

LAW OFFICE OF ABE RAPPAPORT

195 ROUTE 46 WEST, SUITE 6

TOTOWA, NEW JERSEY 07512

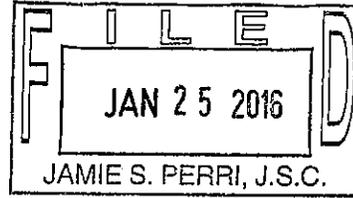
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ATTORNEY ID# 017141982

ATTORNEYS FOR INTERVENOR-DEFENDANT

MANALAPAN 37 LLC



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY
DOCKET NO.: MON-L-2518-15

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

Plaintiff/Petitioner

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:
:

Civil Action

(Mount Laurel Action)

**ORDER GRANTING MOTION TO
DENY MANALAPAN TOWNSHIP
REQUEST FOR EXTENDED
IMMUNITY**

THIS MATTER HAVING BEEN opened to the Court by way of motion of Abe Rappaport, Attorney at Law, attorneys for proposed intervenor-defendant and/or interested party Manalapan 37 LLC (Jeffrey Kantowitz, Esq., appearing), on notice to the parties/entities listed on the notice of motion and attached Service List, for an order granting the motion of Manalapan 37 LLC to deny the request of Manalapan Township to extend its immunity from exclusionary zoning litigation in this matter, and

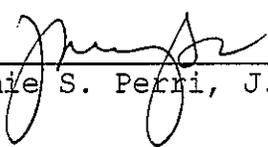
the Court having reviewed papers submitted in connection with this motion, having heard the arguments of counsel, and for the reasons set forth by the Court on the record *on in the attached order dated January 25,* 2016, and for good cause shown,

IT IS ON THIS 25th day of January, 2016 ORDERED as follows:

1. The application of Manalapan 37 LLC to deny Manalapan Township's request to extend immunity from exclusionary zoning litigation is granted. **DENIED**

2. The protections of immunity granted by this Court's earlier orders are terminated. **DENIED**

3. A copy of this Order shall be served on all counsel/interested parties in this action within 7 days of the entry of this Order.



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

Opposed
 Unopposed

oral argument conducted on 1/22/16

SEE ATTACHED RIDER

RIDER TO ORDER DATED 4/25/16
I/M/O the Application of the Township of Manalapan
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:

On July 7, 2015, the Township of Manalapan (“the Township”) filed a Complaint for Declaratory Judgment 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”), seeking temporary immunity from constitutional compliance claims and builder’s remedy litigation pending final determination of the Township’s affordable housing obligation and compliance therewith under the Fair Housing Act of 1985 (“FHA”), N.J.S.A. 52:27D-301, et seq. Temporary immunity was granted by Order dated August 19, 2015. By Order dated October 7, 2015, the municipalities were to submit preliminary housing plan summaries by October 31, 2015. The time for submission was further extended to December 14, 2015, pursuant to the court’s Omnibus Order #4, dated December 2, 2015. The Order, which set forth the procedure by which municipalities could obtain continuing immunity pending the court’s determination of the state, regional and municipal fair share obligations, provided in pertinent part:

3. Immunity previously granted to any municipality is hereby extended pending submission of the updated housing plan summaries. Submission of the plan summary shall constitute an application by the submitting municipality for continued immunity. Such immunity shall be automatically extended through the provision of notice to the parties, which shall occur on or before December 14, 2015, and shall continue through the court’s determination as to whether immunity shall be further extended. Notice of such application shall be provided to the court, Special Masters, interveners, and interested parties, with an accompanying letter and other materials stating why the extension of immunity is appropriate. The notice shall state that the court may grant immunity on the papers without any further procedure unless a party or interested party files a motion within fifteen (15) days of the notice seeking to deny the municipality immunity or a Special Master suggests and the court finds that the municipality should show cause as to why immunity should be continued.

4. Each Special Master shall provide the court and the parties with a brief review of the December 14, 2015, submissions for his/her assigned municipalities on or before December 31, 2015. In the event an intervener or interested party objects to a municipality’s continued immunity, such objection shall be made by motion. The municipality shall bear the burden of demonstrating its entitlement to continuing immunity. Applications for immunity may be for the period through and including forty-five (45) days after the decision is issued by the court following the trial scheduled in this Order, but in no event shall immunity be extended beyond June 8, 2016, without a further application by the municipality on motion with an opportunity for parties and interested parties to be heard.

The Township submitted its initial plan summary to Special Master Francis J. Banisch, III, PP/AICP, and submitted its revised plan summary on December 14, 2015, and on December 31, 2015, Special Master Banisch issued his preliminary report to the court. The Special Master found that, based upon the Township's submission, it could meet or exceed its affordable housing obligations.¹

On December 30, 2015, interveners Manalapan 37, LLC and Manalapan 7, LLC, filed motions to deny a further extension of immunity to the Township. Intervenors Village at Manalapan Properties, LLC; Highview Homes, LLC, Countryside Developers, Inc., and K. Hovnanian Shore Acquisitions support the motions. The Township opposes the motions. The court heard oral argument on the motions on January 22, 2016, and now sets forth its decision.

In Mount Laurel IV, the Supreme Court 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." Mount Laurel IV, supra, 221 N.J. at 3-4. The Court authorized trial courts "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.

In assessing whether a municipality should be granted temporary immunity, the Court in Mount Laurel IV identified two categories or classes of towns, those that had been granted substantive certification by COAH and those that "were designated simply as 'participating' in the COAH process." Id. at 21. With regard to towns that had obtained substantive certification, the Court held that "courts should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during that necessary review process, unless such process is unreasonably protracted." Id. For such municipalities, the Supreme Court found that "courts should be generously inclined to grant applications for immunity from subsequently filed exclusionary zoning actions during that necessary review process, unless such process is unreasonably protracted." Id. at 26. Such immunity must be reviewed with "periodic regularity" and, "once granted, should be withdrawn if a particular town abuses the process for obtaining a judicial declaration of constitutional compliance." Id. The Township received substantive certification from COAH on July 15, 2010, prior the invalidation of the growth share methodology of the Third Round Rules.

This generous approach notwithstanding, the interveners argue that the Township has failed to carry its burden to demonstrate good faith efforts to address its affordable housing obligation. First, defendants take issue with what they consider to be insufficient information regarding the Township's 100% affordable housing projects, including the Lewis Street and Millhurst Road projects. In his report to the court dated December 31, 2015, Special Master Banisch notes that while the Township must confirm the likelihood of obtaining funding for these developments, the Township's project proposals are sufficient to meet and exceed its affordable housing obligations.

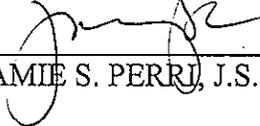
Second, the interveners claim that the Township has failed to properly document whether all the committed money for RCAs has been transferred to the receiving municipality and

¹ Intervenors Highview Homes, LLC, Countryside Developers, Inc., and K. Hovnanian Shore Acquisitions submitted comments to the Special Master regarding the sufficiency of the original plan. The comments were submitted prior to the revised submission. The Special Master found that the bulk of the objections were addressed in the revised summary.

whether these units have been built and occupied. However, defendants do not make any detailed claim as to any alleged misuse of RCA funds.²

Finally, defendants argue that the Township has failed to address their obligations from 1999-2015 and have assigned the period an obligation of 0. While this aspect of the Township's updated summary was acknowledged in the Special Master's report, he nonetheless determined that the Township "has put forth in the plan summary what appears to be a good faith effort to craft a constitutionally compliant plan, to the extent that can be done at this time."

In Mount Laurel IV, the Court admonished trial courts that they should "assiduously assess whether immunity, once granted, should be withdrawn 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. The court finds in this matter that while the arguments raised by the interveners may be relevant to the court's final determination of compliance and good faith, they are not sufficient to meet the demanding standard set by the Court to deny continued immunity. This is particularly true where, as here, the municipality previously received substantive certification and has submitted a housing plan as required by the court's Order. The motions are therefore denied.



JAMIE S. PERRI, J.S.C.

² Special Master Banisch noted that the Fair Share Housing Center made a similarly unsupported argument in an email dated November 13, 2015.

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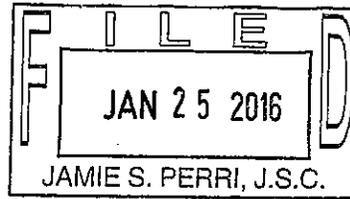
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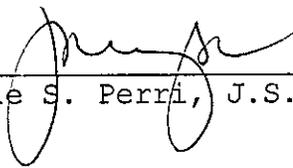
the Court having reviewed papers submitted in connection with this motion, having heard the arguments of counsel, and for the reasons set forth by the Court on the record ^{set forth in the attached} ~~en~~ order dated January 25th, 2016, and for good cause shown,

IT IS ON THIS 25th day of January, 2016 ORDERED as follows:

1. The application of Manalapan 7 LLC to deny Manalapan Township's request to extend immunity from exclusionary zoning litigation is granted. **DENIED**

2. The protections of immunity granted by this Court's earlier orders are terminated. **DENIED**

3. A copy of this Order shall be served on all counsel/interested parties in this action within 7 days of the entry of this Order.



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

Opposed

Unopposed

trial argument conducted on 1/22/16

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