

HEROLD LAW, P.A.

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Attorneys for Defendant/Interested Party,

Princeton Coalition for Responsible Development, Inc.

IN THE MATTER OF THE APPLICATION
OF THE MUNICIPALITY OF PRINCETON
IN MERCER COUNTY,

Petitioner

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.: MER-L-207-25

CIVIL ACTION
(MOUNT LAUREL)

**ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT
AND CHALLENGE TO THE
HOUSING ELEMENT AND FAIR
SHARE PLAN PURSUANT TO
N.J.S.A. 52:27D-301, ET SEQ.,
AND AOC DIRECTIVE #14-24**

Defendant/Interested Party, Princeton Coalition for Responsible Development, Inc.

(“PCRD”), a non-profit corporation with a registered address of 18 Hibben Road, Princeton, New Jersey, by way of Answer to the Complaint (“Complaint”) and Challenge to Petitioner’s Housing Element and Fair Share Plan (“HEFSP”), adopted on June 25, 2025, says:

Paragraphs 1 through 21.¹ PCRD denies each and every allegation and objects to any proposed form of relief set forth in the Complaint, to the extent that any such allegation or requested relief seeks to establish that the challenged HEFSP complies with the Amended FHA or the New Jersey Constitution as construed by the Mount Laurel doctrine.²

AFFIRMATIVE DEFENSES/ CHALLENGE

By way of further response in support of this Challenge to Petitioner's HEFSP, pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Section III.B of Directive #14-24 of the Program, PCRD, supported by the Letter Brief attached hereto as Exhibit A and the Planning Report of Donna Holmqvist, PP, AICP ("Planning Report") attached hereto as Exhibit B,³ asserts the following:

1. PCRD is an Interested Party within the meaning of the Amended FHA.
2. For the reasons to follow, and for the reasons set forth at length in the Letter Brief attached hereto as Exhibit A and the Planning Report attached hereto as Exhibit B, PCRD

¹ PCRD acknowledges the requirements of R. 4:5-3 relative to the form of an Answer; however, as the allegations of the Complaint are not germane to the issue of whether the HEFSP is compliant, and Directive #14-24 does not mandate compliance with the New Jersey Court Rules in the filing of Challenges to municipal housing elements and fair share plans pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b), and this action is not in the Superior Court, but rather is a proceeding before the Program, PCRD is submitting this Challenge in a fashion that comports with the requirements of the Amended FHA. Should the Program interpret Directive #14-24 to require an Answer that fully comports with the procedural requirements of R. 4:5-3, PCRD shall provide the same upon direction of the Program. However, such an amended Answer would not result in any substantive revision to PCRD's positions as to the merits of this Challenge, as the merits are set forth in this current form of Answer with supporting exhibits.

² The term Mount Laurel doctrine refers to Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I"), Southern Burlington County NAACP, et al v. Township of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), and its progeny, the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*, and the implementing regulations of the New Jersey Council on Affordable Housing ("COAH") N.J.A.C. 5:93 and/or N.J.A.C. 5:97, to the extent they have not been invalidated by the Supreme Court in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010), modified, 215 N.J. 578 (2013).

³ The expert planning opinions and conclusions, including any reliance on the Master Plan & Reexamination Report dated November 30, 2023 ("2023 Master Plan"), set forth in the Planning Report by Ms. Holmqvist are solely intended to aid the Program in its objective review of this Challenge. As such, the Planning Report's reliance on the 2023 Master Plan (the Petitioner's most recent adopted master plan) has no bearing on the assertions raised by PCRD in its pending legal challenge to the validity of the 2023 Master Plan, which is referenced in the certifications below.

respectfully submits that the HEFSP does not comply with the governing law, including the Amended FHA and the Mount Laurel doctrine, and the Program should so conclude.

3. The fair share obligations of Petitioner were established by the Program, and those obligations were then memorialized by way of Order of the Superior Court, entered on March 25, 2025. Pursuant to that Order, Petitioner's Fourth Round present need fair share obligation is 60 units and its Fourth Round prospective need fair share obligation is 276 units.

4. On June 27, 2025, Petitioner filed its HEFSP with the Program, purporting to meet its present and prospective fair share obligations for the Fourth Round, and also purporting to demonstrate compliance with Petitioner's prior round obligations. This Challenge follows.

5. With respect to prior round obligations, N.J.S.A. 52:27D-304.1(f)(2)(a) of the Amended FHA requires that municipalities demonstrate prior round compliance, as follows:

As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's prospective need obligation.

In addressing prior round obligations, the municipality...shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity, which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources. The municipality shall only plan to replace any sites planned for development as provided by a prior court approval, settlement agreement, or approval by the council, with alternative

development plans, if it is determined that the previously planned sites no longer present a realistic opportunity, and the sites in the alternative development plan provide at least an equivalent number of affordable units and are otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.

[Ibid. (emphasis added).]

6. As set forth in the Letter Brief attached hereto as **Exhibit A**, the HEFSP fails to demonstrate how the newly-identified prior round compliance mechanism, a proposed inclusionary development at property commonly known as 108 Stockton Street, Block 36.01, Lots 15, 16, 17 and Block 35.01, Lots 25 and 26 ("108 Stockton"), presents a realistic opportunity.

7. N.J.A.C. 5:93-5.3(b) of COAH's rules provides that "[m]unicipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1." N.J.A.C. 5:93-1 provides as follows:

"Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

"Suitable site" means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

[Ibid.]

8. As noted in the Planning Report attached hereto as **Exhibit B**, the Petitioner's inclusion of 108 Stockton as an inclusionary development that is part of its prior round compliance mechanisms is contrary to COAH's rules, as it is not "available", "suitable", "developable", or "approvable", and, therefore, the HEFSP is contrary to the Amended FHA and Mount Laurel doctrine.

9. PCRD reserves the right to supplement this Answer with additional affirmative or other defenses, including those which may arise during the adjudication of the HEFSP by the Program.

WHEREFORE, PCRD respectfully requests that the Program and the Superior Court grant the following relief:

- (a) Declaring that Petitioner's HEFSP fails to comply with the Amended FHA and the Mount Laurel doctrine;
- (b) Declaring that Petitioner's immunity from exclusionary zoning litigation, to the extent it exists, is terminated;
- (c) Ordering Petitioner to prepare and file a revised Housing Element and Fair Share Plan fully complying with the Amended FHA, Directive #14-24, as amended, and the Mount Laurel doctrine, and consistent with all guidance provided by the Program; and

(d) Ordering any and all such other relief as the Program and Court deem equitable and just.

HEROLD LAW, P.A.
*Attorneys for Defendant/Interested
Party, Princeton Coalition for
Responsible Development, Inc.*



By: _____
Robert F. Simon

Dated: August 29, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c) and R. 4:25-4, Robert F. Simon, Esq. of Herold Law, P.A. is hereby designated as trial counsel for Defendant/Interested Party, Princeton Coalition for Responsible Development, Inc.

HEROLD LAW, P.A.
*Attorneys for Defendant/Interested
Party, Princeton Coalition for
Responsible Development, Inc.*



By: _____
Robert F. Simon

Dated: August 29, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding now pending in any Court or of any pending arbitration proceeding, except: (i) Princeton Coalition for Responsible Development, Inc. v. Mayor & Council of the Municipality of Princeton, et al., Docket No. MER-L-1764-24; and (ii) Princeton Coalition for Responsible Development, Inc. v. Municipality of Princeton Planning Board, et al., Docket No. MER-L-100-24.

To the best of my knowledge and belief, no other parties need to be joined at this time, and no other proceedings are contemplated at this time.

HEROLD LAW, P.A.

Attorneys for Defendant/Interested Party, Princeton Coalition for Responsible Development, Inc.



By: _____
Robert F. Simon

Dated: August 29, 2025

CERTIFICATION OF SERVICE

I hereby certify that the within Answer to Complaint, Affirmative Defenses and Challenge have been timely filed and served via eCourts with the Superior Court of New Jersey, Mercer County, pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and AOC Directive #14-24.

HEROLD LAW, P.A.

Attorneys for Defendant/Interested Party, Princeton Coalition for Responsible Development, Inc.



By: _____
Robert F. Simon

Dated: August 29, 2025

**EXHIBIT A
(LETTER BRIEF)**

Reply to:
25 INDEPENDENCE BOULEVARD
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August 29, 2025

VIA ECOURTS

Honorable Robert T. Lougy, A.J.S.C.
Mercer County Criminal Courthouse
400 South Warren Street, Floor 4
Trenton, New Jersey 08650

**RE: In the Matter of the Application of the Municipality of Princeton
in Mercer County
Docket No.: MER-L-207-25**

Dear Judge Lougy:

This firm represents Defendant/Interested Party, Princeton Coalition for Responsible Development, Inc. (“PCRD”) in the above-captioned action filed by Petitioner, Municipality of Princeton (“Petitioner” or “Municipality”). This action was filed by Petitioner to establish its Fourth Round (2025-2035) fair share obligation and to obtain a compliance certification of its Fourth Round Housing Element and Fair Share Plan (“HEFSP”). Pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., as amended by P.L. 2025, c. 2 (collectively, “Amended FHA”), and the Affordable Housing Dispute Resolution Program (“Program”) Directive #14-24 (“Directive #14-24”), as amended through its Addendum dated June 23, 2025 (“Addendum”), please accept this Letter Brief, which is attached as **Exhibit A** to PCRD’s Answer in this action, in support of PCRD’s challenge to the compliance mechanisms contained in the Municipality’s HEFSP.

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 2

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On July 8, 2015, Petitioner filed a Third Round Declaratory Judgment action in the Superior Court of New Jersey, Mercer County (Docket No. MER-L-1550-15) (“2015 DJ Action”). Judge Mary C. Jacobson, A.J.S.C. presided over the 2015 DJ Action from its inception to 2021, and then Your Honor presided over the 2015 DJ Action. During the pendency of the 2015 DJ Action, the Municipality and West Windsor Township were involved in a methodology trial resulting in a March 8, 2018 Opinion and Order establishing the municipal fair share obligations of both municipalities. On December 18, 2019, Petitioner entered into a settlement with Fair Share Housing Center (“FSHC”), which set forth Petitioner’s total affordable housing obligation and compliance mechanisms to be addressed during the Third Round (“2019 Settlement Agreement”). The 2019 Settlement Agreement identified Petitioner’s affordable housing obligations during the Third Round as: (i) Present Need/Rehabilitation Share of 80 units; (ii) Prior Round Obligation (pursuant to N.J.A.C. 5:93) of 641 units; and (iii) Third Round Obligation (1999-2025) (New Construction) of 753 units.

Because the Municipality was created on January 1, 2013 by consolidation of the former Borough of Princeton (“former Borough”) and the former Township of Princeton (“former Township”), the Prior Round Obligation was established by the sum of the separate obligations of the two former municipalities. The former Borough’s Prior Round Obligation was determined to be 323 units. Pursuant to a Judgment of Compliance and Repose entered on October 16, 2002, the Borough received a Vacant Land Adjustment, which resulted in a Realistic Development Potential (“RDP”) of 100 units and a remaining Unmet Need Obligation of 223 units for the Prior Round. The 2019 Settlement Agreement recognized that pursuant to New Jersey Council on Affordable

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 3

Housing's ("COAH") 2008 calculations in N.J.A.C. 5:97, Appendix C, the recalculated Prior Round Obligation was 311 units, and found that the remaining former Borough Unmet Need Obligation was 195 units after accounting for the COAH adjustment and units that could be credited to the former Borough's Prior Round Obligation. The Municipality and FSHC agreed to the Petitioner addressing its remaining former Borough Prior Round Unmet Need Obligation, amongst other compliance mechanisms, through a Municipality-wide mandatory affordable housing set-aside ordinance. The 2019 Settlement Agreement specified that affordable housing units created in the boundaries of the former Borough pursuant to the Municipality-wide set-aside ordinance would first be credited to the former Borough's Prior Round Unmet Need Obligation. Further, with the mandatory set-aside ordinance and the specific overlays adopted in accordance with the 2019 Settlement Agreement, the parties agreed that the former Borough's Unmet Need Obligation was adequately addressed in accordance with COAH's rules, and, in particular, N.J.A.C. 5:93-4.2(f).

GOVERNING LAW

The Amended FHA sets forth the procedures governing Fourth Round compliance, requiring municipalities to adopt a housing element and fair share plan as provided for in the Amended FHA on or before June 30, 2025. N.J.S.A. 52:27D-304.1(f)(2)(a), requires that municipalities also demonstrate prior round compliance, as follows:

As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 4

or the council for any prior round, **the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan**. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's prospective need obligation.

In addressing prior round obligations, the municipality...**shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity**, which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources. The municipality shall only plan to replace any sites planned for development as provided by a prior court approval, settlement agreement, or approval by the council, with alternative development plans, if it is determined that the previously planned sites no longer present a realistic opportunity, and the sites in the alternative development plan provide at least an equivalent number of affordable units and are otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.

[Ibid. (emphasis added).]

Under the Amended FHA, interested parties are required to file any challenge to the Fourth Round compliance plans adopted by municipalities on or before August 31, 2025, and must address the issue of whether the challenged municipal housing element and fair share plan complies with the Amended FHA and the Mount Laurel doctrine, as set forth in the relevant case law. See Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I"), Southern Burlington County NAACP, et al v. Township of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), and its progeny. Further, a challenger must specify with particularity which sites or elements of the Fourth Round compliance plan do not comply, and the basis for alleging such noncompliance. See N.J.S.A. 52:27D-304.1(f)(2)(b). Following its review of a housing element and fair share plan and any challenges raised, the Program is also required to

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 5

apply an objective assessment to determine compliance with the Amended FHA and the Mount Laurel doctrine. See id.

MANDATORY COMPONENTS OF THE HEFSP

The Amended FHA and Directive #14-24, as amended through its Addendum, govern the mandatory components of the HEFSP, and are guided by other sources of law like certain COAH regulations. See e.g. N.J.S.A. 52:27D-311(m) (providing that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by [COAH] unless those regulations are contradicted by statute...or binding court decisions.”). N.J.S.A. 52:27D-310 explains the essential components of a compliant HEFSP, noting that the HEFSP “shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs... and shall contain at least... (e) determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to [N.J.S.A. 52:27D-304.1].”

The Directive, as amended on June 23, 2025, contains an “Addendum” that identifies the specific elements that are mandated to be submitted together with the HEFSP, including:

1. Detailed site suitability analyses with a concept plan for the development of each of the selected sites, overlaid on the most up to date environmental constraints map for that site.
2. Identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.
3. Following the submission of a proposed HEFSP, where it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed, the burden will be on the

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 6

municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.

4. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP.
5. Appendix of the HEFSP must include:
 - a. Proposed zoning amendments or redevelopment plans, if applicable;
 - b. Proposed Affordable Housing Ordinance;
 - c. Mandatory set aside ordinance;
 - d. Development fee ordinance;
 - e. Affirmative Marketing Plan;
 - f. Spending Plan indicating how the municipality intends to allocate development fees and other funds;
 - g. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.
 - h. Resolution(s) and/or contract(s) appointing Administrative Agent(s) and the Municipal Affordable Housing Liaison.
 - i. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

See Directive #14-24, Addendum § B (1)-(9).

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 7

Sites selected by a municipality for inclusionary development in any HEFSP are required to be suitable for affordable housing by conforming to the criteria in N.J.A.C. 5:93-1.3 and 5.3, and shall submit the information required in N.J.A.C. 5:93-5.3. See N.J.A.C. 5:93-5.6(a). An “available site” is a site with clear title, and that is free of encumbrances which preclude development for low- and moderate-income housing. A “developable site” is a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area-wide water quality management plan and wastewater management plan. A “suitable site” is a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4 (not in wetlands, flood hazard areas, steep slopes). An “approvable site” is a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. Notably, N.J.A.C. 5:93-5.3(c)(1) requires a general description of each site designated for the new construction of an inclusionary development, including the “acreage, current zoning, surrounding land uses, and street access,” with maps showing the location of all sites.

COMPONENTS OF THE MUNICIPALITY’S HEFSP

The HEFSP recognizes the former Borough’s Prior Round Obligation of 323 units (later adjusted by COAH to 311 units), which was modified pursuant to a Judgment of Compliance and Repose entered on October 16, 2002, resulting in a RDP of 100 units and a remaining Unmet Need Obligation of 211 units for the Prior Round. After crediting units to the former Borough, the 2019 Settlement Agreement recognized that there was a remaining Prior Round Unmet Need Obligation of 195 units. The HEFSP indicates that after the 2019 Settlement Agreement was executed:

...another 15 units have been produced or approved as a result of the inclusionary overlay zones in the former Borough, an error in

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 8

the [2019] Settlement Agreement has been corrected, removing 12 scattered-site affordable family for-sale units from the former Borough's RDP compliance, and a redevelopment plan has been adopted for the former Princeton Theological Seminary site that requires the redevelopment to produce 48 affordable family rental units.

The referenced "Princeton Theological Seminary site" is further identified in the HEFSP as 108 Stockton Street, Block 36.01, Lots 15, 16, 17 and Block 35.01, Lots 25 and 26 ("108 Stockton"). In Table 23 of the HEFSP, the Municipality identifies the former Borough's adjusted 223-unit Prior Round RDP compliance mechanisms, and includes 108 Stockton under the category of "Inclusionary Developments - Existing and Completed" despite the fact that the proposed redevelopment has not yet been subject to site plan review and approval by the Board. The HEFSP also fails to advise the Program that the redevelopment plan for 108 Stockton is subject to a separate legal challenge, Princeton Coalition for Responsible Development, Inc. v. Mayor & Council of the Municipality of Princeton, et al., Docket No.: MER-L-1764-24. Additionally, for the identified "new" 108 Stockton inclusionary development, the Municipality has failed to provide sufficient information in accordance with N.J.A.C. 5:93-5.3(c)(1), including, but not limited to, "acreage, current zoning, surrounding land uses, and street access."

The Municipality has claimed Prior Round credits for 108 Stockton without providing a sufficiently detailed site suitability analysis, including the required technical studies - e.g. traffic, stormwater, and utility capacity - needed to demonstrate creditworthiness under N.J.A.C. 5:93-1.3 and 5.3. Absent these technical submissions, there is no basis to conclude that the credited 108 Stockton site is "available", "approvable", "developable", or "suitable" for the proposed inclusionary development within the meaning of N.J.A.C. 5:93-1.3. For example, the Municipality has failed to provide the minimum documentation under N.J.A.C. 5:93-5.3, including information

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 9

regarding the “location, size and capacity of lines and facilities within the service area,” maps showing the location of sewer and water facilities, or any information regarding whether there is capacity available for this massive project. Additionally, the Municipality fails to comply with the Amended FHA requirements to analyze geographic equity, ensuring that the affordable housing is located near employment, transit, schools, and essential services, the absence of which raises the possibility of exclusionary siting, inconsistent with both statutory requirements and the constitutional mandate of fair share housing.

In justifying its inclusion of 108 Stockton as a Prior Round compliance mechanism, the Municipality references an agreement with FSHC to recharacterize and proactively address the remaining former Borough unmet need requirement via its Fourth Round compliance mechanisms:

Although Princeton now consists of a single municipality, rather than a Borough and Township, legacy obligations and judgments from the Prior Round and Third Round maintain this artificial distinction with respect to planning for affordable housing compliance. In an effort to move past this and create a plan for affordable housing from the viewpoint of what’s best for the Municipality, Princeton has successfully articulated an approach that will satisfy the obligations while doing just that. This entails a recharacterization of the Prior Round Unmet Need that was assigned to the former Borough and allowing the Municipality of Princeton to account for that portion of the obligation in its Fourth Round plan. In doing so, several benefits may be realized, including the elimination of the legacy Unmet Need requirement, the ability to claim bonuses for the former Unmet Need units, the ability to plan for future housing in locations determined to be appropriate for the Municipality (such as in proximity to transit, jobs, “third places,” and essential goods and services), elimination of a separate accounting of affordable units depending on whether they are created in the former Township or former Borough, and a unified approach to the consideration of the most appropriate locations and types of affordable housing within Princeton according to sound land use principles. This approach, which has been endorsed by Fair Share Housing Center (FSHC), results in a combined Prospective

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 10

Need obligation to be satisfied in the Fourth Round of 364 (276 + 88).

However, as challenged by PCRD in its separate lawsuit and for the reasons set forth in the Planner's Report attached as **Exhibit B** to this Challenge, the proposed redevelopment of 108 Stockton is not consistent with sound land use planning principles. The Redevelopment Plan effectively proposed three (3) multi-family buildings on approximately 4.38 acres, leading to a proposed density of nearly 54 du/ac on property that historically permitted a residential density of 6.25 du/ac for one-family dwellings and 9 du/ac for two-family dwellings. Further, 108 Stockton is surrounded by a residential zone that permits approximately 2.18 du/ac for single-family dwellings. Even with the site becoming available for the development of affordable housing after the court-approved Third Round HEFSP, the required (and adopted) mandatory set-aside ordinance would have captured the required 20% affordable housing units for an appropriately sized and planned redevelopment of the site. Notably, the adopted Second Round rules ultimately required a minimum density of 10 du/ac and a maximum set-aside of 15% for affordable rental housing. See N.J.A.C. 5:93-5.15(c)(5).

CONCLUSION

For the foregoing reasons, and as set forth in Planner's Report attached as **Exhibit B** to this Challenge, the Municipality's Fourth Round HEFSP fails to comply with the Amended FHA and the Mount Laurel Doctrine. As such, consistent with Directive #14-24, as amended, PCRD respectfully requests that the Program order Petitioner to prepare and file a revised Fourth Round

Honorable Robert T. Lougy, A.J.S.C.

August 29, 2025

Page 11

housing element and fair share plan fully complying with the Amended FHA, Directive #14-24, as amended, and the Mount Laurel doctrine.

Respectfully submitted,

HEROLD LAW, P.A.

Attorneys for Defendant/Interested Party,
Princeton Coalition for Responsible
Development, Inc.



Robert F. Simon

RFS:amk

EXHIBIT B
(PLANNER'S REPORT)



PREFERRED PLANNING GROUP LLC

Land Development & Zoning Experts

MEMORANDUM

TO: Robert Simon, Esq.
FROM: Donna Holmqvist, AICP, PP
DATE: August 28, 2025
RE: PCRD Challenge to Princeton's Fourth Round Housing Element & Fair Share Plan

1. Introduction

Preferred Planning Group LLC (PPG) is the Planning Consultant for Princeton Coalition for Responsible Development Inc. (PCRD). PCRD is an interested party in this action and has a pending legal challenge raising concerns about the density, mass and scale of the zoning regulations implemented by the municipality for the land known as Princeton Theological Seminary or 108 Stockton St. (Block 36.01 Lots 15, 16 & 17, and Block 35.01 Lots 25 & 26).

The Municipality's 2025 Fourth Round Housing Element and Fair Share Plan includes this site, which was not included in the previously adopted Third Round Housing Plan. The site's inclusion in this Fourth Round compliance plan is the result of a recent settlement agreement with Fair Share Housing Center and is utilized to help fulfill the former Borough of Princeton's Adjusted Prior Round Obligation (a total of 311 units). The Municipality has claimed 96 credits from this site, 48 affordable plus 48 rental bonuses, which are intended to apply to the former Borough's adjusted 223 unit Prior Round RDP, accounting for 43% of the total credits needed.

The site has been rezoned via a challenged 2024 Redevelopment Plan, which proposes a density far exceeding the surrounding area. The inclusion of the site was not envisioned in the community's 2023 Master Plan & Reexamination Report (the validity of which is challenged in a separate action that is unrelated to this HEFSP Challenge). Although designated as a "Multi-Family" land use, there was no land use policy guidance on the appropriate density, height, buffers or other elements of neighborhood compatibility.

To prepare a planning analysis and conclusions on these issues, I reviewed the following documents:

- a. Master Plan & Reexamination Report, prepared by Princeton Municipality, dated November 30, 2023
- b. 2020 Third Round Housing Plan Element and Fair Share Plan, prepared by Clarke Caton Hintz, adopted July 9, 2020



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- c. 2025 Fourth Round Housing Plan Element and Fair Share Plan, prepared by Clarke Caton Hintz, adopted June 25, 2025
- d. Fourth Round Affordable Housing Settlement Agreement, between Princeton Municipality and Fair Share Housing Center, dated June 26, 2025
- e. Complaint for Declaratory Judgment for Princeton Municipality, dated January 28, 2025
- f. Redevelopment Plan for Princeton Theological Properties, prepared by Kyle McManus, dated July 1, 2024
- g. N.J.A.C. 5:93-1 et. seq.

N.J.A.C. 5:93-5.3, which remains applicable in this Fourth Round, requires that municipalities designate for new construction sites that are:

...available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is currently or imminently available. All sites designated for low and moderate income housing shall be consistent with the applicable areawide water quality management plan (including the wastewater management plan) or be included in an amendment application filed prior to the grant of final substantive certification. If there is a denial by DEP or at the end of two years if there is no DEP determination, then COAH shall revisit the site and housing plan to determine if it provides a realistic opportunity.

“Available” means “a site with clear title, free of encumbrances which preclude development for low and moderate income housing.”

“Approvable” means “a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.”

“Developable” means “a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.”

“Suitable” means “a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.”



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After reviewing the aforementioned documents, the proposed inclusionary development at 108 Stockton St. is not “appropriate”, “available”, “developable” or “suitable” within the meaning of the COAH regulations. In sum, the planning objection to the inclusion of this site, as a compliance mechanism in the Fourth Round HEFSP is three fold:

- 1) No Consistent Plan or Zoning Vision. No concept or policy guidelines including density, building height, or buffers for the site was provided in the 2023 Master Plan & Reexamination Report. Further, the Redevelopment Plan lacks uniform setbacks, has insufficient buffers, and refers to individual parcels rather than establishing standards for one integrated site.
- 2) Violating the Power to Zone. The Redevelopment Plan zoning regulations violate the MLUL power to zone by including standards not drawn with reasonable consideration to the character of the surrounding area. The contemplated redevelopment is detrimental to the surrounding area and the Municipality has not demonstrated that the site will integrate with the existing community rather than perpetuating an isolated siting.
- 3) Overdevelopment & Excessive Density. The resulting number of units (238 total) on 4.38 acres represents a density of approximately 54 units to the acre, or 26 times the density of the surrounding area. There is no rationale to force overdevelopment on this site. The number of credits assigned to this site is 43% of the prior round credits, indicating the overbuilding.

These facts support PCRD's assertion that the Municipality has included a site in the Fourth Round HEFSP in violation of the COAH regulations and, without a planning rationale, to support the proposed redevelopment project, assigns an exorbitant proportion of prior round credits onto the site. The findings to support this assertion are set forth herein.

2. Subject Site

The PCRD objection to the 2025 Princeton Fourth Round Housing Element & Fair Share Plan involves the following properties known as 108 Stockton St.:

Block	Lot	Street Address	Prior Use ^{1,3}	Current Use ²	Lot Area
35.01	25	34-36 Hibben Rd.	Whitely Gym	Vacant	22,651.2
	26	34-36 Hibben Rd.	Whitely Gym	Vacant	17,424
36.01	15	92 Stockton St.	Residential	Residential	20,163.92
	16	100 Stockton St.	Roberts Hall	Vacant	25,513.09



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	17	108-110 Stockton St.	Tennent Hall/108 Stockton St.	Vacant	124,146
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¹ 2018 Area in Need of Redevelopment Study² NJ PropertyTaxRecords.com³ The developer demolished the buildings in 2022.

The property is split by Hibben Rd., a narrow residential roadway serving historic homes dating to the 1800's. Most of the 108 Stockton St. site is on the west side of Hibben Rd. The western portion of the site adjoins Edgehill Rd., another narrow roadway serving historic homes.

Location	Block & Lot	Sq. Ft.	Acres	Percent
Total East of Hibben Rd				
	Block 35.01 Lots 25 & 26	40,075.20	0.92	19.1
Total West of Hibben Rd				
	Block 36.01 Lots 15, 16 & 17	169,823.01	3.89	80.9
Total Combined		209,898.21	4.81	100

3. No Consistent Plan or Zoning Vision

The municipality has failed to establish a clear and consistent vision for the 108 Stockton St. site. The planning for affordable housing is required to have a basis in the master plan, and Princeton has no basis or rationale for the density proposed for the site.

Specific findings include:

- No concept or zoning guidelines for the site, including density, building height or buffers, was provided in the 2023 Master Plan & Reexamination Report.
- The Redevelopment Plan was adopted prior to the release of the Fourth Round affordable housing obligations.
- The failure to establish a consistent vision for the site's future integration with an historic neighborhood has created ambiguity and confusion.

The planning for affordable housing is required to have a basis in the master plan, as this document is the underpinning for all zoning in the community.



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4. Violating the Power to Zone

The Redevelopment Plan's zoning regulations violate the Municipal Land Use Law (NJSA 40:55D-62a) by not providing "reasonable consideration to the character of each district." The Master Plan notes that the Mercer Hill Historic District is residential in character and contains two National Historic Landmarks.

Specific findings include:

- a. The Redevelopment Plan proposes a building height of 56 ft. with an 18 ft. exception for rooftop appurtenances, far exceeding the surrounding area's height limits of 35 ft.
- b. The Master Plan and Reexamination Report has no prescribed density or intensity of use for the multifamily designation for the site.
- c. The Redevelopment Plan, with 238 units on 4.38 acres, is contrary to the purposes of planning regarding appropriate density and does not promote the general welfare due to the glaring incompatibility with the surrounding area.

The MLUL (NJSA 40:55D-28 b2) requires the land use element of a master plan to show the "proposed location, extent and intensity of development or land to be used in the future" which was not done regarding the 108 Stockton St. site. The Princeton document has no statement of the standards of population density and development intensity recommended for the site.

5. Overdevelopment & Excessive Density

The result of these failures is an excessive, and unnecessary, overdevelopment that is contrary to the purposes of planning. The designated number of units (238) on 4.38 acres represents a density of 54 dwelling units per acre, or 26 times the density of the surrounding area.

Specific findings include:

- a. The entire site is 4.8 acres and is currently vacant except for one dwelling. The Redevelopment Plan proposes the construction of three (3) multifamily residential buildings on an approximately 4.38 acre portion of the site.
- b. The number of credits from this site (96 total) accounts for 43% of the prior round credits, supporting the assertion that the number of units assigned to this site is excessive and unnecessary, especially when compared to the number of units produced by the other Prior Round compliance mechanisms.



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- c. The Redevelopment Plan is contrary to the Master Plan goals, such as maintaining progressively lower densities outside of the downtown area and balancing goals of neighborhood scale with historic preservation.
- d. The proposed density does not promote the general welfare, as it fails to provide adequate light, air and open space or to promote appropriate densities that contribute to the well being of the neighborhood.

The proposed density of 54 dwelling units to the acre is a stark and overwhelming contrast to the adjoining historic neighborhood's zoned density of approximately 2.2 dwelling units per acre. It introduces an overwhelming and incompatible density that violates the principles of sound planning. The dramatic disparity in scale and intensity will dominate, and erase, the historic identity of the area. Sound planning prioritizes contextual compatibility and harmonious character through innovative community planning. Rather than enhancing the neighborhood, the proposed density upends the rhythm of the neighborhood and fails to blend old with new. This density fails to create harmonious development, it is contrary to sound community planning and it unnecessarily erodes the historic character of the existing neighborhood.

6. Contrary to Purposes of Planning

The proposed 238 dwelling units on the 108 Stockton St. site is contrary to the following purposes of planning per NJSA 40:55D-2:

- A Encouraging development in manner that promotes public health, safety and welfare
- C Provide adequate light, air and open space
- E Promote appropriate population densities and concentrations
- J Promote conservation of historic sites and districts

7. Conclusion

The facts outlined in this memorandum demonstrate that the inclusion and zoning of the 108 Stockton St. site is a clear and unacceptable breach of sound planning principles. The municipality's actions have resulted in a plan that is inconsistent with its own master plan, violates the statutory power to zone, and imposes a shocking, and unnecessary, level of overdevelopment on a community that has consistently voiced its concerns. The proposed development not only fails to meet the legal requirements of rational land use planning but also fundamentally disregards the character of the surrounding neighborhood.



New Jersey Judiciary
Civil Practice Division

Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1.
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the
black bar is not completed, or attorney's signature is not affixed.

For Use by Clerk's Office Only

Payment type	<input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash		Charge/Check Number	Amount	Overpayment	Batch Number
Attorney/Pro Se Name		Telephone Number			County of Venue	
Robert F. Simon, Esq.		(908) 647-1022 ext.			Mercer	
Firm Name (if applicable)			Docket Number (when available)			
Herold Law, PA			MER-L-207-25			
Office Address - Street		City	State		Zip	
25 Independence Boulevard		Warren	NJ		07059	
Document Type				Jury Demand		
Challenge to Housing Element & Fair Share Plan				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Name of Party (e.g., John Doe, Plaintiff)		Caption				
Princeton Coalition for Responsible Development, Inc.		IMO the Application of the Municipality of Princeton				
Case Type Number (See page 3 for listing)		816				
Are sexual abuse claims alleged?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Does this case involve claims related to COVID-19?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Is this a professional malpractice case?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.						
Related Cases Pending?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
If "Yes," list docket numbers MER-L-1764-24 & MER-L-100-24						
Do you anticipate adding any parties (arising out of same transaction or occurrence)?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Name of defendant's primary insurance company (if known)		<input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown				

The Information Provided on This Form Cannot be Introduced into Evidence.

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship? Yes No

If "Yes," is that relationship:

Employer/Employee Friend/Neighbor Familial Business
 Other (explain) _____

Does the statute governing this case provide for payment of fees by the losing party? Yes No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

 Do you or your client need any disability accommodations? Yes No
 If yes, please identify the requested accommodation:

Will an interpreter be needed? Yes No
 If yes, for what language?

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Attorney/Self-Represented Litigant Signature:



ROBERT F. SIMON

Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES

(Choose one and enter number of case type in appropriate space on page 1.)

Track I - 150 days discovery

- 151 Name Change
- 175 Forfeiture
- 302 Tenancy
- 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 Book Account (debt collection matters only)
- 505 Other Insurance Claim (including declaratory judgment actions)
- 506 PIP Coverage
- 510 UM or UIM Claim (coverage issues only)
- 511 Action on Negotiable Instrument
- 512 Lemon Law
- 801 Summary Action
- 802 Open Public Records Act (summary action)
- 804 Election Law
- 805 Civil Commitment Expungement
- 999 Other (briefly describe nature of action)

Track II - 300 days discovery

- 305 Construction
- 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))
- 599 Contract/Commercial Transaction
- 603N Auto Negligence – Personal Injury (non-verbal threshold)
- 603Y Auto Negligence – Personal Injury (verbal threshold)
- 605 Personal Injury
- 610 Auto Negligence – Property Damage
- 621 UM or UIM Claim (includes bodily injury)
- 699 Tort – Other

Track III - 450 days discovery

- 005 Civil Rights
- 301 Condemnation
- 602 Assault and Battery
- 604 Medical Malpractice
- 606 Product Liability
- 607 Professional Malpractice
- 608 Toxic Tort
- 609 Defamation
- 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
- 617 Inverse Condemnation
- 618 Law Against Discrimination (LAD) Cases

Track IV - Active Case Management by Individual Judge / 450 days discovery

- 156 Environmental/Environmental Coverage Litigation
- 303 Mt. Laurel
- 508 Complex Commercial
- 513 Complex Construction
- 514 Insurance Fraud
- 620 False Claims Act
- 701 Actions in Lieu of Prerogative Writs
- 816 Affordable Housing

Multicounty Litigation (Track IV)

- 282 Fosamax
- 291 Pelvic Mesh/Gynecare
- 292 Pelvic Mesh/Bard
- 293 DePuy ASR Hip Implant Litigation
- 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components
- 300 Talc-Based Body Powders
- 601 Asbestos
- 624 Stryker LFIT CoCr V40 Femoral Heads
- 626 Abilify
- 627 Physiomesh Flexible Composite Mesh
- 628 Taxotere/Docetaxel
- 629 Zostavax
- 630 Proceed Mesh/Patch
- 631 Proton-Pump Inhibitors
- 633 Prolene Hernia System Mesh
- 634 Allergan Biocell Textured Breast Implants
- 635 Tasigna
- 636 Stratdice Hernia Mesh
- 637 Singulair
- 638 Elmiron
- 639 Pinnacle Metal-on-Metal (MoM) Hip Implants
- 640 Bard Implanted Port Catheter Products

If you believe this case requires a track other than that provided above, please indicate the reason on page 1, in the space under "Case Characteristics".

Please check off each applicable category

<input type="checkbox"/> Putative Class Action	<input type="checkbox"/> Title 59	<input type="checkbox"/> Consumer Fraud
<input type="checkbox"/> Medical Debt Claim		