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December 31, 2015

The Honorable Jamie S. Perri, J.S.C.  
Monmouth County Superior Court  
71 Monument Park  
PO Box 1266  
Freehold, NJ 07728

Re: In re Township of Middletown, Docket No. MON-L-2539-15

Dear Judge Perri:

The purpose of this letter is to provide a brief review of Middletown Township's Summary of Housing Plan, which was submitted in a timely fashion on December 14, 2015. With this submission the Township has addressed Paragraph 3. of the Court's Case Management Order No. 4 (CMO 4), which indicated that submission of the plan summary shall constitute an application by the submitting municipality for continued immunity.

In accordance with the Court's September 24, 2015 Order Appointing Special Master and Requiring Submission of Plan Summary, the Township first filed its Summary of Housing Plan in a timely manner on October 30, 2015. As an interested party the Fair Share Housing Center (FSHC) provided comments on the Township's submission on November 13, 2015. A proposed intervenor identified in the September 24, 2015 Order, Half Mile Road Associates, has not responded to inquiries from the Middletown Township Attorney and has not provided comments.

Prior Round Obligation (1987-1999)

Middletown Township received substantive certification from the Council on Affordable Housing (COAH) for its first round affordable housing obligation on March 14, 1994. The Township petitioned COAH for certification of its second round obligation on March 13, 2000, but COAH informed the Township it was not acting on petitions at this point in time.

According to the Summary of Plan, the Township's prior round obligation was 1,561 affordable units, and the Township utilized the following mechanisms to address the obligation:

- 32 units by means of prior cycle credits (4/1/80-12/31/86)
- 101 units by means of credits without controls
- 213 units by means of inclusionary zoning
- 255 units by means of 100% affordable projects
- 52 units by means of accessory apartments
- 25 units by means of supportive and special needs/alternative living arrangements

- 19 units by means of scattered site development
- 500 units by means of a Regional Contribution Agreement (RCA)
- 156 units by means of a compliance bonus
- 208 units by means of rental bonus credits

The above listed mechanisms provide a total credit of 1,561 units, all of which have been completed according to the Summary. The compliance bonus is a mechanism which requires further examination to determine if the correct standards were applied, but this item is part of the global review of compliance standards that the Court will address.

#### Estimate of Fair Share (Prospective Need) Obligation (1999-2025)

In its Summary of Plan the Township appears to have relied on the draft Econsult Report, "Preliminary Calculation of Affordable Housing Obligations", dated November 18, 2015, to establish a prospective need of 266 affordable units, rather than the 965 units in the Reading Report. In a letter of December 14, 2015, transmitting the Summary of Plan the Township Attorney indicates "Middletown does not know or frankly understand the methodology resulting in the numbers produced by Regional Special Master Richard B. Reading. Nothing but numbers were provided with Omnibus Order No. 4 and it is readily apparent that the numbers presented are based on flawed methodology".

I note the Court's Omnibus Order No. 4, in paragraph 2, states in part "These preliminary calculations [Reading Third Round Obligations] are provided as guidance to the municipalities in preparing their updated housing plan summaries, which shall be submitted to the court, Special Masters, interveners, and interested parties no later than December 14, 2015. *Any municipality that chooses to submit a plan summary which relies on fair share obligations derived from any source other than the Reading calculations must be prepared to independently verify through expert testimony that the data and conclusions represented therein are based on prior round methodologies.*" (Emphasis added) Thus, the Court provided latitude for a municipality to use fair share calculations other than those prepared by Richard Reading.

It should be further noted that Middletown Township received substantive certification from COAH for its third round plan on October 19, 2009, one of 68 municipalities in the State to do so.

#### Analysis of Plan Summary

The Township proposes to address the 266 unit affordable housing obligation identified in its Summary of Plan in the following manner:

- 106 units by means of inclusionary zoning
- 110 units by means of a 100% affordable project
- 20 units by means of accessory apartments
- 10 units by means of supportive and special needs/alternative living arrangements
- 22 units by means of mixed-use developments
- 20 rental bonuses

The Summary of Plan does not indicate how the rehabilitation component will be addressed, but the Township has a past history of success in this regard.

### Conclusion

It is readily apparent that Middletown Township has been an active participant in the provision of affordable housing for at least 25 years, and has continued to implement programs to provide affordable housing through the uncertainty of the last decade. While there are additional details to be worked out and affordable housing rules and regulations to abide by with some of these mechanisms, such as 100% affordable projects, compliance bonuses, very low income requirements, and accessory apartment programs, the Township is well on its way to providing a compliant Housing Plan Element and Fair Share Plan.

Final determinations as to the Township's proposals cannot be worked out until the Court determines suitable compliance mechanisms and, of course, the magnitude of the Township's third round fair share obligation. Once the Court resolves these issues the Township will be in a position to finalize its Housing Plan Element and Fair Share Plan, and an extension of temporary immunity certainly is warranted under these conditions.

Sincerely,

*Original signed*

Michael P. Bolan

cc. Brian M. Nelson, Esq. via e-mail  
Kevin D. Walsh, Esq., via e-mail  
Sanyogita Chavan, PP, AICP, via e-mail