



ORDER PREPARED BY THE COURT

IN THE MATTER OF THE MT. LAUREL
DECLARATORY JUDGMENT
ACTIONS FILED IN THE COUNTY OF
SOMERSET, STATE OF NEW JERSEY,
PURSUANT TO In Re Adoption of
N.J.A.C. 5:96, 221 N.J. 1 (2015)¹

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

CIVIL ACTION
(Mount Laurel)

IN THE MATTER OF THE MT. LAUREL
DECLARATORY JUDGMENT
ACTIONS FILED IN THE COUNTY OF
HUNTERDON, STATE OF NEW
JERSEY, PURSUANT TO In Re Adoption
of N.J.A.C. 5:96, 221 N.J. 1 (2015)²

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUNTERDON COUNTY

CIVIL ACTION
(Mount Laurel)

IN THE MATTER OF THE MT. LAUREL
DECLARATORY JUDGMENT
ACTIONS FILED IN THE COUNTY OF
WARREN, STATE OF NEW JERSEY,
PURSUANT TO In Re Adoption of
N.J.A.C. 5:96, 221 N.J. 1 (2015)³

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
WARREN COUNTY

CIVIL ACTION
(Mount Laurel)

**OMNIBUS ORDER
CASE MANAGEMENT AND
CONSOLIDATED HEARING ON
DETERMINATION OF FAIR SHARE
OBLIGATION**

¹ The complete list of the matters filed within each County is listed in paragraph 19 of this Order.

² The complete list of the matters filed within each County is listed in paragraph 19 of this Order.

³ The complete list of the matters filed within each County is listed in paragraph 19 of this Order.

THE MATTERS set forth below having come before the Court on January 28, 2016 at a Joint Case Management Conference with the parties and counsel listed on the attached Exhibit "A" having appeared and made argument or comment concerning the various issues that were initiated by the Court; and the Court having considered the comments and arguments made by the parties, and the Court included in its consideration of the issues, the various alternatives that are available to hear, analyze and decide the most efficient and fair mechanism in order to adjudicate the issues involved in the determination of the methodology to be applied to calculate the regional and municipal fair share housing need and allocation; and the Court having determined that the adjudication of the Third Round Fair Share Obligations should occur in a consolidated hearing in which all parties to the pending Mount Laurel declaratory judgment proceedings that are pending within Somerset, Hunterdon and Warren Counties (as listed in paragraph 19 below), including intervenors and interested parties, may participate; and the need to create a fair, reasonable and credible framework going forward in order to comply with the Court's mandate and for other good cause appearing;

It is on this 5th day of February, 2016, **ORDERED** as follows:

1. The matters set forth below in paragraph 20 of this Order (that is all of Somerset, Hunterdon and Warren County Mt. Laurel matters) are hereby consolidated for the limited purpose of conducting the necessary hearing(s) to determine the appropriate methodology for establishing the state and regional need for low and moderate income housing and allocating the appropriate portion of such need among the municipalities within the Counties of Somerset, Hunterdon and Warren. The Court considers that all "compliance issues" and any issue or issues concerning the applicability of the so called "gap period from 1999 to 2015" shall be included within the ambit methodology determination to be made by the Court (see paragraph 16 below).

2. Municipalities that have entered into the Municipal Consortium that has retained Econsult shall submit the Econsult report on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation to the Court, Special Masters, intervenors and interested parties, if they have not already done so, no later than February 15, 2016. Any municipality that does not intend to rely on the Econsult Report or intends to rely upon the report or reports of other expert(s) shall so advise the Court in writing on or before February 15, 2016. If a party indicates that it intends to rely upon an expert other than or in addition to Econsult shall also provide to the Court, Special Master, intervenor(s) and interested parties the

name, address and curriculum vitae of that proposed expert by February 15, 2016.

3. No later than March 1, 2016, any other experts that have not already been identified by any party who will be presented during the trial scheduled in paragraph 12 of this Order shall be identified, and their expert reports shall be provided on or before that date to the Court, Special Masters, intervenors and interested parties.

4. All “draft” expert reports from experts that are proposed to be used by the parties on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation shall be exchanged and submitted no later than March 14, 2016.

5. Any person or entity wishing to submit an expert report and to actively participate in the hearing(s) before the Court must be a party to these proceedings, and to do so, the person or entity must move to intervene (unless the intervenor has already done so), which Motion shall be accepted by the Court, or intervene by consent, no later than February 10, 2016. The Court notes that this provision of its Order shall not apply to the following non-profit entities, which the Court recognizes as “specially recognized interested parties” for the purpose of this consolidated portion of the matters: Fair Share Housing Center, New Jersey Builders Association; and the New Jersey League of Municipalities.

6. All expert reports filed or relied upon in accordance with this Order shall include, without the need for further discovery, the factual basis for any and all conclusions, including but not limited to any and all data, formulas, and methodologies relied upon as part of any determination in the report, consistent with New Jersey Rule of Evidence 703. If a party determines that the factual basis and conclusions for a report have not been sufficiently provided, it may serve a request to produce upon the party submitting the report, and the party that receives the request shall respond within five (5) days. The party submitting the report may move to quash the request to produce or strike portions of any report in accordance with New Jersey law.

7. Depositions of experts are permitted. Parties and interested parties shall work cooperatively to schedule times for depositions of any expert witnesses who will be presented at trial scheduled in paragraph 12 of this Order. The dates of depositions on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation and housing compliance standard shall be scheduled no later than May 1, 2016, and all depositions shall be completed no later than June 15, 2016. The Court is mindful that depositions of many, if not all of the experts that will be offered by the parties in this case will be subject to depositions

in other “Mt. Laurel” cases that have been filed in other Vicinages around the State. The parties are ordered to strive to minimize duplicative depositions and discovery. Transcripts of depositions of “common experts” that have been conducted in other Vicinages shall be shared by the parties. Oppressive, burdensome and/or duplicative depositions shall be avoided.

8. Another comprehensive case management conference in these matters shall take place at a date to be established in April 2016 to address the status of this matter, the progress that has been achieved concerning any matters that have been addressed by the Court in these matters, and to schedule of milestone dates for discovery, pretrial conferences and the eventual trial.

9. All parties shall confer to discuss compliance standards within forty (40) days of the date of this Order. Within ten (10) days thereafter, the parties shall contact their respective municipal Special Master to schedule a meeting to conduct further discussions if deemed appropriate by the Special Master.

10. Final expert reports on behalf of the parties on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation shall be exchanged and submitted to the Court, Special Masters, intervenors, and interested parties no later than April 10, 2016.

11. The Regional Special Master (Richard B. Reading of Richard B. Reading and Associates of Princeton, New Jersey)⁴ shall submit a Draft Final Report on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation on a date to be established by the Court.

12. Any Deposition of the Regional Special Master on the issues of methodology and calculation of the state, regional and municipal fair share need and allocation shall be permitted but only in accordance with the Court’s direction. At this time the Court anticipates that the deposition of Richard B. Reading shall be performed by the submission of written questions in accordance with R. 4:15 (as has been adopted in other Vicinages, including but not limited to Ocean County). The Court will address the scope and parameters of the written questions and any “follow up” or reply questions at the next scheduled Case Management Conference or at the time when the procedure adopted in Ocean County can be evaluated.

13. All parties and intervenors shall submit comments to the Regional Special Master’s Draft Final Report at a time to be addressed at the Court’s next Case Management Conference.

⁴ Who has been appointed by the Court by separate Order issued simultaneously herewith.

14. The Regional Special Master shall submit a Final Report at a time to be addressed at the Court's next Case Management Conference.

15. A Pre-Trial Conference shall be scheduled at the Case Management Conference to be held at a date to be established in April, 2016. At the Pre-Trial Conference the parties shall be prepared to discuss the mechanisms for the conduct of the trial, including the employment of "lead counsel" by all sides.

16. Summary Judgment Motions regarding (1) Affordable Housing Compliance Issues; and (2) and any and all issue(s) concerning whether the "so-called gap period" (from 1999 – 2015) needs to be separately addressed by experts who propose to submit reports concerning the methodology that is proposed to be adopted by the Court when determining affordable housing obligations, shall be filed and served no later than April 15, 2016. Any opposition shall be filed and served no later than April 25, 2016. Any replies shall be filed and served no later than May 6, 2016. The Motions shall be returnable before the Court at the Court's discretion and as soon as thereafter as practicable.

a. On or before February 10, 2016 Fair Share Housing Center (FSHC) shall submit to the Court, with copies to the Court Masters and all parties, a report from its expert, Dr. Kinsey, setting forth the methodology and the affordable housing obligation it claims arose during the so-called "gap period" from 1995 to 2015. On or before February 15, 2016 the FSHC will submit its response to the Econsult Report of December 30, 2015.

b. On or before March 1, 2016, the consortium of municipalities shall submit through its expert, Econsult, a critique of the report submitted by FSHC. The Econsult "critique" may, but shall not be required, to set forth an alternate methodology to calculate the affordable housing need which arose during the "gap period". In the event the consortium does not present an alternate methodology and this Court (or an Appellate Court, if applicable) subsequently rules that a "gap period" affordable housing exists, the Court will consider providing the consortium with a reasonable time to submit an additional or supplemental report which contains an alternate methodology to the Court so long as the submission of the report that offers an alternate methodology does not appreciably delay the trial in this matter.

17. The trial in these matters on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation and housing compliance standards is anticipated to be no earlier than July 5, 2016. Once scheduled, the Court shall strive to continue

the trial “day to day” until completed.⁵

18. Sixty (60) days from the conclusion of the trial referenced in Paragraph 17 above and the entry of an Order establishing Third Round municipal fair share allocations, all Housing Element and Fair Share Plans shall be adopted and endorsed and submitted to the Court, the Special Masters, the intervenors and interested parties.

19. The “temporary immunity” from “Mt. Laurel Lawsuits” previously awarded to all of the Municipal parties in the matters within Vicinage 13 as listed below (paragraph 20) shall be extended and continued without prejudice to July 31, 2016.

Any party who seeks to challenge the award of “temporary immunity” or this Court’s extension of the immunity award provided to any particular Municipalit(ies) shall do so by Notice of Motion filed in accordance with the New Jersey Court Rules. Copies of any Motion filed shall be served upon counsel for the Municipality, the Fair Share Housing Council, the Court-Appointed Special Master for that Municipality, the Special Regional Master, any parties recognized by the New Jersey Supreme Court as parties entitled to notice of all Mt. Laurel issues in In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), as well as the Court. Any Motion shall provide, with particularity, the reasons why the award of temporary immunity should be reevaluated, including, if applicable, (1) any claims that the Municipality has not complied with the conditions for the issuance of temporary immunity that was imposed by the Court, or (2) matters that materially undermine representations made by the particular Municipality in this matter, or (3) matters that have materially changed or arisen during the pendency of this Court grant of temporary immunity that are inimical to the Municipality’s constitutional obligation to provide for low and moderate income housing. In that regard, the Court will seek input from the Court-Appointed Special Master concerning the particular issue(s) that may be raised.⁶

20. A copy of this Order shall be served upon all counsel of record and otherwise be made available to all interested parties as directed by the New Jersey Supreme Court in Mount Laurel IV within seven days of the date hereof.

⁵ The Court recognizes the difficulties that will likely be encountered when scheduling all of the parties, counsel, Special Masters and experts (particularly during the summer months) so that it is anticipated that scheduling will require flexibility.

⁶ This paragraph shall not apply to Branchburg Township which is the subject of a particular “immunity” Order issued simultaneously herewith.

As to the following matters:

SOMERSET COUNTY

In the Matter of the Township of Bedminster	SOM-L-914-15
In the Matter of the Borough of Bernardsville	SOM-L-925-15
In the matter of the Township of Branchburg	SOM-L-898-15
In the Matter of the Township of Bridgewater	SOM-L-934-15
In the Matter of the Township of Franklin	SOM-L-866-15
In the Matter of the Township of Green Brook	SOM-L-929-15
In the Matter of the Township of Hillsborough	SOM-L-900-15
In the Matter of the Borough of North Plainfield	SOM-L-935-15
In the Matter of the Borough of Peapack-Gladstone	SOM-L-905-15
In the Matter of the Borough of Raritan	SOM-L-926-15
In the Matter of the Borough of Rocky Hill	SOM-L-901-15
In the Matter of the Township of Warren	SOM-L-904-15
In the Matter of the Borough of Watchung	SOM-L-902-14

HUNTERDON COUNTY

In the Matter of the Township of Alexandria	HNT-L-300-15
In the Matter of the Township of Bethlehem	HNT-L-316-15
In the Matter of the Township of Clinton	HNT-L-315-15
In the Matter of the Town of Clinton	HNT-L-304-15
In the Matter of the Township of East Amwell	HNT-L-306-15
In the Matter of the Borough of Flemington	HNT-L-308-15
In the Matter of the Township of Franklin	HNT-L-314-15
In the Matter of the Township of Frenchtown	HNT-L-309-15
In the Matter of the Borough of Glen Gardner	HNT-L-302-15
In the Matter of the Borough of High Bridge	HNT-L-310-15
In the Matter of the Township of Kingwood	HNT-L-317-15
In the Matter of the City of Lambertville	HNT-L-311-15
In the Matter of the Township of Lebanon	HNT-L-299-15
In the Matter of the Township of Milford	HNT-L-303-15
In the Matter of the Township of Raritan	HNT-L-312-15
In the Matter of the Township of Readington	HNT-L-301-15
In the Matter of the Township of Tewksbury	HNT-L-313-15
In the Matter of the Township of Union	HNT-L-305-15
In the Matter of the Township of West Amwell	HNT-L-307-15

WARREN COUNTY

In the Matter of the Township of Allamuchy	WRN-L-232-15
In the Matter of the Town of Belvidere	WRN-L-238-15
In the Matter of the Township of Blairstown	WRN-L-226-15
In the Matter of the Borough of Bloomsbury	WRN-L-298-15

In the Matter of the Township of Franklin	WRN-L-224-15
In the Matter of the Township of Frelinghuysen	WRN-L-231-15
In the Matter of the Township of Greenwich	WRN-L-228-15
In the Matter of the Township of Hackettstown	WRN-L-234-15
In the Matter of the Township of Hardwick	WRN-L-240-15
In the Matter of the Township of Harmony	WRN-L-239-15
In the Matter of the Township of Independence	WRN-L-246-15
In the Matter of the Township of Knowlton	WRN-L-215-15
In the Matter of the Township of Lopatcong	WRN-L-241-15
In the Matter of the Township of Mansfield	WRN-L-242-15
In the Matter of the Township of Oxford	WRN-L-243-15
In the Matter of the Township of Pohatcong	WRN-L-220-15
In the Matter of the Borough of Washington	WRN-L-230-15
In the Matter of the Township of Washington	WRN-L-244-15
In the Matter of the Township of White	WRN-L-245-15



HON. THOMAS C. MILLER, P.J.Cv.

SEE ATTACHED STATEMENT OF REASONS

STATEMENT OF REASONS

The Court has considered the issues that have involved with regards to scheduling the most fair and efficient mechanism to be employed by the court in order to hear and adjudicate the issues involved in the determination of the methodology to be applied to calculate the regional and municipal fair share housing need and allocation. The Court addressed this issue at the Case Management Conference held with all of the parties, including intervenors and interested parties and their counsel on January 28, 2016. All participants were permitted to comment and advocate regarding their position(s) concerning the issues and matters.

In that regard the Court considered that the issues could be consolidated and tried on a (1) County-by-County basis (that is the Municipalities of each respective County be tried separately); or (2) that the Counties from Region 2 (Somerset and Hunterdon) be consolidated and tried together with Warren County being tried separately; or (3) all of the matters within the Vicinage (all Somerset, Hunterdon and Warren Counties) being tried together. Also, the Court offered for discussion and comment that the issues be tried separately on a Municipality-by-Municipality basis by selecting certain representative or “more hotly contested” municipalities to proceed first.

After receiving comment, argument and discussion concerning the issue, the Court was able to determine that the only common ground between the parties was that (1) there is no consensus between the parties concerning the issue(s); (2) that the parties acknowledge that the determination of the procedure to be employed is within the Court’s discretion; and (3) that each of the parties expressed an interest in participating in the hearing and expressed concern that any method that is chosen that would exclude or limit their opportunity to participate by causing potentially precedential decisions on the issues to be determined by the Court without their input would be unsatisfactory.

After consideration of the issue, the Court has determined that the fairest and most efficient process to be employed is to “try” the methodology related issues will be by a limited consolidation of all of the matters within Vicinage 13 (that is all “Mt. Laurel” cases in Somerset, Hunterdon and Warren Counties) together. While the Court recognizes that notwithstanding the size of the consolidated cases may present logistical issues and certain inefficiencies, that those detriments are materially outweighed by the fact that the consolidation of the matters will permit each of the parties to have a meaningful participation in the process without the cloud of other potentially prior precedential decisions by the Court on the issues.

In that regard, the Court notes that many of the same parties and counsel are participants in matters that “cross” County borders so that a consolidation of all of the cases within the Vicinage will also likely avoid some duplication of effort and thus conserve judicial economy.

Also, the Court has considered, but rejected, the option to consolidate these matters on the basis of their designation as a Region 2 or 3 Housing Region. Since the methodology that is ultimately adopted by the Court would undoubtedly affect the non-participating Count(ies), the Court finds that such a process would unduly prejudice the “second” matter to proceed.⁷

For those reasons, the Court has determined to hear and adjudicate the issues involved in the determination of the methodology to be applied to calculate the regional and municipal fair share housing need and allocation by consolidating all of the “Mt. Laurel” cases filed within Vicinage 13 on a limited basis for that specific purpose.

⁷ Unless the Court heard the matters separately but decided them simultaneously.