

Legal Notice
Borough of Dunellen

Notice of Declaratory Action and Motion before the Superior Court of New Jersey to Reaffirm
Temporary Immunity from Mount Laurel Lawsuits

NOTICE is hereby given that, on July 7, 2015, the Borough of Dunellen filed a Declaratory Complaint in Middlesex County Superior Court, Law Division, in response to the Supreme Court's recent decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter "In re COAH"). Through its Declaratory Complaint, the Borough is asking the Court to:

1. Enter an Order providing the Borough five (5) months to file a Housing Element and Fair Share Plan with the Court, commencing on the date the Court determines the criteria and guidelines with which the Borough must comply;
2. Enter an Order reaffirming the right of the Borough and its Planning Board to temporary immunity from Mount Laurel lawsuits commencing from June 8, 2015 and remaining in effect until the Court issues a final judgment of Compliance and Repose to the Borough for its Housing Element and Fair Share Plan formulated, adopted and approved by the Court; or if the Court declines to commence the start date as the date the Court makes this determination, for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply;
3. Enter an Order extending immunity provided that the Borough files a Round 3 Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") prior to the expiration of the initial five-month period;
4. Enter an Order approving the jurisdiction of the Court to consider and approve any Spending Plan and Amendments thereof, if applicable, and approve the Borough's Fair Share Plan as may be supplemented and amended during the aforementioned five-month period and thereafter;
5. To enter subsequent orders periodically extending immunity until such time as the Court enters a Judgment of Compliance and Repose formally approving the Borough's Fair Share Plan;
6. To enter an Order approving the jurisdiction of the Court to consider and approve any Spending Plan and Amendments thereto, if applicable;
7. To determine that the Borough has committed to expend trust fund monies within four years of receipt in accordance with N.J.S.A. 52:27D-329.2 and 329.3; and
8. To grant such other relief as the Court deems just and equitable.

A "Mount Laurel lawsuit" is brought pursuant to Supreme Court opinions commonly referred to as "Mount Laurel I" and "Mount Laurel II" claiming that a municipality has used its zoning powers to exclude low and moderate income households in violation of the requirements of these landmark decisions, the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et. seq. and other applicable laws. A "temporary immunity" order protects a municipality and its planning board from Mount Laurel lawsuits. A Judgment of Compliance and Repose is an order formally approving a municipality's Housing Element and Fair Share Plan which provides the municipality ten years of protection from Mount Laurel suits. Any response to the Borough's Declaratory Action must be filed in accordance with the Rules of Court. Any interested party seeking to participate in this action should consider legal counsel and should be guided by these Rules.

NOTICE is further given that, on July 7, 2015, the Borough also filed a Motion to Reaffirm Temporary Immunity and shall move before the Honorable Douglas Wolfson, J.S.C. on July 30, 2015 at 10:30 a.m., or such other date and/or time to be determined by the Court, for an Order (1) reaffirming the Temporary Immunity From Mount Laurel Lawsuits previously granted to the Borough and its Planning Board; and (2) providing the Borough five (5) months to file a Fair Share Plan with the Court, commencing from the date the Court determines the criteria and guidelines with which the Borough must comply; or, if the Court declines to commence the start date as the date the Court makes this determination, for five months from the date the Court deems appropriate.

Any public comments opposing the Borough's Motion to Reaffirm Temporary Immunity must be submitted in writing no later than 5:00 p.m. on Tuesday, July 28, 2015. Such written comments shall set forth any reason(s) why the Court should not enter an Order granting the borough and its Planning Board immunity from Mount Laurel lawsuits. Be advised that the Court could decline to consider any written public comments not filed by the deadline, and will use its discretion on the probative weight to be given any filing. Public comments shall be served upon:

Honorable Douglas Wolfson, J.S.C.
Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903

John E. Bruder, Esq.
2 West Union Avenue
PO Box 750
Bound Brook, NJ 08805

William M. Robins, Administrator
Borough of Dunellen
355 North Avenue
Dunellen, NJ 08812

John Lore, Esq.
DeMarco and Lore
PO Box 279
418 North Washington Avenue
Dunellen, NJ 08812

A copy of the Borough's Declaratory Action and Motion to Reaffirm Temporary Immunity with supporting documentation are available for public inspection at the office of the Borough Clerk, Borough of Dunellen, 355 North Avenue, Dunellen, NJ 08812 during regular business hours.

LAW OFFICES
OF
JOHN E. BRUDER

Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
732.356.1243
Fax 732.356.0765

MEMBER OF NJ, NV & PA BARS

July 27, 2015

VIA HAND DELIVERY

Civil Records Office
Superior Court of New Jersey
Middlesex County Courthouse
56 Paterson Street
P.O. Box 2633
New Brunswick, New Jersey 08903-2633

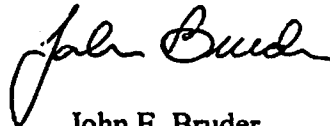
**Re: In the Matter of the Application of the Borough of Dunellen, County of Middlesex,
Docket No. MID-L-03947-15**

Dear Sir or Madam:

Enclosed herewith please find an original and one (1) copy of the Borough of Dunellen's Supplemental Certification of Planner Jennifer Beahm in support of the Borough's Motion for Temporary Immunity. Please note the Borough previously filed and served a Notice of Motion, Certification(s), proposed form of Order, and Proof of Service. This matter is returnable before the Honorable Douglas K. Wolfson, J.S.C. on Thursday, July 30, 2015.

Kindly file the Pleading and Motion and return a filed copy to the undersigned in the self-addressed, stamped envelope provided. Thank you for your anticipated courtesies and cooperation.

Very truly yours,



John E. Bruder

JEB:lcj

Enclosures

cc: Honorable Douglas K. Wolfson, J.S.C.
William Robins, Clerk / Administrator
Service List

3. After submitting said Certification, this Court issued a written opinion in the case entitled In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances. Your Honor's Law Clerk provided a copy of that opinion to all counsel of record on any pending motions for Immunity filed on behalf of Middlesex County municipalities. Within the Opinion, the Court set forth protocols and procedures which municipalities shall be required to follow in order to advance the declaratory judgment action and the immunity motion. Also as part of that provision, Your Honor's Law Clerk encouraged all moving parties to submit detailed information, certifications or exhibits to assist the Court in reaching its decision on each of the pending motions for Immunity.

4. In accordance with those directives, the undersigned hereby provides additional detailed information for this Court to consider in addition to the moving papers, certifications and exhibits already provided to this Court on behalf of the Borough of Dunellen in support of its motion for Temporary Immunity.

5. As noted previously in its Complaint and moving papers in support of this motion, Dunellen has been deemed to be a "participating" municipality, having been under the jurisdiction of COAH to the present time and until the Supreme Court recently removed COAH'S jurisdiction in Mount Laurel IV. Additionally, the Borough had adopted and approved a Fair Share Housing Plan and submitted petitions for substantive certification to COAH in 2006 and 2009, upon which that agency failed to act.

6. Even in spite of there being no well-defined rules in place for Round III fair share housing regulations, Dunellen has continued to advance the goal of providing housing for low to moderate income households within the Borough.

7. In August, 2013, the governing body of the Borough of Dunellen adopted a Redevelopment Plan amendment which requires the provision of affordable housing as part of any residential development within the designated redevelopment area. See, **Exhibit 1**, Redevelopment Plan, Revised August 5, 2013, at Section 6.

8. Most recently, in November, 2014, the Borough adopted an ordinance to amend its Downtown Redevelopment Plan. That amendment, requires a set aside for low and moderate income housing up to 20% for residential development within the redevelopment area. See, **Exhibit 2** to this Certification.

9. It should be noted that the Borough of Dunellen is approximately 1 square mile in geographical size, yet it is the 4th most densely populated municipality in Middlesex County (per capita population) according to the 2010 U.S. Census Report. It is already home to a substantial number of low and moderate income homes. There is virtually minimal or no vacant land in the municipality.

10. However, the Borough has identified one area in need of redevelopment within the Borough. That area is the Downtown Redevelopment Area, and the November, 2014 amendment to the Redevelopment Plan specifically applies to this area. Thus, the Borough has planned for a significant set aside (up to 20%) for fair share housing in the one area in the borough in need of redevelopment.

11. As well, and as noted in the Borough's Declaratory Judgment Complaint, Dunellen is a participant in the Middlesex County program for the rehabilitation of units of low and moderate income housing. That program, known as "Housing First", provides up to \$25,000.00 from the "Coming Home of Middlesex County, Inc." fund for to qualifying low and moderate income homeowners. Dunellen has been a participant in this program for a significant number of years and it is believed by all parties that Dunellen's low obligation amount (12 units) shall be substantially if not entirely met through this program. Dunellen specifically provides detailed information on its municipal website for any residents interested in applying for this program.

12. Finally, it is noted that in spite of there being no clear rules in place for Round III fair share regulations, whenever a multi-unit residential or mixed use residential / commercial development has occurred in the Borough (of which there has been only one to date), the Borough has required that affordable housing units be provided. The Villani building, located at 364-368 North Avenue, in downtown Dunellen, was approved by the Borough in 2009 and the developer completed construction in 2013. Of the 8 residential units in this mixed commercial / residential building, the Borough required the developer to designate two (2) of those units to be low / moderate income units. See, Exhibit 3, relevant provisions of Planning Board Resolution March 23, 2009. Those units are now occupied.


13. In light of the above, it is demonstrably obvious that the Borough of Dunellen has made numerous efforts to comply with the intent of the Fair Housing Act and it has taken measures throughout the Third Round, regardless of whether specific rules were in place, in

order to facilitate affordable housing opportunities. Those measures will continue to ensure for the provision of fair share housing within the Borough of Dunellen.

14. Based on the above, combined with Plaintiff / Petitioner's other moving papers previously filed, it is submitted that the Borough of Dunellen is committed to voluntary Mount Laurel compliance, and thus an Order of Temporary Immunity from Mount Laurel lawsuits is appropriate.

15. I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: July 27, 2015



Jennifer Beahm, P.P., A.I.C.P.

EXHIBIT 1

**Dunellen Downtown
Redevelopment Plan,
Phase 1**

**Borough of Dunellen
Middlesex County**

February 2003

(Revised July 12, 2004)

(Revised August 5, 2013)

Amendments to Section 6, June 2011

Section 6.1.1 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

Section 6.1.2 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

Section 6.1.3 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

EXHIBIT 2

BOROUGH OF DUNELLEN

ORDINANCE 2014-04

The following Amendments to Section 6.1.1, Site #1, Train Station North (Block 69/All Lots), Section 6.1.2, Site #2, Train Station South (Block 70/Lot 13 and 13.01), Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1), Section 7.4.3 Site #3, South Washington Avenue (Block 85/Lot 1) and Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) of Dunellen's Redevelopment Plan and the addition of Section 9.5, Redevelopment Agreement was Introduced for first reading on September 22, 2014. It was reviewed and approved by the Dunellen Planning Board on October 27, 2014, and was presented for Public Hearing and Adoption on November 3, 2014 at 7:30 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey.

This ordinance amends the Dunellen Downtown Redevelopment Plan, Phase One that was adopted in February 2003 and revised on July 12, 2004 with further Amendments in June 2011 and August 2013.

Section 6.1.1, Site #1, Train Station North (Block 69/All Lots) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 6.1.2, Site #2, Train Station South (Block 70/Lot 13 and 13.01) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) is to be amended by deleting Principal Permitted Uses and replacing with the following:

Principal Permitted Uses:

- **Commercial/Retail/Residential/Recreational.** This land use designation contemplates a mixed-use development not exceeding four stories that may include residential, commercial, recreational or retail uses. Retail and commercial uses shall be permitted only on the first floor of buildings (“First Floor Commercial/Retail”) unless the building(s) immediately fronts or faces South Washington Avenue, then, in addition to the above, offices and residential uses shall be permitted on the upper floors of said buildings. Residential development shall be permitted on any or all floors in one or more buildings constructed in the easterly portion of the property north of the Borough recreational site on Columbia Street (with a maximum number of market rate units in such residential buildings not to exceed 340 in number). The Residential development may include an activity center and other typical types of amenities in connection with such Residential use. To facilitate this development the property may be subdivided into two or more parcels but shall be subject to a unified development plan and density shall be calculated based upon the total land area in the unified plan. First Floor Commercial/Retail may include (but is not limited to) personal and business service establishments, restaurants, retail stores, bakeries, delicatessens, drug stores, beauty parlors, food stores and supermarkets. First Floor Commercial/Retail uses may include drive thru facilities. Any residential development may be for sale or rental at the option of the developer.

Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) will be further amended by replacing the “Building Requirements: Density Requirements” subsection with the following:

3. **Density Requirements.** The maximum dwelling unit density shall be twenty (20) per acre.

Section 9.5, Redevelopment Agreement is to be added containing the following language:

A redeveloper undertaking a redevelopment project under this Redevelopment Plan shall do so only pursuant to and in accordance with a Redevelopment Agreement between the redeveloper and the Borough of Dunellen.

Adopted: November 4, 2014

EXHIBIT 3

**PLANNING BOARD
BOROUGH OF DUNELLEN
RESOLUTION**

WHEREAS, 364-368 NORTH AVENUE ASSOCIATES, LLC has heretofore made application to the Dunellen Planning Board for certain variance relief with reference to certain property owned by it located at 364-368 North Avenue; and

WHEREAS, pursuant to the requirements of statute and due process of law, the Planning Board conducted public hearings on the aforesaid application on January 26th, 2009 and February 23rd, 2009; and

WHEREAS, at the aforesaid public hearings the Planning Board heard the testimony of the owners of the aforesaid property, received testimony from a professional engineer, and heard the arguments of applicant's counsel and opened the hearing to comments from members of the general public; and

WHEREAS, it appears that the jurisdictional requirements of this application have been met as the applicant has produced both proof of notice of public hearing in an official newspaper of the Borough of Dunellen, as well as produced proof of Notice of Hearing on the adjoining property owners required by law to be served with Notice of Public Hearing; and

WHEREAS, the Planning Board has duly considered all of the foregoing in arriving at its decision regarding the instant application, and the Dunellen Planning Board, therefore, makes the following **FINDINGS OF FACT:**

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Dunellen, County of Middlesex and the State of New Jersey, that pursuant to the foregoing **FINDINGS OF FACT and CONCLUSIONS** this Board hereby approves the variance application of **364-368 NORTH AVENUE ASSOCIATES, LLC** along with its application for certain design waivers and also for preliminary and final site plan approval to construct a certain mixed use building at property known as 364-368 North Avenue, Dunellen, Middlesex County, New Jersey, in the manner proposed in the plans submitted to the Board and consistent with the testimony presented to the Board concerning this application.

BE IT FURTHER RESOLVED that the within variance design waiver and site plan approval is granted on the following terms and conditions:

- (1) In accordance with the requirements on New Jersey C.O.A.H., one of the eight residential units must be designated and retained as low income housing and one such unit must be designated and retained as moderate income housing.
- (2) The applicant must negotiate in good faith with the Dunellen Parking Authority to obtain the exclusive use of at least an additional eight parking spaces, and will report back to the Planning Board within a reasonable time as to the results of such negotiation.
- (3) The applicant must comply with all other conditions of approval as set forth in the February 28th, 2009 Memo from CME Associates to Planning Board Attorney, John M. Lore, Esq., a copy of which is attached hereto and incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the applicant must comply with all of the terms and conditions of the January 10th, 2009 report from CME Associates to this Board, copy of which is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED that the within variance approval is strictly limited to the facts and circumstances as set forth in the testimony before the Board at the public hearings conducted in conjunction with this matter, as well as the plans submitted with this application.

BE IT FURTHER RESOLVED that the within variance approval is subject to whatever other approvals are required by the applicant from any other Boards or bodies having jurisdiction over this application, including but not limited to any requirements of the Borough of Dunellen with reference to the issuance of building permits and/or certificates of occupancy.

APPROVED this 23rd day of March, 2009.

ATTEST:


ROGER DORNBIERER, Chairman
Dunellen Planning Board


SCOTT LUTHMAN, Secretary
Dunellen Planning Board