

Donald J. Sears, Esq.
Township of South Brunswick
540 Ridge Road
P.O. Box 190
Monmouth Junction, NJ 08852
Phone No.: (732) 329-4000

Attorney for Declaratory Plaintiff,
Township of South Brunswick

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY</p> <p>DOCKET NO.: MID-L-003878-15</p> <p>CIVIL ACTION – <u>MOUNT LAUREL</u></p>
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**BRIEF AND APPENDIX IN SUPPORT OF MOTION FOR RECONSIDERATION
AND/OR NEW TRIAL ON
THE TOWNSHIP'S PROSPECTIVE (2015-2025) OBLIGATION**

Donald J. Sears, Esq.
Of Counsel and on the brief

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

As a result of the invalidation of the Council on Affordable Housing (COAH)'s Third Round regulations in In Re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578 (2013), COAH was directed to adopt revised Third Round regulations. When it failed to do so, the Supreme Court determined in In Re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV), that COAH is not capable of functioning as intended by the Fair Housing Act (FHA), and thus municipalities must submit to judicial review for a determination of their compliance with the constitutional obligation to provide for realistic opportunities for the development of low and moderate income housing. Id. at 25-26. In this regard, municipalities were permitted to file a Declaratory Judgment Action seeking an Order for temporary immunity from "builder's remedy" lawsuits as well as entry of a Judgment of Compliance and Order of Repose, protecting them from such suits. Id. at 5.

On July 1, 2015, the Township filed a Declaratory Judgment Action in Middlesex County in compliance with the Court's direction in Mount Laurel IV. On July 31, 2015, this court entered various orders granting intervention to certain interested parties as well as Fair Share Housing Center (FSHC). On that same date, the court also entered an Order granting an initial five-month period of immunity to the Township, until December 2, 2015. The court further ordered that, "upon further application of the Township and on notice to all interested parties, [the Township could seek to] extend the initial immunity period past December 2, 2015, for such additional time as the court deems warranted and reasonable." Id.

Pursuant to the court's directives, the Township submitted various draft preliminary plan summaries for review and consideration by the court and Special Master. None were found acceptable to the court. On February 18, 2016, the Township submitted a draft preliminary plan

to the court that presented two alternatives: (1) addressing the calculated obligation following the Econsult (no Gap Period) conclusions; and (2) addressing the calculated obligation that included a Gap Period. Although the Township's draft plan included a means to address both the Present and Prospective obligations as well as any Gap Period obligation, the court determined that the Township had acted in "bad faith" and thereafter stripped the Township of temporary immunity. The effective date of the ruling was stayed until April 15, 2016 (subsequently extended to May 2, 2016) to give the Township one last opportunity to present a plan that was satisfactory to the court.

On April 15, 2016, the Appellate Division granted Barnegat Township's Motion for Leave to Appeal as well as all Motions to participate as Amicus Curiae in the matter of In Re Ocean County, ___ N.J. Super. ____ (App. Div. 2016) (approved for publication July 11, 2016). This appeal challenged whether municipalities could be held responsible for any Gap Period obligation. FSHC sought emergent relief from these orders in the Supreme Court, which denied its application but directed the Appellate Division to provide for oral argument on or before June 30, 2016. Thereafter the Appellate Division issued an accelerated briefing schedule and calendared the matter for oral argument on June 6, 2016.

On April 27, 2016, the Ocean County court issued an Order staying all further proceedings in Declaratory Judgment actions venued in Ocean County pending a resolution of the Gap Period issues by the Appellate Division. The Monmouth County and Mercer County courts followed suit, staying all Declaratory Judgment matters in those counties pending disposition of the Gap Period issues on appeal. The Township sought a stay of the trial in this matter, which was scheduled to begin on May 2, 2016. That request was denied on April 20, 2016. An emergent application to the Appellate Division seeking a stay of the May 2 trial date was also denied.

As a result, trial commenced in this matter on May 2, subjecting the Township to litigation over its affordable housing obligations for the Prior Round (1987-1999), Gap Period (1999-2015), Present (2015) and Prospective (2015-2025) periods. Its temporary immunity from builder's remedy lawsuits was dissolved on that date as well. By agreement of the parties, establishment of the Township's obligation was tried first. Trial on this issue continued on May 3, 4, 5, 9, 10, 11 and 24, 2016. At the court's request, all parties submitted proposed findings of fact and conclusions of law for the court's consideration.

On July 11, 2016, the Appellate Division rendered its decision in a published opinion, reversing the Ocean County trial court's determination on the existence of a Gap Period obligation, finding that there can be no judicially created new Gap Period obligation imposed upon municipalities. In Re Ocean County, ___ N.J. Super. ___ (App. Div. 2016)(In Re Ocean County). On July 20, 2016, FSHC filed a motion for leave to appeal to the Supreme Court from that decision along with a motion for a stay. The Supreme Court remanded the motion for stay to the Appellate Division, where it is currently pending disposition. The motion for leave to appeal to the Supreme Court also remains pending before that Court.

On July 12, 2016, at a Case Management Conference, this court directed the parties to address "whether and to what extent South Brunswick's present need obligation was modified by In Re Ocean County, and if so, to what extent," due from the parties on or before July 21, 2016. This was memorialized in a Case Management Order dated July 18, 2016. A hearing on this issue was scheduled for August 18, 2016.

On July 21, 2016, this court issued its written decision on the Township's obligation for the Prior Round (1987-1999), Present (2015), and Prospective (2015-2025) obligations. In re South Brunswick, Docket No. MID-L-3878-15, unpublished opinion dated July 21, 2016 (Exhibit A). Embracing the methodology used by FSHC and its expert, Dr. David Kinsey, and

completely rejecting the testimony and opinions of the Township's expert, Dr. Peter Angelides of Econsult, the court found that the Township was responsible for the following:

Prior Round	-	841
Present	-	109 (subject to modification after the August 18 hearing)
Prospective	-	1,533

An order memorializing the court's written opinion was entered on August 8, 2016 (Exhibit B).

After considering the identical opinions and evidence, Special Master Richard B. Reading, the regional master for Ocean, Monmouth and Mercer Counties, issued his report on July 29, 2016 (Exhibit C). In his analysis of the evidence presented by the experts, Reading found that the Township was responsible for the following:

Prior Round	-	841
Present	-	115
Prospective	-	927

The primary difference in calculating the Prospective obligation between this court's findings and Special Master Reading's was the estimate of the percentage of households that are expected to be low and moderate income households (LMI HHs) in the Prospective period. This difference alone accounts for a substantial portion of the difference in the Township's total obligation for the Prospective period (1,533 v. 927). In light of the significant difference in the estimation of the Township's Prospective obligation, and the basis upon which this difference rests, this court should reconsider the calculation of the Township's Prospective obligation or, in the alternative, grant a new trial on this issue.

LEGAL ARGUMENT

POINT I

THE TOWNSHIP'S MOTION FOR RECONSIDERATION AND/OR NEW TRIAL SHOULD BE GRANTED

Pursuant to R. 4:49-2,

...a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred...

The rule governing motions for reconsideration is applicable “when the court’s decision is based on plainly incorrect reasoning or when the court failed to consider evidence or there is good reason for it to reconsider new information.” See Cummings v. Bahr, 295 N.J. Super. 374, 384-385 (App. Div. 1996). In the context of a motion for relief from a judgment or order pursuant to R. 4:50-1, a party is entitled to such relief in matters of public significance, Manning Engineering, Inc., v. Hudson City Park Comm’n., 74 N.J. 113 (1977), and to avoid inconsistent judgments. See Ramos v. Strelecki, 110 N.J. Super. 153 (App. Div. 1970); Schaefer v. Strelecki, 107 N.J. Super. 7 (App. Div. 1969). The same considerations should be just as relevant on a motion for reconsideration.

In addition, pursuant to R. 4:49-1(a),

A new trial may be granted to all or any of the parties and as to all or part of the issues on motion made to the trial judge. On a motion for a new trial in an action tried without a jury, the trial judge may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. The trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.

In the instant case, as part of the determination of the Township's Prospective obligation, the court was required to determine what percentage of all households projected for the Prospective period would qualify as LMI HHs pursuant to the FHA. The key component to this projection is a determination of the regional median income. This is a critical step in the process and is "the foundation for the Prospective Need." (T111:2-6)¹. Indeed, this court found that this calculation "is the cornerstone for any fair share calculation." In re South Brunswick, *supra.*, at p. 46.

The FHA defines low and moderate income housing, forming the basis for defining median income and LMI thresholds in the calculation of affordable housing obligations. The FHA defines each as follows:

"Low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located. N.J.S.A. 52:27D-304(c)

"Moderate income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50% but less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located. N.J.S.A. 52:27D-304(d)

The Prior Round methodologies determined regional median income according to the amounts published by the federal Department of Housing and Urban Development (HUD), as suggested in the first clause of the definitions in the FHA. This has resulted in the traditional COAH/HUD "grid" establishing median income and threshold limits for moderate, low and

¹ T- Refers to trial transcript dated May 2, 2016.

very-low income households (T111:7-20; See P-10, ESI Power Point Slide 26). The language used in the FHA, however, makes clear that the HUD standards are not the only option for defining LMI HHs. Rather, the definition permits the use of the HUD standards or “other recognized standards for home ownership and rental costs.” In either case, whatever “standards” are used must ensure that units are “occupied or reserved for occupancy by households with a gross household income [of 50% or less (low) or] equal to more than 50% but less than 80% [moderate] of the median gross household income for households of the same size within the region in which the housing is located.” N.J.S.A. 52:27D-304(c) & (d).

Dr. Kinsey and Mr. Art Bernard, the expert called on behalf of Richardson Fresh Ponds/Princeton Orchards, both blindly followed the COAH/HUD income grid, performing no analysis of its accuracy or reliability in meeting the FHA’s requirements. (6T170:23 to 6T171:6; 14T88:17 to 14T89:17)². The analysis of household income based on actual data performed by Dr. Angelides, however, clearly demonstrated that the COAH/HUD grid does not in fact properly identify ‘households with a gross household income of 50% or less (low) or equal to more than 50% but less than 80% (moderate) of the median gross household income for households of the same size within the housing region in which the housing is located.’ This indicates that another “recognized standard” should be used that does satisfy the statutory requirement.

In reviewing this issue, this court found Dr. Angelides’ methodology to be an “untried, untested and (heretofore) unused method to calculate income limits for [LMI HHs]” that “would, if accepted, decrease South Brunswick’s prospective need by thousands of units. Whether or not it was designed specifically to achieve such a purpose, Dr. Angelides’ approach deserves little

² 6T- Refers to trial transcript dated May 5, 2016 (Vol. 1)
14T- Refers to trial transcript dated May 24, 2016

consideration here, as it is inconsistent with both prior round methodologies, violates the FHA, and does not adhere to the UHAC or HUD income limits.” In re South Brunswick, supra., at p. 54. It is respectfully submitted that this was a mistake by the court, and does not reflect the import of the testimony and evidence that was presented.

In contrast to the court’s characterization that Dr. Angelides deliberately manipulated the data to decrease the Township’s obligation, the evidence was clear that he sought to determine the **actual** increase in LMI HHs for the Prospective period as accurately as possible, using the most up to date data available. (T54:10-12; 2T54:1-3)³. Instead of artificially “decreasing” the Township’s obligation, he sought to determine the **actual** obligation, based on the **actual** data and resulting **actual** need for LMI HHs. Of course he would concede that following the COAH/HUD grid would improperly result in “thousands” more units. In re South Brunswick, supra., at 51. That was the very point he was making in demonstrating to the court that following the COAH/HUD grid results in grossly inaccurate and overinflated estimates, artificially increasing the need and municipal obligations.

Dr. Angelides also clearly established that following the COAH/HUD grid allows some households that are **not actually eligible** for affordable housing pursuant to the FHA’s requirements to qualify for affordable housing. This is a violation of the plain meaning of the FHA. On the other hand, some households that **should be eligible** for affordable housing based on their actual income will be prevented from qualifying because of the skewed results that are achieved in following the COAH/HUD grid. This is a violation of the entire Mt. Laurel doctrine. Thus, continued use of the highly flawed COAH/HUD grid is clearly a miscarriage of justice, rewarding ineligible households and denying eligible ones the right to affordable housing in violation of the law.

³2T – Refers to trial transcript dated May 3, 2016 (Vol. 1).

In contrast to this court’s characterization of Dr. Angelides’ testimony, Special Master Reading clearly recognized the injustice of simply following the COAH/HUD grid. He found that use of the COAH/HUD grid, and following the method used by Dr. Kinsey and Mr. Bernard, “is clearly not consistent with COAH’s prior findings that, ‘nonetheless, almost by definition, about 40 percent (40.622%) of household growth will be comprised of low and moderate income households.’ In this regard, the LMI proportion of household growth estimated by Econsult (40.71%) is recommended to be utilized.” Reading Report July 29, 2016, p. 83.

By not following the requirements of the FHA in addressing the needs of the statutorily defined LMI HH’s, but rather blindly following the COAH/HUD grid that results in a distortion in the projection of LMI HHs, the final calculation of LMI HHs overinflates the LMI need and the obligations that flow therefrom. Indeed, Special Master Reading demonstrated the full extent of this overinflation, indicating that following the Kinsey methodology results in an estimation that an astounding 67.65% of all projected household growth between 2015-2025 qualifies as LMI. Reading Report July 29, 2016, p. 50. As demonstrated at trial, since this calculation is required by the FHA to be based on the median income for households, this is a statistical impossibility! (T119:24). Instead, in accordance with the FHA and COAH’s prior findings, “about 40 percent (40.622%) of household growth will be comprised of low and moderate income households.” Reading Report July 29, 2016, p. 83.

In conformance with the express goals of the FHA that only – and all -- those households eligible for low and moderate income housing as defined in the FHA be included in the projected need, the Angelides methodology results in an estimation that 40.71% of all projected household growth between 2015-2025 qualifies as LMI. This is wholly consistent with COAH’s guidance, the requirements of the FHA and the actual data available to calculate this projection. By rejecting Dr. Angelides’ methodology and following the methodology espoused by Dr. Kinsey

and Mr. Bernard, this court incorrectly overinflated the affordable housing obligation for the Township, resulting in a clear mistake and/or a miscarriage of justice. As a result, the Township has been ordered to provide for housing for households that do not qualify as LMI HHs. At the same time, households that rightfully should be eligible for affordable housing will be denied that opportunity. Such a gross distortion of “the foundation for the Prospective Need” (T111:2-6) and “the cornerstone for any fair share calculation” In re South Brunswick, *supra.*, at p. 46, infects the entire Prospective Need calculation.

Determining the Township’s Prospective obligation accurately, so that all eligible LMI HHs are afforded opportunities for affordable housing, is of paramount public importance. Similarly, ensuring that the Township is not overburdened with an obligation to provide for housing for households that are not eligible for affordable housing is of equal public significance. A failure to appropriately address both concerns is a mistake of constitutional dimension that results in a clear miscarriage of justice. Accordingly, the Township’s motion for reconsideration and/or new trial on this issue should be granted.

POINT II

THE TOWNSHIP’S PROSPECTIVE (2015-2025) AFFORDABLE HOUSING OBLIGATION SHOULD BE RECALCULATED SO THAT IT ACCURATELY REFLECTS THE NEED OF LMI HHs FOR THE PROSPECTIVE PERIOD

In its calculation of the Township’s Prospective obligation, the court used the methodology proposed by Dr. Kinsey and Mr. Bernard, relying upon the COAH/HUD grid. The testimony clearly demonstrated that this results in inaccurate projections and errors in the estimate of LMI HHs. Dr. Angelides explained these errors as part of his testimony and as demonstrated in his reports. As he stated, the grid contains only six independent numbers based on actual data, one for each region, all within the 4 person household category. Every other

number in the grid is merely a derivative of those numbers, based on implicit assumptions that are clearly not valid based on the demonstrated data. (T113:7 to T114:22).

The first cause of the COAH/HUD error is what Dr. Angelides called a “data problem.” (T115:10-13). The LMI standard used by COAH is based on a transformation of income thresholds defined by HUD. This, however, is a mismatch of data – comparing apples to oranges. HUD defines median family income for a family of four in each county. COAH takes this data and multiplies it by the number of households in each county, sums this number with the parallel number from the other counties in the region, and divides the total by the total number of households in each region. This process produces what the Prior Round methodology calls “the regional weighted average of median income for a household of four” (See 26 N.J.R. 2332). This estimated median for a family of four is then adjusted based on a “factor,” or multiplier, supplied by HUD to adjust median income for household sizes smaller and larger than four. For example, the factor is 0.9 for a family of three, meaning that the median income threshold is set to 90% of the median income defined for a family of four. The LMI threshold for the purpose of estimating affordable housing need is then calculated as 80% of this adjusted estimate of the median for each household size. This threshold is then compared to household income data from the American Community Survey (ACS) to estimate the proportion of LMI households.

Serious statistical problems arise from this methodology. The first is an intermixing and comparison of non-like data sources. A HUD standard, which uses median family income for a family of four, is used to establish an income threshold against which median household income is compared. These are clearly two different data sets. Using one to establish the other leads to incorrect results. This is easily corrected by simply using the actual Census data, which provides the median income for a housing region by household size. It is a more accurate data source because it measures “exactly what you’re supposed to [measure].” (T116:1-14).

Another major statistical issue is the factors applied to adjust this threshold up (for household sizes above four) and down (for household sizes below four). Unfortunately, these factors do not reflect the actual relationships between median household incomes for various household sizes. The COAH grid assumes, for example, that one-person households have a median income 70% as high as that of two-person households (since the median calculation is to multiply the four-person household benchmark by 0.7 for a one-person household and by 0.8 for a two-person household). Actual ACS data, however, shows that median household incomes for two-person households are in fact more than twice as high as that of one-person households in every region in New Jersey. (P-10, ESI Power Point Slide 27; P-60, ESI Power Point Slide 4).

As a result, median incomes estimated for one-person households in every region using the COAH/HUD grid are well above (in some cases nearly double) the actual median income for one-person households in those regions. This “makes many more single person households low and moderate income.” (T117:9-10). Conversely, median incomes do not always rise linearly with increasing household size. The medians estimated by the COAH/HUD grid for large households are well above the actual median income for those household sizes in most regions, but below the actual median income for households of two to four persons. As a result, the actual ACS data demonstrates that, by using the COAH/HUD grid, more than 70% of one-person households in each region have a household income below the COAH/HUD median (T119:21-23). Statewide, 52% percent of households have incomes lower than the COAH/HUD median for their household size. (P-8, ESI March 24, 2016 report, p. 43; P-10, ESI Power Point Slide 28). This data was undisputed, with even Dr. Kinsey testifying that he had no reason to dispute the accuracy of this data. (12T97:24 to 12T98:3)⁴. Of course, use of the COAH/HUD grid and the

⁴ 12T- Refers to trial transcript dated May 11, 2016 (Vol. 1).

results that flow from it violates the statistical principle of a “median” and is “a mathematical impossibility.” (T119:24).

The flawed COAH median thereby produces a flawed calculation of LMI HHs based on income thresholds set at 80% of that median. Following the COAH/HUD grid, a full 65% of all one-person households statewide are estimated to have incomes below the regional LMI threshold for their household size. (T120:1-7). This is a clear statistical impossibility and results in a significant portion of one person households being eligible for LMI housing, even though they should not be eligible for the assistance. This is a clear violation of the requirements set forth in the FHA.

The problem further continues when evaluating four person households. In that situation, the evidence shows, as to Region 3, only 29% of the LMI eligible households would receive LMI assistance. This deprives 25% of four person LMI eligible households in Region 3 from receiving LMI assistance even though they are eligible for such assistance. In addition, far less than 40% of households with 2-5 people are estimated as LMI using the present COAH grid. Statewide, 43% of households are estimated to be LMI under this method, which follows directly from the 52% of households that are (incorrectly) estimated to be below the median income (T120:8-18; P-10, ESI Power Point Slide 28; P-60, ESI Power Point Slide 6).

This problem is not simply an academic one. The FHA defines moderate income housing as “reserved for occupancy by households with a gross household income...less than 80% of the median regional gross household income for households of the same size within the housing region...” N.J.S.A. 52:27D-304 (d). The COAH/HUD grid plainly fails to address that population. For example, the regional median income for three-person households in Region 1 is \$85,300 according to 2014 ACS data (P-8, ESI March 24, 2016 report, p. 42), and 80% of that amount is \$68,240. A three-person household in Region 1 with a household income of \$65,000

earns less than 80% of the regional median income, but nonetheless is **excluded** from the regional need under the COAH/HUD grid, which sets the LMI threshold for a three-person household in Region 1 at \$60,784. (P-10, ESI Power Point Slide 26; P-60, ESI Power Point Slide 3). By contrast, a one-person household in Region 2 with a household income of \$50,000 (nearly 50% above the actual median income of \$34,000 for one-person households in Region 2 (P-8, ESI March 24, 2016 report, p. 42)) is considered LMI under the COAH/HUD grid. (P-10, ESI Power Point Slide 26; P-60, ESI Power Point Slide 3). In the final analysis, simply following the COAH/HUD grid results in a highly distorted picture of households that fall within the median income thresholds. More significantly, doing so leads to a net overestimation of the number of LMI HHs and therefore incorrectly (and inaccurately) overestimates the need. (T123:23 to T124:3). Indeed, following Dr. Kinsey’s blind adherence to the COAH/HUD grid inaccurately increases the estimated Statewide Prospective Need by “tens of thousands” of units (3T218:3-10)⁵.

The solution to this problem is very straightforward – to calculate median household incomes directly from the actual 2014 ACS data for each household size and region. This approach is “a very straightforward calculation, easily reproducible by anybody skilled in the field.” (3T219:13-16). It eliminates the mismatch between family and household incomes, eliminates the need for county data to be weighted to a regional average, and eliminates the flawed household size factors by using observed data for each household size to calculate a unique median. Then, in keeping with the FHA, LMI thresholds are set at 80% of the median household income for each household size by region. PUMS data from the 2014 ACS can then be used to estimate the proportion of households that are LMI for each household size and region. Statewide, 40% of households are estimated to be LMI using this procedure. (T123:15-

⁵ 3T- Refers to trial transcript dated May 3, 2016 (Vol. 2).

16). This is a much more accurate way to determine median income and the proportion of households that may qualify as LMI households, consistent with the express requirement of the FHA.

Although the source of the data used by Dr. Angelides to determine LMI eligibility is different than the source of the data used in Round 1 and Round 2, Dr. Angelides uses data from ACS PUMS, which is clearly “recognized” data. The use of this data is consistent with the FHA and with the Mount Laurel IV directive to use the best, most up-to-date data available. Of utmost importance, the incorporation of the ACS PUMS data to accurately reflect LMI eligibility ensures that the determination of Statewide fair share need will be more accurate than with the continued use of the COAH grid. In this regard, Dr. Angelides again stressed the core principle that permeates throughout his methodology, which places an emphasis on accuracy. The evidence is unrefuted that use of the COAH/HUD grid is inconsistent with a methodology that values accuracy.

To calculate Prospective Need, the median income limits and resulting proportions of households estimated to be LMI are then matched with the population and household projections for 2015 and 2025 to produce an estimate of incremental growth in LMI households for each region between the beginning and end of the Prospective Need period. This step requires translating the projections of population in households and total households for 2015 and 2025 into an estimated distribution of households by size and age. The LMI proportions by household size and county can then be applied to this estimated distribution. Household size estimates for each county are then aggregated to the regional level and the calculated LMI rate for each region and household size from 2014 (using ACS data) is applied to produce estimated numbers of LMI households in 2015 and 2025. The results of this procedure are calculated for each region and statewide for 2015 and 2025. (P-8, ESI March 24, 2016 report, p. 48).

This raises a second significant problem with how Dr. Kinsey performed his calculations. When blindly following the COAH/HUD grid, a “math problem” is unavoidable. Dr. Kinsey, however, chose to ignore this problem, thereby artificially increasing the projected need. Dr. Angelides, however, sought to correct the problem so that the projected need could be accurately calculated. As Dr. Angelides explained, “the very method that COAH has used to calculate low and moderate income percentages in the past and the future give rise to a mathematical problem that can’t be solved within the context of how its been done before, and the math is just – it’s a math thing, it’s not a policy thing. It’s just that’s how the math works.” (T115:14-20).

As the population ages, there are less people in the higher income ‘middle years’ and more people in the lower income ‘senior years.’ As a result, the statewide median income in 2025, all other things being equal, will be lower than it is in 2015 (T125:12-20). Despite this mathematical certainty, COAH held the median income constant from the current to projected periods (P-48, Second Round Appendix A, p. 6; 26 N.J.R. 2347). This failure to account for a decrease in the median income results in an overestimation of the need, ultimately artificially inflating the obligation. A simple means to correct this mathematical problem is to calculate according to household size rather than by age cohort. This automatically adjusts for the change in median income and produces accurate results that do not fall prey to the mathematical issue. (T126:18 to T127:24).

In his analysis of this issue, Special Master Reading, after an exacting review of the methodologies used by both Dr. Kinsey and Dr. Angelides, concluded the following:

The proportion of the total households that are LMI households are estimated differently by the alternative methodologies. FSHC estimates the proportion of LMI households utilizing Census, ACS data and COAH income limits to estimate the number of LMI households and this procedure results in FSHC's estimate that LMI households would represent two-thirds (67.65 percent) of the total household growth between 2015 and 2025. Econsult's estimates of the proportion of total households that are LMI households are calculated

directly from Census and ACS income data rather than using HUD/COAH income thresholds and results in an estimate that between 2015 and 2025, 40.71 percent of the total increase in households would be LMI households, which is significantly below the incremental LMI share (67.65 percent) projected by FSHC. Whereas FSHC contends that their procedure is similar to the approach utilized in the prior rounds, the proportion of total households that are LMI households, is not determined using the proportion of households reflected in Census and/or ACS data with household incomes below 80 percent of the median by household size, but in comparison to HUD "county income limits by family size". There are significant differences in the median incomes of households and families. The ratios used in the income qualification tables are structured around four person families that are reduced by household size and indicate that one-person households have a median income that is 70 percent of a four person family, when the actual proportion is 31.2 percent. Similarly, a two-person household is assumed to have a median income that is 80 percent of a four person family when the actual proportion is 69.0 percent. These deviations in one- and two-person households, which account for 56.4 percent of all households contribute to FSHC's estimation that nearly 70 percent of all new households will be LMI households. This allocation is clearly not consistent with COAH's prior findings that "nonetheless, almost by definition, about 40 percent (40.622 %) of household growth will be comprised of low- and moderate-income households". In this regard, the LMI proportion of households growth estimated by Econsult (40.71%) is recommended to be utilized. Richardson report July 29, 2016, at p. 82-83.

Consistent with Special Master Reading's conclusions, after correcting for the problems with the COAH/HUD grid identified by Econsult, the effective LMI rate determined by Special Master Reading is 40.71%.

After determining the correct percentage of LMI HH to total households for the Prospective period, and accounting for minor adjustments to Conversions and Demolitions as part of the Secondary Source analysis, Special Master Reading's calculation of the Prospective need for Region 3 and the Township compares to this court's calculations as follows:

Prospective Need Item	Hon. D. Wolfson, JSC	Special Master R. Reading	Difference
Region 3 2015 LMI HH	184,462	177,860	6,602
Region 3 2025 LMI HH	204,857	190,532	14,325
Region 3 2015-2025 need	20,396	12,672	7,724
SB Nonresidential ratables factor	0.086164517	0.086164517	0
SB Undeveloped land factor	0.101856321	0.101856321	0
SB Household income factor	0.036042548	0.036042548	0
SB Avg allocation factor	0.074687795	0.074687795	0
SB Gross need 2015-2025	1,523	946	577
Filtering	0	0	0
Conversions	(20)	(44)	24
Demolitions	30	25	5
SB Prospective Need	1,533	927	606

See data in Excel spreadsheet of Special Master Richard B. Reading accompanying his July 29, 2016 report. (Exhibit D)

As is readily apparent, by correcting for the inaccurate projections that result from use of the COAH/HUD grid, and instead utilizing the actual data to accurately determine LMI HHs as Dr. Angelides and Special Master Reading have done, the Township's Prospective (2015-2025) obligation is significantly reduced. Since the evidence and testimony before the court demonstrates that this is the more accurate way to calculate LMI HH formation over the Prospective period, this court should recalculate the Township's Prospective obligation or, in the alternative, vacate the prior determination and order a new trial on this issue.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the court:

1. Grant a reconsideration of its July 21, 2016, opinion and August 8, 2016, order as to the Township's Prospective (2015-2025) obligation of 1,533;
2. Recalculate the Township's Prospective (2015-2025) obligation to reflect the actual need for the Prospective period or, in the alternative, vacate the prior determination and order a new trial on this issue; and
3. Such other relief as the court finds just and equitable.

Respectfully submitted,

TOWNSHIP OF SOUTH BRUNSWICK

s/ Donald J. Sears

Donald J. Sears

Dated: August 10, 2016