



Michael J. Ash, Esq., CRE
Michael.Ash@carlinward.com
*Certified by the New Jersey Supreme Court
As a Civil Trial Attorney*

October 3, 2025

Via ECOURTS

Hon. Thomas C. Miller, A.J.S.C. (ret.)
Affordable Housing Dispute Resolution Program
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625

**RE: IMO Application of the Township of Teaneck, County of Bergen
Docket No. BER-L-776-25**

Dear Judge Miller and Members of the Program:

Please accept this letter on behalf of the Township of Teaneck (the “Township”) in response to the August 27, 2025 challenge filed by Fair Share Housing Center (“FSHC”) to the Township’s 4th Round Housing Element and Fair Share Plan (“HEFSP”) which is pending before the Affordable Housing Dispute Resolution Program (the “Program”). FSHC alleges ambiguous and vague deficiencies in the Township’s FSHC without specifying with particularity which sites or elements are non-compliant. The Township has complied with the 4th Round Requirements of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2, and Administrative directive #14- 24, issued December 13, 2024, and Supplemented June 23, 2025 by Administrative Office of the Courts (collectively as the “FHA”). In good faith, the Township has spent considerable time and resources to fully comply with the requirements of the FHA in a timely manner. The HEFSP adopted by the Township on June 17, 2025 describes in detail six (6) projects that will provide sufficient units to satisfy the requirements of the FHA. The “cookie-cutter” challenge by FSHC is an affront to the efforts of the

25B Vreeland Road, Suite 102
P.O. Box 751
Florham Park, New Jersey 07932

Phone: (973) 377-3350
Fax: (973) 377-5626
<https://www.carlinward.com>

Township to comply with the FHA. For failure to include any specificity of particularity in FSHC's challenge, the challenge should be dismissed outright. The Township's HEFSP is presumed valid and should be certified as compliant by the Program.

I. FSHC HAS FAILED TO MEET THE STANDARD TO CHALLENGE THE TOWNSHIP'S HEFSP.

FSHC has failed to specify or otherwise identify with particularity any deficiency with the Township's HEFSP that would prevent the Program from certifying the Township's compliance. A challenge of a specific nature is a statutory prerequisite for any challenge. There is no exception for FSHC. This jurisdictional defect renders FSHC's challenge as deficient and should be rejected outright. The FHA and 4th Round Compliance did not provide a remedy for "cookie cutter" and "cut and paste" style challenges to a municipality's good faith compliance. There is no doubt this challenge was "cut and paste" from another challenge by FSHC as a reference to "Woodcliff Lake" was inadvertently left in the filed document. See, FSHC Letter Brief, p. 8.

When viewed under the proper standard of review, the Township's plan should receive certification. The FHA requires that the Program "shall apply an objective assessment standard" to determine whether a municipality's HEFSP is compliant with the FHA and the Mount Laurel doctrine. A housing plan "adopted by a municipality shall be presumed valid and compliant with this section unless the program determines, based on the documentation submitted, that the plan fails to satisfy the requirements of this section." N.J.S.A. 52:27D-304.2(b). The Legislature deliberately established the presumption to recognize the extensive municipal planning process and to facilitate a streamlined, collaborative dispute resolution program in lieu of prolonged and meritless litigation. The Program's role is expressly collaborative to avoid unnecessary litigation and to support [reward] municipalities in achieving compliance certification while ensuring a constitutional obligation to provide a realistic opportunity for affordable housing is met. Applying an objective standard to judge the Township's

HEFSP, the Program should outright dismiss FSHC's challenge and recommend approval of the Township's HEFSP. Taking each ambiguous allegation by FSHC individually demonstrates compliance with the FHA by the Township.

A. The Township's Vacant Land Adjustment Complies with the FHA

FSHC makes a broad objection to the Vacant Land Adjustment incorporated into the Township's HEFSP. The Township's analysis and Vacant Land Adjustment is well supported by the FHA, Mount Laurel Doctrine and best practices of 4th Round planners. To underscore the generic nature of FSHC's objection and illustrative of the arbitrariness of FSHC's objection, FSHC did not uniformly object to the same methodology used by the Township's planner in over a dozen municipalities. Rather, in some municipalities the same VLA methodology was not challenged at all. In another municipality, FSHC did make this same objection, however, that particular municipality did not make a VLA at all. The amendment to the FHA, N.J.S.A. 52:27D-310.1 makes a "significant change" in the rules governing unmet need. Instead of relying on the current state of the law, FSHC ignores the significance of that change and focuses on N.J.A.C. 5:93-4.2(d), asserting that the Township's VLA must include sites "'that are devoted to a specific use which involves relatively low-density development' and would create a realistic opportunity if inclusionary zoning were in place." This argument fails. According to N.J.A.C. 5:93-4.2(d) COAH "may" determine whether other sites that are devoted to a specific use which involves relatively low density development, which would create an opportunity for affordable housing if inclusionary housing was in place, should be included. The rules contemplate potential development for large open parcels without significant building improvements, as well as non-conforming uses. The Township is a densely populated area without these types of sites that COAH under the rule "may" determine to be included when preparing a VLA. This analysis is not a required component of a VLA.

Critically, even if the Township had such sites in its borders, the obligation and burden of proof is on an objector to bring such sites forward for consideration, not on the municipality to figure out whether such sites exist and whether the owners of such sites are interested in making the site available for inclusionary development. It is longstanding law that where a party's case depends on proving a negative – FSHC's case here depends on proving a negative, namely that the Township's VLA and its calculation of RDP, does not comply with the AFHA or the Mount Laurel doctrine – the burden of proof falls on the party averring the negative, here FSHC. Chase Manhattan Bank v. O'Connor, 82 N.J. Super. 382, 387 (Chan. Div. 1964). See also, IMO the Application of the Township of Bordentown, 471 N.J. Super. 196, 233 (App. Div. 2022), certif. denied, 252 N.J. 533 (2023) (applying the burden of proof to objectors in Mount Laurel cases).

FSHC did not provide any planning analysis of their own to support their objection. FSHC has failed to meet its burden of proving that the Township's VLA and calculation of RDP by failing to identify the sites it contends should be included in RDP. This is not a theoretical or academic question. What properties in the Township of Teaneck did we overlook in calculating RDP? The lack of specificity in this objection as required by N.J.S.A. 52:27D-304.1.f.(2)(b) requires the dismissal of FSHC's challenge. Even if the Program is unwilling to dismiss FSHC's challenge in accordance with section III.C of Directive #14-24 for failure to "meet the standards required by N.J.S.A. 52:27D-304.1.f.(2)(b)," the Program should consider the challenge in terms of whether FSHC has met its burden of proving that the Township's VLA and RDP calculation violates the AFHA and the Mount Laurel doctrine.

Finally, FSHC implies that the Township's calculation of RDP did not utilize the appropriate density. The Township followed N.J.A.C. 5:93-4.2(f) and, applying the correct densities, multiplied the

resulting numbers by 20% to calculate its RDP. FSHC has failed to provide any specifics of how and where the Township failed to follow this rule. Even if the Program is unwilling to dismiss FSHC's challenge in accordance with section III.C of Directive #14-24 for failure to "meet the standards required by N.J.S.A. 52:27D-304.1.f.(2)(b)," the Program should consider the challenge in terms of whether FSHC has met its burden of proving that the Township's RDP calculation violates the AFHA and the Mount Laurel doctrine in this regard.

B. The Township's Properly Applied Unmet Need Mechanisms

FSHC argues that the Township's VLA improperly under includes vacant land resulting in a lower than required RDP. FSHC objects for the Township's VLA for including only including certain classes of properties and applying "a blanket minimum density of 6 dwelling unit per acres, thereby ruling out any parcels under the size of 0.83 acres" to those properties. Finally, FSHC makes the vague allegation that the "Township has not provided any analysis of sites that have redeveloped or are likely to redevelop that contribute towards RDP." These arguments are ambiguous and without merit.

As to its first point, FSHC cites N.J.A.C. 5:93-4.2 which it alleges "requires a VLA to consider redevelopment sites in addition to vacant sites." FSHC fails to acknowledge that an analysis of redevelopment comes into play only when addressing unmet need. N.J.A.C. 5:93-4.2(h) provides that if a municipality's RDP is less than the municipality's pre-credited need, then COAH "shall review the existing municipal land use map for areas that may develop or redevelop." Examples of such areas are set forth in the rule and include: "a private club owned by its members; publicly owned land; downtown mixed-use areas; high density residential areas surrounding the downtown; areas with large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support

additional development.” FSHC has failed to provide any specifics of how and where the Township failed to follow N.J.A.C. 5:93-4.2(h).

Even if the Program is unwilling to dismiss FSHC’s challenge in accordance with section III.C of Directive #14-24 for failure to “meet the standards required by N.J.S.A. 52:27D-304.1.f.(2)(b),” the Program should consider the challenge in terms of whether FSHC has met its burden of proving that the Township’s RDP calculation violates the FHA and the Mount Laurel doctrine in this regard.

Further, to the extent that the Township’s VLA does not comply with N.J.A.C. 5:93-4.2, the FHA through N.J.S.A. 52:27D-310.1 has altered the process municipalities must undertake in considering both vacant land and areas that have the potential or are “likely” to redevelop. N.J.S.A. 52:27D-310.1 provides:

Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation.

The FHA specifically provides in N.J.S.A. 52:27D-311m: “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by [COAH] unless those regulations are contradicted by statute, including but not limited to [the FHA], or binding court decisions.” (emphasis added). Here, the prior round COAH regulations FSHC has relied upon to challenge the Township’s 4th Round HEFSP are now contradicted by the FHA and no longer apply.

FSHC argues that the Township has not provided an adequate response to its unmet need, including the required 25% through zoning on site with a likelihood to redevelop. Here, FSHC characterizes the 25% provision as a required response to “unmet need,” to be in addition to the unmet

need mechanisms set forth in N.J.A.C. 5:93-4.2(h), consisting of: “(1) [z]oning amendments that permit apartments or accessory apartments; (2) [o]verlay zoning requiring inclusionary development; or (3) [z]oning amendments that impose a development fee. . . .” The FHA through N.J.S.A. 52:27D-310.1, however, does not use the phrase “unmet need.” To the contrary, N.J.S.A.52:27D-310.1, uses the phrase “realistic zoning,” which must be adopted to “address” RDP, not unmet need, in accordance with N.J.A.C. 5:93-4.2(g):

Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation.

FSHC tries to buttress their arguments with the appearance of expert analysis with reliance on a report by David N. Kinsey dated August 25, 2025 (the “Kinsey Report”). The Kinsey report states that “compliant municipalities” have not only zoned for 25% of their unmet need on sites likely to redevelop but “have also proposed appropriate compliance mechanisms, usually overlay including zoning, to address the remaining 75% of their Unmet Need as required by COAH rules.” While this may be Dr. Kinsey’s preference, there is no COAH rule, and there never was a COAH rule, that requires a municipality to “meet its entire unmet need.” The only support for Dr. Kinsey’s preference is N.J.A.C. 5:93-4.1(b), which requires a “response toward the obligation not addressed by the RDP.” A “response toward” unmet need is not a requirement that 100% of unmet need to addressed. It has always been the case, and continues to be the case, that a municipality has an obligation to zone to satisfy 100% of its RDP but a municipality needs to only provide a response to a portion of its unmet need.

II. The Township’s HEFSP Includes Specific Sites to Fulfill Realistic Development Potential

The Township has filed a HEFSP that demonstrates a plan to fulfill realistic development potential for full compliance with the Township’s obligation.

PROJECT SITE	B/L	LMI UNITS	BONUS CREDIT TYPE	BONUS CREDITS	W/ BONUS CREDITS
140 State Street Amended RDP	Block 5004, Lot 1	5	TOD (0.5)	2.5	7.5
Cedar Lane and American Legion Drive	Block 819, Lots 1, 14, 16, 17; Block 707, Lots 1-5; Block 705, Lot 4.01	48	TOD or Non-Res Conversion (0.5)	24	72
143 State Street	Block 5002, Lot 26	9	TOD or Non-Res Conversion (0.5)	4.5	13.5
827 Teaneck Road	Block 3902, Lot 2.01	6	TOD or Non-Res Conversion (0.5)	3	9
1387 Hill Street	Block 5003, Lot 16	4	TOD (0.5)	2	6
54 West Englewood Ave	Block 4905, Lot 3	11	TOD (0.5)	5.5	16.5
Total:					124.5

See, HEFSP, p. 29. The Township is actively taking necessary steps to re-zone and adopt redevelopment plans necessary to effectuate these proposed projects. For example, the 140 State Street Project contributing 7.5 credits received site plan approval on August 21, 2025. The Township is committed to implementing all zoning and providing the Program with all extension controls and documentation required by March 15, 2026 in accordance with N.J.S.A. 52:27D-304.1f.(2)(d). The meritless challenge by FSHC is counter-productive and is a waste of time and resources that could be better used toward compliance.

CONCLUSION

For the reasons stated above, Fair Share Housing Center's challenge should be rejected as a matter of law and the Township's Housing Element and Fair Share Plan should be certified as compliant by the Program.

Very truly yours,

CARLIN, WARD, ASH & HEIART, LLC

By: *Michael J. Ash*
MICHAEL J. ASH, ESQ., CRE

cc: Jaelyn Hashmat, Township Manager (via email)
Doug Ruccione, Township Clerk (via email)
Scott Salmon, Esq., Township Attorney (via email)
Esme M. Devenney, Esq. Fair Share Housing Center (via email and eCourts)
Jason Tuvel, Esq. (via email and eCourts)