FAIR SHARE
HOUSING CENTER

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August 12, 2015

Honorable William C. Meehan, J.S.C.
Bergen County Courthouse
10 Main Street, 3rd Floor
Hackensack, NJ 07601

Re: Comments on Pending Motions for Temporary Immunity in Bergen County Municipalities Returnable August 21, 2015

In the Matter of the Borough of Dumont, Docket No. BER-L-6065-15
In the Matter of the Borough of East Rutherford, Docket No. BER-L-5925-15
In the Matter of the Borough of Ho-Ho-Kus, Docket No. BER-L-6215-15
In the Matter of the Township of Mahwah, Docket No. BER-L-6281-15
In the Matter of the Borough of Oakland, Docket No. BER-L-6359-15
In the Matter of the Borough of Upper Saddle River,Docket No. BER-L-6121-15

Dear Judge Meehan:

Fair Share Housing Center (FSHC) submits these comments on the pending motions for temporary immunity in the above-captioned pending matters. This letter is sent in accordance with the Supreme Court's decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015), which permits interested parties to participate in proceedings regarding whether municipalities receive immunity from builder's remedy litigation.

1. **The Court should consider this letter in evaluating the pending immunity motions.**

FSHC brought the motion to enforce litigant's rights that led to the shift of all Mount Laurel compliance proceedings from the Council on Affordable Housing (COAH) to trial courts. In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015). In its March 2015 decision, the Supreme Court acknowledged FSHC's interest in the Third Round proceedings now before trial court. Id. at 25. The Court wrote that "[i]f a municipality seeks to obtain an affirmative declaration of constitutional compliance, it will have to do so on notice and opportunity to be heard to FSHC and interested parties" and that trial courts "will be assisted in rendering its preliminary determination on need by the fact that all initial and succeeding applications will be on notice to FSHC and other interested parties." Id. at 29. In a recent decision by the Honorable Douglas Wolfson, J.S.C. involving Monroe Township, Middlesex County, the court held that "it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations." In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances, Docket No. MID-L-3365-15 (July 9, 2015), Exh. A, Slip op. at 9 (emphasis added)(a related order is also included in Exh. A).[1]

[1] FSHC is unaware of any contrary unpublished opinions. R. 1:36-3.

The Court specifically required immunity applications to be made "on notice and opportunity to be heard" for interested parties. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 28. Although FSHC could intervene in the proceedings before the Court on immunity and may do so in some of these matters the future, at this time we request that Your Honor consider these comments without intervention. This approach has been permitted in other vicinages around the state. Allowing comments while not foreclosing intervention is consistent with the practice employed in fairness and compliance hearings for decades in Mount Laurel proceedings.

FSHC therefore respectfully requests that Your Honor accept this letter for the purpose of commenting on the immunity applications pending in the matters listed in the attachment to this letter.

2. **The Court may only enter a period of immunity for five months from the date of filing of the complaint.**

The applications for immunity before the Court include requests worded in differing ways that seek a common goal: delay and an indeterminate schedule for complying with the Supreme Court's mandate that municipalities adopt fair share plans within five months of filing their declaratory judgment actions. Municipalities seek to have the five month clock start from an unknown date in the future when fair share obligations have been handed down by courts and, it appears, when courts effectively issue rules. The court should reject this relief because it contravenes the Supreme Court's decision in two fundamental ways.

First, having the five month clock start at an unknown date in the future is inconsistent with the Supreme Court's order that "towns that were in 'participating' status before COAH and that now affirmatively seek to obtain a court declaration that their affordable housing plans are presumptively valid should have no more than five months in which to submit their supplemental housing element and affordable housing plan. During that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding." In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 27 (emphasis added). The Court did not say "no more than five months from a proceeding determining fair share numbers"; rather, it said "no more than five months" from the time that towns "affirmatively seek to obtain a court declaration." Ibid.

It is additionally important to point out the Court's decision prohibits the loose language sought by some municipalities allowing immunity, for instance, for "such additional time as the Court deems just and reasonable." The Court specifically provided a five month period; directed that "[r]eview of immunity orders . . . should occur with periodic regularity and on notice," id. at 26; and provided that "[i]mmunity, once granted, should not continue for an undefined period of time; rather, the trial court's orders . . . should include a brief, finite period of continued immunity," id. at 28. Open-ended periods of immunity that are not defined and finite or not the subject of a proceeding on notice to the public are prohibited.

Second, the requests that trial courts issues rules for compliance with Mount Laurel has been expressly prohibited by the Supreme Court. Municipalities rely on N.J.S.A. 52:27D-316, a statutory provision that addresses the promulgation of rules, and incorrectly argue that the Supreme Court's decision requires a similar rule-like process. The Supreme Court clearly prohibited trial courts from functioning like an administrative agency:

> The judicial role here is not to become a replacement agency for COAH. The agency is sui generis—a legislatively created, unique device for securing satisfaction of Mount Laurel obligations. In opening the courts for hearing challenges to, or applications seeking declarations of, municipal compliance with specific obligations, it is not this Court's province to create an alternate form of statewide administrative decision maker for unresolved policy details of replacement Third Round Rules, as was proposed by NJLM. The courts that will hear such declaratory judgment applications or constitutional compliance challenges will judge them on the merits of the records developed in individual actions before the courts.
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> [In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 29.]

The Supreme Court thus specifically considered and rejected the suggestion repeated by municipalities with applications before you, namely that trial courts should follow the same procedures of rulemaking and establishment of statewide "criteria and guidelines" only after which time municipalities would have to come into compliance. Trial courts are not permitted to act in the manner of COAH and hand down "criteria and guidelines" for municipalities to follow; rather, consistent with the way that courts ordinarily operate, the parties are responsible for arguing for positions on those criteria and guidelines themselves through the adversarial process, during the five month period or, at the latest, during trial on the fair share plan they adopt.

The requirement that the parties litigate issues that are in dispute rather than waiting for trial courts to issue advisory opinions also applies to fair share obligations. The Court held that "[t]he parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." Id. at 30 (emphasis added).

Finally, it is important to note that every court that has ruled on the issue of immunity and when the five month period starts has found that the clock is currently running. That is the case with Judge Wolfson of Middlesex County in his decision involving Monroe Township, Exh. A; with Judge Cassidy in Union County in her July 24, 2015 Order in In the Matter of the Borough of Roselle Park, Union County, Docket No. UNN L 2061-15, Exh. B; with Judge McDonnell in her July 24, 2015 order in In the Matter of Pennsville Township, SAL-L-119-15, Exh. C; with Judge Toskos' decision in In the Matter of the Township of Washington, BER-L-6067-15, Exh. E; with Judge Jacobson's decision in In the Matter of West Windsor Township, MER-L-1561-15, Exh. F; and with Judge Troncone in In the Matter of the Township of Ocean, Docket No. OCN-L-1884-15, Exh. G. Based on case management conferences we have participated in, we anticipate there will be many more orders throughout the state late this month and early next month in which additional judges express their view consistent with the judges who have done so thus far.

3. Immunity from builder's remedy litigation is not automatic. Immunity must be earned.

Based on In re N.J.A.C. 5:96 and 5:97, supra, there are three key issues that the court should consider in evaluating whether immunity from builder's remedy litigation is appropriate.

First, as noted above, "initial immunity" should run for "no more than five months" from the time that towns "affirmatively seek to obtain a court declaration." Id. at 27. Open-ended periods of immunity that are not defined and finite or not the subject of a proceeding on notice to the public are prohibited. Id. at 28

Second, for "participating" municipalities, an assessment of the municipality's past actions is needed to determine whether immunity is likely to lead to compliance. It is not the case, as many municipalities suggest, that any participating municipality gets immunity automatically. The Court stated as to participating municipalities: "[a] town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed." Id. at 27. The decision as to whether to grant immunity thus requires a fact-specific analysis as to whether immunity is ultimately likely to lead to municipal compliance or further delay, based on an individualized assessment of the municipality's history of compliance. We cannot comment on individual municipalities addressed in this letter at this point, but urge Your Honor to make these individualized assessments. If it is not possible to do so at this point, or if there is ambiguity, immunity should be denied, or the court at most should issue a period of immunity of one month and direct a refiling of the immunity application with all necessary information provided.

Third, the Court stated that "[a] preliminary judicial determination of the present and prospective need will assist in assessing the good faith and legitimacy of the town's plan." Id. at 29. The Court also stated that "[t]he parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." Id. at 30. Whether or not a party has demonstrated to the court what its preliminary determination of present and prospective need bears on the likelihood that immunity will lead towards a realistic plan within at most five months.

In this regard, it is important to note that many municipalities throughout the state have declined to rely on the fair share calculations prepared by FSHC's expert, David N. Kinsey, PhD, FAICP, PP, and have claimed they cannot provide information regarding their obligations until a report by Rutgers Professor Robert Burchell is complete in late-September. According to the attached contract between Rutgers and Jeffrey R. Surenian, Exh. D at p. 2, Dr. Burchell's draft report was due on or before July 15, 2015. Having 75 days to submit a revised report does not appear reasonable given that the Supreme Court directed the fair share plans to be adopted within five months. The validity of fair share obligations that have not been adjudicated prior to the filing deadline can be addressed at trial, but it is important that the court consider whether the preliminary determination process is being frustrated and that it be aware that municipalities relying on this report could produce fair share calculations much earlier than they are.

An example of an individualized assessment of a fair share plan is included in Judge Toskos' recent decision in Washington Township, BER-L-6067-15, Exh. E. There, the court analyzed the Township's past actions in providing affordable housing to determine whether the Township had "made a good faith attempt to satisfy its affordable housing obligations." Rider at 4. The Court should make a similar analysis in the above-captioned matters to determine whether immunity is appropriate.

Similarly, in In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances, Docket No. MID-L-3365-15 (July 9, 2015), Exh. A, Judge Wolfson granted Monroe five months of immunity in accordance with the

Supreme Court's decision, Slip op. at 5, upon a finding of "prima facie documentation of its good faith efforts to comply with its fair share obligation," Slip op. at 8. Judge Wolfson provided this immunity following the municipality's acknowledgement in its Complaint that its obligation was at least 1000 units, which satisfied the third prong.

4. Immunity should be accompanied by an order that establishes case management conferences, requires the filing of a plan within five months, and provides the opportunity for municipalities and others to participate in adjudication of related issues.

The Supreme Court stated that trial courts "should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations." [In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 33. In keeping with that goal, we urge Your Honor to consider establishing a schedule in these proceedings that will adjudicate issues raised by municipalities, developers, and public interest advocates prior to the filing of fair share plans while maintaining the five month deadline for the filing of fair share plans. It is likely that some issues will still be adjudicated as part of trial court proceedings reviewing fair share plans, but it would be helpful for some issues to be adjudicated ahead of plan being filed. It appropriate for a case management order to be issued when immunity is being considered because immunity from builder's remedy litigation is generally granted in Mount Laurel matters only upon a finding that a municipality is actually proceeding toward compliance based on objective indications. See J.W. Field v. Tp. of Franklin, 204 N.J. Super. 445, 456 (Law Div. 1985) (immunity only allowed if "if the municipality will stipulate noncompliance and obtain the court's approval of a proposed fair share number").

We respectfully urge Your Honor, if you have not already done so, to provide a schedule to address the following issues:

1. Monthly case management conference calls in all proceedings, perhaps grouping which attorneys are involved in the proceedings. These should all be on notice to the Supreme Court service list.

2. Briefing and filing of expert reports on a preliminary determination of fair share obligations. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 29 ("A preliminary judicial determination of the present and prospective need will assist in assessing the good faith and legitimacy of the town's plan."). The court should order any expert reports that will be considered, perhaps in a consolidated proceeding, to be filed within at most 30 days and direct limited court-approved discovery.

3. Briefing regarding legal issues involving legal issues that may arise in a fair share plan review on which parties agree and disagree. A special master would be helpful in narrowing the issues before the court. Issues that are not agreed upon should be the subject of argument on an expedited schedule.

4. Mediation should occur as much as possible during the five month period and trials or other hearings should be scheduled as soon as possible after the fair share plan is filed in court.

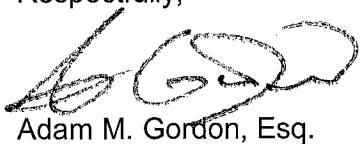
Aggressive case management is especially important in Mount Laurel proceedings. The Supreme Court has noted that "[t]he obligation is to provide a realistic opportunity for housing, not litigation. We have learned from experience, however, that unless a strong

judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals." Southern Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158, 199 (1983)(Mount Laurel II).

We note that none of the municipalities in the above-captioned matters to date to our knowledge has come forward to propose an approach that actually gets them over the finish line, choosing instead to be passive, as if they are not obliged to prosecute their declaratory judgment actions. In light of this, if municipalities do not cooperate in the procedure suggested above, those municipalities should be subjected to having issues decided at trial[2] with the ability of a court to take over a municipality's fair share plan.[3]

Thank you for your consideration of these comments.

Respectfully,



Adam M. Gordon, Esq.
Counsel for Fair Share Housing Center

c: Attorneys listed on attached service list
Supreme Court service list

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[2] Upon preparing a fair share plan and submitting it for court review, if the municipality carries its burden and demonstrates that it has met its Mount Laurel obligations, "the trial court shall issue a judgment of compliance." Mount Laurel II, supra, 92 N.J. at 285. However, "[i]f the revised ordinance does not meet the constitutional requirements, or if no revised ordinance is submitted within the time allotted, the trial court may issue such orders as are appropriate." Ibid. (emphasis added). Trial courts have broad discretion at this stage. Among other things, a trial court that finds a plan deficient may order "that the municipality adopt such resolutions and ordinances, including particular amendments to its zoning ordinance, and other land use regulations, as will enable it to meet its Mount Laurel obligations." Ibid.

[3] The Supreme Court lists the following examples of appropriate orders:
(1) that the municipality adopt such resolutions and ordinances, including particular amendments to its zoning ordinance, and other land use regulations, as will enable it to meet its Mount Laurel obligations;
(2) that certain types of projects or construction as may be specified by the trial court be delayed within the municipality until its ordinance is satisfactorily revised, or until all or part of its fair share of lower income housing is constructed and/or firm commitments for its construction have been made by responsible developers;
(3) that the zoning ordinance and other land use regulations of the municipality be deemed void in whole or in part so as to relax or eliminate building and use restrictions in all or selected portions of the municipality (the court may condition this remedy upon failure of the municipality to adopt resolutions or ordinances mentioned in (1) above); and
(4) that particular applications to construct housing that includes lower income units be approved by the municipality, or any officer, board, agency, authority (independent or otherwise) or division thereof.

[Id. at 285-86 (emphasis added).]

Bergen Motions Returnable August 21, 2015

Docket No.	Municipality/caption	Attorney with mailing address	Email address	Fax number
BER-L-6065-15	**In the Matter of the Borough of Dumont**	Gregg F. Paster Gregg F. Paster & Associates 18 Railroad Avenue Suite 104 Rochelle Park, NJ 07662	gpaster@pasteresq.com	201-489-0520
BER-L-5925-15	**In the Matter of the Borough of East Rutherford**	Richard J. Allen Kipp & Allen 52 Chestnut Street PO Box 133 Rutherford, NJ 07070	rallen@kippallen.com	201-933-4611
BER-L-6215-15	**In the Matter of the Borough of Ho-Ho-Kus**	David B. Bole Winne Dooley & Bole, PC 240 Frisch Court, Suite 102 Paramus, NJ 07652	wdblaw@optimum.net	
BER-L-6281-15	**In the Matter of the Township of Mahwah**	Nylema Nabbie Gittleman, Muhlstock & Checaskie 220 Fletcher Avenue 9W Office Center Fort Lee, NJ 07024	nylema@gmcnjlaw.com	
BER-L-6359-15	**In the Matter of the Borough of Oakland**	Nylema Nabbie Gittleman, Muhlstock & Checaskie 220 Fletcher Avenue 9W Office Center Fort Lee, NJ 07024	nylema@gmcnjlaw.com	201-944-1497
BER-L-6121-15	**In the Matter of the Borough of Upper Saddle River**	Edward Buzak The Buzak Law Group 150 River Rd, Suite N-4 Montville, NJ 07045	ejb@buzaklawgroup.com	973-335-1145

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – CIVIL PART (MT. LAUREL)

In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances

DOCKET NO: MID-L-3365-15

CIVIL ACTION

OPINION

Decided July 9, 2015

Not for Publication Without the Approval of the Committee on Opinions

Jerome J. Convery, Esq. and Marguerite M. Schaffer, Esq. (*Shain, Schaffer & Rafanello, P.C.*) appeared on behalf of the Township of Monroe

Thomas F. Carroll, III, Esq. and Stephen Eisdorfer, Esq. (*Hill Wallack, LLP*) appeared on behalf of proposed intervener, Monroe 33 Developers, LLC

Kevin D. Walsh, Esq., appeared on behalf of proposed intervener Fair Share Housing Center

WOLFSON, J.S.C.

I. Jurisdictional Posture

Following the March 10, 2015 decision of the Supreme Court of New Jersey 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), hereinafter referred to as Mount Laurel IV, the adjudication of a municipality's compliance with its constitutional obligation to create a realistic opportunity for producing a fair share of

Exh. A

affordable housing was removed from the Council on Affordable Housing ("COAH") and returned to the judiciary. The Supreme Court instructed the designated Mount Laurel judges within the State to adjudicate the issue of whether a given municipality's housing plan satisfies its Mount Laurel obligations and provided detailed guidelines regarding the manner in which the judges should do so. The within matter comes before me by virtue of that grant of jurisdiction.

II. Statement of the Case

The Township of Monroe filed this declaratory judgment action pursuant to the authorization provided by Mt. Laurel IV, *supra*, 221 N.J. 1, seeking a judicial declaration that its housing plan is presumptively valid, and, while the declaratory matter relating to its constitutional compliance proceeds to adjudication, a five-month period of temporary immunity from exclusionary zoning lawsuits. Monroe 33 Developers, LLC ("Monroe 33") sought to intervene as a defendant and for leave to file a counterclaim, which included a demand for site-specific relief – a builder's remedy. Fair Share Housing Center ("FSHC") also sought to intervene as a defendant and for leave to file a counterclaim challenging the constitutionality of Monroe's affordable housing plan.

For the reasons set forth below, the Township of Monroe's motion for a five-month period of immunity is **GRANTED**; the cross-motions of Monroe 33 Developers, LLC and Fair Share Housing Center to intervene as defendants are **GRANTED**; the cross-motion of Monroe 33 Developers, LLC to file a counterclaim seeking site-specific relief is **DENIED without prejudice**; and the cross-motion of FSHC to file a counterclaim challenging Monroe's proposed compliance plan is **GRANTED**.

III. Procedural History

Throughout its opinion in Mt. Laurel IV, *supra*, 221 N.J. 1, the Supreme Court addressed COAH's failure to adopt revised constitutional rules ("Third Round Rules") regarding municipal housing obligations under the Fair Housing Act, N.J.S.A. 52:27D-301 to -392 (the "FHA"). As a result of COAH's failure to comply with prior Orders of the Supreme Court, a new procedure was established whereby the issues relating to compliance with a municipality's constitutional obligation to create a realistic opportunity for producing a fair share of affordable housing would be returned to the courts.[1]

Recognizing that some municipalities had embraced the COAH process in good faith, but were stymied by that agency's inability to function, the Supreme Court set forth procedures by which municipalities that had either received substantive certification from COAH or had filed resolutions of participation prior to the judicial invalidation of COAH's the third-round methodology, could seek a judicial declaration that its housing plan satisfied its constitutional obligations. The process outlined by the Court affords such towns a reasonable opportunity to demonstrate constitutional compliance to a court's satisfaction (including time to take curative action if the municipality's plan requires further supplementation), without the specter of a

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[1] See Mt. Laurel IV, *supra*, 221 N.J. at 6 ("Our order effectively dissolves, until further order, the FHA's exhaustion-of-administrative-remedies requirement. Further, as directed, the order allows resort to the courts, in the first instance, to resolve municipalities' constitutional obligations under Mount Laurel."); see also Southern Burlington County NAACP v. Twp. Of Mount Laurel, 67 N.J. 151 (1975) (hereinafter referred to as Mt. Laurel I); and see Southern Burlington County NAACP v. Twp. Of Mount Laurel, 92 N.J. 158 (1983) (hereinafter referred to as Mt. Laurel II).

builder's remedy action hanging over them like a "sword of Damocles."[2] Importantly, the Supreme Court authorized the courts to grant a period of temporary immunity for up to five months, "preventing any exclusionary zoning actions from proceeding,"[3] to those municipalities that promptly sought such declaratory relief.[4]

Accordingly, I am tasked with determining first, whether Monroe has demonstrated an entitlement to a period of immunity, and second, whether the procedures and protocols crafted by the Supreme Court authorize the relief sought by the proposed interveners.

IV. The Township of Monroe's Request for Temporary Immunity

The Township of Monroe enjoys "participating" status and has now affirmatively sought judicial approval of its affordable housing plan through the filing of its declaratory judgment action. Thus, it "should receive like treatment to that which was afforded by the FHA to towns that had their exclusionary zoning cases transferred to COAH when the Act was passed." Mt.

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[2] See e.g., Mt. Laurel IV, *supra*, 221 N.J. at 3 ("In the event of a municipality's inability or failure to adopt a compliant plan to a court's satisfaction, the court may consider the range of remedies available to cure the violation, consistent with the steps outlined herein and in our accompanying order."); id. at 24 ("[A]s part of the court's review, we also authorize... a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings.").

[3] Id. at 23-24.

[4] See id. at 5-6. ("We will establish a transitional process and not immediately allow exclusionary zoning actions to proceed in recognition of the various states of municipal preparation that exist as a result of the long period of uncertainty attributable to COAH'S failure to promulgate Third Round Rules. During the first thirty days following the effective date of our implementing order, the only actions that will be entertained by the courts will be declaratory judgment actions filed by any town that either (1) had achieved substantive certification from COAH under prior iterations of Third Round Rules before they were invalidated, or (2) had "participating" status before COAH.").

Laurel IV, *supra*, 221 N.J. at 27, *citing* N.J.S.A. 52:27D-316.[5] These towns received "insulating protection" by virtue of their submission to COAH's jurisdiction, "provided that they prepared and filed a housing element and fair share plan within five months." N.J.S.A. 52:27D-316. So too here, as a "participating" town, Monroe similarly has "no more than five months in which to submit their supplemental housing element and affordable housing plan. During that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding." Mt. Laurel IV, *supra*, 221 N.J. at 27-28.

Since Monroe had actually devised a housing element and took action toward adopting ordinances in furtherance of its plan, it has earned a more "favorable" or "generous" review of its request for immunity.[6] Even where granted, however, immunity "should not continue for an undefined period of time; rather, the trial court's orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance." Id. at 28. Only where that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is "***determined to be constitutionally noncompliant***" may

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[5] While the Court cautioned that the judicial role "is not to become a replacement agency for COAH," the process developed in Mt. Laurel IV "seeks to track" the processes provided for in the FHA "as closely as possible," so as to create "a system of coordinated administrative and court actions." Id. at 6, 29.

[6] For those municipalities that made good faith attempts to implement their affordable housing obligations by, for example, devising a housing element and taking action toward adopting ordinances in furtherance of its plan, the Supreme Court "expect[s] a reviewing court to view more favorably such actions than that of a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance." Id. at 28.

exclusionary zoning actions seeking a builder's remedy proceed against "certified" or "participating" towns.[7]

Based upon my preliminary review of the Township's submissions, detailed below, I am satisfied that Monroe has made a good faith attempt to satisfy its affordable housing obligations, and hence, deserves immunity from exclusionary zoning actions, on the condition that it prepares and files its housing element and fair share plan within five months (as would have been required if it were subject to COAH's jurisdiction).[8]

In or around December 2008, Monroe adopted its Third Round Housing Element and Fair Share Plan, as well as its Third Round Housing Trust Fund Spending Plan. Promptly thereafter, the Township petitioned COAH for substantive certification by submitting: (1) a document regarding the status of inclusionary development Stratford Monroe with its proposed two-hundred and five (205) affordable units; (2) a document regarding the status of inclusionary development Monroe Manor with its proposed one-hundred and twenty-seven (127) affordable units; and (3) a document encompassing a general description of the Township's Rehabilitation Program, which included sixty-one (61) units proposed for rehabilitation.

During early 2009, Monroe created the Planned Residential Development Affordable Housing District ("PRDAH"). Said district requires that 23.03% of the dwelling units be designated and set aside for low- and moderate-income households. According to the Board Planner for the Monroe Township affordable Housing Board ("the Planner"), the PRDAH zone

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[7] Id. at 33 (emphasis added); see also id. at 29 ("Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed.").

[8] See N.J.S.A. 52:27D-316(a) ("If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer [to COAH], or promulgation of criteria and guidelines by the council pursuant to section 7 of this act, whichever occurs later, jurisdiction shall revert to the court.").

should produce two-hundred and ninety-three (293) age-restricted affordable housing units and one-hundred and eight (108) family rental affordable housing units.

During 2011, the Monroe Township Planning Board denied a developer's application to concert a previously-approved plan to all non-age restricted units. Through a reconsideration by the parties, said developer dedicated part of its site to the municipality for a municipally sponsored 100% affordable housing complex which is expected to yield one-hundred and fifty (150) family rental units. Later in 2011, the Monroe Township Zoning Board approved an application which required the construction of twenty-six (26) affordable family rental units at the Monroe Chase site, ten (10) of which have already been constructed.

In May 2012, the Township amended its Third-Round Housing Element and Fair Share plan to include a municipally sponsored affordable housing project and, in addition, designated two new overlay zones – actions intended to produce additional affordable housing. The Township Council also passed a Resolution endorsing the recommendation of its Affordable Housing Board reserving and dedicating funds for affordable housing purposes, and thereafter adopted an ordinance authorizing the creation of an Affordable Housing Irrevocable Trust.

In February 2014, a developer was granted a use variance for construction of residential units on State Highway 33. The approval required construction of forty-seven (47) affordable family rental units in the VC-2 Village Center Overlay Zone. In July 2014, as a result of other, unrelated litigation, the Township also rezoned two sites – one along Route 33, which, when developed, will yield one-hundred and thirty-one (131) affordable age-restricted rental units; and another known as "the Villages," which, when developed, will generate an additional sixty-six (66) affordable age-restricted rental units.

In September 2014, Monroe amended the Affordable Housing Mixed Use Development/Highway Development overlay zone (hereinafter "AHMUD/HD overlay zone"), which, according to the Planner, should produce two-hundred and ninety-five (295) affordable housing units under a 100% municipally sponsored development. Monroe also amended the VC-1 and VC-2 Village Center overlay zones to create mixed-use environments which, according to the Planner should produce an additional one-hundred (100) affordable housing units and twelve (12) family rental affordable housing units, respectively, under the set-aside provisions of those zones.

As the Supreme Court recognized: "...not all towns that had only 'participating' status may have well-developed plans to submit to the court initially. A town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed." Undoubtedly, Monroe (a "participating" municipality) has provided *prima facie* documentation of its good faith efforts to comply with its fair share obligation. Accordingly, the Township's motion seeking a five-month period of temporary immunity from exclusionary zoning suits is granted.[9]

V. Proposed Interveners' Motions to File Answers and Counterclaims

a. The Right of Interested Parties to Participate in the Adjudication of Constitutional Compliance

Both substance and procedure permit, and perhaps, demand that "interested parties" be permitted to "participate" in any assessment of a municipality's purported compliance with its affordable housing obligation. First, absent intervention, a municipality's declaratory judgment

[9] See Mt. Laurel IV, *supra*, 221 N.J. at 27-28; see also N.J.S.A. 52:27D-316(a).

action would be, essentially, unopposed. While the appointment of a Special Master is, ideally, both a welcome and necessary protocol, a blanket rule prohibiting any interested party from intervening, fundamentally silences potentially useful and critical voices which may have legitimate insights or analyses relevant to the constitutionality of the town's proposed plan. Second, while I am mindful of the Supreme Court's clear mandate to adjudicate such actions as quickly as prudence and justice will allow, it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations.

The Supreme Court was unequivocal in its mandate that all declaratory judgment cases are to be brought on notice to interested parties and with an opportunity for them to be heard. Id. at 35. I can discern no legitimate basis, therefore, to deny any interested party the opportunity to intervene as a defendant, albeit limited to the question of whether the particular town has complied with its constitutional housing obligations. Accordingly, Monroe 33 and FSHC's motions to intervene as defendants and to file Answers are both granted.

b. Counterclaims Seeking Site-Specific Relief – i.e., Builder's Remedy Actions – are Barred as Against "Certified" or "Participating" Municipalities

Despite the Supreme Court's clear directive affording interested parties an "opportunity to be heard," I am equally confident that this right does not extend so far as to authorize them to contest the municipality's site selections and/or methods of compliance by suggesting or claiming that other sites (owned or controlled by them) are superior to, or perhaps, better suited for an inclusionary development. While such parties' "participation" may, of course, include proofs related to whether the proposed affordable housing plan passes constitutional muster, so

long as the plan does so, the municipality's choices (including site selection and the manner and methods by which it chooses to satisfy its affordable housing obligations) remains, as it was under the FHA and COAH's oversight[10], paramount. Accordingly, claims that a "better" and/or "more suitable" site is, or may be available will not be entertained in any declaratory judgment action brought by a certified or participating municipality. Simply stated, to hold otherwise would be to permit an interested party to do indirectly that, which the Supreme Court has specifically prohibited from being done directly.

i. Monroe 33's Counterclaim

At its core, Monroe 33's counterclaim seeks site-specific relief – i.e., a builder's remedy, relief that goes beyond the limited participation envisioned the Supreme Court. In discussing whether and when exclusionary zoning actions and builder's remedies would actually be permitted (or, if permitted, "stayed"), the Court used various limiting phrases such as "may be brought"[11] and "may proceed."[12] Irrespective of its choice of language, the Supreme Court's overarching intent was clearly to foreclose such litigation until such time as constitutional compliance has been judicially addressed and found "wanting." Mt. Laurel IV, *supra*, 221 N.J. at 29. Then, and only after the court has concluded that a municipality is "determined to be noncompliant" (by refusing to supplement or amend its plan to remedy any perceived

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[10] See generally N.J.S.A. 52:27D-309-311; see also Hills Dev. Co. v. Bernards Tp., 103 N.J. 1, 22 (1986) (hereinafter referred to as Mt. Laurel III) (Under the FHA, municipalities retain the right "to exercise their zoning powers independently and voluntarily" along with the means to determine what combination of ordinances and other measures will achieve their fair share of affordable housing).

[11] See e.g., Mt Laurel IV, *supra*, 221 N.J. at 28.

[12] See e.g., id. at 26, 27 and 35.

deficiencies) would exclusionary zoning actions be warranted.[13] Limiting participation of interested parties in such a fashion comports with the specified protocols mandated by the Supreme Court that: (1) interested parties must be given notice and an opportunity to be heard ***on the issue of constitutional compliance***; and (2) exclusionary zoning suits are not authorized unless the court fully addressed the issue of constitutional compliance, and has determined the town's affordable housing plan to be deficient.[14]

Barring interested parties from pursuing builder's remedies, either via an independent action, or as here, by way of a counterclaim, results in no discernible prejudicial impact.[15] Indeed, site-specific relief is wholly irrelevant to the larger, and preliminary, question of constitutional compliance. Builders choosing to participate as defendants[16] in constitutional compliance actions pending before the trial courts may do so in much the same manner as they

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[13] Id. at 33; see also n. 6, *supra*.

[14] See id. at 33-34 (stating that if the court is unable to secure "prompt voluntary compliance from municipalities... with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, ***then*** the court may authorize exclusionary zoning actions seeking a builder's remedy to ***proceed***." (emphasis added)).

[15] As recognized nearly thirty years ago in Mt. Laurel III:

> If there is any class of litigant that knows the uncertainties of litigation, it is the builders. They, more than any other group, have walked the rough, uneven, unpredictable path through planning boards, boards of adjustments, permits, approvals, conditions, lawsuits, appeals, affirmances, reversals, and in between all of these, changes in both statutory and decisional law that can turn a case upside down. No builder with the slightest amount of experience could have relied on the remedies provided in Mt. Laurel II, in the sense of justifiably believing that they would not be changed, or that any change would not apply to the builders.
> Id., *supra*, 103 N.J. at 55.

[16] Irrespective of whether a "certified" or "participating" municipality chooses to file a declaratory judgment action or waits to be sued, "***the trial court may grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding***[.]" Mt. Laurel IV, *supra*, 221 N.J. at 35.

would have, had COAH not ceased to function; a parallel process that neither affords builders any greater rights, nor deprives them of any that they would have had, including the rights to participate in the processes authorized under both Mount Laurel II and the FHA – conciliation, mediation, with the use and assistance of special masters.[17] Certainly, the Court's dissolution of the FHA's exhaustion-of-administrative-remedies requirement and its resurrection of the judiciary's role as the forum of first resort to evaluate municipal compliance was not intended to signal a return to Mount Laurel II and its "reward-based" system for vindicating the constitutional rights of the poor.[18] In point of fact, the Court's newly established framework fundamentally alters that "reward-based" approach. In so doing, it rendered obsolete the "first to file" priority scheme adopted in J.W. Field Co., Inc., v. Franklin Tp., 204 N.J. Super. 445 (Law Div. 1985), since the ultimate location and satisfaction of a certified or participating municipality's affordable housing obligation ought be based upon a more interactive process,

[17] As noted by the Supreme Court in Mt. Laurel II, *supra*, 92 N.J. at 283, special masters were intended to be "liberally used" to provide expertise and to assist the parties as "a negotiator, a mediator, and a catalyst." See also N.J.S.A. 52:27D-315 (mediation and review process by council).

[18] The procedures articulated herein are not intended to prevent builders or other interested parties from bringing exclusionary zoning actions against any municipality that was neither certified nor participating. Indeed, the approximate 200 towns that never subjected themselves to COAH's jurisdiction remain "open to civil actions in the courts... [and] will continue to be subject to exclusionary zoning actions as they have been since inception of Mount Laurel..." Mt. Laurel IV, *supra*, 221 N.J. at 23.

guided by the equities[19] of the particular participants and principles of sound planning,[20] rather than on a race to the courthouse.[21]

Indeed, even under Mount Laurel II, no builder's remedy would be awarded unless the plaintiff's proposed site was "***located and designed in accordance with sound zoning and planning concepts, including its environmental impact.***"[22] As originally intended, builder remedies were authorized to incentivize builders to vindicate this constitutional imperative largely because the Court's landmark decision in Mount Laurel I was widely ignored and failed to achieve the desired goal of producing balanced communities and affordable housing, but also

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[19] As opposed to the "date of filing," such equitable considerations could include, for example, an assessment of "whether any project was clearly more likely to result in actual construction than other projects and whether any project was clearly more suitable from a planning viewpoint than other projects." See J.W. Field Co., Inc., *supra*, 204 N.J. Super. at 460.

[20] The Court has consistently demonstrated its sensitivity to and the importance of sound planning and environmental conditions over builder preference. See, e.g., Mount Laurel II, *supra*, 92 N.J. at 211 (The obligation to encourage lower income housing, therefore will depend on "natural long-range land use planning" rather than upon "sheer economic forces."); and see id. at 238 ("the Constitution of the State of New Jersey does not require bad planning.").

[21] While the priority system articulated in J.W. Field Co., Inc., *supra*, 204 N.J. Super. 445, has never been specifically embraced by any appellate authority, it has, for all intents and purposes, become embedded and generally followed in Mount Laurel jurisprudence for more than thirty years. It seems reasonable to conclude that it remains a viable protocol for determining priorities among multiple plaintiffs in litigation against towns that were neither "certified" nor enjoyed "participating status" before COAH. Nonetheless, with regard to the certified and participating municipalities now before the courts, the Court encouraged "present day courts" to employ "flexibility in controlling and prioritizing litigation." Mt. Laurel IV, *supra*, 221 N.J. at 26.

[22] Mount Laurel II, *supra*, 92 N.J. at 218 (emphasis added); see also id. at 279 (a builder's remedy award is only appropriate where a builder demonstrates that "the construction can be implemented without substantial negative environmental or planning impact.").

because, after eight years, the decision had produced only "papers, process, witnesses, trials and appeals."[23]

By way of contrast, the Supreme Court's current framework expressly *prohibits* exclusionary zoning litigation until *after* the compliance phase of the declaratory judgment action has concluded.[24] As such, a builder/plaintiff may be hard pressed to assert convincingly that its actions were the catalyst or procuring cause in vindicating the constitutional rights of low and moderate income persons. This is especially so in the context of a municipally initiated declaratory judgment action, or one defended by a town that was "certified" or enjoyed "participating status" but opted to "wait until sued" before seeking a judicial blessing of its affordable housing plan.[25]

This is not to say that participation by builders or other interested parties in the constitutional compliance action is unwelcome or unnecessary. In fact, the opposite is true. Involvement of, and input from such parties may be among the most beneficial sources of practical and economic information in helping to achieve expedient municipal compliance. By

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[23] Mount Laurel II, *supra*, 92 N.J. at 199; see also Orgo Farms & Greenhouses, Inc. v. Colts Neck, 192 N.J. Super. 599, 601 (Law. Div. 1983) (wherein Judge Serpentelli, one of the three original Mount Laurel judges, recognized that "unless a strong judicial hand was applied, Mount Laurel I would not result in the housing which had been expected."). Consequently, the builder's remedy was designed "to assure a builder who shouldered the burden of Mount Laurel litigation that the end result of a successful litigation would be some specific relief in terms of a right to proceed with construction of a specific project." Orgo Farms, *supra*, 192 N.J. Super. at 602. At present, the framework crafted in Mt. Laurel IV, *supra*, 221 N.J. 1, has replaced, at least temporarily, the builder's remedy as the "strong judicial hand."

[24] Mt. Laurel IV, *supra*, 221 N.J. at 35-36.

[25] See Mt. Laurel IV, *supra*, 221 N.J. at 28 (stating that both "certified" and "participating" towns have the option either to proceed with their own declaratory judgment actions during the thirty-day period post the effective date of the Order, or to wait until their affordable housing plan is challenged for constitutional compliance).

engaging in mediation, negotiation, conciliation, and, with the assistance and planning expertise of special masters, there exists a unique opportunity for municipal officials, on the one hand, and ready, willing and able builders, on the other, to craft mutually workable plans for the construction of affordable housing.[26] In addition to the practical benefits that such a streamlined approach provides all participants, such a cooperative resolution of these competing interveners may very well diminish the likelihood of future litigation.

ii. FSHC's Counterclaim

As distinct from Monroe 33's pleading, FSHC's counterclaim does not seek site-specific relief. Instead, its two-count counterclaim alleges: (1) that the Township's Housing Plan Element and Fair Share Plan is unconstitutional – i.e., a violation of its Mount Laurel obligation; and (2) that the Township has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, by failing to comply with the Mount Laurel doctrine and other sources of law. Since both of these claims fit squarely within the scope of issues authorized by the Supreme Court in Mount Laurel IV – challenges to compliance – FSHC's motion for leave to file its counterclaims is hereby granted.

VI. Conclusion

The Supreme Court's newly crafted framework for ensuring municipal compliance with Mount Laurel obligations, unlike the "reward" based process envisioned in Mount Laurel II, is

[26] Compare, Mount Laurel II, *supra*, 92 N.J. at 284 (acknowledging the need for the special master to "work closely" with all those connected to the litigation, including "interested developers.").

not dependent upon site-specific remedies to achieve constitutional compliance.[27] Instead, as envisioned by the Supreme Court, "certified" and "participating" towns will likely subject themselves to a judicial evaluation of their constitutional compliance either by initiating declaratory judgment actions, or defending them – circumstances which, for all practical purposes, preclude, at least during the compliance phase of litigation, any party from being a "successful" plaintiff as required by Mount Laurel II.[28] Accordingly, all declaratory judgment actions involving "certified" or "participating" municipalities shall be subject to the procedures and protocols set out below:

1. Interested parties shall be permitted to intervene, but only for the limited purpose of participating (through meditation, negotiation, conciliation, etc.) in the court's adjudication of the subject municipality's constitutional compliance with its affordable housing obligation;
2. Interested parties shall not be permitted to file exclusionary zoning/builder's remedy actions, via counterclaims or through independently filed separate actions, until such time as the court has rendered an assessment of the town's affordable housing plan and has decided that the municipality is constitutionally noncompliant, and is determined to remain so by refusing to timely supplement its plan to correct its perceived deficiencies; and

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[27] To be clear, this conclusion pertains only to "certified" or "participating" towns (whether they filed declaratory judgment actions or whether they chose to "wait to be sued"), and not to those towns that were neither "certified" nor "participating." Nothing in this opinion is meant to diminish the rights of parties seeking builder's remedies through the filing of exclusionary zoning actions in the latter category of town. The builder's remedy schemes laid out by both Mt. Laurel II and J.W. Field Co., Inc. seem perfectly viable ***in those towns that made no effort to satisfy their fair share obligations***, as the need to incentivize builders to bring constitutional compliance and/or exclusionary zoning litigation in such towns remains of paramount importance. See Mt. Laurel IV, *supra*, 221 N.J. at 23.

[28] See Mt. Laurel II, *supra*, 92 N.J. at 279.

3. If, after having received a full and fair opportunity to comply with its constitutional obligations, the court concludes that a municipality is "determined to be noncompliant," builders and any other interested parties may then initiate and prosecute exclusionary zoning actions against the town, through which any builder's remedies to be awarded would be guided by equitable considerations and principles of sound planning, and not upon who filed first.

Adherence to these protocols will help focus the litigation and assist in fostering a prompt, efficient, and fair resolution of the constitutional compliance issues, without unnecessary distractions or impediments from builder/developers or other interested parties.

It is so ordered.

FAIR SHARE HOUSING CENTER
510 Park Boulevard
Cherry Hill, New Jersey 08002
P: 856-665-5444
F: 856-663-8182
Attorneys for Defendant-Intervenor
Fair Share Housing Center
By: Kevin D. Walsh, Esq. (030511999)
Adam M. Gordon, Esq. (033332006)

IN THE MATTER OF THE ADOPTION OF THE MONROE TOWNSHIP HOUSING ELEMENT AND FAIR SHARE PLAN, AND IMPLEMENTING ORDINANCES.	SUPERIOR COURT Law Division Middlesex County DOCKET NO: MID-L-3365-15 CIVIL ACTION **CONSENT ORDER**

These matters having been brought before the Court on the application of Movant Fair Share Housing Center (FSHC), through its counsel, Kevin D. Walsh, Esq., through a cross-motion for intervention and for the preliminary determination of Monroe Township's Third Round present and prospective needs and through the application of Movant Monroe 33 Developers, LLC ("Monroe 33") through a motion to intervene and opposition to Monroe Township's motion for immunity;

And it appearing that the Township of Monroe, FSHC, and Monroe 33 have consented to the following terms as part of a case management conference with the Honorable Douglas Wolfson, J.S.C. held on June 26, 2015;

And it further appearing that the Township of Monroe, FSHC, and Monroe 33 have proposed a process by which the Court will be asked to make decisions involving the Township's compliance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015), including its fair share obligations and the application of the 1000-unit cap, and that the Court has accepted this process as an appropriate way to facilitate compliance with the Mount Laurel doctrine by the Township and to adjudicate legal and factual issues relating to compliance,

NOW, THEREFORE, IT IS on this 26th day of June, 2015 ORDERED as follows:

1. Fair Share Housing Center's (FSHC) Motion to Intervene as a Defendant is granted. FSHC shall file an answer and counterclaim within 10 days of the date of this order and provide a copy of this order to the clerk.

2. Monroe 33's motion to intervene as a defendant is granted. Monroe 33 shall file an answer within 10 days of the date of this order and provide a copy of this order to the clerk.

3. Service of FSHC's answer and counterclaim and Monroe's answer shall be accomplished through the forwarding of a signed copy of those pleadings to counsel for Monroe Township by regular mail. The answer to FSHC's counterclaim shall be filed within 30 days of receipt of the signed pleading.

4. Monroe Township shall prepare and file for review by this court a lawful and valid Housing Element and Fair Share Plan on or before November 9, 2015, which is five months from the filing of the complaint in this matter.

5. The parties to this litigation agree to the following process. FSHC has filed a cross-motion for preliminary determination asserting that the Township's Present Need is 104 units; that the Township's Prior Round Prospective Need is 554 units; and that the Township's Third Round prospective obligation is 2323 units. No later than July 24, 2015, the parties to this litigation and any experts either party may wish to involve shall meet for an off-the-record settlement conference in which the parties shall see if they can reach agreement as to the Township's Present Need, Prior Round prospective need, and the Third Round prospective need and the parties' positions as to the 1,000 unit cap and its potential application in the Township.

6. Monroe 33 will file papers in response to FSHC's pending cross-motion for a preliminary determination on or before July 24, 2015.

7. If the parties do not reach agreement in connection with the meeting occurring on or before July 24, 2015, the Township may file opposition to FSHC's cross-motion and the papers filed by Monroe 33 no later than August 7, 2015, with any supporting expert reports and/or other relevant

evidence that the Township wishes to include; FSHC and Monroe 33 may file any reply, including any supplemental expert reports and/or other relevant evidence, no later than August 14, 2015; and oral argument will be held on the cross-motion for a preliminary determination on August 24, 2015.

8. The Township's fair share plan due on or before November 9, 2015 shall demonstrate how it provides a realistic opportunity for its present need, Prior Round prospective need, and Third Round prospective need obligation, which obligations shall be established through the process set out by this order.

9. Case management conferences are hereby scheduled for the following dates and times:

a. August 24, 2015 at 9:30 a.m.

b. October 9, 2015 at 9:30 a.m.

10. Notice of the adoption of the Township's plan shall be mailed and published for a 30-day comment period on or before November 15, 2015.

11. The trial in this matter ~~is~~ will be scheduled ~~for~~ at a later date ~~_____, 2015 at ____ a.m./~~p.m.

12. The Court provides five months of immunity to Monroe Township commencing with the filing of the complaint by Monroe Township in this matter.

12. Elizabeth McKenzie is appointed as special master in this matter, with fees to be paid as allocated by

the court as required by Mount Laurel II, with all parties recognizing that FSHC will not be directed to pay the Special Master's fees. The municipality may use funds from its affordable housing trust fund for the special master and other eligible administrative expenses, up to the 20 percent cap for administrative expenses as provided in N.J.S.A. 52:27D-329.2(c)(5). The master shall attempt to mediate disputes in this matter as part of the plan preparation process.

13. Counsel for FSHC shall forward a copy of this Order to all parties of record and the Court's Master within five (5) days of receipt.

Hon. Douglas Wolfson, J.S.C.

The undersigned on behalf of the parties they represent hereby consent to the form, content and entry of the within Order on the condition that their consent is withdrawn and the matter will return to the status quo ante if the Court declines to enter the order, with the terms of the order not being binding on the parties to this Consent order:

Jerome J. Convery, Esq.
Counsel for Monroe Township
Dated: 6/26/15

Marguerite M. Schaffer, Esq.
Counsel for Monroe Township
Dated:

Kevin D. Walsh, Esq.
Counsel for Fair Share Housing Center
Dated: 6/26/2015

Thomas F. Carroll, Esq.
Counsel for Monroe 33
Dated: 6/26/15

JEFFREY R. SURENIAN AND ASSOCIATES, LLC
Brielle Galleria
707 Union Avenue, Suite 301
Brielle, NJ 08730
(732) 612-3100
Attorneys for Declaratory Plaintiff, Borough of Roselle Park
By: Jeffrey R. Surenian (Attorney ID: 024231983)
Michael A. Jedziniak (Attorney ID: 012832001)

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF ROSELLE PARK, COUNTY OF UNION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO: ~~UNN-L-~~ 2061-15 UNN-L-2061-15
Civil Case
(Mount Laurel II)

ORDER MAINTAINING AND REAFFIRMING THE BOROUGH'S IMMUNITY FROM MOUNT LAUREL LAWSUITS

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, Jeffrey R. Surenian, Esq. and Michael A. Jedziniak, Esq. appearing on behalf of declaratory plaintiff, Borough of Roselle Park (hereinafter "the Borough"); and the Roselle Park Planning Board (hereinafter "Planning Board") having previously adopted a Housing Element and Fair Share Plan for all three housing cycles; and on September 27, 2010 the Borough having secured a Judgment of Compliance and Repose from the court; and the Supreme Court and Legislature having encouraged municipalities to comply with their affordable housing obligations voluntarily (Mount Laurel II, 92 N.J. at 214 and N.J.S.A. 52:27D-303); and Roselle Park having exhibited a desire to comply voluntarily; and COAH having failed to adopt new Round 3 regulations by the October 22, 2014 deadline the Supreme Court established (see In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015)("In re COAH"); and this failure having prevented COAH from being able to process the petition for substantive certification of any municipality; and the Supreme Court having determined that municipalities bear no responsibility for COAH's failure to adopt new regulations in a timely fashion; and the Court having further determined that, therefore, municipalities should not suffer prejudice because of COAH's failure; and the Supreme Court having determined that the task of implementing the Mount Laurel doctrine should revert from COAH to the courts because of COAH's failure to adopt new regulations by the deadline it imposed; and, accordingly, the Supreme Court having determined that our trial courts in lieu of COAH must now "establish . . . [the] presumptive constitutional housing obligations for each municipality" and "identify the permissible means which a town's proposed affordable housing plan, housing element, and implementing ordinances can satisfy that obligation" (In re COAH, 221 N.J. at 33); and the Supreme Court having further determined that the municipalities under COAH's jurisdiction should enjoy the same protections from exclusionary zoning litigation in a Court proceeding that the New Jersey Fair Housing Act ("FHA") conferred on them in a COAH proceeding; and the Supreme Court in In re COAH having further emphasized the importance and value of voluntary

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municipal compliance (In re COAH, 221 N.J. at 33); and the immunity doctrine having arisen as a result of trial judges implementing the charge of the Supreme Court in Mount Laurel II to foster voluntary compliance; and the Borough having committed itself to comply voluntarily by having secured a Judgment of Compliance and Repose for all three rounds and through other actions; and Mount Laurel jurisprudence having clearly established the principle that voluntary compliance is preferable to exclusionary zoning litigation; and it appearing that immunity should be maintained (1) to bar the filing and serving of any Mount Laurel lawsuits; (2) to promote voluntary compliance; and (3) to facilitate the resolution of all issues concerning the Borough's Mount Laurel responsibilities expeditiously and with as little additional burden to the public as possible; and the Court having considered the pleadings and related papers filed in this matter and the arguments of counsel; and good cause appearing.

IT IS on this 24th day of July, 2015, **ORDERED** as follows:

1. The Court hereby enters this Protective Order maintaining and reaffirming that the Borough of Roselle Park, the governing body of the Borough of Roselle Park, and the Planning Board of the Borough of Roselle Park are immune from the filing and serving of any Mount Laurel lawsuits.

2. The protections from Mount Laurel suits contemplated in this Order shall commence on June 8, 2015, the effective date of In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015).

3. ~~The protections from Mount Laurel suits contemplated in this Order shall remain in effect for five (5) months from the date the Borough receives an Order establishing the presumptive constitutional housing obligations for Roselle Park and identifying the permissible means which the Borough's proposed affordable housing plan, housing element, and implementing ordinances can satisfy those obligations and such additional time as the Court deems just and reasonable.~~

OR, IN THE EVENT THE COURT DENIES THE RELIEF IN PARAGRAPH 3 ABOVE, THE BOROUGH SEEKS THE FOLLOWING RELIEF IN LIEU THEREOF

4. The protections of the Borough and Planning from Mount Laurel suits created by this Order shall remain in effect for five (5) months from the date the Borough filed its Declaratory Judgment Complaint and such additional time as the Court may deem just and reasonable upon application to the Court. (8/12/15)

5. Nothing herein should be construed to invalidate the Borough's Round 3 Judgment of Compliance and Repose, which is presumed valid.

6. Counsel for the Borough shall provide all parties on the Service/Notice List with a copy of this Order within seven (7) days of receipt.

HON. KAREN M. CASSIDY, A.J.S.C.

OC Call management conference in this matter shall take place on Tues. 29, 2015 @ 2pm.

Walter J. Ray
254 South Broadway; P.O. Box 406
Pennsville, NJ 08070
Phone (856) 678-4777; Fax (856) 678 6805
Attorney for Declaratory Plaintiff, Township of Pennsville

FILED
JUL 24 2015
Anne McDonnell, P.J.Ch.

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF PENNSVILLE, COUNTY OF SALEM	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SALEM COUNTY DOCKET NO.: L-119-15 *Civil Case* **ORDER GRANTING TEMPORARY IMMUNITY FROM MOUNT LAUREL LAWSUITS**

THIS MATTER having been opened to the Court by Walter J. Ray, appearing on behalf of declaratory plaintiff, Township of Pennsville (hereinafter "the Township"); and the Court having considered the pleadings and related papers filed in this matter and the arguments of counsel; and good cause appearing.

IT IS on this 24th day of July, 2015, **ORDERED** as follows:

1. The Court hereby enters this Protective Order granting the Township of Pennsville temporary immunity from the filing and serving of any Mount Laurel lawsuits.
2. The protections from Mount Laurel suits created by this Order shall commence nunc pro tunc on June 8, 2015, the effective date of In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015).
3. The protections from Mount Laurel suits created by this Order shall remain in effect for five (5) months from the date the Township receives an Order establishing the presumptive constitutional housing obligations for Pennsville and identifying the permissible means which the Township's proposed affordable housing plan, housing

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element, and implementing ordinances can satisfy those obligations and such additional time as the Court deems just and reasonable. ~~DENIED~~

OR, IN THE EVENT THE COURT DENIES THE RELIEF IN PARAGRAPH 3 ABOVE, THE TOWNSHIP SEEKS THE FOLLOWING RELIEF IN LIEU THEREOF

4. The protections of the Township from Mount Laurel suits created by this Order shall remain in effect for five (5) months from the date the Township filed its Declaratory Judgment Complaint and such additional time as the Court deems just and reasonable in order to enable Township to submit its housing element and fair share plan, ADJ

5. Nothing herein should be construed to invalidate the Township's grant of Round 3 substantive certification by COAH, which is presumed valid.

6. Counsel for the Township shall provide all parties on the Service/Notice List with a copy of this Order within seven (7) days of receipt.

7. A case management conference is scheduled for August 6, 2015 at 2:00pm. Township shall be prepared to address a date for filing its proposed constitutionally compliant affordable housing plan. The court will consider appointment of a Special Master and ~~unopposed~~ paid by Township. ✓

Ann McDonnell
HON. Anne McDonnell

Reasons for Order:

Per certification of Mary Beth Lonergan, PP, AICP, the Township's affordable housing planner since 2008, Township received third round substantive certification from COAH for its 2005 and 2008 third round housing elements and fair share plan. As a "certified" municipality, Township is entitled to period of immunity. Mount Laurel IV, 221 NJ 1, 25-26 (2015).

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
Office of the Vice President for Research and Economic Development

RESEARCH STUDY AGREEMENT

This Research Study Agreement ("Agreement") is entered into as of June 30, 2015 (the Effective Date") by and between the Municipal Joint Defense Group, established by the Municipal Shared Services Joint Defense Agreement attached hereto as **Attachment** 1, having an office at 707 Union Avenue, Suite 301, Brielle, New Jersey, 08730, c/o Jeffrey R. Surenian and Associates; LLC (hereafter "SPONSOR") and RUTGERS, The State University of New Jersey, a specially chartered New Jersey Educational Institution, having its principal offices in New Brunswick, New Jersey 08901 (hereafter "RUTGERS").

WHEREAS, Sponsor wishes to fund certain research at RUTGERS which is of interest and benefit to RUTGERS, will further the instructional and research objectives of RUTGERS and the public interest in a manner consistent with its status as a non-profit, tax-exempt, public, educational institution, and may derive benefits for both SPONSOR and RUTGERS by advancing knowledge through discovery and by creating new technologies through invention;

WHEREAS the Sponsor has agreed to enter into this Agreement with Rutgers for the purpose of establishing present and prospective statewide and regional affordable housing need and allocating fair share obligations among municipalities in accordance with applicable law.

NOW, THEREFORE, the parties mutually agree as follows:

1. Scope of Work

RUTGERS' Principal Investigator for the research program conducted during the Period of Performance shown in Article 3 of this Agreement (hereinafter the "Research") is Robert W. Burchell, Ph.D. The Principal Investigator shall be responsible for the direction of the Research and shall conduct the Research in accordance with the terms of this Agreement. The research and analysis to be undertaken shall be to establish present and prospective statewide and regional affordable housing need and allocate fair share obligations among municipalities in accordance with applicable law.

2. Compensation

This is a Firm-Fixed Price Installment-Type Agreement and the amount payable by SPONSOR to RUTGERS for the cost of Research is $70,000. One-half of the total amount is payable on the Effective Date. The balance is payable in equal installments at three, (3) one month intervals thereafter during the period described in Article 3 of this Agreement with the final payment due

Exh 10

simultaneously with the delivery of the final Report.

Checks should be made payable to Rutgers, The State University of New Jersey and should identify the SPONSOR and the Principal Investigator and be sent to:

Rutgers, The State University of New Jersey Division of Grant and Contract Accounting ASBIII, 3 Rutgers Plaza, 2nd Floor New Brunswick, New Jersey 08901

RUTGERS will not be obligated to expend fund in excess of those provided under this Agreement to conduct the Research.

3. **Period of Performance**

Research under this Agreement will be performed during the period June 30, 2015 through September 30, 2015.

4. **Company Technical Representative**

SPONSOR shall appoint a technical representative (hereafter "SPONSOR's Technical Representative") who initially will be Jeffrey R. Surenian, Esq. or in his absence or disability, Jonathan E. Drill, Esq., or such other representatives as SPONSOR may subsequently designate in writing.

5. **Communication with SPONSOR's Representatives**

During the period of this Agreement, SPONSOR's Technical Representative(s) may have reasonable access personally or by telephone to discuss the Research informally with Principal Investigator. Access to work performed in RUTGERS laboratories and at other RUTGERS' premises in the course of the Research will be entirely under the control of RUTGERS personnel; SPONSOR's representatives are permitted to visit such laboratories and premises only during usual hours of operation as is mutually agreeable.

6. **Technical Reports**

The Principal Investigator shall provide a draft report no later than July 15, 2015; receive any written comments of Sponsor through their designated counsel within 22 days of receipt of the draft report, meet with the members of the Sponsor within 37 days of receipt of the draft report and submit a comprehensive final written report to SPONSOR on or before September 30, 2015(hereinafter "Initial Report") which shall serve as an expert report to be used by any member of the Sponsor in the conjunction with litigation over the municipality's fair share obligation.

The Principal Investigator shall consider any challenges to his Report and shall prepare a report responding to those challenges (hereinafter "Rebuttal report").

The purpose of this agreement is to identify the responsibilities of the parties with respect to the Initial Report and the flat $70,000 fee pertains only to that report. Furthermore, it is anticipated that Dr. Burchell will have to review a responsive critical analysis of his report an d issue a rebuttal report. Rutgers shall be compensated for said additional work based upon the fee schedule attached. See Attachment 2

The Parties hereto understand and agree that Dr. Burchell will be available to the individual members of the group to testify in select court hearings for the purpose of presenting the conclusions of the Report. In such case Dr. Burchell shall be compensated at a rate of $231 per hour

In the event of a scheduling conflict for testimony, schedules will be rearranged to allow Dr. Burchell to testify to the extent that it is within the control of the Sponsor. If there is a scheduling conflict, Sponsor will seek to accommodate Dr. Burchell.

7. **Publicity**

As the work being undertaken by Rutgers is in support of litigation, Rutgers will not provide any information on the content of the report prior to the finalization of the report and the submission of the Report to the courts and/or to adverse parties by the Sponsor. RUTGERS may list the existence of this project in its internal documents, annual reports and databases which are available to the public.

8. **Publication**

RUTGERS has the right to copyright and publish and otherwise publicly disclose, through technical presentations or otherwise, the information and results gained in the course of the Research after the report has been finalized and disclosed in the by any member of the Sponsor. Notwithstanding the foregoing, any Member of Sponsor shall be entitled to utilize the initial or rebuttal report of Burchell if that member has fulfilled its financial obligations pursuant to the Municipal Shared Services Defense Agreement. See Attachment 1.

9. **Intellectual Property**

All rights in the research, analysis and conclusions developed during the term of this Agreement in the course of and within the scope of the Research (hereafter "Intellectual Property") shall be the property of Rutgers. Rutgers or Dr. Burchell, however, shall not utilize the Research nor disclose any aspect of the Research until it is finalized, and disclosed by any member of the Sponsor in the course of litigation over the municipality's fair share obligation nor shall Rutgers comment on,

discuss, or refer to the Research in any setting other than in the course of litigation over the municipality's fair share obligation by and through the Sponsor, until the litigation over the municipality's fair share obligation is resolved, including all appeals.

10. **Confidential Information**

All information belonging to one party and given to the other under this Agreement shall be used only for the purposes given and shall be held in confidence by the receiving party during the course of the fair share litigation and until the litigation is resolved including all appeals so long as such information (i) remains unpublished by the giving party or does not otherwise become generally available in the public domain, (ii)is not lawfully received by the receiving party from a third party with the legal authority to publicly disclose it, (iii) is not independently developed by the receiving party without the benefit of such information, or (iv) is not required by law to be disclosed.

10. **IndependentContractor**

For the purposes of this Agreement and all services to be provided hereunder, each party is, and will be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action, which is binding on the other party, except as maybe explicitly provided for herein or authorized by the other party in writing.

11. **Warranties**

RUTGERS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, ORIGINALITY, OR ACCURACY OF THE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. RUTGERS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY SPONSOR, ANY LICENSEE, OR ANY OTHERS RESULTING FROM THE USE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT.

RUTGERS MAKES NO REPRESENTATION OR WARRANTY REGARDING ACTUAL OR POTENTIAL INFRINGEMENT OF PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY OF THIRD PARTIES, AND SPONSOR ACKNOWLEDGES THAT THE AVOIDANCE OF SUCH INFRINGEMENT IN THE DESIGN, USE AND SALE OF PRODUCTS AND PROCESSES RELATED TO THE RESEARCH WILL REMAIN THE RESPONSIBILITY OF SPONSOR.

12. **Indemnification**

To the extent permitted by law SPONSOR agrees to indemnify, defend and hold harmless Rutgers

and its present and former officers, directors, governing board members, employees, agents and students (collectively "Rutgers") from and against any and all claims, loss, cost, expense, damage or liability of any kind, including reasonable attorney's fees and expenses of litigation if Rutgers is brought into any litigation involving a sponsor municipality as a party due to their involvement with the Initial Report or Final Report as set forth in Sections 6 of this Agreement.

13. Governing Law

The validity and interpretation of this Agreement and the legal relations of the parties to it will be governed by the laws of the State of New Jersey applicable to the agreements entered into, and to be fully performed, in the State of New Jersey, without regard to its conflict of laws provisions.

14. Assignment

This Agreement is not assignable by either party without the prior written consent of the other party. Any and all assignments not made in accordance with this Article are void.

15. Term and Termination

This Agreement will expire at the end of the period specified in Article 3, unless extended or sooner terminated in accordance with the provisions of this Article.

RUTGERS may terminate this Agreement immediately if circumstances beyond its control preclude continuation of the Research.

In the event RUTGERS' Principal Investigator is unavailable or unable to continue direction of the Research for a period in excess of thirty (30)days, RUTGERS shall notify SPONSOR and may nominate a replacement; if RUTGERS does not nominate a replacement or if that replacement is unsatisfactory to SPONSOR, SPONSOR may terminate this Agreement upon fifteen(15)days written notice and such right to terminate shall be SPONSOR's sole remedy at law or in equity; however, Rutgers shall refund to SPONSOR such amount of the fees paid that have not been applied to the research.

If SPONSOR fails to meet any of its obligations under this Agreement and fails to remedy any such failure within thirty(30)days after receipt of written notice thereof, RUTGERS shall have the option of terminating this Agreement upon written notice thereof, and may terminate any licenses or negotiation rights granted to SPONSOR. In the event RUTGERS fails to meet its obligations under this Agreement and fails to remedy any such failure within thirty (30)days after receipt of written notice thereof, SPONSOR will have the option of terminating this Agreement upon written notice thereof, and such right to terminate shall be SPONSOR's sole remedy at law or in equity however, Rutgers shall refund to SPONSOR such amount of the fees paid that have not been applied to the research.

Termination or expiration of this Agreement, for reasons other than an un-remedied failure to meet the material obligations under this Agreement, will not affect the rights and obligations of the parties accrued prior to termination.

16. Agreement Modifications

No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.

17. Notices

Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if sent by first class certified or registered mail or if delivered by express delivery service to the following addresses of either party:

Office of the Vice President for Research and Economic Development
Rutgers, The State University of New Jersey
Corporate Contracts
ASBIII, 3 Rutgers Plaza, 3rd Floor
New Brunswick, New Jersey08901-8559
ATTN: Director, Corporate Contracts

and

Jeffrey R. Surenian, Esq.
Jeffrey R. Surenian and Associates; LLC
707 Union Avenue, Suite 301,
Brielle, New Jersey, 08730,

or to such other address as is hereafter furnished by written notice to the other party.

18. Paragraph Headings

The Article headings are provided for convenience and are not to be used in construing this Agreement.

19. Survivorship

The provisions of Articles 6, 7,8, 9,11, 12, 13, and 17 survive any expiration or termination of this Agreement.

20. Insurance

The parties to this agreement including the individual members of the Municipal Joint Defense

Group agree to maintain adequate levels of commercial general liability, motor vehicle liability insurance and other types of insurance customary to the conduct of their business and/or as required by law. Such insurance may be provided through commercially insured polices or programs of self-insurance.

21. **Excusable Delays**

RUTGERS will be excused from performance of the Research if a delay is caused by inclement weather, fire, flood, strike or other labor dispute, acts of God, acts of governmental officials or agencies, or any other cause beyond the control of RUTGERS. The excusable delay is allowed for the period of time affected by the delay. If a delay occurs, the parties will revise the performance period or other provisions, as appropriate.

22. **Entire Agreement**

This Agreement contains the entire understanding and agreement between the parties heretowith respect to the Research and the Intellectual Property and supersedes and replaces any prior or contemporaneous understandings or agreements of the parties with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Joint Municipal Defense Group

By: _____

Jeffrey R. Surenian, on behalf of the
Municipal/Joint Defense Group

Date: July 9, 2015

RUTGERS, The State University of New Jersey

By: _____

Charles H. Wyckoff, CCM, CHCM
Director, Corporate Contracts

Date: 13 JULY 2015

Principal Investigator has reviewed this Agreement and agrees to be bound by the provisions of Articles 1, 2, 3, 6, 7, 8, 9 and 10 herein.

Robert W. Burchell

Digitally signed by Robert W. Burchell
DN: cn=Robert W. Burchell, o=Rutgers University, ou=CUPR, email=burchell@rutgers.edu, c=US
Date: 2015.07.10 16:25:59 -04'00'

Principal Investigator, Robert W. Burchell, Ph.D.

ATTACHMENT 1

MUNICIPAL SHARED SERVICES DEFENSE AGREEMENT

MUNICIPAL SHARED SERVICES DEFENSE AGREEMENT

This Agreement is made as of this __ day of _____, 2015, between and among the Members (the "Members") of the Municipal Group (collectively, the "MG"), whose representatives have executed this Shared Services Defense Agreement ("Agreement"). A list of the Members is attached hereto as Appendix A. In consultation with their legal advisors, the Members of the MG are considering, have or will file a Declaratory Judgment Action in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Decision") or may otherwise be engaged in litigation (hereinafter referred to as "Litigation") for a Judgment of Compliance and Repose and, among other forms of relief , a determination of the municipality's obligation to provide a realistic opportunity for its fair share of the region's affordable housing needs in accordance with the Mount Laurel Doctrine as set forth in the Decision and prior decisions of the Courts of New Jersey, and the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (Collectively referred to as "Housing Obligations")

WHEREAS, the Members wish to cooperate collectively to obtain information regarding the development of Housing Obligations that may be used in planning and in the Litigation and to enter into an agreement with Rutgers, The State University of New Jersey for that purpose

NOW, THEREFORE, in consideration of the agreements and obligations listed below, the Members hereby agree as follows:

1. Purpose.

The purpose of this Agreement is to control the manner and the means by which the Members:

(a) participate in this Agreement;

(b) collectively retain Rutgers, the State University of New Jersey ("Rutgers"), which employs Dr. Robert Burchell and various other Rutgers experts with whom he will work (hereinafter collectively "Burchell");

(c) collectively work with Burchell to conduct an analysis and report (hereinafter "Burchell Report") of the housing need for each region and the allocation of that need to the individual municipalities in the region;

(d) may elect, at the exclusive expense of any Member or group of Members, to rely upon and present Burchell as a witness in the Litigation, including for any mediation, Alternative Dispute Resolution or other proceeding involving a determination of a Member's Affordable Housing Obligation;

(e) raise funds to pay for activities authorized by the MG ("Shared Costs") as described herein at Section 5 hereof; and

(f) engage in such other activities related to and in accordance with the purposes of this Agreement.

Nothing in this Agreement limits the right of any Member to take such action as deemed necessary to protect its own interests, or to present its own analysis of its Housing Obligation and rely upon credits, vacant land analysis adjustments, and such other factors and/or crediting mechanisms that may be necessary and appropriate to properly adjust its Housing Obligation.

2. Meetings.

Upon remitting the initial $2,000 payment set forth in paragraph 5 and execution of this Agreement, each member of the MG shall provide Surenian with the email address of counsel to whom all notices under this Agreement shall be provided if it has not done so heretofore (hereinafter "designated counsel"). In the event the municipality fails to supply the name of the designated counsel, the municipal attorney shall serve as the designated counsel unless the municipality informs Surenian at JRS@Surenian.com that it wishes another attorney to serve as designated counsel and Surenian confirms receipt of that request. Upon 5 calendar days notice by email to designated counsel, meetings of the MG shall be conducted with Counsel for Members to determine actions to be taken by and on behalf of the MG in furtherance of their common interests in the Litigation. All meetings shall be scheduled, to the extent reasonably possible at Rutgers University so that the greatest number of available counsel for Members may participate. In the event of such a meeting, each municipality shall have one vote and a majority of those present may take action on behalf of the MG

3. Retention of Burchell.

a. The administrative retention of Burchell through a Research Agreement with Rutgers to conduct an analysis of Housing Obligations shall be made by Jeffrey R. Surenian and Associates, LLC ("Surenian") on behalf of the MG. Surenian shall monitor and track the progress of Dr. Burchell and shall confer with the MG as to the development of his analysis and report and other issues; provided, however, that nothing herein contained shall mean that Surenian is acting as legal counsel to the Members unless a Member has specifically authorized same by separate action

b. In the absence or unavailability of Surenian, Jonathan E. Drill, Esq. ("Drill") shall serve in this capacity and in such other of Surenian's capacities as provided by this Agreement; provided, however, that nothing herein contained shall mean that Drill is acting as legal counsel to the Members unless a Member has specifically authorized same by separate action.

c. To fulfill the responsibilities set forth in this paragraph, Surenian or Drill, as the case may be, except as is otherwise precluded under Paragraph 15 of this Agreement (i) shall pass on to Burchell any written communications forwarded to them by designated counsel as Burchell prepares his draft report (ii) shall furnish the MG a draft of the report prepared by Burchell for their input; (iii) shall furnish Burchell the comments on the draft report of the MG for his consideration; and (iv) shall furnish each Member the final Burchell Report. Members shall hold Surenian and Drill harmless for performing the tasks set forth in this agreement.

d. To facilitate the administration of this agreement, all materials shall be submitted to Surenian or Drill, as the case may be, electronically, and Surenian or Drill, as the case may be, shall be free to furnish all submissions referenced herein electronically.

4. Authorization to Sign.

Surenian for Jeffrey R. Surenian and Associates is hereby authorized and directed to sign the Research Agreement with Rutgers on behalf of the Members.

5. Shared Costs.

a. All assessments for Shared Costs shall be solely to pay Rutgers for Burchell. Each Member shall be responsible for its per capita share and shall pay a $2,000 no later than June 30, 2015.

b. It is anticipated that said fee shall suffice (i) to pay $70,000 to prepare the Burchell Report, (ii) to pay for Burchell to analyze challenges to his report and (iii) to pay for the preparation of a rebuttal report to said challenges.

c. If the collection of this $2,000 fee is insufficient to cover these costs, each Member shall pay an additional fee to cover said costs on a per capita basis.

d. If the aggregate fees collected exceed the costs for the aforementioned activities, each member of the MG shall be entitled to a per capita rebate of the remaining monies.

e. This $2,000 fee is nonrefundable unless the sum of the $2,000 fees collected exceed the cost of the tasks listed in this paragraph in which case each Member who contributed shall receive a per capita rebate.

f. A prerequisite to becoming a member is (a) the execution of this agreement, and (b) the payment of this $2,000 fee.

6. Expenses Not Covered By This Agreement.

This Agreement is just for the cost to perform the services set forth in paragraph 5. Each member of the MG shall be responsible for any other expenses they may incur and the responsibility to pay those expenses shall not be the responsibility of the MG. Each Member shall be free to seek to retain Burchell individually to serve as an expert in its case and shall be responsible individually for the expenses associated with Burchell serving as the municipality's expert witness at a rate of $231 per hour to be paid to Rutgers pursuant to a separately negotiated agreement with terms and conditions acceptable to Rutgers.

7. Liaison Counsel or Committee.

The MG may select one or more counsel to coordinate with Surenian and Burchell to consult on the preparation and dissemination of the Burchell analysis and/or report, manage the collection and maintaining of funds, payment of invoices, and such other actions as may be necessary to effectuate the purposes of this agreement. The Members shall not be responsible for payment of the fees for Surenian or any counsel; each counsel will be paid by their respective client or clients.

8. Holding of Funds.

The MG hereby authorizes Surenian to hold all Shared Cost monies collected in connection with this Agreement in escrow in the Attorney Trust Account of Jeffrey R. Surenian and Associates, LLC. Surenian is authorized to disburse such funds as they are received from the Members of the MG in accordance with the terms of this Agreement and the engagement contract between Surenian, on behalf of the MG, and Rutgers.

9. Confidentiality and Use of Information.

(a) From time to time, Members or their counsel, and/or Burchell and/or other consultants or experts, including those independently retained by any Member may elect to disclose or transmit to each other such information as the Members may deem appropriate for the purpose of developing any common issues, claims, defenses, legal positions or other matters relating to the Litigation and for coordinating such other activities as may be necessary to carry out the purposes of this Agreement ("Shared Information"). Shared Information may include documents and information that are protected by attorney-client privilege, attorney work product doctrine, or other privilege or protection (hereinafter "Protected Materials"). The Members agree that any

sharing of Protected Materials among the Members and their counsel pursuant to this Agreement is not intended to and shall not constitute a waiver of any privilege or protection that otherwise would apply to the Protected Materials.

(b) Each Member agrees that all Shared Information, other than that described in Section (e) below, shall be held in strict confidence by the receiving Member, and by all persons to whom such confidential documents and information are revealed by the receiving Member, and that such documents and information shall be used by the receiving Member and any other receiving party only in connection with issues, claims, defenses, legal positions or other matters relating to the Litigation and for conducting such other activities as may be necessary to carry out the purposes of this Agreement. The Members intend by this Section to protect from disclosure all information and documents shared by any Members with each other and Burchell and other consultants or experts of individual members of the MG to the greatest extent permitted by law, regardless of whether the sharing occurred before execution of this Agreement and regardless of whether any writing or document is marked "Confidential."

(c) Sharing of Protected Materials between a Member and its governing body, zoning and/or planning boards, housing agency or other municipal board, agency or entity charged with zoning, planning or housing, pursuant to attorney-client privileged communications, shall not constitute a violation of the terms of this Agreement and by the acceptance of such Protected Material those recipients shall be bound by the terms of this Paragraph 9 to the extent applicable. Nothing in this Agreement shall preclude any Member from providing Shared Information with any independent expert or consultant that it has retained, who shall be bound by these same confidentiality terms.

(d) No Member shall provide any Shared Information, including but not limited to any communications with Burchell or any draft reports from Burchell with any counsel, planner, engineer or other professional consultant (collectively "Professional Consultants") to that Member if said Professional Consultant also represents any builder or developer who is currently engaged in exclusionary zoning litigation or is contemplating initiating exclusionary zoning litigation or the New Jersey Builder's Association or similar or related entities. To facilitate the implementation of this provision term, the expert or consultant with whom the designated attorney may consult shall be required to sign a statement or acknowledgment to that effect in the form attached hereto as Appendix B.

(e) The confidentiality obligations of the Members shall continue in full force and effect without regard to whether: (i) this Agreement is terminated, or (ii) any action arising out of the MG is terminated by final judgment or settlement; provided however, that the provisions of this Section shall not apply to information that is now, or hereafter becomes, public knowledge without violation of this Agreement, or which is sought and obtained from a Member pursuant to applicable discovery procedures and not otherwise protected from disclosure.

(f) The terms of this Section 9 shall survive the termination of this Agreement or the withdrawal of any Member.

10. Communications.

All communications shall be through designated counsel and no member may contact Burchell directly, but must communicate through their designated counsel to Surenian or Drill as the case may be pursuant to paragraph 3. Any communication to Surenian or Drill from anyone other than designated counsel shall not be considered.

11. Common Interest.

As the Members have a common interest in the development of a uniform approach to certain aspects of the Litigation by engaging Burchell, each Member agrees that if any Member withdraws from MG and this Agreement, or elects not to rely upon any report or testimony of Burchell , that Member agrees that it shall raise no objection at trial or in any other proceeding to the continued presentation by any other Member of any report or testimony of Burchell, on the basis of the relationship that has been created between such Member and Burchell or under the terms of this Agreement. The terms of this Section shall survive the termination of this Agreement or the withdrawal of any Member.

12. No Adoptive Admission:

No Member shall be bound by any findings or conclusions of any report by Burchell until such time as the Burchell or such other common expert's report has been approved by such Member and is formally adopted by the Member within the Litigation. The terms of this Section shall survive the termination of this Agreement or the withdrawal of any Member.

13. New Members.

Any municipality that wishes to become a Member subsequent to the effective date of this Agreement may do so only by (a) signing this agreement, (b) paying the initial $2,000 fee referenced in paragraph 2. a. and (c) paying *ab initio* any additional assessments which such Member would have been obligated to pay,.

14. Denial of Admissions .

This Agreement shall not constitute, nor be interpreted, construed or used as evidence of, (a) any admission of responsibility, obligation, law or fact, or the failure of any Member to have met its Housing Obligation (b) a waiver of any right, defense, theory or position, or (c) an estoppel against any Member by Members as among themselves or by any other person not a Member; provided, however, that this Agreement can be used to enforce its terms..

15. Conflict of Interest.

If the firm of the attorney representing the municipality also represents (i) the New Jersey Builder's Association; (ii) a developer seeking a builder's remedy or is presently contemplating bringing a builder's remedy action, the municipality may become part of this consortium subject to the following limitations. Said attorney shall not (i) be made privy to any of the information presented to Dr. Burchell; (ii) have the right to make submissions to Dr. Burchell; and (iii) be entitled to attend any meetings with Dr. Burchell or the MG. Nothing in this paragraph is intended nor shall be interpreted to waive the Rules of Professional Conduct and/or the Local Government Ethics Law (N.J.S.A. 40A:9-22.1 et seq.)

16. Effective Date.

This Agreement shall not be effective for any individual Member until that municipality (a) executes this agreement and furnishes the executed agreement to Surenian and (b) pays Surenian of the $2,000 payment referenced in paragraph 5 for deposit in the Attorney Trust Account of Surenian so that the bills of Rutgers may be paid.

17. Subsequent Agreement.

a. The Members may hereafter agree to engage in activities in addition to those set forth in Sections 1(b) through 1(f) hereof. Any such agreement, and any communications with respect thereto or in connection therewith, shall be protected under and pursuant to Section 9 hereof. Any such agreement shall be binding only upon the signatories thereto.

b. Since the Agreement between Rutgers and the MG has not yet been consummated, there is a possibility that changes to this agreement may be necessary. In such an event, Surenian shall notify designated counsel of how this agreement will change in which case, designated counsel will have ten business days to rescind membership of his or her client in which case the Member shall be entitled to a rebate.

18. Termination.

This Agreement shall terminate upon the execution of a writing signed by all Members which have not withdrawn from, been removed from, or otherwise ceased to participate in this Agreement.

19. Applicable Law.

This Agreement shall be interpreted under the laws of the State of New Jersey.

20. Severability.

If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

21. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original but collectively shall constitute but one and the same document provided that each Member receives a copy of signature page(s) signed by all other Members. Signatures sent electronically shall be deemed to be originals.

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature Page to
Municipal Shared Services Defense Agreement
[MUNICIPALITY], _____ County, New Jersey

ATTEST:

_____
, Township Clerk

[MUNICIPALITY]

By:_____

Date:_____

Appendix A
Signatory Parties

Appendix B

Agreement to Maintain Confidentiality: Attorney-Client/Attorney Work Product

The undersigned has been retained by [MUNICIPALITY] as a consultant and/or expert with regard to litigation pending in the Superior Court of _____ County, entitled_____. I acknowledge that certain information and documentation will be provided to me by counsel for [MUNICIPALITY] which shall be subject to the Attorney-Client privilege and/or the Attorney Work Product Doctrine, ("Protected Materials") and such other available privileges. I understand and agree that such Protected Materials shall be held in strict confidence by me and by all persons to who work with me in developing my opinions, reports and providing testimony in this matter and shall not be disclosed to any other person or party.

Signed _____

Date _____

ATTACHMENT 2

FEE SCHEDULE FOR POST FINAL REPORT SERVICES

Additional Employees

Mirabel Chen Hourly Rate $42 =$25(salary); $2 (fringe); $15 (overhead)

William Dolphin Rate $92 =$55(salary); $4(fringe); $33 (overhead)

Henry Mayer Hourly Rate $159= $73 (salary); $30 (fringe); $56 (overhead)

Carl Figueiredo Rate$116= $75 (salary); $ 0 (fringe); $41 (overhead)

This Order has been prepared by the Court

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF WASHINGTON	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-BERGEN COUNTY DOCKET NO. BER-L-6067-15 Civil Action **ORDER**

THIS MATTER having been opened to the court by the Township on notice to all interested parties as identified by the Supreme Court in its opinion In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), and the court having considered the arguments of counsel and having determined for the reasons set forth in the attached rider that the Township of Washington has demonstrated through prima facie documentation its good faith efforts to comply with its fair share obligation and for good cause

IT IS on this 7th day of August, 2015,

ORDERED that, for the reasons set forth in the attached Rider, the Township of Washington is granted temporary immunity from exclusionary zoning suits for a period of five (5) months commencing from the date of the filing of the complaint; and

IT IS FURTHER ORDERED as follows:

1. By separate order the court will appoint a special master whose responsibilities and duties will be identified in the court's order.
2. The Township of Washington is directed to diligently pursue completion and submission to this court of a (supplemental) housing element and affordable housing

Exh. E

plan satisfying the municipality's constitutional obligation to provide for low and moderate income housing in its zoning code.

3. A case management/status conference is scheduled for October 22, 2015 at 1:30pm; and

IT IS FURTHER ORDERED that copies of this order shall be served by the plaintiff on all interested parties.

MENELAOS W. TOSKOS, J.S.C.

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF WASHINGTON, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY

DOCKET No. BER-L-6067-15

RIDER TO ORDER DATED August 7, 2015

Law

The judiciary has resumed jurisdiction over a municipality's compliance with its constitutional obligation to create a realistic opportunity to produce a fair share of affordable housing. In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1, 6 (2015).[1] The Court outlined a procedure for those municipalities that had embraced the COAH process in good faith by participating in the Third Round process ("participating") or received Third Round substantive certification ("sub. cert."), but were hindered by the agency's inability to function. Id. at 5-6. Municipalities that did not participate ("nonparticipating towns" or "recalcitrant towns") are excluded from the process. Ibid.

First, a participating or sub. cert. municipality had thirty days to file a declaratory judgment action. Ibid.[2] Second, the municipality could bring a motion for temporary immunity, preventing exclusionary zoning actions. Mt. Laurel IV, supra, 221 N.J. at 27–28 (citing N.J.S.A. 52:27D-316). The immunity could last up to five months, "provided that they prepared and filed a housing element and fair share plan within [the] five month[] [period]." Ibid.

[1] Hereinafter referred to as Mt. Laurel IV.

[2] "If a town elects to wait until its affordable housing plan is challenged for constitutional compliance, immunity requests covering any period of time during the court's review shall be assessed on an individualized basis." Mt. Laurel IV, supra, 221 N.J. at 28.

A participating or sub. cert. municipality that devised a housing element and took action towards implementing the plan, such as adopting ordinances, receives a more favorable review of its request for immunity than "a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance." Id. at 27–28.

The Supreme Court recognized "that not all towns that had only 'participating' status may have well-developed plans to submit to the court initially. A town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed." Id. at 27. To determine whether to grant a participating town temporary immunity

> while responding to a constitutional compliance action, the court's individualized assessment should evaluate the extent of the obligation and the steps, if any, taken toward compliance with that obligation. In connection with that, the factors that may be relevant, in addition to assessing current conditions within the community, include whether a housing element has been adopted, any activity that has occurred in the town affecting need, and progress in satisfying past obligations.
>
> [Mt. Laurel IV, supra, 221 N.J. at 28.]

Thus, prima facie documentation of a participating municipality's good faith efforts to comply with its fair share obligation, which will entitle it to temporary immunity, include adoption of a housing element, adoption of relevant ordinances, evidence of activity that has occurred affecting need, and the municipality's progress satisfying past and projected need. See ibid.

Immunity, though, "should not continue for an undefined period of time; rather, the trial court's orders in furtherance of establishing municipal affordable housing obligations

and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance." Mt. Laurel IV, supra, 221 N.J. at 28. Once granted, the court has discretion to remove the immunity "if a particular town abuses the process for obtaining a judicial declaration of constitutional compliance. Review of immunity orders therefore should occur with periodic regularity and on notice." Id. at 26. It is "[o]nly after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed." Id. at 29.

Facts

On or about March 23, 1999, the Township of Washington (the "Township") was the defendant in a Mount Laurel action (the "Viviano Action"). Plaintiff builder, Viviano, sought a builder's remedy. On July 26, 2001, the parties entered into a settlement agreement, conditioned on passing a fairness hearing to be conducted by the Honorable Jonathan N. Harris, J.S.C., who had overseen the entire action. After holding a fairness hearing, Judge Harris approved the settlement on November 15, 2001 and entered a judgment of repose.

The settlement agreement called for a twenty-four unit obligation. The Township received a thirteen- unit credit on account of community residences for the developmentally disabled under N.J.S.A. 40:55D-66.2. The Township also purchased eleven units pursuant to a regional contribution agreement with the City of Bayonne (the "RCA"). The Township has complied with the settlement and order approving the settlement by adopting amendments to its master plan, particularly its land use and housing elements, entering into the RCA and paying all funds due to Bayonne.

The Township has attempted to provide affordable housing opportunities. Recently, it commenced an eminent domain action to acquire suitable property. The Township is in negotiations with Habitat for Humanity with respect to the acquired property.

On June 29, 2015, the Township filed its complaint in the underlying declaratory judgment action, as well as this motion for temporary immunity.

Analysis

Based upon a preliminary review of the Township's submissions, as detailed above, the Court is satisfied that the Township of Washington has made a good faith attempt to satisfy its affordable housing oblations. The Township has complied with the settlement by adopting amendments to its master plan, particularly its land use and housing elements, entering into the RCA and paying all funds due to Bayonne. Therefore, the Township's motion for temporary immunity from exclusionary zoning actions is granted, on the condition that it prepares and files its housing element and fair share plan within five (5) months the date of the filing of the complaint.

FILED

AUG 07 2015

PREPARED BY THE COURT

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER GRANTING MOTION FOR TEMPORARY IMMUNITY

Attorney for Plaintiff:
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Attorney for Fair Share Housing Center
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Attorney for The Howard Hughes Corporation:
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Attorney for West Windsor Duck Pond Associates, LLC:
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Princeton, NJ 08543

Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

THIS MATTER having been opened to the court by way of a motion for temporary immunity, filed by plaintiff; and West Windsor Duck Pond Associates, LLC having filed an opposition to the motion for temporary immunity; and the court having reviewed the briefs of the

Exh. F

parties; and the court having heard oral argument on the motion on August 7, 2015; and for the reasons set forth on the record, and for good cause shown:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. The Township of West Windsor's motion for temporary immunity is GRANTED. The Township of West Windsor is immune from builder's remedy lawsuits for five months starting retroactively on July 7, 2015. No such builder's remedy lawsuits shall be filed against the Township of West Windsor during this period of temporary immunity.
2. Counsel for the Township shall provide all parties on the service list with a copy of this order within 7 days of receipt of this order.

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

MARY C. JACOBSON, A.J.S.C.

FILED

AUG 07 2015

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

PREPARED BY THE COURT

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER GRANTING THE HOWARD HUGHES CORPORATION'S CROSS-MOTION TO INTERVENE

Attorney for Plaintiff:
Miller Porter & Muller, P.C.
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Attorney for Fair Share Housing Center
Kevin D. Walsh, Esq.
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Attorney for The Howard Hughes Corporation:
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Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
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THIS MATTER having been opened to the court by way of a cross-motion to intervene in this case, filed by the Howard Hughes Corporation; and the Township of West Windsor having

filed an opposition to this motion to intervene; and the court having reviewed the briefs of the parties; and the court having heard oral argument on the motion on August 7, 2015; and, at oral argument, counsel for the Township having rescinded its opposition to the motion to intervene; and Mount Laurel IV having encouraged trial judges presiding over affordable housing cases to liberally appoint masters to assist them in deciding the various issues that arise in such cases; and the court being satisfied that Elizabeth McKenzie is well qualified to serve in this capacity; and for the reasons set forth on the record, and for good cause shown:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. The Howard Hughes Corporation's cross-motion for intervention is GRANTED. This intervention is limited to the issue of whether the Township of West Windsor is in compliance with its affordable housing obligation. The Howard Hughes Corporation shall file an answer within 10 days of the date of this order and provide a copy of this order to the clerk.
2. The court hereby appoints Elizabeth McKenzie to serve as a special master in this case. The special master shall be compensated at a rate of $250 per hour.
3. All fees for the special master's services shall be allocated between the Township, Avalon Watch, West Windsor Duck Pond Associates, LLC, the Howard Hughes Corporation, and any future intervener. Fair Share Housing Center will not be directed to pay the special master's fees.
4. Counsel for the Township shall provide all parties on the service list with a copy of this order within 7 days of receipt of this order.

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

MARY C. JACOBSON, A.J.S.C.

FILED

AUG 07 2015

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

PREPARED BY THE COURT

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER GRANTING AVALON WATCH'S CROSS-MOTION TO INTERVENE

Attorney for Plaintiff:
Miller Porter & Muller, P.C.
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Attorney for Fair Share Housing Center
Kevin D. Walsh, Esq.
510 Park Blvd.
Cherry Hill, NJ 08002

Attorney for The Howard Hughes Corporation:
Brian R. Zurich, Esq.
Jonathan M. Preziosi, Esq.
PEPPER HAMILTON LLP
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Attorney for West Windsor Duck Pond Associates, LLC:
Thomas F. Carroll, III, Esq.
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Princeton, NJ 08543

Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

THIS MATTER having been opened to the court by way of a cross-motion to intervene in this case, filed by Avalon Watch; and the Township of West Windsor having filed an opposition

to this motion to intervene; and the court having reviewed the briefs of the parties; and the court having heard oral argument on the motion on August 7, 2015; and, at oral argument, counsel for the Township having rescinded its opposition to the motion to intervene; and Mount Laurel IV having encouraged trial judges presiding over affordable housing cases to liberally appoint masters to assist them in deciding the various issues that arise in such cases; and the court being satisfied that Elizabeth McKenzie is well qualified to serve in this capacity; and for the reasons set forth on the record, and for good cause shown:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. Avalon Watch's cross-motion for intervention is GRANTED. This intervention is limited to the issue of whether the Township of West Windsor is in compliance with its affordable housing obligation. Avalon Watch shall file an answer within 10 days of the date of this order and provide a copy of this order to the clerk.
2. The court hereby appoints Elizabeth McKenzie to serve as a special master in this case. The special master shall be compensated at a rate of $250 per hour.
3. All fees for the special master's services shall be allocated between the Township, Avalon Watch, West Windsor Duck Pond Associates, LLC, the Howard Hughes Corporation, and any future intervener. Fair Share Housing Center will not be directed to pay the special master's fees.
4. Counsel for the Township shall provide all parties on the service list with a copy of this order within 7 days of receipt of this order.

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

MARY C. JACOBSON, A.J.S.C.

FILED

AUG 07 2015

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

PREPARED BY THE COURT

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER GRANTING WEST WINDSOR DUCK POND ASSOCIATES, LLC'S CROSS-MOTION TO INTERVENE

Attorney for Plaintiff:
Miller Porter & Muller, P.C.
Gerald J. Muller, Esq.
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Attorney for Fair Share Housing Center
Kevin D. Walsh, Esq.
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Attorney for The Howard Hughes Corporation:
Brian R. Zurich, Esq.
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Princeton, NJ 08543

Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

THIS MATTER having been opened to the court by way of a cross-motion to intervene in this case, filed by West Windsor Duck Pond Associates, LLC; and the Township of West

Windsor having filed an opposition to this motion to intervene; and the court having reviewed the briefs of the parties; and the court having heard oral argument on the motion on August 7, 2015; and, at oral argument, counsel for the Township having rescinded its opposition to the motion to intervene; and Mount Laurel IV having encouraged trial judges presiding over affordable housing cases to liberally appoint masters to assist them in deciding the various issues that arise in such cases; and the court being satisfied that Elizabeth McKenzie is well qualified to serve in this capacity; and for the reasons set forth on the record, and for good cause shown:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. West Windsor Duck Pond Associates, LLC's cross-motion for intervention is GRANTED. This intervention is limited to the issue of whether the Township of West Windsor is in compliance with its affordable housing obligation. West Windsor Duck Pond Associates, LLC shall file an answer within 10 days of the date of this order and provide a copy of this order to the clerk.
2. The court hereby appoints Elizabeth McKenzie to serve as a special master in this case. The special master shall be compensated at a rate of $250 per hour.
3. All fees for the special master's services shall be allocated between the Township, Avalon Watch, West Windsor Duck Pond Associates, LLC, the Howard Hughes Corporation, and any future intervener. Fair Share Housing Center will not be directed to pay the special master's fees.
4. Counsel for the Township shall provide all parties on the service list with a copy of this order within 7 days of receipt of this order.

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

MARY C. JACOBSON, A.J.S.C.

PREPARED BY THE COURT

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER DENYING WEST WINDSOR DUCK POND ASSOCIATES, LLC'S CROSS-MOTION TO ESTABLISH FAIR SHARE DETERMINATION PROCEDURES AND COMPLIANCE STANDARDS

Attorney for Plaintiff:
Miller Porter & Muller, P.C.
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Attorney for Fair Share Housing Center
Kevin D. Walsh, Esq.
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Attorney for The Howard Hughes Corporation:
Brian R. Zurich, Esq.
Jonathan M. Preziosi, Esq.
PEPPER HAMILTON LLP
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Attorney for West Windsor Duck Pond Associates, LLC:
Thomas F. Carroll, III, Esq.
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Princeton, NJ 08543

Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

THIS MATTER having been opened to the court by way of a cross-motion to establish fair share determination procedures and compliance standards in this case, filed by West Windsor Duck Pond Associates, LLC; and the Township of West Windsor having filed an opposition to this motion to intervene; and the court having reviewed the briefs of the parties; and the court having heard oral argument on the motion on August 7, 2015; and for the reasons set forth on the record:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. West Windsor Duck Pond Associates, LLC's motion to establish fair share determination procedures and compliance standards is DENIED without prejudice.

Mary C. Jacobson, A.J.S.C.
MARY C. JACOBSON, A.J.S.C.

PREPARED BY THE COURT

IN THE MATTER OF WEST WINDSOR TOWNSHIP,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MERCER COUNTY

DOCKET NO. MER-L-1561-15

CIVIL ACTION

ORDER GRANTING FAIR SHARE HOUSING CENTER'S CROSS-MOTION TO INTERVENE

Attorney for Plaintiff:
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Attorney for Fair Share Housing Center
Kevin D. Walsh, Esq.
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Cherry Hill, NJ 08002

Attorney for The Howard Hughes Corporation:
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Jonathan M. Preziosi, Esq.
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Princeton, NJ 08543

Attorney for West Windsor Duck Pond Associates, LLC:
Thomas F. Carroll, III, Esq.
HILL WALLACK LLP
21 Roszel Road
P.O. Box 5226
Princeton, NJ 08543

Attorney for Avalon Watch:
Robert A. Kasuba, Esq.
BISGAIER HOFF, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

THIS MATTER having been opened to the court by way of a cross-motion to intervene in this case, filed by Fair Share Housing Center; and the Township of West Windsor having filed

an opposition to this motion to intervene; and the court having reviewed the briefs of the parties; and the court having heard oral argument on the motion on August 7, 2015; and, at oral argument, counsel for the Township having rescinded its opposition to the motion to intervene; and Mount Laurel IV having encouraged trial judges presiding over affordable housing cases to liberally appoint masters to assist them in deciding the various issues that arise in such cases; and the court being satisfied that Elizabeth McKenzie is well qualified to serve in this capacity; and for the reasons set forth on the record, and for good cause shown:

IT IS on this 7th day of August, 2015, **ORDERED** that:

1. Fair Share Housing Center's cross-motion for intervention is GRANTED. This intervention is limited to the issue of whether the Township of West Windsor is in compliance with its affordable housing obligation. Fair Share Housing Center shall file an answer and counterclaims within 10 days of the date of this order and provide a copy of this order to the clerk.
2. The court hereby appoints Elizabeth McKenzie to serve as a special master in this case. The special master shall be compensated at a rate of $250 per hour.
3. All fees for the special master's services shall be allocated between the Township, Avalon Watch, West Windsor Duck Pond Associates, LLC, the Howard Hughes Corporation, and any future intervener. Fair Share Housing Center will not be directed to pay the special master's fees.
4. Counsel for the Township shall provide all parties on the service list with a copy of this order within 7 days of receipt of this order.

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

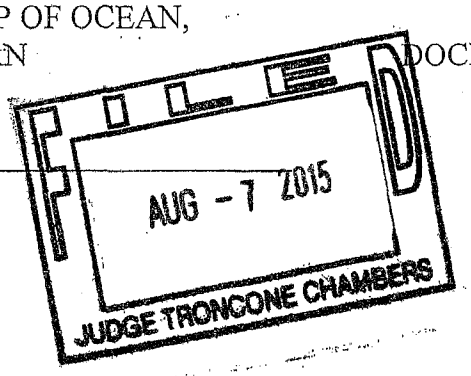
MARY C. JACOBSON, A.J.S.C.

Prepared by the Court:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF OCEAN,
COUNTY OF OCEAN

DOCKET NO.: OCN-L-1884-15



Civil Action

ORDER

THIS MATTER having been opened to the court by Gluck Walrath LLP, Andrew Bayer, Esquire, appearing on behalf of declaratory plaintiff, Township of Ocean (hereinafter "Township"); pursuant to the procedures established by The New Jersey Supreme Court in In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), (Mount Laurel IV) wherein the Township seeks a protective order from this court by the grant of temporary immunity from the filing and serving of any Mount Laurel lawsuits against it while the court determines the merits of the declaratory action regarding the sufficiency of the Township's affordable housing plan and whereas, following the provision by the Township of notice to all interested parties set forth in the Supreme Court's notice list in "Mount Laurel IV", two (2) interested parties, Fair Share Housing Center ("FSHC") and New Jersey Builders Association ("NJBA") petitioned the court seeking to intervene in this matter, in part, to oppose the Township's request for a protective order; whereas the court having reviewed the motions filed by the parties together with the supporting legal memoranda and related papers and having heard the arguments of counsel; and good cause appearing,

IT IS on this 7th day of August, 2015, **ORDERED** as follows:

Exh. G

1. The court hereby enters a protective order granting the Township of Ocean, the governing body of the Township of Ocean, and any of its agencies, boards, commissions, etc. immunity from the filing and serving of any Mount Laurel lawsuits.

2. The immunity granted to the Township of Ocean from Mount Laurel suits set forth in paragraph 1 above, shall remain in effect for five (5) months from the termination of the period of repose established by the Supreme Court in its March 8, 2015 decision, i.e. July 8, 2015 and shall expire on December 8, 2015. This period of immunity may be extended by the court for good cause.

5. The court hereby appoints John D. Maczuga, PP/AICP to serve as the Master in this case. The Master and his staff will charge an hourly rate in accordance with rate schedule annexed hereto as Schedule "A".

6. The Master shall provide guidance to the Township and mediation as necessary and shall review the Township's Housing Element and Fair Share Plan; identify any concerns the Master may have and give the Township an opportunity to address same.

7. The Master shall further determine whether the Housing Element and Fair Share Plan in its present form or any amended form creates a realistic opportunity for the Township's fair share of low and moderate housing.

8. The Master shall submit monthly invoices to the Township for payment. If the Township contests any charges it shall notify the Master and attempt to resolve

the disagreement; failing to do so either the Township or the Master may bring the dispute to the court for resolution.

9. The court is hereby setting a date of September 16, 2015, at 9:00 am for a case management conference. All parties, their experts and the appointed Master shall appear at that time.

MARK A. TRONCONE, J.S.C.

2015 HOURLY RATE SCHEDULE

Principal	$225.00
Senior Professional	$190.00
Junior Professional	$150.00

Direct Expenses (prints, reproduction, mapping and other graphics) to be provide at cost plus 10%.