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October 10, 2025

Via Electronic Mail

Fair Share Housing Center
C/o Joshua Bauers, Esquire

RE: In the Matter of the Borough of Pennington
Docket No. MER-L-209-25

Dear Mr. Bauers:

This firm represents Petitioner, the Borough of Pennington (“Borough”), relative to its above-captioned Fourth Round Affordable Housing Declaratory Judgment action. Please accept this letter in response to the non-challenge letter filed by Fair Share Housing Center on August 31.

The responses (in *italics*) of the Borough’s Planner, Jim Kyle, PP, AICP to each of Fair Share Housing Center’s requests (in **bold**) are as follows:

1. The Borough is required to provide a Housing Element in accordance with N.J.S.A. 52:27D-310, including all components described therein.

Response: The Borough believes the components required in the Fair Housing Act have been provided within the adopted plan, which includes the following:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

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- b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;*
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;*
- d. An analysis of the existing and probable future employment characteristics of the municipality;*
- e. A 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 section 3 of P.L.2024, c.2 (C.52:27D-304.1);*
- f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;*
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);*
- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and*

i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

If Fair Share Housing Center feels that one or more of these components are not adequately addressed, the Borough will agree to update the Housing Element and Fair Share Plan as needed. Given that the spending plan and certain other elements will require revision, the Borough will need to readopt the plan and can address this issue.

2. The Borough should provide description of additional mechanisms that will fully meet its cumulative Prior and Third Round unsatisfied obligation of 157 units and Fourth Round unmet need of 8 units.

Response: The Borough has provided mechanisms that address a substantial portion of Unmet Need for the Fourth Round and has met the requirement to address 25% of the Unmet Need requirement per the amended Fair Housing Act. If additional mechanisms are sought to address a portion of Unmet Need from the third round, the Borough will incorporate such mechanisms into a revised Housing Element and Fair Share Plan.

3. To address its Fourth Round obligation the Borough relies, in part, on a program to extend expiring controls on six for-sale affordable housing units that received 30-year deed restriction in 1995 at Pennington Point. To receive credit for this type of program the Borough should be required to address how this program meets the requirements for extension of expiring controls in both the COAH regulations (N.J.A.C. 5:97-6.14) as well as the updated UHAC regulations from HMFA.

The COAH regulations generally address the required documentation and some criteria for which developments are eligible. Those criteria are as follows:

- **The Borough must show that the unit meets the criteria for prior-cycle or post- 1986 credits. N.J.A.C. 5:97-6.14(a)(1).**
- **The Borough must show that the affordability controls are actually scheduled to expire during the compliance period. N.J.A.C. 5:97-6.14(a)(2)**
- **The Borough must show that the unit to be extended has received a “continuing certificate or occupancy” or a statement that the unit meets all code standards. N.J.A.C. 5:97-6.14(a)(3).**

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- **The Borough must show that all units which need rehabilitation or repair to receive a certificate of occupancy and/or to be brought up to code will receive the required rehabilitation. N.J.A.C. 5:97-6.14(a)(4).**
- **The Borough must provide a written commitment from the owner to extend the controls, or evidence that the controls have been extended in accordance with UHAC. N.J.A.C. 5:97-6.14(b)(2).**
- **The Borough must provide the proposed or filed deed restriction for the extended controls. N.J.A.C. 5:97-6.14(b)(3).**
- **Where the Borough has identified that units to be extended will need rehabilitation the Borough must provide particulars for the rehabilitation program including: a pro forma of the costs for the rehab, documentation of the source of funding, a resolution of intent to fund those rehab costs, a rehab manual, an affirmative marketing plan, and an administrative agent to oversee the program. N.J.A.C. 5:97-6.14(c).**

In addition, in accordance with A4/S50, the UHAC regulations now have more specific and updated requirements specifically as to funding extension of expiring controls. The UHAC rules now require the municipality to “exercise the right of first refusal to extend the affordability controls” by electing via municipal ordinance to extend the controls “not later than 180 days prior to the end of the affordability control period.” N.J.A.C. 5:80-26.6(h). The municipality must also contribute funds to the preservation of units by paying “at least \$20,000 . . . to support the preservation.” The municipality must also demonstrate that the affordability period including the initial period and the extended period shall equal at least sixty (60) years. N.J.A.C. 5:80-26.6(a)(3).

Here, the Borough has provided very little information on this program other than a quick paragraph in the HEFSP. The Borough should provide the required information before this program can be approved.

Response: The Borough is currently working with Community Grants, Planning & Housing, its administrative agent, to prepare documentation demonstrating compliance with these regulations. The Housing Element and Fair Share Plan will be revised to provide more detail on compliance with the requirements.

4. The Borough should recalculate its administrative expense maximum in the Spending Plan pursuant to N.J.S.A. 52:27D-329.2(b)(5), which requires that “not more than 20 percent of the revenues collected from development fees shall be expended on administration, in

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accordance with rules of the department.” No extraneous funds may be used in the calculation of the administrative expense maximum, including interest on development fees or development fee revenue that was previously allocated in a prior Spending Plan.

Response: As the spending plan will need to be revised upon N.J.A.C. 5:99 being amended, the Borough will revise as needed to address this comment.

5. The Borough should correct its calculations to demonstrate how it will comply with family-unit-minimums and age-restricted-unit-cap requirements, including:

- **The Borough shall satisfy a minimum of fifty (50) percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need for affordable housing obligation through the creation of housing available to families with children. N.J.S.A. 52:27D-311(l).**
- **The Borough shall satisfy a minimum of twenty-five (25) percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need for affordable housing obligation, through rental housing including at least half of that number available to families with children.**
- **The Borough shall not satisfy more than thirty (30) percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need for affordable housing through the creation of age restricted housing.**

Response: The Borough believes the calculations provided on pages 19 and 20 of the Housing Element and Fair Share Plan are correct based on the compliance mechanisms addressing the fourth round obligation which includes RDP of 3 units and unmet need of 55 units. As noted in the section on page 19 entitled “Fourth Round Obligation Requirements”, calculations are based on the 40 units actually provided. If Fair Share Housing Center would prefer these calculations be based on the 58 unit fourth round obligation, this can be included in a revised Housing Element and Fair Share Plan.

6. The Borough should provide additional administrative documents, including an Accessory Apartment Manual and resolutions appointing a Municipal Housing Liaison and an Administrative Agent, in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq. and N.J.A.C. 5:99 after they are adopted and before March 15, 2026.

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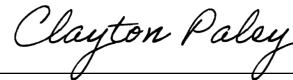
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Response: The Borough agrees to provide this documentation in the revised Housing Element and Fair Share Plan after regulations are finalized. The resolutions appointing the Municipal Housing Liaison and Administrative Agent can be provided in early November after the Governing Body's November 3rd meeting.

In accordance with the foregoing, the Borough will continue to provide revisions and documentation for Fair Share Housing Center's review as they become available.

The Borough is hopeful that Fair Share Housing Center will accept the Borough's responses at this time as a good faith effort toward the Borough's receipt of a Final Judgment of Compliance and Repose relative to its Fourth Round affordable housing.

Very truly yours,



Clayton R. Paley

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