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PREPARED BY THE COURT

NOV 19 2015

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY**

**In the Matter of the Application of the
Township of East Windsor**

Civil Action
(*Mt. Laurel*)

**In the Matter of the Application of the
Township of Lawrence**

**In the Matter of the Application of the
Township of Robbinsville**

ORDER ON USE OF BONUS CREDITS

**In the Matter of the Application of the
Municipality of Princeton**

DOCKET NUMBERS:

**In the Matter of the Application of the
Borough of Pennington**

MER-L-1522-15

MER-L-1538-15

MER-L-1547-15

MER-L-1550-15

In the Matter of the Application of Ewing

MER-L-1555-15

MER-L-1556-15

**In the Matter of the Application of the
Township of Hopewell**

MER-L-1557-15

MER-L-1561-15

MER-L-1568-15

In the Matter of West Windsor Township

MER-L-1573-15

**In the Matter of the Application of the
Borough of Hightstown**

**In the Matter of the Application of the
Township of Hamilton**

Petitioners.

THIS MATTER having come before the court for consideration of the various arguments put forth by the parties regarding compliance issues unrelated to the methodology for determining the extent of the municipalities' affordable housing obligations; and the court having considered the arguments put forth in the briefing and at oral argument; and for good cause shown and for the reasons set forth in the attached decision:

IT IS this 19th day of November, 2015, **HEREBY ORDERED** that:

1. The municipalities may choose to implement the bonus credit structure from either the Second Round Rules or the Third Round Rules as part of their compliance programs, but may not combine provisions from different Rounds.
2. All other matters are deferred until the court has received a full expert analysis.
3. The municipalities are permitted to utilize affordable housing obligation numbers calculated by Dr. David Kinsey in his expert report or the numbers calculated by Special Methodology Master Richard Reading in his spreadsheet attached to the court's decision as "Appendix A" in preparing their preliminary plans for court review.


Hon. Mary C. Jacobson, A.J.S.C.

NOT FOR PUBLICATION WITHOUT APPROVAL OF THE COMMITTEE ON OPINIONS

PREPARED BY THE COURT

In the Matter of the
Application of the Township
of East Windsor

In the Matter of the
Application of the Township
of Lawrence

In the Matter of the
Application of the Township
of Robbinsville

In the Matter of the
Application of the
Municipality of Princeton

In the Matter of the
Application of the Borough of
Pennington

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In the Matter of the
Application of the Township
of Hopewell

In the Matter of West Windsor
Township

In the Matter of the
Application of the Borough of
Hightstown

In the Matter of the
Application of the Township
of Hamilton

Petitioners.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

Civil Action
(Mt. Laurel)

DECISION ON COMPLIANCE ISSUES

DOCKET NUMBERS:

MER-L-1522-15
MER-L-1538-15
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MER-L-1550-15
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MER-L-1561-15
MER-L-1568-15
MER-L-1573-15

November 19, 2015

JACOBSON, A.J.S.C.

Factual and Procedural History

The present matter has arisen out of the New Jersey Supreme Court's 2015 decision reinstating the courts as "the forum of first instance for evaluating municipal compliance with Mount Laurel obligations." In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 20 (2015). That role had previously been held by the Council on Affordable Housing ("COAH"), which was authorized by the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 to -329, to guide municipalities in meeting their affordable housing obligations. Having concluded that COAH was "not capable of functioning as intended by the FHA," In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 19, the Court directed the trial courts both to establish the present affordable housing obligations for New Jersey's municipalities and to certify municipal plans to meet those obligations through declaratory judgment actions. Id. at 24-29.

Pursuant to the Supreme Court's directive, eleven of the twelve Mercer County municipalities filed declaratory judgment actions with this court: Hamilton, East Windsor, West Windsor, Lawrence, Robbinsville, Princeton, Pennington, Ewing, Hopewell Township, Hightstown, and Hopewell Borough.¹ In addition, the municipalities have been joined by several intervenors: Fair Share

¹ On November 10, 2015, Hopewell Borough voluntarily dismissed its declaratory judgment action, citing the expense of participation.

Housing Center ("FSHC"), New Jersey Builders Association ("NJBA"), OTR East Windsor Investors, LLC, Thompson Realty Company of Princeton, Inc., CF Hopewell, LLC, Howard Hughes Corp., The Blackpoint Group, LLC, and Avalon Watch, LLC.

Like some other courts enforcing Mount Laurel obligations, this court has treated certain common issues among the parties in a consolidated manner. In an effort to establish some guidelines for all of the municipalities to follow as they prepare preliminary affordable housing plans for judicial review, the court invited the parties to submit briefs addressing any compliance issue they thought could be decided as a matter of law. On September 25, 2015, the court established a briefing schedule and oral argument for the compliance issues. Given the municipalities' representation that their expert report on methodology would not be available until the end of 2015, the court determined not to address the mechanism for calculating the affordable housing obligation at this time.

That decision was prompted by the fact that the court had only received expert reports on methodology from two intervenors. First, and most prominently, FSHC submitted a report from its expert, Dr. David Kinsey. Dr. Kinsey's report both presented an affordable housing calculation methodology and then applied that methodology to assign numerical affordable housing obligations for

all Mercer County municipalities. In addition, NJBA submitted a report from Art Bernard supporting and endorsing Dr. Kinsey's work.

Conversely, the municipalities had initially selected Dr. Robert Burchell to provide an alternate methodology for calculating the affordable housing obligation for each town. But due to Dr. Burchell's unexpected incapacity last summer, he was unable to complete this task. The municipalities subsequently retained a replacement, Econsult Solutions, Inc. ("Econsult"), both to critique the expert report of Dr. Kinsey and to provide a separate calculation of each town's fair share burden. While Econsult submitted its critique of Dr. Kinsey's report to the court in October, it is not anticipated that it will provide its affordable housing methodology and calculations until December 2015 at the earliest. Without the benefit of expert testimony on behalf of the municipalities, the court was reluctant to evaluate and then determine the appropriate methodology to calculate affordable housing needs.²

Nevertheless, the court anticipated that there might be a set of legal issues relevant to the towns' compliance obligations but unrelated to the methodology of determining the number of units

² On October 30, 2015, Special Methodology Master Richard Reading, appointed to assist the courts in Ocean, Monmouth, and Mercer Counties (COAH Region 4), issued a report discussing both the Kinsey Report as well as Econsult's critique. This report included a preliminary, total affordable housing number for the whole of Mercer County, but did not provide preliminary numbers for each town. Upon this court's request, however, Mr. Reading's office recently provided preliminary affordable housing calculations for each municipality in Mercer County. These numbers are attached as "Appendix A" to this decision.

necessary to meet those obligations that were ripe for decision. The court hoped that inviting the presentation of such issues and releasing a decision on such matters would have a positive impact on the compliance process by assisting municipalities in drafting their compliance plans and fostering mediation by reducing uncertainty. Although the oral argument proved so divisive that the court's hopes for mediated settlements early in the process were dashed, the court nonetheless concludes that some clarity in the compliance process may ultimately contribute to mediated resolutions in some of the Mercer County towns. Notably, however, the court will address only a small subset of the panoply of arguments made by the parties because most of the issues were too intertwined with the methodology for calculating the obligations to be decided at this point absent full expert input.

For example, the validity of the Kinsey Report and his calculation methodology was argued by many of the parties. FSHC's extensive briefing sought to defend the Kinsey approach. A similar defense was a prominent feature of briefs submitted by OTR East Windsor Investors, LLC, and Thompson Realty Co. of Princeton, Inc. Conversely, briefing from Mason, Griffin, & Pierson, on behalf of various municipalities, presented arguments directly contesting the Kinsey methodology. The court is persuaded that the merits of these arguments cannot be properly reviewed without the benefit of expert input on each side.

In addition, East Windsor argued extensively against Dr. Kinsey's inclusion of senior citizen households in his affordable housing calculations. This argument was disputed by FSHC, NJBA, OTR East Windsor Investors, LLC, and Thompson Realty Co. of Princeton, Inc. Here again, the court has determined that the appropriate consideration of senior citizen households in calculating affordable housing obligations is too closely related to methodology to be decided at this time. This sentiment was echoed by Special Master Richard Reading in his October report, in which he noted that, while East Windsor's concerns were legitimate, the precise degree to which the calculation needed adjustment could only be determined after further expert input on methodology. While Mr. Reading opined that some adjustment was necessary and he incorporated an adjustment into his preliminary report, East Windsor seemed to suggest that senior citizen households should be excluded from consideration in the methodology altogether. The court thus has decided that this issue cannot appropriately be decided at this time.

Almost all of the parties commented on whether a 1,000-unit cap should be used to limit each municipality's affordable housing obligation pursuant to N.J.S.A. 52:27D-307(e). While the Honorable Douglas Wolfson, J.S.C., released a decision on this issue on October 5, 2015, Middlesex County Mt. Laurel Litigation, MID-L-

3365-15, et al., this court has decided not to address the matter at this time.

Firstly, it remains unclear how many Mercer County towns will be eligible to claim the 1,000-unit cap. Mr. Reading's preliminary calculations, for example, utilize the cap for only one Mercer County town. If that analysis or a similar one is adopted by this court, the issue can be reviewed in the one case where it may be relevant. Moreover, the court was persuaded (particularly by arguments put forth in the Mason, Griffin & Pierson brief) that analysis of the 1,000-unit cap issue may very well be intertwined with questions regarding methodology. For example, the court will likely need to determine the applicability of the 1,000-unit cap to the sixteen-year gap in regulatory action from the expiration of the Second Round Rules in 1999 to the present declaratory judgment actions. Before considering this issue, the court may require expert input to determine whether, for example, the inclusion of this regulatory "gap period" would result in any double counting.

After considering the numerous arguments put forth by the parties in response to its September 25 order, the court has decided to issue a ruling only on the limited subject of the appropriate bonus credits Mercer County municipalities may use in

their plan proposals.³ This decision is provided in an effort to clarify some compliance issues to assist the municipalities in developing their preliminary plans and perhaps to help foster some mediated settlements.

Legal Analysis

After reviewing the arguments of the parties, the court concludes that Mercer County municipalities may choose either the Second Round or Third Round framework regarding bonus credits, but may not combine approved bonus credits from both rounds. This limited discretion comports with Mount Laurel case law and the specific guidance provided by the Supreme Court in its 2015 order to the courts.

The Mount Laurel doctrine places a constitutional requirement on each municipality to provide a realistic opportunity for the construction of its fair share of the present and future regional housing needs for low and moderate income households. S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, 174 (1975) (Mt. Laurel I); In re adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 15 (App. Div. 2007), certif. denied, 192 N.J. 72 (2007). The Supreme Court's opinion in S. Burlington County NAACP v. Twp. of

³The court also notes, for clarity's sake, that "bonus credits" are distinct from "construction credits." See In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 81 (App. Div. 2007). The latter pertains to the subject of the extension of affordability controls and will not be covered by this decision.

Mount Laurel, 92 N.J. 158 (1983) (Mt. Laurel II) provided the basic framework for establishing whether a municipality has met its Mount Laurel obligations. The Court directed that municipalities must first establish their housing need by calculating a concrete number of housing units. Id. at 215-16. Following enumeration of the need, municipalities must create housing plans that provide a "realistic opportunity" to meet that housing need. Id. at 221.

The latter requirement entailed an entirely practical review of a plan's effect on a municipality and developer incentives: municipalities need to demonstrate that there "is in fact a likelihood—to the extent economic conditions allow—that the lower income housing will actually be constructed." Id. at 222. Indeed, subsequent courts have struck down rules that inadequately incentivize development or dilute a town's obligation. See In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. at 73-74 (noting that such inadequate incentives "provide[] municipalities with an effective tool to exclude the poor by combining an affordable housing requirement with large-lot zoning and excessive demands for compensating fees in lieu of providing such housing").

These goals were largely adopted by the Legislature when it created an administrative mechanism for enforcing affordable housing requirements through the FHA and the State Planning Act. N.J.S.A. 52:18A-196 to -207. Most notably, the FHA created an administrative agency, COAH, which would be required to promulgate

periodic rules to guide municipalities in both ascertaining their fair share housing obligation and in developing an appropriate compliance program to meet that obligation.

COAH twice carried out this task successfully—passing the First Round Rules in 1986, N.J.A.C. 5:92-1.1 to -18.20, which covered housing obligations from 1987 to 1993, and the Second Round Rules in 1994, N.J.A.C. 5:93-1.1 to -15.1, which covered housing obligations accrued from 1987 through 1999. These Rules largely withstood various legal challenges levied against them. The Third Round Rules, by contrast, failed on two separate attempts to secure judicial approval. See In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. 1 (overturning the first iteration, codified at N.J.A.C. 5:94-1.1 to -9.2); In re Adoption of N.J.A.C. 5:96, 215 N.J. 578 (2013) (overturning the second iteration, codified at N.J.A.C. 5:96-1.1 to -20.4). When COAH failed to adopt a third iteration, leaving a fifteen-year regulatory gap, the Supreme Court decided to remove COAH from its role and reinstate the courts as the primary enforcement mechanism for affordable housing obligations. In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 19-20. Despite the fact that the Third Round Rules were rejected by the Appellate Division in 2007 and again in 2010, those courts explicitly endorsed specific features of the Rules in each review. See, e.g., In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 495-98 (App. Div. 2010), aff'd sub nom. In re Adoption

of N.J.A.C. 5:96, 215 N.J. 578 (2013). The Supreme Court explicitly acknowledged these determinations as potential sources of guidance for the trial courts in carrying out their current task. In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 30-33. (The 2010 Appellate Division rulings were also largely endorsed by the Supreme Court in 2013. In re Adoption of N.J.A.C. 5:96, supra, 215 N.J. at 619).

The usage of bonus credits in affordable housing plans has repeatedly been approved by courts as a proper incentive to foster the creation of affordable housing units. See, e.g., Mount Laurel II, supra, 92 N.J. at 217; Calton Homes v. Council on Affordable Housing, 244 N.J. Super. 438, 456-58 (App. Div. 1990), certif. denied 127 N.J. 326 (1991) (permitting the use of rental bonus credits to ensure that such units are constructed). Their use was among the provisions of the Third Round Rules that were explicitly endorsed by the Appellate Division. See, e.g., In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. 1, 81-84 (App. Div. 2007); In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 495-97. Bonus credits supply incentives by rewarding towns that approve the construction of specific types of affordable housing units. The bonuses encourage towns to approve affordable developments because the bonuses assist the municipalities in meeting their affordable housing obligations. Thus, for example, a two-for-one bonus credit for rental housing would double-count

each rental unit constructed in satisfying a municipality's overall obligation.

COAH implemented different systems of bonus credits in both the Second Round Rules and the Third Round Rules. In the Second Round, there was only one type of bonus credit authorized to incentivize the construction of rental units. See N.J.A.C. 5:93-5.15(d). The Rules required municipalities to provide 25% of their housing obligations in the form of rental units. Id. In order to incentivize the construction of such units, the Rules permitted the municipalities to receive bonus credits for each rental unit constructed in meeting that 25% minimum. Id. Specifically, the Rules provided a two-for-one credit for family rental units and a 1.33-for-one credit for age-restricted and alternative living units. Id.

The Third Round Rules endorsed significant changes to the bonus credit structure. First, COAH altered the rental bonus so that municipalities could only receive it *after* having met the 25% mandatory minimum for rental units. N.J.A.C. 5:97-3.6(a). Second, COAH introduced four new types of bonuses: (1) a 1.33-for-one bonus for each affordable unit constructed in housing areas designated as most desirable for development by the State Planning Commission (the so-called "Smart Growth" bonus), N.J.A.C. 5:97-3.18; (2) a 1.33-for-one bonus for each affordable unit constructed in redevelopment or rehabilitation areas designated by the Local

Redevelopment and Housing Law (the "Redevelopment" bonus), N.J.A.C. 5:97-3.19; (3) a two-for-one bonus for each affordable unit constructed for very low income households (i.e., those members of the public earning no greater than 30% of the median income), N.J.A.C. 5:97-3.7; and (4) a two-for-one bonus for municipalities that had followed the iteration of the Third Round Rules in effect between 2004 and 2008 (the "Compliance" bonus). N.J.A.C. 5:97-17. In addition, COAH limited the aggregate of all bonuses permitted to 25% of a municipality's overall housing obligation. N.J.A.C. 5:97-3.20. In 2007, the Appellate Division affirmed the very low income credit bonus. In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. at 81-84. In 2010, the Appellate Division affirmed both the Smart Growth and Redevelopment bonuses. In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 495-98. These conclusions were explicitly cited with favor by the Supreme Court in its 2015 decision. In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 31-32. The Appellate Division also overturned the Compliance bonus, In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 497-98, but the Supreme Court expressed no opinion on this point. See In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 31-32.

It is important to note that the courts did not merely rubber-stamp COAH's bonus credits; rather, they closely inspected each provision to ensure that it properly incentivized the development

of affordable housing. The courts were well aware that bonuses and credits that do not incentivize construction could result in an unconstitutional dilution of housing obligations, providing rewards without requiring action. See, e.g., In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 493-95 (invalidating rental bonus credits awarded to municipalities for units that had been planned in the prior round but had not yet been constructed). Thus, the bonus credits of the Second and Third Round Rules that were upheld by the courts were only accepted after a rigorous legal analysis to ensure their validity.

The present inquiry does not require the court to determine whether new bonuses properly incentivize construction without unduly diluting the affordable housing need. Rather, the Supreme Court directed the trial courts to utilize, at their discretion, the available Second and Third Round Rules. Thus, this court's task is simply to determine which of the already accepted bonus credits from the previous rounds may be applied by the Mercer County towns as they prepare preliminary affordable housing plans due to the court in December 2015.

The municipalities argued that the court should permit the use of the Second Round bonus structure in conjunction with the specific Third Round bonuses approved by the Appellate Division—e.g. the Redevelopment and Smart Growth bonuses—as well as the Compliance bonus credit that was expressly struck down. By

contrast, FSHC argued that the court should use only the bonus credit structure of the Third Round. To further highlight the diversity of opinions proffered, the court also notes that NJBA seems to find almost any combination of bonus credits acceptable, so long as the court maintains the aggregate 25% cap on all bonus credits contained in the Third Round Rules.

Having reviewed the arguments of the parties and applicable case law, the court will authorize the municipalities to choose either the bonus credit structure of the Second Round Rules or that of the Third Round Rules except for those provisions, such as the Compliance Bonus, that were expressly rejected by the Appellate Division. This court does not see the need to revisit the in-depth analysis of prior appellate courts regarding the Rules. The municipalities should not be deprived of policies that have been permitted by the courts in the past.

On the other hand, the court will not permit the municipalities to select any combination of bonus credits previously authorized. The court shares the concern expressed by FSHC at oral argument and in its briefing--namely, that combining bonuses and credits from both rounds could dilute the municipalities' obligations to a degree COAH sought to avoid. Notably, COAH itself never aggregated the bonus credits in the manner advocated by the municipalities. To the contrary, as noted above, COAH maintained a certain balance in the credits between

the Second and Third Rounds: while the Third Round Rules increased the number and type of bonus credits available, COAH limited the use of the rental bonus credit from the Second Round and established an overall cap for bonus credits.

Notably, the court is concerned that a significant *imbalance* could result if the court were to permit municipalities to choose bonuses from either Round. For example, such an order would permit a municipality to maintain the Second Round's allowance for rental bonus credits for each unit constructed in meeting the municipality's obligation (rather than permitting such bonuses only after that obligation has been met, as provided in the Third Round), plus the three new credits implemented in the Third Round, with no limit on their aggregate use. The court agrees with the concerns voiced by FSHC that such an imbalanced system would impermissibly dilute the Mercer County municipalities' constitutional obligations. Accordingly, the municipalities may choose either one or the other approach in developing their plans, but may not combine both.

Moreover, the municipalities' position is unsupported by the case law. A close examination of the applicable opinions shows that the courts evaluated the impact of each bonus credit within the broader context of the then current Rules as a whole. E.g. Calton Homes, supra, 244 N.J. Super. at 457 ("The rental bonus rule is part of a comprehensive scheme to encourage municipalities

and developers to build affordable rental units in the future.").
In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. at
83 (noting in its analysis of the bonus credit structure in the
Third Round Rules that "[t]he third round rules do not dilute
satisfaction of the housing need to the same degree as first or
second round rules"). In other words, the rulings regarding bonus
credits were purposefully contained within the context of the
broader Round of rules in which they were found. The court is not
persuaded that the appellate courts intended that specific bonus
credits be divorced from the context in which they were adopted.
Consequently, the court will apply the discretion afforded it by
the Supreme Court as a "forum of first instance for evaluating
municipal compliance with Mount Laurel obligations," In re
N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 20, by providing the
Mercer County municipalities with the choice described above.

In adopting this approach, the court has tried to remain
cognizant of the Supreme Court's direction that the "judicial role
. . . is not to become a replacement agency for COAH." Id. at 29.
The Court explicitly eschewed "creat[ing] an alternate form of
statewide administrative decision maker for unresolved policy
details of replacement Third Round Rules." Id. On the other hand,
the Court emphasized the courts' "flexibility in assessing a town's
compliance" and explicitly endorsed the use of creative means to
achieve it. Id. at 33. Thus, the courts have been ordered to use

the same tools that were used in the prior rounds in flexible ways to assure satisfaction of each town's constitutional obligation to provide affordable housing.

In addition, the Supreme Court's directive gives trial courts the discretion to utilize both Second Round and Third Round Rules in various combinations as they adjudicate affordable housing obligations. While the Supreme Court did ban the use of the Third Round's "growth share" methodology, stating instead that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need," Id. at 30, the Court did not simply condemn the Third Round Rules *in toto*. Quite to the contrary, the Court explicitly enumerated with positive endorsement several Third Round Rules that had been upheld by the Appellate Division in 2007 and 2010. Id. at 30-33. This list included the new bonus credits discussed above, as well as other Third Round alterations relating to the methodology for calculating affordable housing obligations (which are not presently before the court). Id.

The Supreme Court's positive view of aspects of the accepted Third Round Rules demonstrates the flexibility the Supreme Court provided to the trial courts to use rules from either the Second or the Third Round. First, the list itself is presented in permissive terms. See Id. at 33 (noting that the list is meant to "guide" courts). Thus, although it explicitly endorses the use of

Third Round bonuses and credits that were approved by the Appellate Division, the Court quite strikingly did not *require* that these bonuses be used. Second, the list itself was also not meant to be exhaustive; rather, it simply provides a sample of Third Round Rules that may be used.

Thus, this court is satisfied that permitting the municipalities to choose from bonus structures that have already withstood judicial scrutiny will allow them to select the option best suited to each municipality's circumstances without risking the dilution condemned by the appellate courts. Moreover, the approach falls within the flexibility that the Supreme Court afforded to the trial courts in reviewing municipal efforts to meet their Mount Laurel obligations.

In short, the court concludes that by permitting the use of either the Second Round or Third Round bonus credit structure, the municipalities' compliance plans will—as required by the Mount Laurel doctrine—appropriately incentivize development without diluting their affordable housing obligations. The court now leaves it to the Mercer County municipalities to select which of the bonus credit structures they will utilize as they develop their plan proposals.

Other Matters

Finally, the court will continue to require submission of preliminary plans from each town that has an active declaratory judgment action by December 7, 2015. In preparing the plans, each town may utilize either the Kinsey numbers or the preliminary numbers proposed by Special Methodology Master Richard Reading and provided to the court on November 13, 2015. These numbers are attached to this decision as "Appendix A," and were calculated based on the approach contained in Mr. Reading's report of October 30, 2015, which has already been circulated to the parties.

Appendix A – Prospective Need Calculations for Mercer Municipalities

Muni Code	Municipality	Gross Prospective Need, 1999-2025 (units)	Secondary Sources (units)			Calculated Prospective Need, 1999-2025 (units)	Prospective Need 20 Percent Cap, 1999-2025	20 Percent Cap Applies?	Prospective Need Obligation, 1999-2025 (units)	Prospective Need Obligation, 1999-2025 (units after 20% and 1000 unit caps) (1)
			Demolitions, 1999-2025	Filing, 1999-2025	Conversions, 1999-2025					
1101	East Windsor Township	356	32.0	(83)	56	415	1,890	N	415	415
1102	Ewing Township	377	33.3	424	80	0	2,510	N	0	0
1103	Hamilton Township	855	187.6	1342	273	0	6,705	N	0	0
1104	Hightstown Borough	57	16.2	(7)	26	54	400	N	54	54
1105	Hopewell Borough	66	17.9	(4)	10	78	163	N	78	78
1106	Hopewell Township	828	54.6	(24)	15	891	1,100	N	891	891
1107	Lawrence Township	501	46.5	145	63	339	2,159	N	339	339
1108	Pennington Borough	90	6.8	(6)	7	96	203	N	96	96
1114	Princeton	480	196.9	119	134	424	1,874	N	424	424
1111	Trenton City	0	642.0	982	670	0	5,887	N	0	0
1112	Robbinsville Township	475	32.4	21	5	481	815	N	481	481
1113	West Windsor Township	970	124.9	(32)	32	1095	1,456	N	1,095	1,000
		5,054	1,391	2,877	1,370	3,873	25,161		3,873	3,778