

Woolson Sutphen Anderson

A Professional Corporation • Attorneys at Law

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MARK S. ANDERSON
JOLANTA MAZIARZ
ROBYN D. WRIGHT

O. STANLEY WOOLSON
1936 - 2013
WILLIAM R. SUTPHEN III
Retired

March 15, 2016

Somerset County Court House
Attention: Clerk, Civil Motions
P.O. Box 3000
Somerville, NJ 08876

Re: IMO The Application of the Township of Branchburg
Docket No.: SOM-L-898-15
Our file: 16bl-47fair

Dear Sirs:

Enclosed for filing, please find:

1. Original and one copy of Notice of Motion to Extend Immunity;
2. Original and one copy of Letter Brief of Mark S. Anderson; and
3. Original and two copies of proposed form of Order.

Please mark the motion returnable for Friday, April 1, 2016 or as soon thereafter as the case is reached.

Please charge our attorney collateral account #141825 in the amount of \$50 which represents the filing fee.

Very truly yours,



Mark S. Anderson

LAS:no
Enclosures

cc: Attached Service List
Township of Branchburg

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Honorable Thomas C. Miller, P.J.Cv.
Somerset County Court House
P.O. Box 3000
Somerville, NJ 08876

Re: IMO The Application of the Township of Branchburg
Docket No.: SOM-L-898-15
Our file: 16bl-47fair

Dear Judge Miller:

This firm represents the Township of Branchburg ("Branchburg") in the above-referenced matter. Please accept this letter brief in lieu of a more formal submission in support of Branchburg's Motion to Extend Immunity returnable on April 1, 2016 or on a date set by the Court.

In In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council of Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), the Supreme Court of New Jersey established a declaratory judgment procedure for affordable housing issues and held that municipalities who had participated in the third round COAH process should be granted temporary immunity. Specifically, the Supreme Court ordered as follows:

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 in a given case.

Mount Laurel IV, 221 N.J. at 35-36. The Supreme Court held that builder's remedy actions should proceed against such

municipalities only if the goal of voluntary compliance "cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant[.]" Mount Laurel IV, 221 N.J. at 33 (emphasis added).

In the present case, Branchburg had "participating" status before COAH, as set forth in its declaratory judgment complaint filed on July 2, 2015. By decision issued on or about September 15, 2015, this Court held that Branchburg was entitled to an order of temporary immunity. In the Matter of the Application of Branchburg, Docket No. SOM-L-898-15 (Miller, J.), pg. 26. Branchburg had submitted a third round housing element and fair share plan to COAH and had acted in good faith in attempting to meet its affordable housing obligations pursuant to COAH regulations then in effect. Branchburg's efforts in this regard were set forth in its complaint and will not be repeated here.

By order dated February 5, 2016 and amended on February 17, 2016, this Court consolidated the declaratory judgment actions for the Vicinage 13 municipalities and granted all such municipalities, except Branchburg, temporary immunity until July 31, 2016. However, with respect to Branchburg, the Court issued an "Order Appointing Special Master and Providing for Payment of the Special Master Fees" (hereafter "Branchburg Order") and extended temporary immunity only until March 31, 2016. Branchburg Order, ¶ 1.

Branchburg has attempted in good faith to comply with its affordable housing obligations. By February 12, 2015, Branchburg completed and submitted a matrix prepared by its affordable housing planner, Elizabeth McKenzie, P.P. Branchburg has issued a Request For Proposals ("RFP") to intervenors and other interested parties to allow them to present to Branchburg their proposals for providing affordable housing to Branchburg (also available on Branchburg's municipal website at http://branchburg.nj.us/current_notices.php) By using the RFP process, Branchburg hopes to obtain affordable housing in the types and numbers that are most beneficial to those needing such housing in the region. By March 14, 2016, Branchburg received fourteen responses to its RFP.

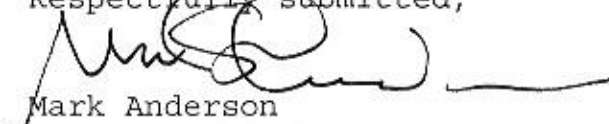
On February 26, 2016, I called Branchburg's assigned Special Master, Christine Cofone, to set up an initial meeting with her and Branchburg administration to discuss compliance issues. That meeting has not yet been scheduled. I am not certain whether Ms. Cofone has completed her investigation into potential conflicts. When the Special Master is able to schedule the meeting, Branchburg will attempt in good faith to resolve compliance issues with the other parties to this action.

The Court has not had an opportunity to fully address whether Branchburg has been constitutionally compliant. The number of affordable housing units that Branchburg is obligated to produce has not yet been determined. To some degree, Branchburg's efforts in this regard must be coordinated with other municipalities who have been working with Econsult as an expert. It has not yet been determined how and whether there is an obligation for the "gap" period of 1999 to 2015 and compliance standards are in dispute. Therefore, Branchburg believes that it would be unreasonable to hold that it is determined to be constitutionally noncompliant at this stage of the lawsuit.

In Mount Laurel IV, the Supreme Court held that its goal was not to "punish" municipalities who were "in a position of unfortunate uncertainty" due to the lack of third round rules. 221 N.J. at 23-24. Until this Court has established the regional affordable housing need and determined the compliance standards for the region, it should not allow intervenors to proceed with counterclaims and lawsuits against Branchburg.

For the foregoing reasons, Branchburg respectfully requests that its motion be granted.

Respectfully submitted,


Mark Anderson
ID No.: 261051972

cc: Christine Cofone, Special Master
Attached service list

Woolson Sutphen Anderson

A Professional Corporation

Mark S. Anderson, 261051972

11 East Cliff Street

Somerville, New Jersey 08876

908 526-4050

Attorneys for: Township of Branchburg

IN THE MATTER OF THE TOWNSHIP	:	SUPERIOR COURT OF NEW JERSEY
OF BRANCHBURG'S HOUSING ELEMENT	:	LAW DIVISION
AND FAIR SHARE PLAN	:	SOMERSET COUNTY
	:	DOCKET NUMBER: SOM-L-898-15
	:	
	:	Civil Action
	:	
	:	NOTICE OF MOTION
	:	TO EXTEND IMMUNITY
	:	

TO: All Parties on Service List Attached

TAKE NOTICE that Woolson Sutphen Anderson, a Professional Corporation, will apply to the above Court, at the Court House in Somerset County, New Jersey on April 1, 2016, at 9:00 A.M., or as soon thereafter as the case is reached, for an Order for extending the Township of Branchburg's immunity through July 31, 2016.

In support of the motion, we will rely on the letter brief of Mark S. Anderson.


We request oral argument if the motion is opposed.

The original of this notice has been filed with the Clerk of the county of venue.

An original and two copies of a proposed form of Order are attached to the copy of this notice filed with the deputy clerk of the Superior Court in the county of venue.

Certificate of Service: The undersigned certifies that copies of this notice and all attachments have been sent by regular mail to the persons and/or entities listed on the attached service list.

WOOLSON SUTPHEN ANDERSON, P.C.

By: 
Mark S. Anderson
Attorney ID#261051972

DATED: March 9, 2016

Service List - Parties

New Jersey Builders Association

c/o Stephen Eidsorfer, Esquire
Hill Wallack, LLP
202 Carnegie Center
P.O. Box 5226
Princeton, NJ 08543

**New Jersey State League of
Municipalities**

c/o Edward J. Buzak, Esquire
The Buzak Law Group, LLC
Montville Office Park
150 River Road, Suite N-4
Montville, NJ 07045

Borough of Atlantic Highlands

Jeffrey R. Surenian, Esquire
Michael A. Jedziniak, Esquire
Jeffrey R. Surenian & Assoc., LLC
707 Union Avenue, Suite 301
Brielle, New Jersey 08730

Ken Pizzo, Sr.

Richard J. Hoff, Jr.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033

**John Jay Hoffman,
Acting Attorney General**

Office of the Attorney General
Attn: Geraldine Callahan, Esq.
Deputy Attorney General
25 W. Market Street
P.O. Box 112
Trenton, NJ 08625

Fair Share Housing Center

510 Park Boulevard
Cherry Hill, New Jersey 08002

3361 Route 22 LLC

Craig M. Gianetti, Esquire
One Jefferson Road
Parsippany, NJ 07054

**The Weingarten 2013 Family
Trust**

Bruce H. Snyder, Esquire
Lasser Hochman, L.L.C.
75 Eisenhower Parkway
Roseland, New Jersey 07068

**Advance/GLB Partners, LLC
Advance at Branchburg II, LLC**

Henry L. Kent-Smith
Fox Rothschild LLP
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311

S/K Stoney Brook Associates

John P. Inglesino, Esquire
Inglesino, Webster, Wyciskala
& Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, NJ 07054

**American Properties at
Branchburg, LLC**

Matthew N. Fiorovanti, Esquire
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777

MTAE, Inc.

Jeffrey Kantowitz, Esquire
Law Office of Abe Rappaport
195 Route 46 West, Suite 6
Totowa, New Jersey 07512

Sycamore Developers

Alexander G. Fisher, Esquire
The Law Offices of Mauro Savo
Camerino, Grant & Schalk
77 North Bridge Street
Somerville, New Jersey 08876

Bernards Township

Jonathan E. Drill, Esquire
Stickel, Koenig, Sullivan
& Drill, LLC,
571 Pompton Avenue
Cedar Grove, New Jersey 07009

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Somerville, New Jersey 08876

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Attorneys for: Township of Branchburg

IN THE MATTER OF THE TOWNSHIP	:	SUPERIOR COURT OF NEW JERSEY
OF BRANCHBURG'S HOUSING ELEMENT	:	LAW DIVISION
AND FAIR SHARE PLAN	:	SOMERSET COUNTY
	:	DOCKET NUMBER: SOM-L-898-15
	:	
	:	Civil Action
	:	
	:	ORDER
	:	

This matter having been opened to the Court by Woolson Sutphen Anderson, a Professional Corporation, attorneys for the Township of Branchburg for an Order extending immunity through July 31, 2016.

It is on this ____ day of April, 2016, ORDERED that the Township of Branchburg's immunity is hereby extended through July 31, 2016.

Honorable Thomas C. Miller, P.J.Cv.

Papers Considered

- () Notice of Motion
- () Movant's Affidavits
- () Movant's Brief
- () Answering Affidavits
- () Answering Brief
- () Cross Motion
- () Movant's Reply
- () Other