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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 15<sup>th</sup> day of April, 2016, ORDERED that the Township of Branchburg's immunity is hereby extended through July 31, 2016.



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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

**MOTION BY BRANCHBURG TOWNSHIP TO EXTEND IMMUNITY THROUGH JULY 31, 2016**

*Re: In re Township of Branchburg, Docket No. SOM-L-898-15*

This matter comes to the Court on Plaintiff, Branchburg Township's Motion to extend immunity in "Mt. Laurel" or "Exclusionary" Lawsuits.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The issues before the Court arises from circumstances that have developed as part of the Declaratory Judgment Action (hereinafter DJ) that have been filed with this Court in response to the New Jersey Supreme Court's Order of March 10, 2015 enforcing the Court's ruling in the matter known as In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter "In re COAH").

This Court has been deeply involved in the efforts necessary to make a preliminary assessment of the current status of compliance with each municipalities' constitutional affordable housing obligations. As part of the Court's review, this Court has previously reviewed the Complaint, Certifications, and documentation filed with the Court in this matter. Those documents have provided details concerning the status of the determination of the Supplemental Housing Plan Element and Fair Share Plan.

With regards to the Township of Branchburg, this Court has previously found that it has satisfied the criteria for securing temporary immunity. As a result, on October 8, 2015 this Court has previously awarded the Township temporary immunity from "Exclusionary Lawsuits" for a period of five months with the temporary immunity period to terminate on March 31, 2016.

In this Motion, the Township of Branchburg moves to extend temporary immunity until July 31, 2016.<sup>1</sup>

Defendants, Advance/GLB Development Partners, LLC and Advance at Branchburg II, LLC, object to Branchburg's extension of immunity on the basis that the Township has failed to comply with the following terms of this Court's Order:

(1) Paragraph 4 directs Branchburg to conduct in-person meetings with all interested parties and report to the Court regarding any progress.

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<sup>1</sup> Branchburg's initial motion was to extend immunity until July 31, 2016 as this Court has extended immunity for other municipalities in the Vicinage until that date. Since that time the Court has extended immunity for the Municipalities until October 31, 2016.

(2) Paragraph 7 directs Branchburg to submit its position regarding compliance issues by March 8, 2016.

With regards to the Township's position concerning compliance issues, on March 10, 2016 the Township requested a one month extension until April 8, 2016 in order to provide their position concerning compliance issues.

With regards to the in-person meeting, the Township has apparently established and substituted its own procedure by soliciting RFPs from potential developers (presumably including intervenors and non-intervenors) for potential residential development projects that would provide a component for low and/or moderate income housing. Branchburg has called the RFP the "Affordable Housing Development Request for Proposals".

The Defendants contest to the extension of immunity based upon Branchburg's non-compliance with this Court's Order. The Defendants have offered that if the Township complies with the Court's Order it will withdraw its objection to the extension.

#### CIRCUMSTANCES LEADING TO THE PRESENT MOTION

The Township of Branchburg filed a Declaratory Judgment Action on July 2, 2015 in accordance with the Supreme Court's directive in the matter entitled In re the 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 "Mount Laurel IV"). On October 8, 2015 this Court entered an Order granting temporary immunity for a period of five months and until the Court has the opportunity to address constitutional compliance and has found constitutional compliance wanting.

In this Motion the Township indicates that the schedule that was proposed in their original Order is no longer tenable in light of intervening circumstances that have occurred. The Township relies upon the letter brief in lieu of a more formal submission in support of the Township's Motion to Extend Immunity submitted by Mark S. Anderson, Esq.

#### COURT'S OPINION

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 claims that it has acted in good faith in attempting to meet its affordable housing obligations pursuant to

COAH regulations then in effect.<sup>2</sup>

By Order dated February 5, 2016, and amended on February 17, 2016, this Court consolidated the declaratory judgment actions for Vicinage 13 municipalities and granted all such municipalities, except Branchburg, temporary immunity until July 31, 2016.<sup>3</sup> 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 contends that it 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](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.

“[C]ourts exist for the sole purpose of rendering justice between parties according to law. While the expedition of business and the full utilization of their time is highly to be desired, the duty of administering justice in each individual case must not be lost sight of as their paramount objective.” Allegro v. Afton Village Corp., 9 N.J. 156, 161 (N.J. 1952) (citing Pepe v. Urban, 11 N.J. Super. 385 (App. Div. 1951)). As the Appellate Division explained: “Our ultimate goal is not, and should not, be swift disposition of cases at the expense of fairness and justice. Rather, our ultimate goal is the fair resolution of controversies and disputes.” R.H. Lytle Co. v. Swing-Rite Door Co., Inc., 287 N.J. Super. 510, 513 (App. Div. 1996).

The process that was established by the Supreme Court for “Mt. Laurel” cases is not intended to punish the Townships represented before this Court. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015) (“In re COAH”), the Supreme Court clearly stated that it did not intend to punish municipalities for the utter failure of the Council on Affordable Housing (“COAH”) to do its job:

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<sup>2</sup> Branchburg’s efforts were documented in its Complaint.

<sup>3</sup> Since that time the Court has further extended immunity for each of the Vicinage 13 Municipalities until October 31, 2016.

[T]he process established **is not intended to punish the Townships** represented before this Court, or those that are not represented but which are also in a position of unfortunate uncertainty **due to COAH's failure to maintain the viability of the administrative remedy**. Our goal is to establish an avenue by which Townships can demonstrate their constitutional compliance to the courts through submission of a housing plan and use of processes.

In re COAH at 23 [Emphasis added].

Branchburg has complied with the requirement to submit their “HPE and FSE” so that they qualified for the initial five month immunity period. Since that time the Court provided Branchburg with another four month extension. At issue in this Motion is whether Branchburg should be given another extension through July 31, 2016 – an extension which has been granted to all of the other 58 Municipalities within the Court’s vicinage.

The Court will GRANT Branchburg’s extension of immunity to July 31, 2016. While this Court recognizes that Branchburg has determined to proceed with its own RFP process, the Court is also concerned that Branchburg simply ignored this Court’s directives to meet with Intervenors.

Even though this Court is not wed to any particular process for these cases to proceed, the Court issued its directive for specific reasons. The meetings with Intervenors is designed to generate and improve communication, prompt settlement discussions and to improve the efficiency of the matters before the Court by requiring the parties to convene and discuss the issues. With 59 Mt. Laurel cases in the Vicinage, a significant number of which contain many Intervenors and Interested Parties, it is imperative that there be communication between the parties before the Court becomes involved in the matter, whether that involvement be at trial or settlement purposes.

Branchburg has chosen to “listen to its own drummer” and develop a process that may be unique in this Vicinage. It is certainly free to do so. That decision does not relieve it of the directives of the Court however. Branchburg, like every other Municipality in the Vicinage, must meet with the Intervenors in its case.

In addition to the Court’s extension of immunity, the Court will order Branchburg to comply with paragraph 7 of its prior Order by May 16, 2016. In addition to its use of the RFP process, Branchburg shall be required to meet, in good faith, with all Intervenors, whether those

Intervenors have provided an RFP or not.<sup>4</sup>

If Branchburg fails or refuses to comply, the Intervenor shall be free to move for the Court to reconsider its extension of immunity at which time they can renew their arguments.

With regards to the requirement for the township, the Court will grant Branchburg's extension to submit its position regarding compliance issues to April 18, 2016. For the purposes of this Motion, the Court assumes that Branchburg will comply with the Court's requirement by that extended date.

### **CONCLUSION**

The Court GRANTS Branchburg's Motion to extend immunity until July 31, 2016 in accordance with the terms and conditions set forth in the Court's opinion.

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<sup>4</sup> The Court requirement does not extend to entities that may have submitted an RFP but who are not Intervenors. Branchburg may use its discretion as to whether to hold meetings with those parties.