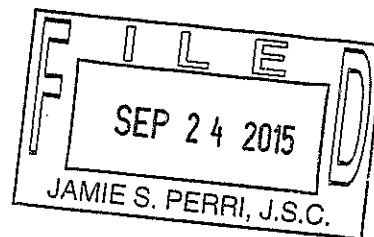


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IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF MANALAPAN,
COUNTY OF MONMOUTH

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY

Docket No. MON-L-2518-15

CIVIL ACTION
(Mount Laurel)

ORDER

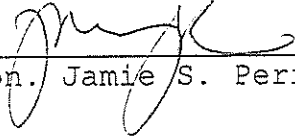
This matter having been opened to the Court by, John J. Hoffman, Acting Attorney General of New Jersey, by Geraldine Callahan, Deputy Attorney General, appearing, attorney for movant New Jersey Department of Community Affairs, and the Court having considered the papers submitted in support herein; and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

IT IS on this 24th day of September, 2015;

ORDERED that movant Department of Community Affairs is hereby granted leave to intervene in the above captioned matter and

DENIED WITHOUT PREJUDICE

file an Answer and Counterclaim in the form submitted with this motion.



Hon. Jamie S. Perri, J.S.C.

In accordance with the required statement to R. 1:6-2(a), this motion was opposed unopposed.

A copy of this Order shall be served upon all parties within 7 days.

NO ORAL ARGUMENT

SEE ATTACHED RIDER

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 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.

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. PERRI, J.S.C.