

ARCHER & GREINER P.C.

Riverview Plaza

10 Highway 35

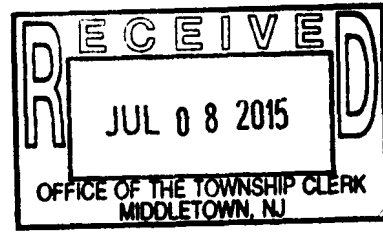
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By: Brian M. Nelson, Esq. (Attorney ID: 1352003)



**IN THE MATTER OF THE
APPLICATION OF THE
TOWNSHIP OF MIDDLETOWN**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY**

DOCKET NO.: MON-L-

Civil Case
(Mount Laurel)

**CERTIFICATION OF ANTHONY P.
MERCANTANTE, PP, AICP, IN SUPPORT
OF THE TOWNSHIP'S MOTION FOR
IMMUNITY FROM MOUNT LAUREL
LAWSUITS**

I, Anthony P. Mercantante, PP, AICP, of full age, do hereby certify as follows:

1. I am currently the Township Administrator for the Township of Middletown, as well as, a Professional Planner licensed by the State of New Jersey and Certified by the American Institute of Professional Planners.

2. Prior to serving as Township Administrator, a position I have held since 2009, I served as the Township's Director of Planning and Community Development since 1989 with the exception of an 18 month period between 1999 and 2000, when I worked as a Planning Consultant with the firm of Heyer Gruel & Associates, but during which time I was Middletown's Affordable Housing Consultant.

3. The Township also employed me as a Planner from 1980 to 1984, as such, I have personally been involved in the land use planning and development of Middletown

for more than 20 years, and have personally been involved in the preparation, implementation and administration of the Township's various Housing Element and Fair Share Plans during this time.

4. Accordingly, I am personally familiar not only with the Township's land use planning as it relates to addressing its affordable housing obligations over more than two decades, but I am also personally familiar with the lineage of landmark decisions that generally make up what is known as the Mount Laurel doctrine, the Fair Housing Act ("FHA") and the various regulations of the New Jersey Council on Affordable Housing ("COAH") as they have been adopted and amended over time.

5. I am submitting this Certification in support of the Township's Motion for Immunity from all Mount Laurel lawsuits due to the Township's clear and continuing compliance with the Mount Laurel doctrine.

6. The Township consists of 41 square miles and 66,522 residents, the largest municipal population in Monmouth County, with 24,959 individual housing units, according to the 2010 census.

7. The 2013 American Community Survey ("ACS") estimates reflect little change in the Township's population over the last two decades, which has declined slightly from its peak in 1990.

8. Middletown, along with Asbury Park, Long Branch and Howell are Monmouth County's only "entitlement" communities that can receive Community Development Block Grants ("CDBG") and other federal funding directly from the United States Department of Housing and Urban Development ("HUD").

9. Middletown has also participated in the State's HUD-funded Neighborhood Preservation Program, which is only available to municipalities that contain distinct neighborhoods that exhibit concentrations of low income households and/or dilapidated housing.

10. Since commencing its participation, the Township has expended over five million dollars (\$5,000,000) of CDBG resources to rehabilitate housing stock occupied by low and moderate income households.

11. According to the ACS's 2013 five year analysis, thirty one percent (31%) of all households in the Township (7,329 homes) earn an income of less than \$60,000 per year, whereas, \$66,682 was considered as moderate income for a family of three in COAH Region 4 in 2013.

12. According to the ACS's 2013 five year analysis, nearly twenty percent (20%) of all households in the Township (4,719 homes) earn an income of less than \$40,000, which is slightly less than \$41,676 per year, which was considered low income for a family of three in COAH Region 4 in 2013.

13. On March 14, 1994, the Township received Cycle I substantive certification from COAH.

14. On March 13, 2000, the Township timely petitioned COAH for substantive certification for its Cycle I and II obligations.

15. Even though COAH eventually announced that it wasn't going to act on petitions during this period, the Township still implemented its plan, including but not limited to the following significant projects:

- a. The Township purchased a site and leased it back to Conifer Realty for the development of one hundred and eighty (180) senior affordable rental units that were completed.
- b. A site on Highway 35 (Block 878, Lot 35) commonly known as the Village at Chapel Hill, was rezoned in 2005. The project was developed with 150 units, of which thirty (30) were affordable family rentals completed in 2007.
- c. A site on Highway 36 (Block 91, Lots 5-7) commonly known as Regency Park was developed with 110 units, of which sixteen (16) were affordable family rentals in 2004.
- d. A site on Park Avenue in Port Monmouth (Block 135, Lot 6.01) was rezoned in 2004. The project was developed with 30 units, of which six (6) were affordable family rentals completed in 2006.
- e. Two sites made up of various blocks and lots on Highway 36 commonly known as Cottage Gate were rezoned to allow for the development of affordable housing and has resulted in the development of 105 units, of which thirteen (13) were affordable for sale units, plus one five (5) bedroom supportive housing unit.
- f. The Township rezoned to allow residential over commercial development on Leonard Avenue that has resulted in the development of twelve (12) affordable rental units. (This project is in the process of being modified through rezoning to allow for a total of sixteen (16) affordable rental units

in what was designated to be commercial space that was deemed not viable).

16. On December 20, 2005, the Township first petitioned for Cycle III substantive certification based upon the original version of COAH's third round regulations that were invalidated in large part by the Appellate Division in the case of In re Adoption of N.J.A.C. 5:94 and 5:95 By New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div.) certif. denied 192 N.J. 72 (2007). See Exhibit A.

17. Even though COAH was not able to act on the Township's 2005 Cycle III petition due to the Appellate Division's decision, the Township nevertheless continued to implement its housing plan, including but not limited to the following significant projects:

- a. The Township approved an inclusionary townhouse project (Block 615, Lot 82) commonly known as Harmony Glen that has been developed with 90 units, of which eighteen (18) were affordable family rentals. This project is completed and occupied.
- b. The Township approved a twelve (12) unit one hundred percent (100%) affordable project (Block 532, Lots 43-44) on Highway 36 to include for-sale units and family rentals to be managed by the Affordable Housing Alliance of Monmouth County.
- c. The Township approved an inclusionary townhouse project (Block 517, Lots 3-8) along Highway 36 resulting in the development of two (2) for-sale units. This project is completed and occupied.

d. The Township added six (6) affordable accessory apartment rentals to its inventory.

18. On December 31, 2008, the Township filed for substantive certification under COAH's revised Cycle III regulations. See Exhibit B.

19. On June 15, 2009, the Township adopted Ordinance No. 2009-2969 authorizing the acquisition and conveyance of the Coe Property with various parties, including Impact Oasis, to provide eight (8) affordable supportive housing beds for autistic youth, and the later dedication of \$40,000 in affordable housing trust funds to bring the structure to code for such purposes. See Exhibit C.

20. On July 20, 2009, the Township adopted Ordinance No. 2009-2979, rezoning highly developable properties commonly known as the Meadowview, Mountain Hill and Four Ponds sites, specifically to facilitate inclusionary development. See Exhibit D.

21. On September 8, 2009, implementing Ordinance No. 2009-2979, the Township adopted Resolution No. 09-219, authorizing the execution of a Developer's Agreement that was entered with Mountain Hill LLC to provide for the development of up to eighty (80) low and moderate income family rental units, with at least fifty percent (50%) of the units being reserved as low income rentals. See Exhibit E.

22. On September 29, 2009, COAH staff issued its Compliance Report, which in addition to recommending the Township receive substantive certification, concluded that the Township's 2008 Cycle III plan created a surplus of 105 credits. See Exhibit F.

23. On October 14, 2009, Middletown became just one of 68 municipalities in the State to be granted full substantive certification by COAH with its adoption of Resolution No. 42-09. See Exhibit G.

24. Implementing its certified Cycle III plan, on November 16, 2009, the Township adopted Ordinance No. 2009-2991 conveying property for the development of affordable housing to Housing and United Services (“HUS”), and authorized and entered a Developer’s Agreement with HUS for the development of eight (8) supportive housing beds in two separate homes. See Exhibit H.

25. Implementing its certified Cycle III plan, on November 16, 2009, the Township adopted Ordinance No. 2009-2992 further rezoning various properties throughout the Township, commonly known as the, Steiner, Atlantic Pier, and Taylor Lane sites specifically for the purpose of facilitating inclusionary development, as well as establishing a Residential Over Commercial program. See Exhibit I.

26. Implementing its certified Cycle III plan, on November 16, 2009, the Township adopted Ordinance No. 2009-2994 establishing necessary rules for the administration of the Township’s wide variety of affordable housing programs. See Exhibit J.

27. On March 3, 2010, the Township’s Planning Board approved the application of Meadowview LLC for the development of thirty eight (38) condominiums, including nine (9) affordable units for low to moderate income households, plus a payment to the Township’s affordable housing trust fund for a twenty five (25%) affordable set-aside. See Exhibit K.

28. On January 22, 2013, the Township adopted Ordinance No. 2013-3077 conveying property on Unity Road and authorizing the entry of a Developer’s Agreement for the development of four (4) affordable supportive housing beds as part of the Township’s Scattered Sites program with HUS. See Exhibit L.

29. On May 7, 2014, the Township's Planning Board approved the application of the Atlantic Pier Company, Inc. for the development of forty (40) units, including ten (10) affordable family rental units for a twenty five (25%) affordable set-aside. See Exhibit M.

30. On December 3, 2014, the Township's Planning Board approved the application of Bayshore Village LLC for the development of one hundred and ten (110) one hundred percent (100%) affordable senior rental units to replace ninety six (96) units not previously credited or deed restricted by COAH that were substantially destroyed in Superstorm Sandy. See Exhibit N.

31. Notably, Bayshore Village is an entirely new affordable housing site not included in any prior Township housing plans, which adds one hundred and ten (110) units to the Township's one hundred and five (105) credit surplus as determined by COAH in 2009 for Cycle III compliance.

32. On March 4, 2015, the Township's Planning Board approved the application of American Properties at Middletown LLC, which was a significant inclusionary site in the Township's certified Cycle III plan, for the development of two hundred and forty five (245) townhomes, plus forty nine (49) affordable rental units. See Exhibit O.

33. On March 4, 2015, the Township's Planning Board also approved the application of 190 Main Street LLC for the development of two (2) affordable rentals over commercial as part of a mixed use building. See Exhibit P.

34. On July 1, 2015, the Township's Planning Board ratified approval of a General Development Plan ("GDP") for Village 35, LP and Toll Brothers as contract purchasers of the Mountain Hill site contained as a significant inclusionary site in the

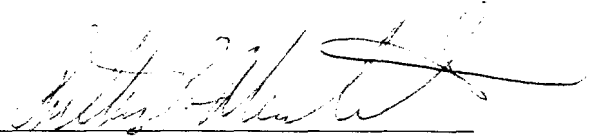
Township's certified Cycle III plan to include three hundred and fifty (350) residential units, including seventy (70) affordable rental units. See Exhibit Q.

35. Pursuant to COAH's own determinations and the summary of the record above, the Township has voluntarily met its affordable housing obligations on numerous occasions over the last two decades and has continued to do so in recent years despite continued uncertainty and a lack of guidance from the State.

36. Due to the efforts of the Township to fully comply with the Mount Laurel doctrine, since 2008 alone, at least two hundred and ten (210) new affordable housing units have been issued certificates of occupancy, representing thirty one percent (31%) of the six hundred and twenty four (624) total residential units issued certificates of occupancy through February 2015.

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

Dated: July 7, 2015



Anthony P. Mercantante, PP, AICP