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December 22, 2015

VIA FEDERAL EXPRESS

The Honorable Jamie S. Perri, J.S.C.
Monmouth County Superior Court
P.O. Box 1266, 2nd floor
71 Monument Park
Freehold, NJ 07728-1266

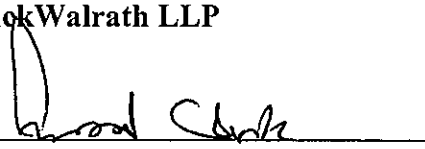
Re: In the Matter of the Application of the Township of Manalapan
Docket No. MON-L-2518-15

Dear Judge Perri:

This firm represents the Township of Manalapan (“Manalapan”) in the above referenced declaratory judgment action. On December 14, 2015, our Firm delivered a letter brief to your Honor enclosing Manalapan’s updated housing plan summary and supporting Manalapan’s request for an extension of temporary immunity. After submission of this letter brief, we discovered that due to a copying error, there was a discrepancy in page numbering of the brief. We are therefore re-submitting a corrected version of this letter brief.

Respectfully submitted,

GluckWalrath LLP

By: 
David A. Clark

DAC/lpc

cc. Special Master Francis J. Banisch (Via E-Mail)
Service List (including all interveners) (Via E-Mail, where available, and Regular Mail)
Jennifer Beahm, Manalapan affordable housing planning consultant (Via E-Mail only)



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December 14, 2015

VIA HAND DELIVERY

The Honorable Jamie S. Perri, J.S.C.

Monmouth County Superior Court

P.O. Box 1266, 2nd floor

71 Monument Park

Freehold, NJ 07728-1266

**Re: In the Matter of the Application of the Township of Manalapan
Docket No. MON-L-2518-15**

Dear Judge Perri:

This firm represents the Township of Manalapan (“Manalapan”) in the above referenced declaratory judgment action. Pursuant to Omnibus Order No. 4 entered on December 2, 2015 in the consolidated Monmouth County affordable housing actions (“CMO 4”), we are enclosing Manalapan’s updated housing plan summary. By copy of this letter, we are serving Manalapan’s updated housing plan summary upon Special Master Francis J. Banisch and all interveners and interested parties in this action.

Although CMO 4 indicates that the submission of this updated housing plan summary shall constitute an application by Manalapan for continued immunity from exclusionary zoning or builder’s remedy actions, CMO 4 also requires each municipality to issue a notice of its application for an extension of immunity and to submit a letter stating why such an extension is appropriate. We are attaching the notice of Manalapan’s extension application to this letter and, by copy of this letter, are serving it upon Special Master Francis J. Banisch and all interveners and interested parties in this action. The remainder of this letter sets forth the reasons why the further extension of Manalapan’s immunity from exclusionary zoning or builder’s remedy actions is appropriate.

First of all, Manalapan received substantive certification from COAH and therefore is entitled to an advantage in terms of the judicial review of its constitutional compliance. See In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 26 (2015)(hereinafter, “Mt. Laurel IV”) (“... while not entitled to the statutory presumption of validity the FHA would normally provide, **these towns deserve an advantage in the judicial review that shall take place.**”). That advantage includes being generously inclined to grant applications for continued immunity. Mt. Laurel IV, 221 N.J. at 26 (emphasis added) (“[w]hile reviewing for constitutional compliance the ordinances of a town that achieved substantive

Letter to Judge Perri
December 14, 2015
Page 2

certification, 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.**”). The Supreme Court also instructed that “[o]nly constitutional compliance actions may proceed initially as against a town with substantive certification from COAH. No builder’s remedy shall be authorized to proceed against any such town unless a court determines that the substantive certification that was granted is invalid, **no constitutionally compliant supplementing plan is developed and approved by the court after reasonable opportunity to do so**, and the court determines that exclusionary zoning actions, including actions for a builder’s remedy, are appropriate and may proceed in a given case.” Mt. Laurel IV, 221 N.J. at 26-27 (emphasis added).

Here, there has not been a finding by the Court that the housing plan submitted by Manalapan that was the basis for COAH’s award of substantive certification is deficient. Moreover, even if this plan was deemed to be deficient, the Supreme Court clearly intended that municipalities which received substantive certification should be entitled to an advantage in the judicial review of their plans and should be allowed to amend their plans to address any deficiencies. Only when that process is unreasonably protracted and no constitutionally compliant plan is developed after reasonable opportunity to do so should the court even consider lifting the municipality’s immunity and allowing exclusionary zoning and builder’s remedy actions. The clearly is not the case herein.

On August 19, 2015, the Court granted Manalapan temporary immunity from exclusionary zoning or builder’s remedy actions for a period running from July 8, 2015 to December 8, 2015 and relating back nunc pro tunc to the date of Manalapan’s filing of the Complaint in this declaratory judgment action. The reasons for the grant of this initial period of immunity, which are set forth more fully within Manalapan’s temporary immunity motion and the Court’s opinion ruling upon this motion, included the following:

- (i) Manalapan received substantive certification from COAH on July 15, 2010 for Manalapan’s third round plan;
- (ii) in granting substantive certification to Manalapan, COAH determined that Manalapan had satisfied its 706 unit prior round obligation;
- (iii) Manalapan has already taken action to approve affordable housing projects that will be credited towards its third round obligation, including the Wood Avenue project (an 80 unit family rental municipally sponsored 100 percent affordable housing project), the Lewis Street project (providing for a developer to construct 10 affordable for-sale townhouse units on municipally-owned land), and the Millhurst Road project (where Manalapan made land available for a 100 percent affordable housing project with the 120 units broken down as 35 family rental, 50 age-restricted rentals and 35 special needs units for the developmentally disabled); and



Letter to Judge Perri
December 14, 2015
Page 3

- (iv) Manalapan timely filed this declaratory judgment action in accordance with the Supreme Court's directive in In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015)(hereinafter, "Mt. Laurel IV").

Based upon these facts, Manalapan was granted immunity through December 8, 2015.

Since the date of the Order granting Manalapan temporary immunity from exclusionary zoning or builder's remedy actions, Manalapan has continued to act in good faith to plan for the voluntary satisfaction of its third round obligation (once that obligation is fixed by the Court). These actions have included the following:

- (i) timely submitting initial plan summary forms addressing its third round obligation on or before the October 30, 2015 deadline as required by the Orders entered in this matter;
- (ii) meeting with intervening defendants and other interested parties regarding proposed affordable housing projects to plan in good faith to meet its ultimately determined fair share number; and
- (iii) timely submitting the updated housing plan summary addressing its preliminarily determined 649 unit third round obligation identified by Special Regional Master Richard Reading without prejudice to modify, delete or amend the sites included within this submission after this Court ultimately determines the Township's fair share obligation.

Thus, Manalapan has already taken meaningful steps to plan for the satisfaction of its third round obligation. Manalapan remains willing to take whatever additional steps are necessary to voluntarily plan for its third round obligation once that third round obligation is finally established by the Court. The Supreme Court recognized in Mt. Laurel IV that "the courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities . . ." and that only "If that goal cannot be accomplished, with good faith effort and reasonable speed, then the court may authorize exclusionary zoning actions seeking a builder's remedy litigation to proceed . . .". Mt. Laurel IV, 221 N.J. at 33. As Manalapan has demonstrated its intent to voluntarily comply with its third round obligation, once it is established, an extension of immunity from exclusionary zoning or builder's remedy actions until that determination is made is appropriate.

For the reasons set forth herein, Manalapan respectfully requests that the Court enter an Order extending immunity from exclusionary zoning or builder's remedy actions for a time period through and including forty-five (45) days after the decision is issued by the Court following the trial on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation described within CMO 4, but in no event beyond June 8, 2016 without the filing of an application by Manalapan for a further extension by way of motion on notice to all interveners and interested parties.



Letter to Judge Perri
December 14, 2015
Page 4

Respectfully submitted,
GluckWalrath LLP

By: 
Andrew Bayer

DAC/lpc

- cc. Special Master Francis J. Banisch (Via E-Mail and Regular Mail)
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