AE," which is one of several Special Flood Hazard Area (SFHA) designations. SFHAs, commonly referred to as the 100-year floodplain, have a one percent or greater chance of being inundated by a "base flood" in any given year. Most of these properties have a base flood elevation (BFE) of 8 feet. The NJMC does not prohibit development in SFHAs; however, its Zoning Regulations in N.J.A.C. 19:4-5.2(a)3 require the floor elevations for structures built within a 100-year floodplain to be at least one foot above the BFE. Such properties outside the Meadowlands District must be developed in accordance with the New Jersey Department of Environmental Protection (DEP)'s standards in the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

5. Historic and architecturally important sites and districts listed on the State or National Register of Historic Places shall be reviewed by the New Jersey Historic Preservation Office for a recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. The review and written recommendation by the New Jersey Historic Preservation Office shall be included in the Housing Element and Fair Share Plan that is the subject of any petition before the Council. Within historic districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

The Borough does not contain any sites or districts listed on the State or National Register of Historic Places.

In addition to complying with the COAH criteria, new residential development should be consistent with sound planning principles. For example, new housing may increase the demand for community services, including police, fire, and ambulance service; public schools needed to serve family units; and recreation facilities. The Borough contains the following recreation facilities to serve new residential development. All of the Borough's public schools and recreation facilities are located within the Borough's established residential areas, located on the western side of Route 17. Recreation facilities include the following:

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<u>Facility</u>	<u>Acres</u>
Lindbergh Field Park	7.73
Rasmus/Hagowski - Little League Field	2.76
Stolz Playground (2 nd and Broad Street)	1.2
Zimmerman Park	2.06
Memorial Park (Hackensack St. and Division Ave.)	0.34

Any issues related to demand for community services would need to be properly addressed and mitigated at the time of development.

An analysis of vacant land appears in the following section.

C. Vacant Land Analysis

Vacant land is land which is undeveloped and unused. Table III-1, appearing on pages 31 through 36, presents an inventory of vacant parcels in the Borough. The parcels are also included on the "Vacant Land Inventory" map in the appendices (#4). The "Zoning Map" in the appendices (#5) further assists with understanding the land use policies and practices of the Borough and the NJMC.

Each of the inventory's vacant parcels consists of an individual lot or an aggregation of adjacent lots without regard to ownership. The table addresses reasons why each parcel may or may not be suitable for consideration for affordable housing. The following abbreviations are used to identify the zoning districts:

- Comm. = Commercial
- LIA = Light Industrial-A
- LIB = Light Industrial-B
- EC = Environmental Conservation
- PPRRA = Paterson Plank Road Redevelopment Area
- WR = Waterfront Recreation

The analysis excludes sites smaller than 0.5 acres unless they are adjacent to other sites that are partially or fully vacant. Otherwise, such sites would not create sufficient development potential to attract a developer for the purpose of building affordable units.

To identify the number of affordable units that could be addressed with inclusionary development on vacant sites, it is necessary to establish the presumed density at which such development would occur. The maximum density permitted for non-age restricted housing in any of the Borough's

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residential zones is 30 dwelling units per acre. The Borough has established a maximum permitted density of 40 units per acre in the Senior Citizen Housing Zone; however, the Borough proposes a reduction to 32 units per acre.

With the exceptions of vacant parcels #'s 1 and 2, all of the parcels are located within the Meadowlands District, for which the policies set forth by the NJMC's Zoning Regulations apply. Hence, the maximum residential density permitted by the NJMC's *Interim Policies Governing Affordable Housing Development in the Meadowlands District*, which equals 32 dwelling units per acre, is applied as the presumptive density for inclusionary development, along with the 20 percent set-aside requirement mandated by Chapter 46, P.L. 2008 for development within the District. A half-acre site without any development constraints would produce a total of 16 units, including 3 or 4 affordable units.

The vacant land analysis reveals that only one of the 30 parcels can be considered for inclusionary development: #29, which contains 0.85 acres and is not large enough to accommodate the COAH-assigned prior round obligation of 228 units. Hence, the development of sufficient housing is constrained by the shortage of suitable vacant land.

Where a municipality seeks to demonstrate that it does not have the capacity to address its entire prior round obligation, it is required by COAH to identify sites that are realistic for inclusionary development in order to calculate its realistic development potential (RDP). The RDP is based upon vacant sites that are not eliminated from consideration for inclusionary development. The density and affordable set-aside of each site is then summed to determine the municipality's RDP. Applying a density of 32 units per acre and an affordable set-aside of 20 percent to Parcel #29, the Borough's RDP is calculated at 6 units.

After calculating the Borough's RDP as being 6 units, the remaining prior round obligation of 222 units remains as the Borough's "unmet need," which equals the number of affordable units that the Borough is unable to accommodate because of a lack of vacant land.

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**Table III-1 Vacant Land Inventory with Parcel Status
(Individual lots or groups of lots with at least 0.5 acres)**

Parcel No.	Block	Lot	Address Location	Zoning District*	Acreage	Flood Zone	Owner
1	82	3	733 Highway 17	Comm.	0.5	AE	A.Gampa
	Used for parking. Located in commercial area on Highway 17, adjacent to Conrail line. In a flood zone. Current land use zoning does not permit residential uses. Unsuitable for inclusionary development.						
2	82	5	701 Highway 17	Comm.	0.5	AE	Magiochetti, Ralph
	Located in commercial area on Highway 17, adjacent to Conrail line. In a flood zone. Current land use zoning does not permit residential uses. Unsuitable for inclusionary development.						
3	84	2(part of)	651 Twelfth Street	LIB	5	out	243 Veterans Blvd., LLC
	84	5	Rear of J Wolf Co	LIB	23.6	out	Lepetomane III, Inc.
	84	6	Meadowlands	EC	3.487	AE	243 Veterans Blvd., LLC
	84	8,02	630 Sixteenth Street	LIB	1.163	AE	CCNY 66 Realty LLC
	84	9	Sixteenth Street	EC	1.744	AE	Saturn Assoc. LLC
	84	11	Sixteenth Street	EC	2.377	AE	Saturn Assoc. LLC
	84	12	Twentieth Street	EC	12.55	out	Saturn Assoc. LLC
	120	20	Broad & Twentieth	PPRA	0.648	out	Northern Carlstadt, LLC
Total Acres = 50.569 (approximate)							
Largely wet tract significantly impacted by Berry's Creek. Located in established industrial area that is remote from residential areas. Subject to the NJMC's land use policies which prohibit residential uses in the LIB zone and the PPRRA and any type of development in the EC zone. Block 84, Lot 2 is listed on DEP's Known Contaminated Sites List and contains a groundwater collection system. Block 120, Lot 20 is a long, very narrow lot at the end of Twentieth Street. Unsuitable for inclusionary development.							
4	91	1	511 Thirteenth Street	PPRA	12.259	AE	Arsynco, Inc.
	Formerly used for manufacture of specialty chemicals. A small building remains at the Thirteenth Street entrance. On DEP's Known Contaminated Sites List. Remediation plan under DEP review; does not allow for remediation to residential standard. Includes over two acres of wetlands. Located in established industrial area that is remote from residential areas. Access from Thirteenth and Sixteenth Streets, which are narrow streets used by large trucks. Subject to the NJMC's land use policies which prohibit residential uses in the PPRRA. Unsuitable for inclusionary development.						
5	103	1 (part of)	155 Broad Street	PPRA	1.2	AE	Broad St., LLC
	104	1 (part of)	Nineteenth & Twentieth	PPRA	1.2	out	Broad St., LLC
	Total Acres = 2.4 (approximate)						
Undeveloped portions of two lots on General Trading warehouse site. Located in industrial area that is remote from residential areas. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Unsuitable for inclusionary development.							
6	112	all	Off Paterson Plank Road	PPRA	0.655	out	State of New Jersey, Dept of Transportation
	113	1	Fourteenth Street	PPRA	0.07	out	Reliable Associates (Att.: T. Newton)
	Total Acres = 0.725						
Undeveloped, vegetated strip of land situated between Paterson Plank Road and an off-ramp from Paterson Plank Road to Thirteenth Street. Neighboring development consists of industrial and commercial uses. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Will likely be used to meet open space requirements of redevelopment plan. Unsuitable for inclusionary development.							
7	116	1	Sixteenth Street	PPRA	0.522	AE	Borough of Carlstadt
	116	12	Seventeenth Street	PPRA	0.314	AE	Borough of Carlstadt
	Total Acres = 0.836						
Generally covered with spotty vegetation, small trees, and shrubs. Standing water within the eastern portion. Adjacent to industrial and commercial uses. Remote from residential uses. Sixteenth Street experiences flooding. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Unsuitable for inclusionary development.							

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Parcel No.	Block	Lot	Address Location	Zoning District*	Acreage	Flood Zone	Owner
8	117	1	Sixteenth & Seventeenth	PPRRA	1.295	AE	Jomicke/C. Brown Corp/Scholder
	117	2	Seventeenth Street	PPRRA	0.313	AE	Borough of Carlstadt
	118	1	Broad & Nineteenth	PPRRA	0.158	AE	Ephron, Michael,c/oDornbush,Esq.
	118	2	Eighteenth Street	PPRRA	0.869	AE	Borough of Carlstadt
	118	3	Eighteenth Street	PPRRA	0.193	AE	Borough of Carlstadt
	118	4	Eighteenth Street	PPRRA	0.073	AE	Borough of Carlstadt
Total Acres = 2.901							
Generally covered with grass and small trees. Some standing water that appears to be a former tributary to Berry's Creek extends through the center. Adjacent to industrial and commercial uses. Remote from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Most suitable as open space in support of the overall redevelopment area. Unsuitable for inclusionary development.							

9	120	5	333 Paterson Plank Rd	PPRRA	0.169	out	Borough of Carlstadt
	120	6	333 Paterson Plank Rd	PPRRA	0.082	out	Amen,Estate
	120	7	333 Paterson Plank Rd	PPRRA	0.046	out	Pappas,Andrew&Germaine
	120	8	333 Paterson Plank Rd	PPRRA	0.013	out	Borough of Carlstadt
	120	10	Twentieth Street	PPRRA	0.2	AE	Bar 20th St. Property LLC
	120	11	Twentieth Street	PPRRA	0.282	AE	Zimmerman Estate
	120	12	Twentieth Street	PPRRA	0.128	AE	Borough of Carlstadt
	120	13	Twentieth Street	PPRRA	0.354	AE	Borough of Carlstadt
	120	14.01	Broad Street	PPRRA	6.904	out	Borough of Carlstadt
	120	14.02	Meadowlands	PPRRA	8.365	AE	State of New Jersey
Total Acres = 16.543							
Very wet tract covered with grass and small trees. A tributary to Berry's Creek runs through the property. Neighboring development is industrial. Remote from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Most suitable as open space in support of the overall redevelopment plan. Unsuitable for inclusionary development.							

10	122	1	269 Paterson Plank Rd	PPRRA	0.213	AE	Spanish Radio/Hefel
	122	2	Paterson Plank Rd	PPRRA	1.659	AE	Borough of Carlstadt
	122	3	Paterson Plank Rd	PPRRA	0.341	AE	Williams Estate, James Williams
	122	4	Paterson Plank Rd	PPRRA	0.221	AE	Jessie Davanzo
	122	5	Paterson Plank Rd	PPRRA	0.273	AE	Grella/Presto Enterprise
Total Acres = 2.707							
Wet tract covered with grass, shrubs, and small trees. Bordered to the northeast by Peach Island Creek. Bordered by Paterson Plank Road to the southwest. Neighboring development is industrial. Remote from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Most suitable as open space in support of the overall redevelopment plan. Unsuitable for inclusionary development.							

11	122	7	266 Paterson Ave	PPRRA	0.7	out	266 Pat.Av.Corp./ Hackensack Steel
	122	8	Gotham Parkway	PPRRA	1.4	AE	Gotham
Total Acres = 2.1							
Wet, vegetated tract along Peach Island Creek. Neighboring development is commercial and industrial. Remote from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Most suitable as open space in support of the overall redevelopment area. Unsuitable for inclusionary development.							

12	123.01	1	Grand Street	EC	2.299	out	CSR Realty Ventures
	123.01	3	Grand Street	LIB	2.726	out	CSR Realty Ventures
Total Acres = 5.025							
Wet, vegetated tract along Peach Island Creek. Neighboring development is industrial. Remote from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the LIB zone or any development in the EC zone. Unsuitable for inclusionary development.							

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Parcel No.	Block	Lot	Address Location	Zoning District*	Acres	Flood Zone	Owner
13	123.01	6	Meadowlands	EC	7.689	AE	State of New Jersey
	123.01	6.01	371 Starke Rd	LIB	2.801	out	R Lewis Group
	123.01	7.01	Meadows	EC	1.126	AE	Brancasons Partnership
	123.01	8.01	Paterson Plank Rd	EC	10.28	out	Brancasons Partnership
	123.01	9.04	Meadows	EC	0.107	AE	(unknown)
	123.01	29	Starke Rd	LIB	1.4	out	Tewani Group, LLC
	123.01	30	371 Starke Rd	LIB	1.586	out	R Lewis Group
Total Acres = 24.989							
Wet, vegetated, contiguous parcels along Berry's Creek. Neighboring development is industrial. Distant from residential uses. Subject to the NJMC's land use policies which do not permit residential uses in the LIB zone or any development in the EC zone. A new warehouse building has recently been constructed in this area. Unsuitable for inclusionary development.							
14	123.01	9	Meadows	EC	12.052	AE	State of New Jersey
	123.01	9.01	Paterson Plank Rd	EC	4.75	AE	H.B.C. New York
	123.01	9.02	Meadows	EC	0.248	AE	Brancasons Partnership
	123.01	9.03	Meadows	EC	1.173	AE	Brancasons Partnership
	123.01	9.05	Paterson Plank Rd	EC	4.11	AE	H.B.C. New York
Total Acres = 22.333							
Wet, vegetated, contiguous parcels along Berry's Creek. Neighboring development is industrial. Distant from residential uses. Subject to the NJMC's land use policies which do not permit development in the EC zone. Unsuitable for inclusionary development.							
15	124	1	216 Paterson Plank Rd	PPRRA	1.635	AE	Borough of Carlstadt
	124	2 (rear)	Paterson Plank Rd	PPRRA	0.2	out	Borough of Carlstadt
	124	3	Off Paterson Plank Rd	PPRRA	0.868	out	Borough of Carlstadt
	124	4	Off Paterson Plank Rd	PPRRA	0.519	out	Borough of Carlstadt
	124	5	216 Paterson Plank Rd	PPRRA	3.953	out	Borough of Carlstadt
Total Acres = 7.175 (approximate)							
Superfund site (former Scientific Chemical Processing), bordered by Peach Island Creek, Paterson Plank Road, and Gotham Parkway. Giants Stadium is located on the other side of Paterson Plank Road. Other neighboring uses are commercial and industrial. Remediation plan approved by EPA does not allow for residential use. Distant from residential areas. Subject to NJMC's land use policies which do not permit residential uses in the PPRRA. Unsuitable for inclusionary development.							
16	124	14	444 Washington Avenue	LIB	15.449	out	JVG Properties, LLC
	124	28 (rear)	398 Washington Avenue	LIB	7.75	out	Sofim Inc Corp NJ
Total Acres = 23.199 (approximate)							
Wet, vegetated site containing tributaries of Peach Island Creek. Located in an industrial area and distant from residential areas. Subject to NJMC's land use policies which do not permit residential uses in the LIB zone. Unsuitable for inclusionary development.							
17	124	33	390 Veterans Blvd	LIB	1.428	out	Carlstadt Pntrns LLC / Centurion
NJMC is currently reviewing a Zoning Certificate application to construct a new warehouse. Located in established industrial area and distant from residential areas. Subject to NJMC's land use policies which do not permit residential uses in the LIB zone. Unsuitable for inclusionary development.							
18	124	52	Palmer Terrace	LIB	4	out	Amor Realty Co
Wet, vegetated site containing tributaries of Peach Island Creek. Located in an industrial area and distant from residential areas. Subject to NJMC's land use policies which do not permit residential uses in the LIB zone. Unsuitable for inclusionary development.							
19	127	13	207 Washington Ave	LIB	0.73	out	Con-Way Central Express
Long, narrow lot located in industrial area and distant from residential areas. Subject to NJMC's land use policies which do not permit residential uses in the LIB zone. Appears to be wetlands on site. Unsuitable for inclusionary development.							

Housing Element and Fair Share Plan

Parcel No.	Block	Lot	Address Location	Zoning District ^a	Acreage	Flood Zone	Owner
20	128	9	Hackensack River	EC	5.532	AE	Meadowlands Conservation Trust
	128	11	Hackensack River	EC	5.433	AE	Meadowlands Conservation Trust
	128	12	Hackensack River	EC	17.682	AE	Meadowlands Conservation Trust
	128	13	Hackensack River	EC	6.321	out	Meadowlands Conservation Trust
	128	14	Hackensack River	EC	2.577	out	Meadowlands Conservation Trust
	128	15	Hackensack River	EC	4.175	AE	Meadowlands Conservation Trust
	128	16	Hackensack River	EC	5.193	out	Meadowlands Conservation Trust
	128	17	Hackensack River	EC	8.579	out	Meadowlands Conservation Trust
	128	18	Hackensack River	EC	4.402	out	Meadowlands Conservation Trust
	128	19	Hackensack River	EC	3.708	AE	Meadowlands Conservation Trust
	128	20	Hackensack River	EC	15.208	AE	Meadowlands Conservation Trust
	128	21	Hackensack River	EC	80.671	AE	Meadowlands Conservation Trust
	128	28	Hackensack River	EC	45.051	AE	Meadowlands Conservation Trust
	131	5	Washington Ave	LIA	4.31	out	Meadowland Mack-Cali
	131	6	Washington Ave	LIA	2.77	out	Meadowland Mack-Cali
	131	7	Hackensack River	EC	80.958	AE	Meadowlands Conservation Trust
131	8	Hackensack River	EC	205.192	AE	Meadowlands Conservation Trust	
131	10	Hackensack River	EC	8.335	out	Meadowlands Conservation Trust	
131	11	Hackensack River	EC	5.511	out	Meadowlands Conservation Trust	
Total Acres = 511.588							
<p>Most of the site consists of the Richard P. Kane Wildlife Area, owned by the Meadowlands Conservation Trust. Two lots at the corner of Washington Ave. and Commerce, located in an industrial/commercial area, contain wetlands with a stream running along the eastern border area. Remote from residential areas. Subject to the NJMC's land use policies, which do not permit development in the EC zone or residential uses in the LIA zone. Unsuitable for inclusionary development.</p>							
21	128	3	Michele Place	PPRRA	2.116	AE	Union Graphics
	128	45	325 Washington Ave.	PPRRA	1.321	AE	Borghoff(etc/trustees), Eugene L
Total Acres = 3.437							
<p>Wetland with open water. Adjacent to industrial uses. Remote from residential areas. Site is subject to the NJMC's land use policies which do not permit residential uses in the PPRRA. Unsuitable for inclusionary development. Most suited for open space in support of the overall redevelopment plan.</p>							
22	130	17	East of Washington Ave	LIA	0.5	AE	APA Truck Leasing Corp.
	<p>Located at end of C Street in an industrial area with heavy truck traffic. Distant from residential areas. Stream runs along one side. Site is subject to the NJMC's land use policies, which do not permit residential uses in the LIA zone. Unsuitable for inclusionary development.</p>						
23	130	19	A Street	LIA	1.758	AE	Hanna Frank
	<p>Used as parking for industrial facility at Block 129, Lot 7. Access through Block 130, Lot 18. Located in industrial area. Remote from residential areas. Site is subject to the NJMC's land use policies which do not permit residential uses in the LIA zone. Appears to have wetlands on site. Unsuitable for inclusionary development.</p>						
24	131.01	6	206 Washington Ave	LIA	5.76	out	Fratfarelli, Angelina
	<p>Narrow strip of vegetated wetland fronting on Washington Avenue and Terminal Lane jughandle. Located in industrial/commercial area and remote from residential areas. Site is subject to the NJMC's land use policies, which do not permit residential uses in the LIA zone. Unsuitable for inclusionary development.</p>						
25	131.01	8 (rear)	Meadowland	LIA	1.58	AE	Keox/Roca Realty, LLC
	<p>Back portion of industrial property located in South Hackensack. Site is subject to the NJMC's land use policies, which do not permit residential uses in the LIA zone. Located in industrial/commercial area and remote from residential areas. Unsuitable for inclusionary development.</p>						

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Parcel No.	Block	Lot	Address Location	Zoning District*	Acreage	Flood Zone	Owner
26	132	1	Washington Ave	LIA	1.08	out	Mack Associates
	Narrow, vegetated parcel with frontage on Washington Avenue and Terminal Lane jughandle. Site is subject to the NJMC's land use policies, which do not permit residential uses in the LIA zone. Located in industrial/commercial area and remote from residential areas. Unsuitable for inclusionary development.						
27	135	1	Paterson Plank Rd	EC	0.519	out	Meadowlands Conservation Trust
	136	1	Hackensack River	EC	0.108	AE	Meadowlands Conservation Trust
	136	2	Hackensack River	EC	5.419	AE	Meadowlands Conservation Trust
	136	3	Hackensack River	EC	4.048	AE	Meadowlands Conservation Trust
	136	4	Hackensack River	EC	3.398	AE	Meadowlands Conservation Trust
	136	5	Hackensack River	EC	12.163	AE	Meadowlands Conservation Trust
	136	6	Hackensack River	EC	9.169	AE	Meadowlands Conservation Trust
	136	7	Hackensack River	EC	7.306	AE	Meadowlands Conservation Trust
	137	1	Transco Pipeline	EC	8.986	out	Trans-Con Pipeline
	137	2	Transco Pipeline	EC	1.738	AE	Trans-Con Pipeline
	137	3	Transco Pipeline	EC	4.515	AE	Trans-Con Pipeline
	137	4	Transco Pipeline	EC	6.064	AE	Trans-Con Pipeline
	137	5	Meadows	EC	7.864	AE	NJMC
	137	6	Transco Pipeline	EC	7.796	AE	Trans-Con Pipeline
	137	7	Transco Pipeline	EC	10.501	AE	Trans-Con Pipeline
	137	8	Transco Pipeline	EC	10.208	AE	Trans-Con Pipeline
	137	9	Transco Pipeline	EC	2.051	AE	Trans-Con Pipeline
Total Acres = 101.853							
Portion of the site consists of the Richard P. Kane Wildlife Area, owned by the Meadowlands Conservation Trust. Transco Pipeline goes through most of remainder. Remote from residential areas. Subject to the NJMC's land use policies, which do not permit development in the EC zone. Unsuitable for inclusionary development.							
28	136	10	Outwater Lane	WR	0.92	AE	Krotz, et al & Martins, George
Located on the Hackensack River. Used as dry dock. Remote from residential areas. Site is subject to the NJMC's land use policies, which permit limited development, excluding residential uses, in the WR zone. Remote from residential areas. Poor road access impairs timely emergency response. Unsuitable for inclusionary development.							
29	136	14(part of)	200 Outwater Lane	WR	0.5	AE	Tomu Devel. Co, Inc.
	136	15	Outwater Lane	WR	0.344	AE	J Murphy
	Total Acres = 0.85 (approximate)						
Vacant portion of developed site located on the Hackensack River. Remainder of site is developed with a driving range, restaurant, and boat storage. Adjacent site along the River to the west in East Rutherford is vacant and under the same ownership. The Majestic Boat Club is located to the west of the owners' properties. The Richard P. Kane Wildlife Area is located on the other side of Outwater Lane. The owners filed a builder's remedy suit to develop site (both vacant and developed portions) with inclusionary housing. The judge's order permits 420 dwelling units on the owners' Carlstadt properties, including 80 affordable units to address the prior round obligation. Although the site is included in the Fair Share Plan, the Borough remains concerned about the suitability of the site for residential use, primarily because it is remote from residential areas, and poor road access may reduce emergency response time. The Borough continues to believe that the site is not suitable for residential use. Therefore, it is included in this plan only because such inclusion is mandated by the court.							

Housing Element and Fair Share Plan

Parcel No.	Block	Lot	Address Location	Zoning District*	Acreage	Flood Zone	Owner
30	137	14	Transco Pipeline	EC	7.274	AE	Trans-Con Pipeline
	137	17	Transco Pipeline	EC	10.218	AE	Trans-Con Pipeline
	137	18	Transco Pipeline	EC	20.058	AE	Trans-Con Pipeline
	137	19	Transco Pipeline	EC	23.529	AE	Trans-Con Pipeline
	137	20	Transco Pipeline	EC	30.081	out	Trans-Con Pipeline
	137	21	Transco Pipeline	EC	6.089	AE	Trans-Con Pipeline
	137	22	Transco Pipeline	EC	5.281	AE	Trans-Con Pipeline
	137	23	Transco Pipeline	EC	10.509	out	Trans-Con Pipeline
	137	24	Transco Pipeline	EC	8.552	out	Trans-Con Pipeline
	137	25	Meadows	EC	0.384	out	NJ Turnpike Authority
	137	26	Transco Pipeline	EC	4.312	AE	Trans-Con Pipeline
	137	27	Transco Pipeline	EC	6.677	AE	Trans-Con Pipeline
	137	28	Transco Pipeline	EC	7.045	AE	Trans-Con Pipeline
	137	29	Transco Pipeline	EC	2.544	AE	Trans-Con Pipeline
	137	30	Transco Pipeline	EC	9.726	AE	Trans-Con Pipeline
	137	31	Transco Pipeline	EC	9.569	AE	Trans-Con Pipeline
	137	32	Transco Pipeline	EC	4.623	AE	Trans-Con Pipeline
	137	33	Transco Pipeline	EC	7.254	AE	Trans-Con Pipeline
	137	34	Transco Pipeline	EC	12.255	AE	Trans-Con Pipeline
	137	35	Transco Pipeline	EC	4.360	AE	Trans-Con Pipeline
	137	36	Transco Pipeline	EC	5.609	AE	Trans-Con Pipeline
	137	37	Transco Pipeline	EC	4.38	AE	Trans-Con Pipeline
	137	38	Transco Pipeline	EC	4.813	out	Trans-Con Pipeline
	137	39	Transco Pipeline	EC	0.905	out	Trans-Con Pipeline
	137	40	Paterson Plank Rd	EC	5.158	out	Trans-Con Pipeline
	137	41	Transco Pipeline	EC	0.129	out	Trans-Con Pipeline
	137	42	Transco Pipeline	EC	6.656	out	Trans-Con Pipeline
	137	43	Transco Pipeline	EC	1.379	out	Trans-Con Pipeline
	137	44	Transco Pipeline	EC	9.234	out	Trans-Con Pipeline
	137	45	Transco Pipeline	EC	0.221	out	Trans-Con Pipeline
	137	46	Transco Pipeline	EC	2.319	out	Trans-Con Pipeline
138	All	Hackensack River		EC	104.15	AE	NJMC (except for Block 138, Lot 8 owned by Dieckmanns Estate)
Total Acres =					935.29		
Located between the New Jersey Turnpike and the Hackensack River. Heavily impacted by minor tributaries. Block 138 was acquired by NJMC in August 2003 for preservation purposes. Remote from residential areas. Subject to NJMC's land use policies which do not permit development in the EC zone. Unsuitable for inclusionary development.							

D. Reuse Opportunities

Given the shortage of suitable vacant land, the Borough of Carlstadt can next explore opportunities to reuse developed sites to address its affordable housing obligation. Table III-2 on the following page lists those sites that the Borough has identified as having reuse potential. The abbreviation "L.I." is used to refer to the Light Industrial zone. "Res." refers to the Residential zone. "WR" is the NJMC's Waterfront Recreation zone. The sites are located on the map of "Reuse Opportunities" included in the appendices (#6).

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Table III-2
Reuse Opportunities

Site No.	Block	Lot(s)	Address	Current Zoning	Owner	Size (acres)	
1	2	1	100 Industrial Road	L.I.	W&W Realty Investment LLC	2.78	
		2	Industrial Road	L.I.	100 Group Industrial LLC	5.34	
		3	600 Industrial Road	L.I.	Potters Industries, Inc	4.26	
		4	550 Industrial Road	L.I.	Platti/Industrial Realty Co.	1.49	
		5	500 Industrial Road	L.I.	500 Group Industrial, LLC	2.78	
		6	10 Industrial Road	L.I.	Gunther Properties, LLC NJ	2.51	
	3	6	649 Industrial Road	L.I.	R & B Holdings	0.29	
		7	645 Industrial Road	L.I.	Faciano, Anthony	0.33	
		8	585 Industrial Road	L.I.	Prologis Cimmaron NJ	2.40	
		16	611 Industrial Road	L.I.	E.K. Realty	1.81	
		17	587 Industrial Road	L.I.	Prologis Cimmaron NJ	2.53	
		29	583 Industrial Road	L.I.	Eichholz, Charles & Patricia	1.69	
		32	575 Industrial Road	L.I.	Sky Matte LLC	0.50	
		33	619 Industrial Road	L.I.	619 Industrial Road LLC	0.40	
		38,39,					
		42	615 Industrial Road	L.I.	Clause Realty Group	1.40	
		43	601 Industrial Road	L.I.	Weber, David & Ruth	0.53	
		47	555 Industrial Road	L.I.	Weber, David & Ruth	1.90	
		53	495 Industrial Road	L.I.	495 Industrial Road Inc.	1.82	
		54	445 Industrial Road	L.I.	Aresta Properties LLC NJ	1.22	
Total Acres Site #1 =						35.98	
2	18	2	447 Garden Street	Res.	Grella-Presto Enterprises	0.435	
		6	425 Garden Street	L.I.	Novus Fine Chemicals LLC	0.229	
		7	436 Orchard Street	L.I.	Novus Fine Chemicals LLC	0.264	
		8	425 Garden Street	L.I.	Novus Fine Chemicals LLC	0.220	
		9	426 Garden Street	L.I.	Novus Fine Chemicals LLC	0.252	
		10	641 Garden Street	L.I.	Novus Fine Chemicals LLC	0.580	
		19	9	411 Orchard Street	L.I.	Novus Fine Chemicals LLC	0.114
	10		611 Broad Street	L.I.	Novus Fine Chemicals LLC	0.481	
	11		412 Lincoln Street	Res.	Novus Fine Chemicals LLC	0.069	
	Total Acres Site #2 =						2.644
3	73	1,2,3,4, 13,14,15	325 Third Street	Res.	Borough of Carlstadt (former Washington School)	1.25	
4	55	9	Seventh Street	Res.	Borough of Carlstadt (former Lincoln School)	0.6887	
5	25	13	575 Hoboken Road	Res.	Markus Associates LLC	0.247	
6	136	14	200 Outwater Lane	WR	Tomu Development Corp.	2.240	
		15	Outwater Lane	WR	Tomu Development Corp.	0.344	
Total Acres Site #6 =						2.584	

Housing Element and Fair Share Plan

1. Site Overviews

Sites #'s 1 and 2: Industrial Road and Novus Fine Chemicals

The Industrial Road site, developed with light industrial uses, is located in proximity to a commercial area and has the potential for redevelopment with mixed uses to include housing. Novus Fine Chemicals borders an established residential area and has the potential for redevelopment with housing. These sites were identified in the Borough's original third round plan as possible locations to address all or a portion of the Borough's growth share obligation and, in addition, its unmet need remaining from prior round.

The Borough requested its housing planner to consider whether these sites could be deemed in need of redevelopment pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). The planner advised Borough officials that neither area satisfied the statutory criteria. Accordingly, these sites do not provide realistic opportunities for the development of affordable housing. If additional locations are needed in the future, Borough officials may approach Potters Industries, Inc., owner of a vacant building in Site No. 1, and Grella-Presto Enterprises, owner of a property in Site No. 2 that is located in the Residential zone, about developing their properties with housing that would include an affordable component.

Site No. 3: Washington School

Located in an established residential area, the Washington School has closed, and the Board of Education has transferred title of the property to the Borough. The Borough has adopted an ordinance which designates the site as the Senior Citizen Housing District with 100 percent of the units to be reserved as affordable. The Borough has also acquired an adjacent lot improved with a residential structure. Allowing for a maximum permitted density of 32 units per acre, the 1.25-acre site could be developed with as many as 40 affordable senior units. Since there is a cap on the percentage of the total growth share credits that may be age-restricted, only a portion of the units may qualify as growth share credits. The remaining units may be applied towards the Borough's unmet need remaining from prior rounds.

Site No. 4: Lincoln School

Lincoln School closed at the same time as Washington School, and the Board of Education transferred title of the property to the Borough. The site is also located in an established residential area. Instead of redeveloping the site with residential uses; however, the Borough prefers to reuse the site to address its needs for additional recreational space.

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Site No. 5: 575 Hoboken Road

The site is located in a residential zone and contains an outdated warehouse. The Borough is discussing with the owner the possibility of developing the site with 100 percent affordable units. These units would satisfy a portion of the Borough's growth share obligation.

Site No. 6: Tomu Development Corp.

The Court has granted the owner a builder's remedy to construct up to 420 dwelling units on the Outwater Lane site, to include a total of 80 affordable dwelling units reserved for renter households. The site is currently developed with a driving range, a restaurant, and boat storage. The vacant portion of the site appears as Parcel No. 29 in the vacant land inventory and provides the basis for the calculation of the Borough's RDP on page 30. The builder's remedy authorizes an additional 420 units on the owner's adjacent property located in East Rutherford. A boat club is located to the west of the site. The Richard P. Kane wildlife area is located on the opposite side of Outwater Lane. Located within the Hackensack Meadowlands District, the site is not located in an urban center or a workforce housing census tract.

2. Relationship of Sites to COAH's Suitability Criteria

A preliminary analysis suggests that each of the first five sites would meet COAH's suitability criteria in N.J.A.C. 5:97-3.13, which are listed on pages 26 through 28 of this document. All of the sites are located in Planning Area 1, which is intended by the State Development and Redevelopment Plan to provide for much of the state's future redevelopment. None of the sites contain any of the environmental constraints cited by COAH.

The Borough of Carlstadt continues to assert that the sixth site, owned by Tomu Development Corp., does not satisfy the COAH criteria. Nevertheless, the Borough is required to comply with the decision of the Court. Therefore, the site is included in the Fair Share Plan to address a portion of its prior round obligation.

E. Need for Changes to Zoning Controls

The final approach in considering lands most appropriate for affordable housing development is to assess the need for changes to zoning controls. Existing zoning may impose obstacles to the development of affordable housing at locations suitable for residential uses.

Housing Element and Fair Share Plan

As stated in the Introduction, over 83 percent of the Borough's lands fall under the NJMC's land use controls. The zoning districts located within the Meadowlands District include the following:

- The Environmental Conservation zone is designed to preserve and enhance the ecological values of wetlands, open water and adjacent uplands within the District.
- The Light Industrial A zone is designed to accommodate a wide range of industrial, distribution, commercial and business uses that generate minimal negative environmental impacts.
- The Light Industrial B zone is designed to accommodate a wide range of industrial, distribution, and commercial uses that generate a minimum of detrimental environmental impacts.
- The Waterfront Recreation zone is designated to accommodate water-oriented commercial and recreation facilities that provide public access to and encourage visibility of the Hackensack River and its tributaries. The parcel owned by Tomu Development Corp. (A portion appears as Parcel No. 29 in the vacant land inventory; the entire Carlstadt site is included as Site No. 6 under Reuse Opportunities) is located within this zone; zoning that permits residential use has been established by an order of the Court.
- The Paterson Plank Road Redevelopment Area is envisioned as a retail entertainment center that will capitalize on the future plans for the Meadowlands Sports Complex. Warehouse, industrial, and office development will complement the vision of a retail entertainment center.

The NJMC's regulation in N.J.A.C. 19:4-3.8 authorizes municipalities to petition the NJMC to rezone land in the District to meet affordable housing obligations. Implementation of the revised Fair Share Plan does not, however, require the rezoning for residential development of any properties within the portion of Carlstadt located within the Meadowlands District.

With respect to the remaining 17 percent of land which is within the Borough's land use authority, Carlstadt has analyzed its own zoning requirements and intends to support the development of affordable housing as follows:

- On December 4, 2008, the Borough adopted an ordinance to create overlay zones which require an affordable housing component in any new residential development including 10 or more dwelling units. A minimum of 20 percent of the units must be reserved as affordable. This

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requirement complies with COAH's own set-aside requirement in N.J.A.C. 5:97-5.2(h) for a municipality that receives a scarce resource adjustment regarding its prior round affordable housing obligation. Additionally COAH's rule in N.J.A.C. 5:97-6.4(b)2 requires inclusionary zoning in Planning Area 1 to permit residential development at a minimum density of eight units per acre with a minimum affordable set-aside of 25 percent of the total units. A copy of the Borough's ordinance is included in the appendices (#25).

- The same ordinance provides for a Senior Citizen Housing District on the former Washington School site. The Borough intends to seek financial and technical resources to develop the site with 40 affordable rental units that are age-restricted for occupancy by senior citizens. The boundaries of the zone need to be amended to include block 73, lot 13 a property adjacent to the former school site, owned by the Borough of Carlstadt.
- The Borough has introduced an affordable housing ordinance to amend the requirements for the affordable housing overlay zones by providing incentives for 100 percent affordable developments along Hoboken Road. The proposed amendments would permit, among other things, a maximum density of 42 units per acre for such developments.

These zoning changes should bestow the Borough with sufficient capacity, including necessary infrastructure, to accommodate the population growth anticipated from both residential and non-residential development and the need for affordable housing.

The site-specific analyses and the assessment of current zoning controls in this chapter provide the bases for the revised Fair Share Plan by which the Borough proposes to address its affordable housing obligations.

IV. Fair Share Plan

The Fair Share Plan describes the projects that will be utilized to address the Borough's affordable housing obligation.

A. Crediting Parameters

The parameters for receiving credits towards the municipal obligation are governed by COAH's rules at N.J.A.C. 5:97-3. The rules set forth the formulas which determine the maximum number of age-restricted units for which the Borough may receive credits, the minimum number of rental units that must be provided, and eligible "bonus" credits. In no event can a municipality receive more than two units of credit for one affordable unit.

1. Income split of the fair share obligation

The requirement for the number of units addressing the fair share obligation that shall be affordable to low income households is calculated as follows:

$$\begin{aligned} \text{Low income minimum} &= 50 \text{ percent (Fair Share Obligation)} \\ &= .50 * 81 \text{ units} \\ &= 41 \text{ units (rounded up to nearest whole number)} \end{aligned}$$

In addition, at least 13 percent of the affordable housing units shall be reserved for occupancy by very low income households:

$$\begin{aligned} \text{Very low income minimum} &= 13 \text{ percent (Fair Share Obligation)} \\ &= .13 * 81 \text{ units} \\ &= 11 \text{ units (rounded up to nearest whole number)} \end{aligned}$$

2. Minimum Rental Obligation

The rental requirement for the prior round obligation is based on the following formula:

$$\begin{aligned} \text{Rental minimum} &= 25 \text{ percent (Realistic Development Potential) - rental} \\ &\text{credits applied at the time of petition} \\ &= 0.25 * 6 - 0 \text{ units} \\ &= 2 \text{ units (rounded up to nearest whole number)} \end{aligned}$$

The rental requirement for the growth share obligation is calculated as follows:

$$\begin{aligned} \text{Rental minimum} &= 25 \text{ percent (Growth Share Obligation)} \\ &= 0.25 (69 \text{ units}) \\ &= 18 \text{ units (rounded up to nearest whole number)} \end{aligned}$$

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At least 50 percent of the rental requirement for growth share must be met with family housing units. Accordingly, a minimum of 9 family housing units are required to address the Borough's rental requirement for growth share.

3. Bonus Credits for Very Low Income Units

A municipality is eligible to receive two units of credit for affordable units reserved for households of the general public earning 30 percent or less of median income. The municipality shall not, however, receive such bonus credits unless the 13 percent target has been exceeded.

4. Maximum Number of Age-Restricted Units

COAH defines age-restricted housing as "a housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that:

1. All the residents of the development where the unit is situated are 62 years or older;
2. At least 80 percent of the units are occupied by one person that is 55 years or older; or
3. The development has been designated by the Secretary of HUD as 'housing for older persons' as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. §§ 3607."

COAH's rule in N.J.A.C. 5:97-3.10(c) limits the number of age-restricted units for which the Borough may receive credit. The age-restricted maximum for the prior round obligation shall be based on the following formula:

$$\begin{aligned}\text{Age-restricted maximum} &= 25 \text{ percent (Realistic Development Potential +} \\ &\quad \text{Rehabilitation Share - Rehabilitation Credits)} \\ &= 0.25 * (6+6-7) \text{ units} \\ &= 1 \text{ unit (rounded down to nearest whole number)}\end{aligned}$$

The age-restricted maximum for the growth share obligation shall be based on the following formula:

$$\begin{aligned}\text{Age-restricted maximum} &= 25 \text{ percent (Growth Share Obligation)} \\ &= 0.25 * 69 \text{ units} \\ &= 17 \text{ units (rounded down to nearest whole number)}\end{aligned}$$

5. Rental Bonus Credits for the Prior Round Obligation

In accordance with N.J.A.C. 5:97-3.5, a municipality is eligible to receive two units of credit for each affordable family rental unit addressing its prior round rental

Housing Element and Fair Share Plan

obligation. For example, the Borough could satisfy its entire RDP of 6 units by developing 3 family rental units.

Additionally, a municipality may receive 1.33 units of credit for each age-restricted rental unit addressing its prior round rental obligation. Such bonuses may only be granted for a maximum of 50 percent of the prior round rental obligation. The Borough would be eligible to receive 1.33 units of credit for the 1 unit that constitutes 50 percent of its prior round rental obligation.

6. Rental Bonus Credits for the Growth Share Obligation

A municipality is eligible to receive two units of credit for each rental family or permanent supportive housing unit provided in excess of its growth share rental obligation.

B. Summary of Fair Share Plan

The Borough of Carlstadt's Fair Share Plan has been prepared to address the total affordable housing obligation from 1987 through 2018, which consists of 6 prior round units, 69 growth share units, and 6 rehabilitation units. In addition, the Fair Share Plan provides mechanisms to address the Borough's unmet need remaining from prior rounds. The plan is summarized in Table IV-1 below. Details appear in the sections that follow.

Table IV-1	Summary of Fair Share Plan	Units	Credits
Growth Share			
	Washington School (all age-restricted)	17	17
	Market to affordable (family rental units)	10	16
	Accessory apartments (family rental units)	10	15
	Overlay zone (Residential & Mixed Use Districts)	5	5
	575 Hoboken Road (family rental units)	<u>10</u>	<u>16</u>
	Total Third Round Growth Share	52	69
Prior Round			
	To satisfy Realistic Development Potential (RDP)		
	Tomu Development Corp. (all family rental units)	3	6
	To address unmet need		
	Tomu Development Corp. (all rental units)	77	77
	Washington School Senior Development	23	23
	Overlay zone in Light Industrial District	to be determined	
Rehabilitation			
	Bergen County Home Improvement Program	7	7

Borough of Carlstadt

C. Growth Share (New Construction) Obligation

The growth share component of the obligation must be met through new construction. It will be addressed as follows:

- A senior citizen development at the Washington School site. The project will include a maximum of 40 units, all affordable. It will yield 17 credits to meet growth share and 23 units to apply to the unmet need remaining from prior round. A minimum of 8 units will be reserved for households of very low-income to partially satisfy the requirement in P.L. 2008, Chapter 46 that at least 13 percent of the affordable units must be reserved for occupancy by very low-income households.
- Market to affordable program. A total of 10 rental units will be subsidized through a written agreement with the property owner and rented to low- and moderate-income family households. The Borough will provide a minimum of \$25,000 per unit to subsidize the creation of each moderate-income unit and \$30,000 per unit to subsidize each low-income unit. Tenants will be eligible to receive assistance with paying security deposits and rent. Funds will be allocated from development fees. Creation of the 10 rental units will generate 6 rental bonus credits for a total of 16 credits.
- Accessory apartment program. The program will create 10 units through the use of development fees. The creation of a moderate-income accessory apartment will be subsidized with at least \$20,000. The minimum subsidy for a low-income accessory apartment will be \$25,000. Subsidies will fund construction costs and provide assistance to tenants with paying security deposits and rent. Funds will be allocated from development fees. The accessory units will generate 5 rental bonus credits for a total of 15 credits.
- Overlay zone applied to Residential & Mixed Use Districts. The Borough has adopted an ordinance (No. 08-15) that creates, among other things, the Affordable Housing Overlay Zone 1 (AHO-1). AHO-1 applies to all properties located within the Residential District and the Mixed Use District. The ordinance requires that residential development containing at least 10 units must reserve at least 20 percent of the units as affordable. This plan anticipates that the AHO-1 will yield 5 affordable units.
- A 10-unit family rental project. The Borough has started discussions with the owner of the building at 575 Hoboken Road to sponsor a 100 percent affordable development. If the project does not move forward, the Borough will seek alternate locations. The 10 units will generate 6 rental bonus credits for a total of 16 credits.

The operational feasibility of these projects will be maintained through an agreement with DCA's Housing Affordability Service (HAS) to assist with the administration of the affordable units. HAS provides municipalities and developers

Housing Element and Fair Share Plan

with an Administrative Agent to oversee the units and to prepare the monitoring reports required by COAH.

D. Prior Round Obligation

Of the 80 affordable units approved by the Court for the site owned by Tomu Development Corp., a total of 3 units will satisfy the Borough's Realistic Development Potential of 6 units. The 3 units, to be created as affordable rental units, will yield 3 rental bonus credits for a total of 6 credits. These units will be reserved for households of very low-income to partially satisfy the requirement in P.L. 2008, Chapter 46 that at least 13 percent of the affordable units must be reserved for occupancy by very low-income households.

The unmet need remaining from prior rounds will be addressed as follows:

- The balance of 77 units to be built on the Tomu site;
- The remaining 23 age-restricted units at the Washington School site; and
- Any units created in the Borough's Affordable Housing Overlay Zone 2 (AHO-2). The AHO-2 zone, established by the same ordinance that created the AHO-1 zone mentioned above, applies to the Light Industrial District. As with the AHO-1 zone, the ordinance requires that residential development containing at least 10 units must reserve at least 20 percent of the units as affordable.

Units designated to satisfy unmet need are not eligible to receive bonus credits.

E. Rehabilitation Obligation

To fully address the rehabilitation component, the Borough of Carlstadt will apply credits from the rehabilitation of units under the Bergen County Division of Community Development's Home Improvement Program. A total of 7 qualifying units were rehabilitated from April 1, 2000 to January 31, 2007. These units are summarized in a table included with the appendices (#13). The average capital cost of \$14,414 expended on each unit satisfies the \$10,000 minimum COAH now requires for crediting.

F. Ordinances Necessary for Implementation of the Fair Share Plan

The following ordinances are needed to further the Borough's implementation of its Fair Share Plan:

Borough of Carlstadt

- Senior Citizen Housing Zone and Affordable Housing Overlay Zones (adopted).
- Affordable Housing (draft). The draft Affordable Housing ordinance implements and incorporates the Fair Share Plan and the requirements of COAH. It provides standards for the development of 100 percent affordable projects, the accessory apartment program, and the market to affordable program. The draft ordinance includes additional standards regarding the provision of affordability assistance to those lower income households seeking to rent units under the accessory apartment and market to affordable programs. COAH requirements governing the development and administration of affordable units are included.
- Development Fees (draft). The ordinance addresses procedures governing the collection and use of development fees derived from new construction. The draft spending plan is included with the appendices (#32).
- Creating the Position of Municipal Housing Liaison (adopted). The position is responsible for the overall administration of the Borough's affordable housing program.

Copies of these ordinances are included in the appendices (#'s 25, 26, 29, 35).

Additionally, amendments to the NJMC's District Zoning Regulations will be necessary to implement the Superior Court decision regarding inclusionary development on the Tomu Development site. The NJMC has provided a draft of the amendments. A copy appears in the appendices (#16).

V. Appendices

1. Map: Aerial Photo
 2. Map: Existing Land Use
 3. Map: Wetlands
 4. Map: Vacant Land Inventory
 5. Map: Zoning
 6. Map: Reuse Opportunities
 7. Petition Application (COAH checklist)
 - Exhibit A: Survey of municipal housing stock
 - Exhibit B: COAH Workbook A - Growth Share Determination Using Published Data
 8. Certified Planning Board Resolution Adopting Housing Element and Fair Share Plan
 9. Certified Governing Body Resolution Endorsing the Adopted Housing Element and Fair Share Plan and Petitioning COAH
 10. Service List
 11. Implementation Schedule
 12. Most recently adopted versions of land use ordinances, including zoning
- Information Supporting Mechanisms for Addressing the Fair Share Obligation:
13. Crediting documentation for rehabilitation share
 14. Zoning for Inclusionary Development: Tomu Development Corp. (COAH checklist)
 15. Litigation Docket No. BER-L-5894-03: Decision and Final Judgment (Tomu)
 16. Draft NJMC amendment to *District Zoning Regulations* regarding Tomu Property, supplied by NJMC
 17. Zoning for Inclusionary Development: Residential & Mixed Use Districts (COAH checklist)
 18. Zoning for Inclusionary Development: Light Industrial District (COAH checklist)
 19. Municipally Sponsored and 100 Percent Affordable Developments: Age-Restricted Units on Former Washington School Site (COAH checklist)
 20. Request for Proposals for Washington School project (draft)

V. Appendices (continued)

21. Deeds for Washington School properties (two)
22. Municipally Sponsored and 100 Percent Affordable Developments: 575 Hoboken Road or alternate site (COAH checklist)
23. Market to Affordable Program (COAH checklist)
24. Accessory Apartments (COAH checklist)
25. Senior Citizen Housing Zone and Affordable Housing Overlay Zones Ordinance (adopted)
26. Affordable Housing Ordinance (draft)
27. Description of any changes to the zoning ordinance during the previous two years
28. Documentation of funding for Washington School project, accessory apartment program, market to affordable program

Affordable Housing Trust Fund:

29. Development Fee Ordinance (draft)
30. Governing Body Resolution Requesting Review and Approval of Development Fee Ordinance
31. Governing Body Resolution Requesting Review and Approval of an Affordable Housing Trust Fund Spending Plan
32. Affordable Housing Trust Fund Spending Plan (draft)
33. Governing Body Resolution Appropriating Funds or Showing Intent to Bond in the Event of Shortfall of Funds

Administration of Affordable Units:

34. Governing Body Resolution Appointing a Municipal Housing Liaison
35. Ordinance Creating the Position of Municipal Housing Liaison

Note: The following documents are not included in the appendices; however, the documents are on file with COAH and the Borough of Carlstadt:

Most recently adopted Master Plan, including the immediately preceding Housing Element and Fair Share Plan
Redevelopment Plan for the Paterson Plank Road Redevelopment Area
Borough of Carlstadt Tax Maps (electronic version)

BOROUGH OF CARLSTADT

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVIII ENTITLED "LAND USE PROCEDURES" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF CARLSTADT, 2002, TO PROVIDE FOR THE IMPOSITION OF DEVELOPMENT FEES TO SUPPORT THE AFFORDABLE HOUSING PLAN OF CARLSTADT.

Be it ordained by the Mayor and Council of the Borough of Carlstadt as follows:

1. **Purpose.** In Holmdel Builder's Association vs. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

2. **Basic requirements.** Carlstadt shall not spend development fees until the Superior Court of New Jersey (the "Court") has approved a plan for spending such fees or a judgment of compliance with regards to Rounds One and Two.

3. **Definitions.**

a) The following terms, as used in this ordinance, shall have the following meanings:

i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

ii. "COAH" means the New Jersey Council on Affordable Housing.

iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

4. **Residential Development fees.**

a) Within all district(s), residential developers shall pay a fee of one (1%) percent of the equalized assessed value for residential development, provided no increased density is permitted. Developers of one single-family house shall be exempt from paying a development fee.

b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized from the d variance.

5. **Non-residential Development fees.**

a) Within all district(s), non-residential developers shall pay a fee of two (2%) percent of the equalized assessed value for non-residential development.

b) If an increase in floor area ratio for a non-residential development is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6%) percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

6. Eligible exactions, ineligible exactions and exemptions.

a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees except as otherwise provided in this ordinance.

b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.

c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

7. Collection of fees.

a) Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

8. Contested fees.

a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by Carlstadt. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

9. Affordable Housing trust fund.

a) There is hereby created a separate, interest-bearing housing trust fund in the Bank of New York for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this ordinance shall be deposited into this fund.

b) Within seven days from the opening of the trust fund account, Carlstadt shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Bank of New York and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).

c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by Court. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

10. Use of funds.

a) Funds deposited in the housing trust fund may be used for any activity authorized by COAH regulations to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for

- b) Funds shall not be expended to reimburse Carlstadt for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Carlstadt affordable housing obligation, at least 30 percent of the balance remaining shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, and rental assistance.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle Carlstadt to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) Carlstadt may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.
- e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

11. Monitoring.

- a) Carlstadt shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

12. Ongoing collection of fees.

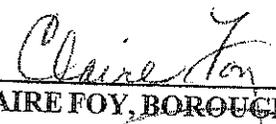
a) The ability for Carlstadt to impose, collect and expend development fees shall expire with the expiration of his judgment of compliance unless Carlstadt has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Carlstadt fails to renew its ability to impose and collect development fees prior to expiration of the judgment of compliance, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. Carlstadt shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification or judgment of compliance, nor will Carlstadt retroactively impose a development fee on such a development. Carlstadt will not expend development fees after the expiration of its substantive certification or judgment of compliance.

INTRODUCED: February 2, 2006

PUBLISHED: February 16, 2006

ADOPTED: February 23, 2006

APPROVED: 
WM. JAY ROSEMAN, MAYOR

ATTEST: 
CLAIRE FOY, BOROUGH CLERK

FINAL MEETING

February 23, 2006

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AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXI OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF CARLSTADT, 2002, TO PROVIDE FOR THE CREATION OF A SENIOR CITIZEN HOUSING ZONE AND OVERLAY ZONES WITHIN CERTAIN AREAS OF CARLSTADT AND TO ESTABLISH BULK AND OTHER REGULATORY PROVISIONS APPLICABLE TO DEVELOPMENT IN THOSE ZONES TO SUPPORT THE AFFORDABLE HOUSING PLAN OF CARLSTADT.

heretofore introduced, does now pass on final reading and the Borough Clerk is hereby authorized and directed to publish said ordinance according to law.

On motion by Lahullier, seconded by Hollenbeck, unanimous on call of roll of those present.

FINAL READING

ORDINANCE NO. 06-4

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVIII ENTITLED "LAND USE PROCEDURES" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF CARLSTADT, 2002, TO PROVIDE FOR THE IMPOSITION OF DEVELOPMENT FEES TO SUPPORT THE AFFORDABLE HOUSING PLAN OF CARLSTADT.

Mayor Roseman entertained a motion to open this ordinance to a hearing of citizens.

On motion by Lahullier, seconded by Stoltz, unanimous on call of roll of those present.

Mayor Roseman asked if any citizen wished to be heard on this ordinance.

Mayor Roseman said to let the record note it is 8:30 P.M. and no citizen is here to be heard on this ordinance.

Mayor Roseman entertained a motion to close this ordinance to a hearing of citizens.

On motion by Lahullier, seconded by Ritchie, unanimous on call of roll of those present.

RESOLUTION NO. 2006-60

BE IT RESOLVED that the ordinance entitled:

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVIII ENTITLED "LAND USE PROCEDURES" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF CARLSTADT, 2002, TO PROVIDE FOR THE IMPOSITION OF DEVELOPMENT FEES TO SUPPORT THE AFFORDABLE HOUSING PLAN OF CARLSTADT.

heretofore introduced, does now pass on final reading and the Borough Clerk is hereby authorized and directed to publish said ordinance according to law.

On motion by Hollenbeck, seconded by Lahullier, unanimous on call of roll of those present.

a) Within all district(s), residential developers shall pay a fee of one (1%) percent of the

RESOLUTION NO. 2010-117

OFFERED BY: Crifasi

SECONDED BY: Stoltz

**RESOLUTION REQUESTING REVIEW AND APPROVAL OF
DEVELOPMENT FEE ORDINANCE**

WHEREAS, the Mayor and Council of the Borough of Carlstadt, Bergen County, intend to petition the Council on Affordable Housing (COAH) for substantive certification; and

WHEREAS, P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), permits municipalities that are under the jurisdiction of the Council on Affordable Housing (COAH) or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

WHEREAS, subject to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by COAH that is accompanied by and includes the following:

1. A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(e) and (d);
2. A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
3. A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
4. A description of collection procedures per N.J.A.C. 5:97-8.3(f);
5. A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
6. A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

WHEREAS, the Borough of Carlstadt has prepared a draft development fee ordinance to accompany its petition to COAH that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

NOW, THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Carlstadt request that COAH review and approve the Borough of Carlstadt's development fee ordinance.

DATED: May 6, 2010

APPROVED: WM. JAY ROSEMAN, MAYOR

ATTEST: CLAIRE FOY, BOROUGH CLERK

ROLL CALL VOTE				
COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
Ritchie	X			
Lahullier	X			
Crifasi	X			
Zimmermann	X			
Stoltz	X			
Bartlett	X			

I hereby certify that the foregoing is a true copy adopted by the Borough Council of the Borough of Carlstadt, New Jersey on May 6, 2010
Claire Foy
 Claire Foy, Borough Clerk

RESOLUTION NO. 2010-119

OFFERED BY: Grifasi

SECONDED BY: Stoltz

RESOLUTION REQUESTING REVIEW AND APPROVAL OF THE AFFORDABLE
HOUSING TRUST FUND SPENDING PLAN

WHEREAS, the Borough of Carlstadt has prepared a draft development fee ordinance which shall, upon adoption, establish an affordable housing trust fund for the deposit of funds collected in connection with Carlstadt's affordable housing program, including but not necessarily limited to development fees, barrier free escrow funds, and rental income; and

WHEREAS, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from COAH prior to spending any of the funds in its housing trust fund; and

WHEREAS, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;
5. A schedule for the expenditure of all affordable housing trust funds;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and
8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;
9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period;
10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
11. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the Borough of Carlstadt has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46; and

WHEREAS, the Mayor and Council of the Borough of Carlstadt intend to petition the Council on Affordable Housing (COAH) for substantive certification of Carlstadt's amended third round Housing Element and Fair Share Plan.

NOW, THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Carlstadt request COAH to review and approve the spending plan.

DATED: May 6, 2010

APPROVED: *Jay Roseman*
Wm. JAY ROSEMAN, MAYOR

ATTEST: *Claire Foy*
CLAIRE FOY, BOROUGH CLERK

ROLL CALL VOTE				
COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
Ritchie	X			
Lahullier	X			
Crifasi	X			
Zimmermann	X			
Stoltz	X			
Bartlett	X			

I hereby certify that the foregoing is a true copy adopted by the Borough Council of the Borough of Carlstadt, New Jersey on

May 6, 2010

Claire Foy
Claire Foy, Borough Clerk