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Attorneys for Plaintiff, Borough of Kinnelon

In the Matter of the Application of:	:	
	:	SUPERIOR COURT OF NEW JERSEY
BOROUGH OF KINNELON,	:	LAW DIVISION: MORRIS COUNTY
	:	
Pursuant to <u>N.J.S.A. 52:27D-304.1 et. seq</u>	:	DOCKET NO. L-
	:	DECLARATORY JUDGMENT
	:	COMPLAINT PURSUANT TO
	:	<u>N.J.S.A. 52:27D-304.1 ET.SEQ.</u>
	:	
	:	

Plaintiff, Borough of Kinnelon, with an address of 130 Kinnelon Road, Kinnelon, New Jersey (hereinafter “the Borough”) by way of this Declaratory Judgment Action pursuant to N.J.S.A.52:27D-304-1 et seq. hereby states as follows:

STATEMENT OF FACTS

1. On March 20, 2024, the New Jersey Legislature passed into law P.L. 2024, c. 2 which is an amendment to the Affordable Housing Regulations of the Fair Housing Act.
2. Pursuant to the amendments, the law amended the Fair Housing Act to abolish the Council on Affordable Housing (COAH) and created a new process for municipalities to come into constitutional compliance with their affordable housing obligations.
3. The new law established an Affordable Housing Alternative Dispute Resolution Program (“the Program”) within the New Jersey Judiciary for the purpose of resolving disputes under the Fair Housing Act (“FHS”).
4. Pursuant to the statute, the New Jersey Department of Community Affairs (“DCA”) was tasked with providing non-binding calculations of municipalities present and prospective needs for affordable housing using formulas outlined in P.L. 2024 c.2.

5. DCA outlined the data sources contained in the statute and published its 10-year affordable housing calculation needed for the Fourth Round from 2025 to 2035 that each municipality in the State.
6. On October 8, 2024, DCA published its findings for the Fourth Round of affordable housing proposed allocations for all municipalities in the State of New Jersey pursuant to N.J.S.A. 52:27D-304.1.6.
7. Pursuant to the statute, after the numbers are released by DCA, municipalities must adopt a resolution no later than January 31, 2025 accepting DCA's determination of the present and prospective fair share obligation pursuant to N.J.S.A. 52:27D-304.1.f(1)(b).
8. If a municipality does not adopt a resolution, then it must challenge DCA's methodology, with its own, to dispute the numbers determined by DCA.
9. If a municipality adopts a resolution, a declaratory judgment action must be filed with the Program within 48 hours of the adoption of said resolution.
10. The filing of said declaratory judgment action is required in order to protect the municipality from exclusionary zoning litigation and protect the municipality from losing its immunity from said litigation.
11. DCA's Fourth Round calculations released on October 18, 2024 set forth that Kinnelon's present need is 22 affordable housing units, and its prospective need is 102 units.
12. On January 16, 2025, the Mayor and Council of the Borough of Kinnelon adopted Resolution 01.02.2025 adopting and accepting the Department of Community Affairs' Fourth Round Affordable Housing present and prospective need calculations. A copy of Resolution 01.02.2025 is attached hereto as Exhibit A.
13. The Borough has filed this declaratory judgment action with the program to accept the Fourth-Round affordable housing obligations prepared by Department of Community Affairs for the Borough of Kinnelon and to preserve the Borough's immunity from

exclusionary zoning litigation.

COUNT I

**DECLARATION OF THE BOROUGH'S FOURTH ROUND
AFFORDABLE HOUSING OBLIGATION TO BE IN
ACCORDANCE WITH DCA'S OCTOBER 2024 DETERMINATION.**

1. The Borough reiterates and incorporates the aforementioned allegations as if more fully set forth herein.
2. Pursuant to N.J.S.A. 52:27D-304.1 et seq. the Borough seeks declaratory judgment in accordance with the statute directing the Borough's Fourth Round Affordable Housing obligation to be in accordance with DCA's October 2024 determinations.
3. The Borough is be entitled to immunity from affordable housing litigation and a judgment of repose from 2025 to 2035 in accordance with N.J.S.A. 52:37D-304.1 2024 c. 2. et seq.

WHEREFORE, the Borough of Kinnelon demands Judgment as follows:

- a) Declaring the Borough's Fourth Round Affordable Housing obligation from 2025 to 2035 to be a present need of 22 units and prospective need of 102 units in accordance with the Department of Community Affairs Affordable Housing Obligations for the fourth round pursuant to its October 2024 methodology report;
- b) Declaring the Borough immune from exclusionary zoning and affordable housing litigation for the Fourth Round period of 2025 to 2035;
- c) A Judgment of Repose; and
- d) Such other relief that the Court deems equitable and just.

GIBLIN & GANNAIO, LLC
Attorneys for the Borough of Kinnelon



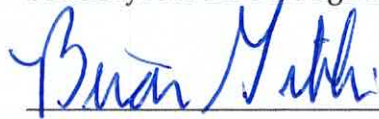
Brian T. Giblin, Esq.

Dated: January 17, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Brian T. Giblin, Esq. is hereby designated as Trial Counsel in this matter.

GIBLIN & GANNAIO, LLC
Attorneys for the Borough of Kinnelon

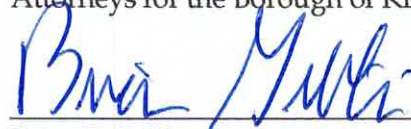


Brian T. Giblin, Esq.

CERTIFICATION PURSUASNT TO R. 4:5-1

Pursuant to R. 4:5-1 it is hereby certified that the matter in controversy is not the subject of any other Court action or arbitration proceeding pending or contemplated.

GIBLIN & GANNAIO, LLC
Attorneys for the Borough of Kinnelon



Brian T. Giblin, Esq.

EXHIBIT A

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS**

RESOLUTION # 01.02.2025

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

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

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

WHEREAS, the DCA Report calculates Kinnelon's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 22 and a Prospective Need or New Construction Obligation of 102; and

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

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

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

WHEREAS, based on the foregoing, Kinnelon accepts the DCA calculations of Kinnelon's fair share obligations and commits to its fair share of 22 units present need and 102 units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

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

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

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

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

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

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

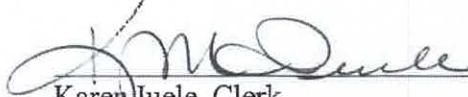
WHEREAS, Kinnelon seeks a certification of compliance with the FHA and, therefore, directs its Borough Attorney to file a declaratory relief action within 48 hours of the adoption of this resolution in Morris County.

NOW, THEREFORE, BE IT RESOLVED on this 16 day of January, 2025 by the Mayor and Council of Kinnelon as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. Kinnelon hereby commits to the DCA Round 4 Present Need Obligation of 22 units and the Round 4 Prospective Need Obligation of 102 units described in this resolution, subject to all reservations of rights set forth above.
3. Kinnelon hereby directs its Borough Attorney to file a declaratory judgment complaint in Morris County within 48 hours after adoption this resolution, attaching this resolution.
4. Kinnelon authorizes Borough Attorney to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.
5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Karen Iuele, Clerk of Kinnelon, County of Morris, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by Mayor and Council at a meeting held on January 16, 2025.



Karen Iuele, Clerk