



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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JOHN J. HOFFMAN
Acting Attorney General

MICHELLE L. MILLER
Acting Director

October 14, 2015

Joseph H. Orlando, Clerk
Superior Court of New Jersey
Appellate Division, P.O. Box 006
Trenton, New Jersey 08625-0006

Re: In The Matter of the Application of the Township
of Manalapan, County of Monmouth - Docket No.

Dear Mr. Orlando:

Enclosed herewith for filing, please find an original
and five copies of each of the following:

- (a) Notice of Motion for Leave to Appeal and for
Extension to File Supporting Brief;
- (b) Certification of Deputy Attorney General
Geraldine Callahan; and
- (c) Certification of Service.

Kindly return a filed copy of the enclosed documents
in the envelope provided. Thank you for your courtesy and
consideration in this matter.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____

Geraldine Callahan
Geraldine Callahan
Deputy Attorney General



cc: Hon. Jamie S. Perri, J.S.C. (Via overnight mail)
Andrew Bayer, Esq. (Via e-mail and overnight mail)
Richard Hoff, Esq. (Via e-mail and overnight mail)
Supreme Court Service List (Via e-mail and regular mail)
Service list prepared by Manalapan (Via regular mail)

JOHN J. HOFFMAN
Acting Attorney General of New Jersey
Attorney for Movant
Department of Community Affairs
Richard J. Hughes Justice Complex
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Trenton, New Jersey 08625

By: Geraldine Callahan
Deputy Attorney General
(609 777-3733
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Attorney ID 030071983

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.

CIVIL ACTION

NOTICE OF MOTION FOR LEAVE TO
APPEAL AND FOR EXTENSION TO FILE
SUPPORTING BRIEF

TO: Joseph Orlando, Clerk
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Richard J. Hughes Justice
Complex
Trenton, New Jersey 08625

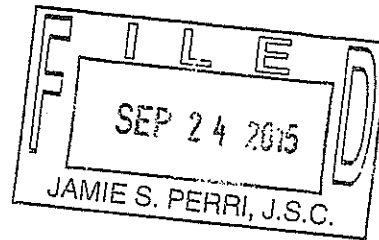
Hon. Jamie S. Perri, J.S.C.
Monmouth County Superior Court
71 Monument Park
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Freehold, NJ 07728-1266

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Richard Hoff, Esq.
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25 Chestnut Street
Suite 3
Haddonfield, NJ 08033-1875

NOTICE IS GIVEN that Movant, Department of Community
Affairs, by John J. Hoffman, Acting Attorney General, by Geraldine

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
R.F. Hughes Justice Complex
P.O. Box 116
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Attorney for Defendant-Intervenor,
New Jersey Department of Community Affairs



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Attorney ID 030071983

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY

Docket No. MON-L-2518-15

CIVIL ACTION
(Mount Laurel)

ORDER

This matter having been opened to the Court by, John J. Hoffman, Acting Attorney General of New Jersey, by Geraldine Callahan, Deputy Attorney General, appearing, attorney for movant New Jersey Department of Community Affairs, and the Court having considered the papers submitted in support herein; and for good cause shown;

IT IS on this _____ day of _____, 2015;

ORDERED that movant Department of Community Affairs be hereby granted leave to intervene in the above captioned matter and
~~DENIED WITH PREJUDICE~~

RIDER TO ORDER DATED 9/24/15

In the Matter of the Application of the Township of Manalapan, Monmouth County
Docket No. MON-L-2518-15

The court makes the following findings of fact and conclusions of law regarding the motion(s) identified in the attached Order(s):

On June 8, 2015, the Township of Manalapan ("the Township") filed a Verified Complaint for Declaratory Judgment and Order to Show Cause seeking injunctive relief pursuant to 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), (hereafter "Mount Laurel IV"). On September 4, 2015, this court granted the Township's motion for temporary immunity from constitutional compliance claims and builder's remedy litigation pending final determination of the Township's constitutional affordable housing obligation and compliance therewith under the Fair Housing Act of 1985 ("FHA"), N.J.S.A. 52:27D-301, et seq. The New Jersey Department of Community Affairs ("DCA") moves to intervene to enforce its rights pursuant to N.J.S.A. 52:27D-329.2 and -329.3 to compel the transfer of lapsed funds from the Township's affordable housing trust fund to the New Jersey Affordable Housing Trust Fund, administered by the DCA. The Township opposes the DCA's motion. Because the court decided an identical motion on behalf of the DCA after oral argument in In re Marlboro, Docket No. MON-L-2121-15, the court finds that further argument will not assist the court in reaching its decision.

With its March 10, 2015, decision in Mount Laurel IV, the Supreme Court acknowledged that the delay in pursuing affordable housing due to COAH's inaction could no longer be tolerated. Id. at 16. The Court dissolved the FHA's exhaustion-of-administrative-remedies provision pending further order of the court and directed the trial courts to resume their position as the forum of first resort for the determination of municipal compliance with the obligation to afford the "opportunity for producing a fair share of regional present and prospective need for housing low-and moderate-income families." Id. at 3-4. The Court's mandate to the trial courts in this regard is clear:

Our goal is to establish an avenue by which towns can demonstrate their constitutional compliance to the courts through submission of a housing plan and use of processes, where appropriate, that are similar to those which would have been available through COAH for the achievement of substantive certification. Those processes include conciliation, mediation, and the use, when necessary, of special masters. The end result of the processes employed by the courts is to achieve adoption of a municipal housing element and implementing ordinances deemed to be presumptively valid if thereafter subjected to challenge by Third parties. Our approach in this transition is to have courts provide a substitute for the substantive certification process that COAH would have provided for towns that had sought its protective jurisdiction. And as part of the court's review, we also authorize, as more fully set forth hereinafter, 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. Id. at 23-24.



SEP 25 2015

The DCA seeks to intervene in this action in order to require a full accounting of the Township's affordable housing trust fund and transfer lapsed funds to the New Jersey Affordable Housing Trust Fund. The DCA alleges that the Township has stockpiled millions of dollars in trust fund monies without using them or committing to use within four years of collection as required under the FHA. In support of its motion, the DCA makes the same arguments that it raised in an identical motion to intervene in In the Matter of the Application of the Township of Marlboro, County of Monmouth, Docket No. MON-L-2121-15. Specifically, the DCA argues that no other party to this litigation is representing the state's interest in ensuring the proper commitment of affordable housing trust fund monies. The DCA argues that it is the appropriate state agency to further this interest and therefore meets the standards for intervention under the Declaratory Judgment Act, N.J.S.A. 2A:16-56, R. 4:33-1 for intervention as a matter of right, and R. 4:33-2 for permissive intervention.

In opposition, the Township argues that the remedy which the DCA seeks does not involve the underlying declaratory judgment action, which is intended to address the sole issue of the constitutionality of the Township's Housing Element and Fair Share Plan under the narrow scope established in Mount Laurel IV. Accordingly, trust fund monies are not at issue at this juncture and the DCA therefore has no interest in this action. The Township further argues that the DCA's attempt to intervene would be futile since equity would prevent the seizure of the Township's trust funds when it was in fact prohibited from spending the money during the time period in question. The seizure of municipal trust funds has already been enjoined by the Appellate Division and is contrary to the legislative intent of N.J.S.A. 52:27D-329.2(d), which envisioned that municipalities would have a fair opportunity to expend the trust fund monies on their own. Finally, Manalapan has wholly committed its trust fund monies under a spending plan submitted to COAH and therefore cannot surrender them under N.J.S.A. 52:27D-329.2(d).

The DCA raises the precise issues that were previously rejected by the court in In Re Marlboro. In Mount Laurel IV, the Court indicated its intention that litigation during its abbreviated time frame address issues of constitutional compliance only. The court finds that whether the DCA is entitled to seize trust fund monies does not fall within this limited mandate. The import of Mount Laurel IV was that the towns must move expeditiously to prepare and submit an affordable housing plan. While funding may clearly be an issue in the ultimate ability of the town to execute its plan, the court finds that the DCA's motion does not meet the confines of the criteria set forth by the Supreme Court for this litigation. The court does, however, disagree with the Township's interpretation of In re Failure of the Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220, 225 (App. Div. 2015), that the DCA and other executive agencies are permanently enjoined from seeking to enforce the statute. In In re Failure of COAH, the court stated that the injunction against automatic seizure does not prohibit "an appropriate body of the State from applying to the courts for forfeiture of trust funds with regard to municipalities which have, under any rational interpretation of the relevant statutory terms, failed to commit funds." Id. at 225 n. 10. The court finds, however, that the within litigation is not the proper forum for addressing this issue. The motion to intervene on behalf of the DCA is therefore denied without prejudice.

JAMIE S. PFERI, J.S.C.

JOHN J. HOFFMAN
Acting Attorney General of New Jersey
Attorney for Movant
Department of Community Affairs
Richard J. Hughes Justice Complex
PO Box 112
Trenton, New Jersey 08625

By: Geraldine Callahan
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(609 777-3733
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Attorney ID 030071983

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.

CIVIL ACTION

CERTIFICATION OF
DEPUTY ATTORNEY GENERAL
GERALDINE CALLAHAN

1. I am the Deputy Attorney General assigned to represent the Department of Community Affairs (DCA) in the above captioned matter and, as such, I am fully familiar with the facts of this matter.

2. DCA is seeking leave to appeal from the trial court's September 24, 2015, 2015 Order denying DCA's Motion to Intervene and File Answer and Counterclaim in the pending declaratory judgment action, In the Matter of the Application of

the Township of Manalapan, County of Monmouth, Docket No. MON-L-2518-15. (Order Attached).

3. In reaching its decision, the trial court addressed novel statutory interpretation issues concerning provisions of the Fair Housing Act, specifically N.J.S.A. 52:27D-329.2 and -329.3. In addressing the novel issues presented, the trial court discussed In re Council on Afford. Housing, 440 N.J. Super. 221 (App. Div. 2015). The trial court's Order raises important issues concerning DCA's ability to intervene in a pending declaratory judgment action and, therefore, DCA seeks leave to appeal.

4. Accordingly, in order to adequately address the significant issues raised in this matter, I am requesting a fifteen day extension of time in which to file the brief in support of DCA's motion for leave to appeal. No party will be prejudiced by this extension as the trial court is proceeding with matters pertaining to Closter's satisfaction of its fair share need is proceeding.

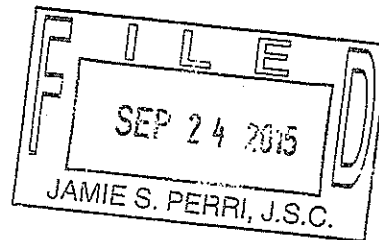
I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I understand that if any of my statements are willfully false, I am subject to punishment.



Geraldine Callahan

Dated: October 14, 2015

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
R. F. Hughes Justice Complex
P.O. Box 116
Trenton, New Jersey 08625
Attorney for Defendant-Intervenor,
New Jersey Department of Community Affairs



By: Geraldine Callahan
Deputy Attorney General
(609) 777-3733
Geraldine.Callahan@dol.lps.state.nj.us
Attorney ID 030071983

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY

Docket No. MON-L-2518-15

CIVIL ACTION
(Mount Laurel)

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IT IS on this _____ day of _____, 2015;

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DEDENED WITH PREJUDICE

RIDER TO ORDER DATED 9/24/15

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2015 SEP 24 10:58 AM



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JAMIE S. PERRI, J.S.C.

JOHN J. HOFFMAN
Acting Attorney General of New Jersey
Attorney for Movant
Department of Community Affairs
Richard J. Hughes Justice Complex
PO Box 112
Trenton, New Jersey 08625

By: Geraldine Callahan
Deputy Attorney General
(609 777-3733
geraldine.callahan@dol.lps.state.nj.us
Attorney ID 030071983

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.

CIVIL ACTION

CERTIFICATION OF SERVICE

SUSAN LEE, of full age, hereby certifies that:

1. I am a Legal Secretary with the Division of Law, Department of Law and Public Safety, State of New Jersey.
2. On October 14, 2015 at the direction of Geraldine Callahan, Deputy Attorney General, I filed with the Superior Court of New Jersey, Appellate Division, an original and five copies of the Notice of Motion for Leave to Appeal and for Extension to File Supporting Brief, Certification of Deputy Attorney General Geraldine Callahan and a Certification of Service. I also served

two copies of the foregoing documents by UPS overnight mail to:

Hon. Jamie S. Perri, J.S.C.
Monmouth County Superior Court
71 Monument Park
P.O. Box 1266
Freehold, NJ 07728-1266

Richard Hoff, Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033-1875

3. On October 14, 2015 at the direction of Geraldine Callahan, Deputy Attorney General I served two copies of the foregoing documents by hand delivery to:

Andrew Bayer, Esq.
Gluck Walrath, LLP
428 River View Plaza
2nd Floor
Trenton, NJ 08611-3420

4. On October 14, 2015, at the direction of Geraldine Callahan, Deputy Attorney General, I served two copies of the foregoing documents to the Service List prepared by the Township of Manalapan, by regular mail and to the Supreme Court Service List by regular mail and e-mail. (See attached).

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



Susan Lee

Dated: October 8, 2015

Manalapan Township's Declaratory Judgment Service List

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Diane Papa
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Attorneys for Marlboro Affordable