

FIGRELLO, Puccio & FIGRELLO LLC

COUNSELLORS AT LAW
1044 ROUTE 23 NORTH
SUITE 318
WAYNE, NEW JERSEY 07470

JOHN FIGRELLO*
LINDA COUSO Puccio
JEFFREY FIGRELLO*

*COURT APPROVED
FAMILY LAW ECONOMIC MEDIATOR

(973) 706-8990
FAX (973) 706-8991

WEBSITE:
WWW.LAWYERSFPF.COM

FILE NO. 10682

May 16, 2017

Civil Division Office
Passaic County Court House
77 Hamilton Street
Paterson, New Jersey 07505

Re: **IN THE MATTER OF THE APPLICATION OF THE
TOWNSHIP OF WAYNE and THE PLANNING BOARD
OF THE TOWNSHIP OF WAYNE, Plaintiff's/Petitioners
DOCKET NO. PAS-L-2396-15 (Mt. Laurel)**

Greeting:

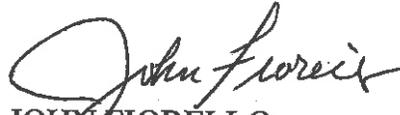
On behalf of the Plaintiffs/Petitioners, Township of Wayne and The Planning Board of the Township of Wayne, in the above referenced Mt. Laurel matter, enclosed please find an original and two (2) copies of the following documents:

1. Notice of Motion for Order Granting Extension of Temporary Immunity and for Extension of Completion of Discovery returnable June 8, 2017 at 2:00 in the afternoon. The return date of Motion is based upon the Order of Judge Brogan dated March 23, 2017 scheduling a status conference of this Mt. Laurel matter on June 8, 2017 at 2:00 p.m., which Order also extended discovery to June 8, 2017.
2. Certification in Support of Motion to Extend Immunity from Exclusionary Zoning Actions, and Extension of Discovery.
3. Brief in Support of Motion.
4. Proposed form of Order.

5. Certification of Service.
6. Our firm's check payable to the order of Treasurer, State of New Jersey in the amount of \$50.00.
7. Reply envelope.

Please file the original of the enclosed documents and return the copies to our office marked "Filed" in the enclosed envelope.

Very truly yours,


JOHN FIORELLO

JF:ff – enc

cc: Matthew J. Cavaliere, Esq., w/enc

JOHN FIORELLO, ESQ. – 201501962
FIORELLO, PUCCIO & FIORELLO LLC
1044 Route 23 North, Suite 318
Wayne, New Jersey 07470
(973) 706-8990
Attorney for Plaintiff/Petitioner Township of Wayne

MATTHEW J. CAVALIERE, ESQ. – 029151982
CAVALIERE & CAVALIERE, P.A.
1700 Route 23 N., Suite 201
Wayne, New Jersey 07470
P (973) 305-1800
Email: MJC@CavaliereLaw.us
Attorney for Plaintiff/Petitioner
Planning Board of Township of Wayne

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – PASSAIC COUNTY

IN THE MATTER OF THE :
APPLICATION OF THE TOWNSHIP :
OF WAYNE, a Municipal Corporation :
of the State of New Jersey, and the :
PLANNING BOARD of the :
TOWNSHIP OF WAYNE, :
Plaintiffs/Petitioners. :

DOCKET NO. PAS-L-2396-15

Civil Action

(Mt. Laurel)

**NOTICE OF MOTION FOR ORDER
GRANTING EXTENSION OF
TEMPORARY IMMUNITY FROM
EXCLUSIONARY ZONING SUITS
PREVIOUSLY GRANTED TO THE
TOWNSHIP OF WAYNE**

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on Thursday, June 8, 2017, at 2:00 o'clock in the afternoon, or as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiff/Petitioners, the Township of Wayne ("Wayne"), and the Planning Board of the Township of Wayne ("Planning Board"), of Passaic County, shall make application to the

Superior Court of New Jersey, Law Division, Passaic County, before Hon. Thomas F. Brogan, J.S.C., (which is the date and time fixed by Judge Brogan in an Order dated March 23, 2017 for a status conference in the captioned Mt. Laurel matter, a copy of which Order is annexed hereto) for an Order as follows:

1. Granting Wayne and the Planning Board an extension of the temporary immunity from third party lawsuits and preventing any exclusionary zoning actions (a/k/a builder remedy suits), from proceeding through the latter of or the date of the Case Management Conference next following or such other time as the Court deems appropriate.

2. Extending the time within which discovery is to be completed.

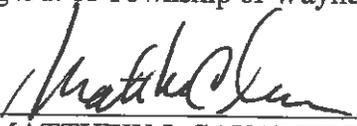
In support of the applications contained herein, Wayne and the Planning Board shall rely upon the Certification of Caroline Reiter, P.P., AICP, from the firm of Christopher P. Statile, P.A., Professional Engineers & Planners, as well as the Brief in support of the applications of Wayne and the Planning Board.

Oral argument is specifically requested in connection with the applications contained herein.

FIORELLO, PUCCIO & FIORELLO LLC
Attorney for Plaintiff/Petitioner Township of Wayne

By: 
JOHN FIORELLO

CAVALIERE & CAVALIERE, P.A.
Attorney for Plaintiff/Petitioner
Planning Bd. of Township of Wayne

By: 
MATTHEW J. CAVALIERE

DATED: *May 16*, 2017

Service List Page 1 of 2

Revised 2017-04-04

IMO App of Wayne Twp for Mt. Laurel 3rd
Round

Dkt PAS-1-2396-15

Prep's by Wayne Twp & Plan Bd

Dahl, Stephen M. Esq.
On behalf of K. Hovnanian Co., LLC
110 Fieldcrest Avenue
Edison, New Jersey 08837
sdahl@khov.com ,

Destito, Samuel Esq. on behalf of GAF
Windels Marx Lane & Mittendorf, LLP
One Giralda Farms
Madison, New Jersey 07940
sdestito@windelsmarx.com

Field, Melissa
Director of Housing Development
Allies, Inc.
1262 White Horse-Hamilton Sq. Road
Bldg. A. Suite 101
Hamilton, New Jersey 08690

Hoff, Richard J. Esq.
On behalf of Highview Homes, LLC
Bisgaier Hoff
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033

Kinsey, David N. PP, AICP, Ph.D.
Kinsey & Hand
14 Aiken Avenue
Princeton, New Jersey 08540

McGuire, Dan AICP
Director, Development Division
On behalf of Homeless Solutions
6 Dumont Place, 3rd Floor
Morristown, New Jersey 07960

Pringle, Scott H. Esq.
Northeast New Jersey Legal Services, Inc.
574 Summit Ave.
Jersey City, New Jersey 07306-2797

Vogel, Jon Esq.
On behalf of Development Director
Avalon Bay Communities, Inc.
517 Rte. 15, Suite 5500
Iselin, New Jersey 08830

Voliton, Robert
116 Erasmus Street
Brooklyn, New York 11226

Brogan, Hon. Thomas F. J.S.C., P.J.Cv
Presiding Judge of Civil Division
Superior Court of New Jersey
Courthouse, 77 Hamilton Street, Rm 304
Paterson, New Jersey 07505

Semeraro, Mark Esq.
On behalf of Galreh, LLC & Others
2 Executive Drive, Suite 530
Fort Lee, New Jersey 07024
msemerano@northjerseyattorneys.com

Vogel, Jerome A. Esq.
Jeffer, Hopkinson & Vogel
1600 Route 208 N.
Hawthorne, New Jersey 07506

Chewcaskie, Esq., Brian M. On behalf of
Borough of Oakland, County of Bergen
Gittlemen, Mulstock & Chewcaskie, LLP
2200 Fletcher Avenue
Fort Lee, New Jersey 07024

Rodriguez, Yolanda Esq.
On behalf of Toll Brothers, Inc.
670 Spotswood-Englishtown Road
Monroe Township, New Jersey 08831

Oberlander, David R. Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033
doberlander@bisgaierhoff.com

Semple, Elizabeth
NJ Dept. of Environmental Protection
PO Box 402
Trenton, New Jersey 08625

Shimanowitz, Robert L. Esq.
Hutt & Shimanowitz, PC
459 Amboy Avenue
PO Box 648
Woodbridge, New Jersey 07095

Walls, Keven J.
On behalf of Rage Realty Partners, LP
1200 Route 46
Clifton, New Jersey 07013

Walsh, Kevin D. Esq.
On behalf of Fair Share Housing Center
510 Park Blvd.
Cherry Hill, New Jersey 08002
adamgordon@fairsharehousing.org

Valentina DiPippo, Esq. DAG
Division of Law
RJ Hughes Justice Complex
PO Box 112
Trenton, New Jersey 08625

LaPlace, Michael, Dr Planning
Passaic County Planning Board
Totowa Business Center
930 Riverview Dr., Suite 250
Totowa, New Jersey 07512

Hecht, Alex
SEIU 32BJ, Research Dept.
25 W. 18th Street
New York, New York 10011

Hartkopf, Karl F. PP, AICP, Dir Planning
New Jersey Business Action Center
Dept. of State, Office for Planning Advocac
PO Box 820, 225 W State St., 3rd Floor
Trenton, New Jersey 08625-0820

Ladell, Ronald S. Sr. Vice President
On behalf of Avalon Bay Communities
517 Route One South, Suite 5500
Iselin, New Jersey 08830

Rahenkamp, Creigh AICP, PP
Creigh Rahenkamp & Associates, LLC
PO Box 222
Riverton, New Jersey 08077

Ticktin, Marilyn K.
SERV Properties & Management, Inc.
20 Scotch Road
Ewing, New Jersey 08628-2529

Toronto, Thomas
President
Bergen County's United Way
6 Forest Avenue, Suite 210
Paramus, New Jersey 07652

Sr. VP
On behalf of ARC of Bergen and Passaic
Counties, Inc.
223 Moore Street
Hackensack, New Jersey 07601

Kasuba, Robert A. Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033
rkasuba@bisgaierhoff.com

Service List Page 2 of 2

Revised 2017-04-04

IMO App of Wayne Twp for Mt. Laurel 3rd
Round

Dkt PAS-1-2396-15

Prep's by Wayne Twp & Plan Bd

Buzak, Edward J. Esq.
The Buzak Law Group, LLC
150 River Road
Suite N4
Montville, New Jersey 07045

Eisdorfer, Stephen Esq.
Hill Wallack
21 Roszel Road,
Princeton, NJ 08540

Wacks, Edward on behalf of Estate of
Jeanne Kuehm, Estate of Edgar Kyum and
Dutchland Realty
555 Madison Avenue, Suite 320A
Morristown, New Jersey 07960

Peter R. Bray, Esq.
Bray & Bray, L.L.C.
100 Misty Lane
Parsippany, NJ 07054-2710
pbray@braynjlaw.com

**Wayne Twp Officials/Employee List
Service By Electronic Transmittal Only**

Lutz, Linda, PP, AICP
Acting Township Planner
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Vergano, Hon. Christopher P. Mayor
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Cavaliere, Matthew J. Esq.
Cavaliere & Cavaliere, PA
1700 Route 23 N., Suite 210
Wayne, New Jersey 07470-7537

Mantica, Matthew
On behalf of Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

DiPippa, Valentina, Esq. D.A.G.
State of New Jersey,
Office of the Attorney General
Dept. of Law and Public Safety-Div. of Law
25 Market Street (#112)
Trenton, NJ 08625-0112

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

Elgart, Irina B., Esq.
Fox Rothschild LLP
Princeton Pike Corp. Center
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648-2311
ielgart@foxrothchild.com

Edge, Ryan T.
MHL
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Margiotta, Paul V. RMC
Municipal Clerk
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Wayne Twp Council President
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Surenian, Jeffrey R. Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, New Jersey 08730

Drill, Jonathan E. Esq.
Stickel, Koenig, Sullivan & Drill
571 Pompton Avenue
Cedar Grove, NJ 07009

Picot, David, SVP, Property Development
Toys R Us
1 Geoffrey Way
Wayne, N.J. 07470

Nazzaro-Cofone, Christine A AICP/PP
Court Appointed Master
Cofone Consulting Group, LLC
125 Half Mile Road - Suite 200
Red Bank, NJ 07701
ccofone@cofoneconsulting.com

Zapata, Fernando
Township Engineer
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Bellet, Neal
Municipal Administrator
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Fiorello, John, Esq.
Fiorello, Puccio & Fiorello
1044 Route 23 North
Suite 318
Wayne, New Jersey 07470

JOHN FIORELLO, ESQ. – 201501962
FIORELLO, PUCCIO & FIORELLO LLC
1044 Route 23 North, Suite 318
Wayne, New Jersey 07470
(973) 706-8990
Attorney for Plaintiff/Petitioner Township of Wayne

MATTHEW J. CAVALIERE, ESQ. – 029151982
CAVALIERE & CAVALIERE, P.A.
1700 Route 23 N., Suite 201
Wayne, New Jersey 07470
P (973) 305-1800
Email: MJC@CavaliereLaw.us
Attorney for Plaintiff/Petitioner
Planning Board of Township of Wayne

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – PASSAIC COUNTY

IN THE MATTER OF THE	:	
APPLICATION OF THE TOWNSHIP	:	DOCKET NO. PAS-L-2396-15
OF WAYNE, a Municipal Corporation	:	
of the State of New Jersey, and the	:	Civil Action
PLANNING BOARD of the	:	(Mt. Laurel)
TOWNSHIP OF WAYNE,	:	CERTIFICATION IN SUPPORT OF
Plaintiffs/Petitioners.	:	MOTION TO EXTEND IMMUNITY
		FROM EXCLUSIONARY ZONING
		SUITS

CAROLINE REITER, P.P. AICP, of Christopher P. Statile, PA, Professional Engineers and planners, 3 Fir Court, Oakland, New Jersey 07436, of full age, does hereby certify as follows:

1. I am a licensed professional planner, licensed to practice in the State of New Jersey. I attach my current curriculum vitae.

2. My professional practice includes a significant amount of Mt. Laurel/Affordable Housing matters. I am currently acting as Special Planner for Mt. Laurel matters for the above petitioner, the Township of Wayne, and have been so engaged since in or about January 2016. I also serve in a similar capacity for other municipalities in northern New Jersey. I was engaged as an 'outside' consultant to work with the Township's planner and staff in developing the township's 'new' Third Round Mt. Laurel Plan.
3. I make this Certification in support of the Petitioner's application for an order continuing Builder's Remedy Immunity in the above matter, and to report to the Court the Township's efforts toward, and status of the Township's Mt. Laurel Plan.
4. According to my review of the Township's file on the matter, on or about July 2, 2015, the Township filed its action for declaratory judgment, in accordance with the precepts of the New Jersey Supreme Court's ruling in IMO Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (In Re: COAH 2015).
5. In August, 2015, the Township timely filed its motion seeking immunity from Builder's Remedy Actions, pending adoption and approval of its Plan,

as permitted and addressed In Re: COAH 2015. That application contained certifications of Wayne's long time (since 1998) planner, John Szabo (who retired effective the end of June, 2016) dated 07-2-15 and 07-31-15, and various exhibits. Mr. Szabo's certification and the exhibits are incorporated herein by reference.

6. The application for immunity was granted by the Court, by way of a series of Orders of the Court (Judge Thomas F. Brogan, PJSC, Presiding) dated 10-21-15, 11-09-15 and 11-20-15. Those Orders also granted Intervenor status to several parties.
7. The immunity was further addressed and continued by way of Case Management Orders dated 02-03-16, 10-20-16, 01-04-17 and 3-23-17. As of the 02-3-16 Order, there were three (3) Intervenors who were granted Intervenor status: AvalonBay (contract purchaser of 'Kearfott' property), Wayne Property Holdings, LLC (owner of the GAF property) and K. Hovnanian (contract purchaser of the Rockledge property).
8. The 02-03-16 Order also appointed Christine A. Nazzaro-Cofone as the Court's Special Master.

Status of the Statewide, Regional and Municipal Mt. Laurel Obligation Determination.

9. As of this Certification date, the methodology to be used to determine, and the actual determination of, the statewide Mt. Laurel obligation has not yet been established. Thus Wayne's Mt. Laurel obligation has not yet been defined, and as a result, its Plan cannot yet be finalized.

10. Wayne Township is one of approximately 290 municipalities that pooled their resources and engaged an expert, Econsult to study the matter and produce a report recommending an appropriate methodology and appropriate Mt. Laurel obligations. Originally the municipal consortium group had commissioned Rutgers University (Dr. Robert Burchell), Center for Urban Policies, but Rutgers bowed out as a result of health problems that arose for Dr. Burchell. Another study, prepared by David Kinsey, was commissioned by the Fair Share Housing Center. As of this writing, these are the two studies (as revised) which address methodology and determination of Mt. Laurel Obligation that are being presented for consideration by the Courts.

11. Several litigations, mostly lying in mid-Jersey, took place which were intended to address the state-wide obligation methodology, including one litigation addressing the question of the so called GAP period during which

the Mt. Laurel Third Round Rules were to have been adopted and implemented. The New Jersey Supreme Court in an opinion dated January 18, 2017, redefined the present need analysis under the Fair Housing Act to include a component premised on a calculation of those low and moderate income New Jersey households, newly formed since 1999 that presently exist and are entitled to their opportunity of access to affordable housing. Pursuant to the Supreme Court's present opinion, the present need analysis must be expanded to guarantee municipal compliance with the Mt. Laurel doctrine using a modified approach to present need.

12. The municipal consortium group met following the decision of the Supreme Court on the GAP issue to discuss the effects of the decision and authorized the committee leadership of the consortium to meet with the consortium's expert and authorize him to prepare a new state-wide affordable housing obligation to include the modified approach to present need as set forth in the Supreme Court's decision. The municipal consortium's expert, Econsult, provided a gap period obligation report less than a month ago; this analysis remains under review. Gap obligation reports have also been provided by Dr. David Kinsey on behalf of the Fair Share Housing Center; Art Bernard on behalf of the New Jersey Builder's Association, and Special Numbers Master Richard Reading. All of these analyses are presently under review.

Wayne Township Prior Obligation and Previously Proposed Third Round Plan

13. As set forth in Mr. Szabo's certifications of 07-2-15 and 7-31-15, previously supplied to the Court Wayne Township's Mt. Laurel Plan has been under the auspices of COAH since the mid-1990s. Its initial First Round repose was by way of Court Order dated 09-10-1993, later amended by Order dated 03-20-1995 reflecting amendments to the Plan certified by COAH. Following the 1993 Order, the Township submitted itself to COAH and has remained under COAH, uninterrupted, since that time.

14. Wayne's initial Third Round Plan was timely submitted to COAH in 2005, ('2005 Third Round Plan') following COAH's adoption of the Third Round Rules. In 2008, COAH substantially revised its Third Round Rules, and in response, Wayne timely submitted to COAH its revised Third Round Plan ('2008 Third Round Plan'). Objections were filed by several interested parties, who sought to be included in the Plan, and thus, following various mediation and related, Wayne revised its Third Round Plan ('2010 Third Round Plan'), which revision received the endorsement of COAH staff, and

was awaiting consideration by COAH Commissioners when Courts invalidated the then COAH Third Round ('Growth Share') Rules.

15. The 2010 Third Round Plan reflected a Third Round prospective need obligation of 394 units and a present (formerly known as 'rehabilitative') need obligation of 23 units. The 2010 Plan also reflected a prior round (Second Round 'Sub Cert' having been granted by COAH on 07-10-1996) prospective need obligation of 1,158 units and a present need (formerly called "Rehabilitative Need") of 59 units. The Plan also reflected that Wayne had been granted (by COAH, and then approved by the Court) a Vacant Land Adjustment ('VLS') of 265 units which effectively reduced the Township's prior round prospective need obligation to 893 units. COAH regulations required, and COAH determined that Wayne had fully "addressed" (in other words, satisfied) the "Unmet Need" otherwise created by the granting of the VLA by implementing other Affordable Housing mechanisms that were permitted under COAH Rules.
16. Thus, the 2010 Plan reflected that Wayne had fully satisfied, and in fact 'over-satisfied', its prior Round obligation and had a credit of 98 age-restricted units available to be applied toward the Third Round obligation.

17. The 2010 Third Round Plan called for the following:

i. a.	Group Homes	20 units
ii. b.	Application of credits from Prior Rounds	98 units
iii. c.	Municipal sponsored housing project	185 units
iv. d.	Bonus credits for rental units	<u>91 units</u>
v. e.	Total	394 units

18. Significantly, the proposed municipally sponsored housing project was to be located on a tract of land owned by Wayne and located on Route 23 North.

19. While Wayne's Plan was awaiting action by the COAH Commission, the Court disallowed the Third Round Rules. COAH failed to adopt replacement rules, and, in March 2015, the New Jersey Supreme Court ordered that, unless and until COAH took action, or the Legislature took action, the Courts would become, and would be, the primary body to address municipal compliance with municipal Fair Share obligation.

Wayne Township's Efforts Since Last Case Management Order

20. Wayne created a Mt. Laurel Plan Committee consisting of the Mayor, Wayne's Director of Planning and Zoning, Wayne's Director of Public Works, attorneys Fiorello and Cavaliere, Wayne Council President, and the undersigned. That committee has continued meeting regularly, usually twice a month since its creation.

21. Wayne has continued to participate in the Municipal Consortium Group and its efforts to settle upon the appropriate methodology to determine the Third Round need amounts, including a component for the GAP period pursuant to the modification of the previous definition of a present need analysis as required by the January 18, 2017 opinion of the Supreme Court of New Jersey.

Wayne Township's New Project – Valley Road Extension

22. Upon the loss of the Wayne Route 23 Project, Wayne moved immediately to re-assess its position. The Township undertook a study of all other municipal-owned properties for the purpose of identifying and evaluating possible replacement properties. This evaluation also included various Wayne owned properties that had been listed on Wayne 'ROSI' inventory. (Recreation and Open Space Inventory) including investigation of removal of properties from ROSI Inventory (which would have to be approved by the State). After several weeks of study, the Township was preliminarily satisfied as to the feasibility and wisdom of utilizing a site located on the Valley Road Extension near Nevins Road and therefore authorized engineering work to continue on that feasibility study.

23. That property consists of approximately 10 acres and is not on the Township's ROSI Inventory. The Township, (after utilizing the State required RFP process) engaged Whitman Engineering of Cranbury NJ to evaluate the property and prepare development plans. That evaluation was fairly involved, time consuming and expensive.
24. After determining that the property was feasible, various development configurations were generated and evaluated. A particular configuration has been selected for inclusion in the 2017 Plan. As currently envisioned, that development will be a municipally sponsored, all-Mt. Laurel project and will yield approximately 200 rental units, including sections devoted to special needs housing.
25. At the time, and in conjunction with the evaluation of the Valley Road property for inclusion in the Plan, Wayne contacted, and consulted with several other towns and otherwise gathered information as to similar projects developed in those towns. To that end, Wayne also contacted and consulted with a major non-profit agency to begin discussions for development and/or operation of a portion of the planned development by a specialist non-profit organization. Those talks are continuing. The identity of the agency is not

public, and therefore, upon advice of counsel, is not identified herein, but instead is offered to be disclosed in-camera to the Court and/or Special Master, if directed by the Court.

26. A representative of the said agency has reviewed the Township's conceptual plan and has directed an architectural firm to prepare a revised plan meeting the parameters of that agency. Conceptual architectural plans have been developed for the municipal project. Additionally, soil tests have also been performed on the site to further analyze the site's development potential. Discussions with the non-profit agency for funding of the proposed development as well as discussions concerning property management have also occurred.

27. The Township has initiated discussions with the owner of a property adjacent to its Municipal Site in an effort to purchase approximately 1.27 acres of the adjacent property. If successful, the additional acreage will be added to the municipal site.

Wayne Township's Additional Efforts Since Last Case Management Order-VLA

28. A significant component to Wayne's 2017 Third Round Plan will be the Township's Vacant Land Adjustment ('VLA'). VLAs were recognized and permitted under COAH's Second Round Rules, were continued as part of the COAH Third Round Rules, and were not part of the Third Round Rules that were disallowed by the March 2015 Supreme Court Ruling. *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by 11 the New Jersey Council on Affordable Housing*, 221 N.J. 1 (2015). It has been generally agreed within the Planning Community that the VLAs continue to be available.
29. The VLA analysis in a municipality as large (25+ sq. miles) and as diverse as Wayne Township is a significant, and time consuming process and which required identifying and assessing all qualifying vacant land parcels and as well as non-vacant parcels that may potentially be underutilized. The analysis included determining environmental and other development constraints for each potential parcel. The evaluation was presented to the Court's Special Master in October, 2016.
30. On January 4, 2017 and March 2, 2017, the undersigned, attorneys Fiorello and Cavaliere, and Adam Gordon of the Fair Share Housing Center

participated in telephone conference calls with Special Master Christine Cofone. The Master recommended that the Township attempt to locate additional properties that might potentially be underutilized. That analysis involved a review of many properties in several sections of the Township. Recommendations were provided from the Township Planner, and some properties that had initiated tax appeals were also reviewed. Many properties in several sections of the Township were considered. Since the Township's last submission to the Court's Special Master, the Township, primarily through my office and at the request of the Master, has revisited to VLA and has undertaken additional research and investigation and has now resubmitted its VLA to the Master for review and comment (see additional information, below.)

Submission of Matrix to Court's Special Master & Mediation with Intervenors

31. In accordance with the Court's Case Management Orders, the Township submitted its Third Round Matrix to the Court's Special Master for Review.
32. In accordance with the Court's Case Management Orders, the Township and three (3) Intervenors met for mediation with the Court's Special Master, Christine A. Nazzaro-Cofone. That mediation took place with Ms. Cofone

on April 7, 2016. In attendance were various attorneys and representatives of Intervenors AvalonBay, K-Hovnanian, and Wayne Property Holdings (GAF). AvalonBay and K-Hovnanian presented and discussed proposed plans for inclusion of their respective properties in Wayne's 2016 Plan. GAF advised at that time, that it did not have any specific plan either generated or 'in mind.'

33. In October 2016 the Township submitted an "Interim Submission" to Special Master Christine Nazzaro-Cofone. The submission consisted of a compilation of the Township's Affordable Housing Analyses to date, including a vacant land analysis and potential affordable housing mechanisms.
34. The Township Planner, Affordable Housing Planning Consultant and Attorneys Fiorello and Cavaliere met with the Special Master on December 2, 2016. Prospective need and affordable housing mechanisms were discussed at the meeting.
35. The Township Planner, Affordable Housing Planning Consultant and Attorneys Fiorello and Cavaliere participated in a conference call with Special Master Cofone and Adam Gordon of the Fair Share Housing Center

on January 4, 2017. During the call, the participants discussed Present Need obligations and affordable housing mechanisms.

36. The Township Planner, Affordable Housing Planning Consultant and Attorneys Fiorello and Cavaliere participated in a conference call with Special Master Cofone and Adam Gordon of the Fair Share Housing Center on March 2, 2017. During the call, the participants discussed the status of the intervenors and other interested parties that had submitted conceptual plans. Attorneys Cavaliere and Fiorello advised Ms. Cofone that the suggested additional analysis for the Vacant Land Adjustment was ongoing. Ms. Cofone requested an updated Plan submission in early May.
37. On May 11th, the Affordable Housing Planning Consultant prepared an interim submission that was sent to Ms. Cofone for her review. The submission included an updated Vacant Land Adjustment analysis and descriptions of the properties that have requested inclusion in Wayne's Plan. The May submission also included an update on the proposed Wayne municipal affordable housing site.
38. Wayne has been advised by the owners of the Kearfott property, which had been under contract of sale to AvalonBay, that the AvalonBay contract had

expired, was not renewed by the owner, and that the property owner had decided, and was preparing to move forward with a plan, to use the property consistent with its present commercial zoning. The owner advised that inclusion of the property in Wayne's 2017 Plan was no longer a consideration. There have been no further discussions as a result.

39. Discussions have continued in earnest with K-Hovnanian and with GAF. At this time, the Township is expecting a revised schematic plan and traffic study for the GAF property.
40. In response to critique offered by the Township, K-Hovnanian has submitted revised plans for the Rockledge property, which plans are considered by the Township to be in serious consideration for Plan inclusion.
41. The Township has had on-going meetings and communications with GAF, which continue to date. GAF generated proposed development plans for the property which were presented and assessed by the Township. GAF has revised its plan, which has been reviewed by Township staff and consultants. Review comments have been provided to GAF.

42. The Township has also had meetings and communications with the principals of 1700 Valley Road, LLC, regarding property located at 1700 Valley Road in Wayne, which property is presently occupied by an office building of JVC. 1700 Valley Road, LLC ("The LLC") has proposed interest in developing the site as an assisted living residence combined with an adult medical daycare center. Although that proposed project was terminated, The LLC has advised that it is actively looking at alternative sites in Wayne for its proposed development.
43. The Township has had meetings and communications with the LLC concerning its proposal. The Township's Planner, Affordable Housing Planning Consultant and attorneys Fiorello and Cavaliere have participated in a conference and conference call with Special Master Cofone and Adam Gordon of Fair Share Housing Center concerning the proposal.
44. The LLC prepared and filed a Notice of Motion to appear as Amicus Curiae in the Township's pending action for declaratory judgment and for an Order for an interim determination that the type of units proposed for assisted living are not age restricted. The Township supported the relief requested in the LLC's Notice of Motion, which was heard by the Court on March 3, 2017. The LLC's motion requested that the proposed units not be considered age-

restricted. The Court denied their application without prejudice. Thereafter, the LLC withdrew its Right to Intervene by Notice to the Court from its attorney, dated March 29, 2017.

Consideration of Other Properties

45. The Township has also had, and continues to have, serious and on-going, meetings and communications with other owners and/or contract purchasers of several, significant township located properties for the purpose of exploring inclusion of their properties in Wayne's 2017 Plan. The identities of the properties and/or parties are not public, and therefore, upon advice of counsel, are not identified herein, but instead are offered to be disclosed in-camera to the Court and/or Special Master, if directed by the Court. The identities of the properties and/or parties have been disclosed to the Special Master but are not public and therefore, upon advice of counsel, are not identified herein, but instead are offered to be disclosed in-cameral to the Court and/or Special Master, if directed by the Court.

46. Those property owners have provided preliminary concept plans and discussions are continuing in earnest.

47. The Township believes that the combination of the above will permit it to satisfy its Third Round Mt. Laurel obligation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: May 16, 2017

Caroline Reiter
CAROLINE REITER

CAROLINE Z. REITER, P.P., AICP

Professional Planner

Ms. Reiter has a wide range of planning experience with C.O.A.H. and affordable housing rules, regulations and monitoring, as well as planning and design of affordable housing developments and ordinances. She prepared the Haworth Housing Element and Fair Share Plan which the Haworth Planning Board adopted in September 2015. She also prepared the Hillsdale Housing Element/Fair Share Plan, and the Council on Affordable Housing granted the Borough substantive certification in November 2001. Ms. Reiter also prepared a Housing Element/Fair Share Plan for Hillsdale under the Council on Affordable Housing Round 3 rules and guided the Borough through C.O.A.H.'s mediation process.

Ms. Reiter has served as the Wayne Township Affordable Housing consultant since January of 2016. She has advised the Affordable Housing Committee on affordable housing obligations, potential municipal affordable housing sites and mechanisms, and prepared a vacant land analysis.

Ms. Reiter serves as Closter's C.O.A.H. Planner. She, along with the firm's drafters, prepared vacant land mapping and a vacant land analysis for the Borough. Ms. Reiter has led Closter's C.O.A.H. Committee and provided guidance on potential affordable housing mechanisms and locations. She has presented several potential locations for affordable housing to the Committee and the Special Master for their consideration.

In River Vale, Ms. Reiter successfully drafted the zoning ordinance to accommodate the Kirk affordable housing development, as well as all associated amendments. The Kirk development is now constructed and occupied. She similarly prepared a zoning ordinance on behalf of the Leonia Housing Authority. The ordinance permitted an expansion of an existing affordable housing development and considered adjacent land uses and Master Plan designations. The Leonia governing body adopted the ordinance amendment and the affordable housing expansion has been constructed.

Ms. Reiter has also successfully completed several municipal planning projects, including Master Plans, Housing Elements/Fair Share Plans and demographic analyses. As the Closter Borough Planner, Ms. Reiter has advised the Borough administration and Chamber of Commerce on potential zoning modifications to strengthen nonresidential zone districts. As a licensed Planner, Ms. Reiter has testified before New Jersey planning and zoning boards, and she has provided technical support to many municipal planning boards. Ms. Reiter has been accepted as an expert in the field of Planning in New Jersey Superior Court. She has also served as the Project Manager for the firm's New Jersey Transit Site Planning project.

Ms. Reiter, until recently, served as the Hillsdale Borough Planner and the Hillsdale Planning Board Planner for several years. She reviewed the Borough's development applications and provided general planning assistance when needed. She prepared a new Master Plan for

Hillsdale that the Planning Board adopted in December 2003 and an update to the Master Plan that was adopted in April 2006, and subsequent Reexamination Reports. Ms. Reiter has developed recommended changes to the Zoning Ordinance for consideration by the Borough Council, including ordinances on floor area ratio, impervious coverage, setbacks and age-restricted housing.

With support staff from our Oakland office for presentations and report publications, she provides services ranging from:

- C.O.A.H. report preparation, appeals, and annual reporting
- Master plan preparation and re-examination
- Site plan/subdivision reviews in conjunction with independent engineering reviews
- Expert witness testimony for and against development applications
- Preparation of land use ordinances
- Consistency review of proposed land use ordinances

Mr. Reiter is diligent, articulate, and an excellent technical planner. Her recent work has included:

- *Borough of Closter* – Led C.O.A.H. Committee to analysis of best location for affordable housing without disrupting existing land use patterns. Prepared Court-required “Summary of Plan” paperwork and Vacant Land Analysis.
- *Borough of Haworth* – Prepared 2015 Housing Element & Fair Share Plan that was adopted by the Planning Board and endorsed by the Governing body.
- *Borough of Hillsdale* – Prepared and submitted appeal on proposed C.O.A.H. Round 3 rules for municipal client. Presented informational C.O.A.H. updates and analysis to Borough Land Use Board and Pascack Valley Administrators. Under previous Round 3 rules, submitted appeal to reduce Bergen County/NJTPA Cross-Acceptance Report population growth projections. Prepared ordinances on signage, age-restricted housing, Floor Area Ratio and impervious coverage limitations. Presentations at public hearings.
- *Township of River Vale* – Attends Planning Board and Zoning Board meetings to review specific applications for the Boards. Provides opinions to the Planning Board for Master Plan consistency reviews for new land use ordinances and capital project reviews. Assists with open space grant applications to Bergen County and the Green Acres program in River Vale. Participated in the successful grants application for the recent purchase of the River Vale Country Club, among others.
- *Bergen County Bar Association, Land Use Board Training Certification* - Provided presentations on planning aspects of land use application reviews to planning and zoning officials in Bergen County for their certification.
- *Teaneck Planning Board* – Prepared a special planning report for a proposed bank branch at DeGraw Avenue/Gifford Place/Teaneck Road intersection. The report recommended *against* a rezoning change requested by a developer and resulting recommendations were favorably met by the Board. The zoning change was denied.

- *Prospect Park Governing Body* – Fiscal impact analysis for development of an 80-acre quarry site for multi-family housing. Presentations at public hearings.
- *Leonia Housing Authority* - A zoning ordinance amendment for presentation to and adoption by the governing body. Provided a draft ordinance with a supporting planning memo. The support memo included information on surrounding properties, current zoning and the Borough’s master planning efforts.
- *Borough of Montvale* - Land use study of commercial office zoning district for consideration of parking decks to expand gross floor areas. Included recommendations for design standards and zoning ordinances, and master plan amendment.

Previously, Ms. Reiter served as a planning consultant to a major Personal Communication Services (PCS) provider in the New York metropolitan area. She was responsible for managing the carrier’s zoning process in the Westchester, NY region. On behalf of the client, Ms. Reiter testified before municipal planning boards, prepared and coordinated development applications and advised on the most appropriate locations for the proposed wireless facilities.

RELEVANT EXPERIENCE

- Affordable Housing Planner, Township of Wayne
- COAH/Affordable Housing Planner, Borough of Closter
- Borough Planner, Borough of Closter
- Board Planner, Township of River Vale, Bergen County
- Township Planner, Township of River Vale, Bergen County
- Borough Planner, Borough of Haworth, Bergen County
- Board Planner, Borough of Hillsdale, Bergen County
- Borough Planner, Borough of Hillsdale, Bergen County
- Special Planner, Township of Teaneck Planning Board
- Developed Ordinance for Affordable Senior Housing, Borough of Leonia
- As the Mt. Olive Township Assistant Planner, analyzed, surveyed and reviewed the Township’s existing land use to determine appropriate modifications to the Master Plan and Zoning Ordinance.

EDUCATION

M.C.R.P., Bloustein School of Planning and Public Policy, 1995 Rutgers University
 BA, Political Science, 1990 State University of New York at Albany

PROFESSIONAL REGISTRATIONS

Professional Planner, NJ
 American Institute of Certified Planners

PROFESSIONAL AFFILIATIONS

American Planning Association

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – PASSAIC COUNTY

IN THE MATTER OF THE :
APPLICATION OF THE TOWNSHIP : DOCKET NO. PAS- L-2396-15
OF WAYNE, a Municipal Corporation :
of the State of New Jersey, and the : Civil Action
PLANNING BOARD of the : (Mt. Laurel)
TOWNSHIP OF WAYNE, :
Plaintiffs/Petitioners. :

**BRIEF IN SUPPORT OF MOTION OF THE
TOWNSHIP OF WAYNE TO EXTEND IMMUNITY
FROM EXCLUSIONARY ZONING ACTION**

JOHN FIORELLO, ESQ. – 201501962
FIORELLO, PUCCIO & FIORELLO LLC
1044 Route 23 North, Suite 318
Wayne, New Jersey 07470
(973) 706-8990
Attorney for Plaintiff/Petitioner
Township of Wayne

MATTHEW J. CAVALIERE, ESQ. – 029151982
CAVALIERE & CAVALIERE, P.A.
1700 Route 23 N., Suite 201
Wayne, New Jersey 07470
P (973) 305-1800
Email: MJC@CavaliereLaw.us
Attorney for Plaintiff/Petitioner
Planning Board of Township of Wayne

JOHN FIORELLO, ESQ.
On The Brief

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The Court is respectfully referred to the CERTIFICATION IN SUPPORT OF MOTION TO EXTEND IMMUNITY FROM EXCLUSIONARY ZONING ACTIONS OF CAROLINE REITER, P.P. AICP, Wayne Township's Mt. Laurel Planner, wherein she sets forth the operative procedural history and facts supporting Wayne's application for an extension of immunity.

ARGUMENT

POINT I

THIS COURT HAS AN OBLIGATION, AS A MATTER OF LAW, TO PRESUME THAT THE TOWNSHIP AND ITS PLANNING BOARD ARE ACTING "FAIRLY AND WITH PROPER MOTIVES AND FOR VALID REASONS," THEREBY IMPOSING THE BURDEN ON ANYONE WHO WOULD CHALLENGE THESE GOVERNMENTAL ENTITIES TO OVERCOME THE PRESUMPTION OF VALIDITY TO WHICH THEY ARE ENTITLED.

A. *Presumption of Validity*

Courts must presume that a municipality "will act fairly and with proper motives and for valid reasons." *Kramer v. Bd. of Adjustment, Sea Girt*, 45 N.J. 268, 296-97 (1965); *see also Fanelli v. City of Trenton*, 135 N.J. 582, 589 (1994). In matters involving local land use and zoning issues, "the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an **affirmative showing** that it was **manifestly an abuse of their discretionary authority.**" *Ward v. Scott*, 16 N.J. 16, 23 (1954). "Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of **clear abuse of discretion by the public agencies involved.**" *Id.* At 23; *Reinauer Realty Corp. v. Paramus*, 34 N.J. 406, 416 (1961).

B. *An Interested party Who Would Seek To Divest The Township And Planning Board of Immunity Has The Heavy Obligation to Overcome the Presumption To Which These Governmental Entities are entitled.*

A "natural corollary to the presumption of validity of governmental action" is that "the objector must carry the burden of demonstrating" that the municipal body acted in bad faith. *Berninger v. Bd. of Adj. of Midland Park*, 254 N.J. Super. 401, 407 (App. Div. 1991) aff'd sub nom, *Beringer v. Bd. of Adj. of Bor. Of Midland Park*, 127 N.J. 226 (1991) (emphasis added); see also *Cell South*, 172 N.J. at 81 ("Because a board's actions are presumed valid, the party 'attacking such action (has) the burden of proving otherwise.") (quoting *New York SMSA Ltd. P'ship v. Bd. of Adj. of Tp. of Bernards*, 324 N.J. Super. 149, 163 (App. Div.) certif. denied, 162 N.J. 488 (1999)).

In consequence of the foregoing, it is submitted that the Court has an obligation to presume that the Township of Wayne and its Planning Board are acting "fairly and with proper motives and for valid reasons." Anyone who would contend otherwise has a heavy burden of proof to overcome.

POINT II

PURSUANT TO MOUNT LAUREL IV AND OTHER WELL-ESTABLISHED LEGAL PRINCIPLES, THIS COURT CAN ONLY "WITHDRAW" THE TOWNSHIP'S IMMUNITY IF AN INTERESTED PARTY OR INTERVENOR CARRIES ITS BURDEN BY PROVING THAT WAYNE TOWNSHIP IS "DETERMINED" TO BE CONSTITUTIONALLY NONCOMPLIANT."

Consistent with the principles established in Point I, the purpose of the FHA and COAH's longstanding rules and policies, the Supreme Court made very clear in Mount Laurel IV that it would only permit litigation against a municipality as a last resort. In this regard, the very purpose of the FHA is to resolve exclusionary zoning issues **without litigation**. See *N.J.S.A. 52:27D-303* (providing that "the State's preference of the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act **and not litigation**"). (emphasis added). Accordingly COAH's regulations

effectively protected towns from exclusionary lawsuits unless an objector proved egregious municipal conduct so extreme as to warrant "accelerated denial of substantive certification." See *N.J.A.C. 5:91-10.2*. In all cases, the burden lies upon a challenger to overcome the presumption of validity and good faith afforded to all municipalities.

Consistent with these principles, the Supreme Court ruled that a municipality would have to demonstrate that a municipality "abused" immunity to warrant losing it.

We repose such flexibility in the Mount Laurel-designated judges in the vicinages, to whom all Mount Laurel compliance-related matters will be assigned post-order, and trust those courts to 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.

(Mount Laurel IV, 221 N.J. at 26 (emphasis added)).

Thus, the Supreme Court correctly placed the burden on a challenger to demonstrate an abuse that would warrant the immunity to be "withdrawn."

Indeed, the Court also assisted trial courts by defining what is meant to "abuse the process" which would call for the divestment of immunity. Specifically, the Supreme Court ruled that exposure to Mount Laurel litigation will only be considered if someone demonstrates that the municipality is "**determined to be constitutionally noncompliant.**" Thus, immunity should remain in place unless the burden is met. Specifically, the Court stated:

Beyond those general admonitions, the courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed, **and the town is determined to be constitutionally noncompliant,** then the court may authorize exclusionary zoning actions seeking a builder's remedy to proceed against the towns either that had substantive certification granted from COAH under earlier iterations of Third Round Rules or that had held "participating status before COAH until this action by our Court lifted the FHA's exhaustion-of-administrative-remedies requirement.

[*Id.* At 33-34]

Pursuant to this passage and the various legal principles articulated above, one thing is clear and beyond debate: Maintaining immunity cannot be conditioned on a repeated and ongoing demonstration of good faith by the municipality. In fact, the opposite is true. Immunity must remain in effect unless and until someone satisfies its burden by proving to the Court's satisfaction that the town "**is determined to be constitutionally noncompliant.** *Ibid.*

Thus, Wayne Township's immunity should remain in place and be extended absent a showing that Wayne is "determined to be noncompliant," which is entirely consistent with well-established principles of law provided above.

POINT III

NO INTERESTED PARTY HAS COME FORWARD OR MET ITS HEAVY BURDEN TO PROVE THAT WAYNE TOWNSHIP IS "DETERMINED TO BE CONSTITUTIONALLY NONCOMPLIANT."

Wayne Township filed its DJ Action on July 2, 2015. To date, three developers have moved for, and with Wayne's consent, have been granted intervenor status; Wayne has continued to work with all interested intervenors and with other interested parties who have not requested intervenor status, and none has sought to make any showing to the Court that Wayne is "noncompliant" with its obligation to develop a "new" Third Round Affordable Housing/Mt. Laurel Plan. Since no challenger has demonstrated that Wayne Township is determined to be constitutionally noncompliant, it is respectfully submitted that this Court should not take the radical action of stripping the Township and its Planning Board of immunity. In fact, it is respectfully submitted that the Court should extend the Township's immunity.

In any event, as explained in Point IV, no interested party can meet the heavy burden of proving that Wayne Township is determined to be constitutionally noncompliant.

POINT IV

NO INTERESTED PARTY CAN MEET ITS HEAVY BURDEN TO PROVE THAT THE TOWNSHIP IS "DETERMINED TO BE CONSTITUTIONALLY NONCOMPLIANT."

No interested party can meet the heavy burden of proving that Wayne Township is **determined to be noncompliant** because the Township is indeed determined to comply voluntarily.

As to Round 3, the Court is referred to the Certification of its Mt. Laurel Planner Caroline Reiter, submitted with the Township of Wayne's Notice of Motion for an Extension of Immunity. The Court is also respectfully referred to the Certifications of the Township's Municipal Planner John P. Szabo dated March 31, 2015 and July 2, 2015 and previously submitted to the Court as well as the facts submitted and exhibits submitted to the Court with Wayne's Notice of Motion for a grant of immunity from exclusionary zoning actions and prohibiting intervenors from contesting Wayne Township's site selections and/or methods of compliance and other relief.

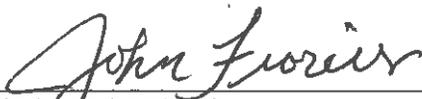
The actions of Wayne as set forth in its original complaint and the Certification of its then principal planner in connection therewith as well as the Certifications and exhibits submitted to the Court in the Township's Motion for an Order Granting Immunity, which immunity was granted in the Court's Supplemental Order of November 9, 2015 as amended in its Order of November 20, 2015 wherein, initially, immunity was granted until March 15, 2016. However, in the Case Management Order of the Court dated February 3, 2016, the immunity granted to Wayne from builders' remedy lawsuits or other third party lawsuits was extended through May 5, 2016. The Court further granted an extension of Wayne's immunity in Orders dated October 20, 2016 and January 4, 2017.

The Township's efforts and activity to satisfy its third round Mt. Laurel obligations, have been set forth in the Certification of its Mt. Laurel Planner, Caroline Reiter, and indicate the significant actions that have been taken and are continuing on behalf of the Township.

CONCLUSION

In light of the above, this Court must presume that the Township is acting in good faith. Consequently, any challenger carries the heavy burden to prove that the Township is "determined to be constitutionally noncompliant" to warrant the radical step of divesting the Township and its Planning Board of Immunity. Therefore, the Court should not divest the Township of its immunity but, instead, the immunity should be extended and the Court should permit Wayne Township to achieve compliance voluntarily. Finally, the Court should establish appropriate dates for a review of the progress of the Township of Wayne in meeting its Mt. Laurel obligations and to review the immunity granted by the Court, following notice to all interested parties.

FIORIELLO, PUCCIO & FIORIELLO LLC
Attorney for Plaintiff/Petitioner Tp. of Wayne

By: 
JOHN FIORELLO

CAVALIERE & CAVALIERE, P.A.
Attorney for Plaintiff/Petitioner Planning Board
Tp. of Wayne

By: 
MATTHEW J. CAVALIERI

DATED: May 16, 2017

JOHN FIORELLO, ESQ. – 201501962
FIORELLO, PUCCIO & FIORELLO LLC
1044 Route 23 North, Suite 318
Wayne, New Jersey 07470
(973) 706-8990
Attorney for Plaintiff/Petitioner Township of Wayne

MATTHEW J. CAVALIERE, ESQ. – 029151982
CAVALIERE & CAVALIERE, P.A.
1700 Route 23 N., Suite 201
Wayne, New Jersey 07470
P (973) 305-1800
Email: MJC@CavaliereLaw.us
Attorney for Plaintiff/Petitioner
Planning Board of Township of Wayne

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – PASSAIC COUNTY

IN THE MATTER OF THE :
APPLICATION OF THE TOWNSHIP :
OF WAYNE, a Municipal Corporation :
of the State of New Jersey, and the :
PLANNING BOARD of the :
TOWNSHIP OF WAYNE, :
Plaintiffs/Petitioners. :

DOCKET NO. PAS-L-2396-15

Civil Action

(Mt. Laurel)

ORDER

THE WITHIN matter having come before the Court on Motion by Fiorello, Puccio & Fiorello LLC (John Fiorello, Esq., appearing) on behalf of Plaintiff/Petitioner, Township of Wayne ("Township"), and Cavaliere & Cavaliere, P.A. (Matthew J. Cavaliere, Esq., appearing) on behalf of Plaintiff/Petitioner Township of Wayne Planning Board (collectively, "Wayne"), for an Order extending temporary immunity from a builder's

remedy lawsuit or other third-party lawsuits until _____, 2017, which immunity was initially granted and extended in Orders dated November 9, 2015, February 3, 2016, October 20, 2016, January 4, 2017, and March 23, 2017, and for good cause having been shown;

It is on this _____ day of June, 2017, **ORDERED** as follows:

1. Wayne is hereby granted an extension of temporary immunity from a builder's remedy suit or other third party lawsuits until the latter of _____, 2017, or the date of a Case Management Conference next following that date.

2. Discovery is extended to _____.

IT IS FURTHER ORDERED that counsel for Wayne shall serve a true copy of the within Order upon all counsel/interested parties within _____ days of counsel's receipt of the Order.

HON. THOMAS F. BROGAN, PJ.CV.

PAPERS CONSIDERED

NOTICE OF MOTION
MOVANT'S AFFIDAVIT OR CERTIFICATION
MOVANT'S BRIEF
NOTICE OF CROSS-MOTION
RESPONDENT'S AFFIDAVIT OR CERTIFICATION
RESPONDENT'S BRIEF
MOVANT'S REPLY
OTHER _____

JOHN FIORELLO, ESQ. – 201501962
FIORELLO, PUCCIO & FIORELLO LLC
1044 Route 23 North, Suite 318
Wayne, New Jersey 07470
(973) 706-8990
Attorney for Plaintiff/Petitioner Township of Wayne

MATTHEW J. CAVALIERE, ESQ. – 029151982
CAVALIERE & CAVALIERE, P.A.
1700 Route 23 N., Suite 201
Wayne, New Jersey 07470
P (973) 305-1800
Email: MJC@CavaliereLaw.us
Attorney for Plaintiff/Petitioner
Planning Board of Township of Wayne

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – PASSAIC COUNTY

IN THE MATTER OF THE	:	
APPLICATION OF THE TOWNSHIP	:	DOCKET NO. PAS- L-2396-15
OF WAYNE, a Municipal Corporation	:	
of the State of New Jersey, and the	:	Civil Action
PLANNING BOARD of the	:	(Mt. Laurel)
TOWNSHIP OF WAYNE,	:	<u>CERTIFICATION OF SERVICE</u>
Plaintiffs/Petitioners.	:	

JOHN FIORELLO, of full age, certifies as follows:

1. I am an Attorney-At-Law of the State of New Jersey and I represent Plaintiff/Petitioner Township of Wayne in connection with the above referenced matter. I am submitting this Certification on behalf of the Plaintiffs/Petitioners Township of Wayne and Planning Board of the Township of Wayne.

2. I have caused to be sent to all those on the attached Service List, except those who are employees and elected or appointed officials of Plaintiff/Petitioner Township of Wayne or of the Plaintiff/Petitioner Planning Board of the Township of Wayne, letter dated May 16, 2017, sent by ordinary mail, advising that the Motion of Plaintiffs/Petitioners for an extension of immunity pending case disposition is scheduled to be heard on June 8, 2017 at 2:00 p.m., before Hon. Thomas F. Brogan, J.S.C. A copy of said letter is annexed hereto.

3. With regard to those on the Service List who are appointed or elected officials of the Township of Wayne or the Planning Board of the Township of Wayne, service has been effected via E-mail.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: May 16, 2017



JOHN FIORELLO

FIGRELLU, PUCCIO & FIGRELLU LLC

COUNSELLORS AT LAW
1044 ROUTE 23 NORTH
SUITE 318
WAYNE, NEW JERSEY 07470

JOHN FIGRELLU*
LINDA COUSO PUCCIO
JEFFREY FIGRELLU*

*COURT APPROVED
FAMILY LAW ECONOMIC MEDIATOR

(973) 706-8990
FAX (973) 706-8991

WEBSITE:
WWW.LAWYERSFPF.COM

May 16, 2017

10682
FILE NO.

TO: ALL ON ATTACHED SERVICE LIST

RE: **NOTICE OF MOTION FOR ORDER EXTENDING
IMMUNITY OF TOWNSHIP OF WAYNE AND
PLANNING BOARD OF TOWNSHIP OF WAYNE
DOCKET NO. PAS-L-2396-15**

This is to give you Notice that the Township of Wayne and the Planning Board of the Township of Wayne have filed a Notice of Motion for an Order granting an extension of temporary immunity from exclusionary zoning suits previously granted to the Township of Wayne together with the Certification in support of the Motion of Caroline Reiter, P.P., A.I.C.P., dated May 16, 2017, Brief in support of said Motion and proposed form of Order under Docket No. PAS-L-2396-15. Copies of the foregoing documents can be obtained as follows:

The Motion and supporting documents may be downloaded from the Wayne Township website as follows:

<http://www.waynetownship.com/mt-laurel-public-notices.html>

This Notice is sent to you pursuant to the Decision of the Supreme Court of New Jersey *In the Matter of the Adoption of the N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing*, 221 N.J. 1(2015).

Very truly yours,

JOHN FIGRELLU, ESQ.
Attorney for Township of Wayne

MATTHEW J. CAVALIERE, ESQ.
Attorney for Planning Bd. of Tp. of Wayne

By: 
JOHN FIGRELLU

Service List Page 1 of 2

Revised 2017-04-04

**IMO App of Wayne Twp for Mt. Laurel 3rd
Round**

Dkt PAS-1-2396-15

Prep's by Wayne Twp & Plan Bd

Dahl, Stephen M. Esq.

On behalf of K. Hovnanian Co., LLC

110 Fieldcrest Avenue

Edison, New Jersey 08837

sdahl@khov.com

Destito, Samuel Esq. on behalf of GAF

Windels Marx Lane & Mittendorf, LLP

One Giralda Farms

Madison, New Jersey 07940

sdestito@windelsmarx.com

Field, Melissa

Director of Housing Development

Allies, Inc.

1262 White Horse-Hamilton Sq. Road

Bldg. A. Suite 101

Hamilton, New Jersey 08690

Hoff, Richard J. Esq.

On behalf of Highview Homes, LLC

Bisgaier Hoff

25 Chestnut Street, Suite 3

Haddonfield, New Jersey 08033

Kinsey, David N. PP, AICP, Ph.D.

Kinsey & Hand

14 Aiken Avenue

Princeton, New Jersey 08540

McGuire, Dan AICP

Director, Development Division

On behalf of Homeless Solutions

6 Dumont Place, 3rd Floor

Morristown, New Jersey 07960

Pringle, Scott H. Esq.

Northeast New Jersey Legal Services, Inc.

574 Summit Ave.

Jersey City, New Jersey 07306-2797

Vogel, Jon Esq.

On behalf of Development Director

Avalon Bay Communities, Inc.

517 Rte. 1S, Suite 5500

Iselin, New Jersey 08830

Voliton, Robert

116 Erasmus Street

Brooklyn, New York 11226

Brogan, Hon. Thomas F. J.S.C., P.J.Cv

Presiding Judge of Civil Division

Superior Court of New Jersey

Courthouse, 77 Hamilton Street, Rm 304

Paterson, New Jersey 07505

Semeraro, Mark Esq.

On behalf of Galreh, LLC & Others

2 Executive Drive, Suite 530

Fort Lee, New Jersey 07024

msemerano@northjerseyatorneys.com

Vogel, Jerome A. Esq.

Jeffer, Hopkinson & Vogel

1600 Route 208 N.

Hawthorne, New Jersey 07506

Chewcaskie, Esq., Brian M. On behalf of

Borough of Oakland, County of Bergen

Gittlemen, Mulstock & Chewcaskie, LLP

2200 Fletcher Avenue

Fort Lee, New Jersey 07024

Rodriguez, Yolanda Esq.

On behalf of Toll Brothers, Inc.

670 Spotswood-Englishtown Road

Monroe Township, New Jersey 08831

Oberlander, David R. Esq.

Bisgaier Hoff, LLC

25 Chestnut Street, Suite 3

Haddonfield, New Jersey 08033

doberlander@bisgaierhoff.com

Semple, Elizabeth

NJ Dept. of Environmental Protection

PO Box 402

Trenton, New Jersey 08625

Shimanowitz, Robert L. Esq.

Hutt & Shimanowitz, PC

459 Amboy Avenue

PO Box 648

Woodbridge, New Jersey 07095

Walls, Keven J.

On behalf of Rage Realty Partners, LP

1200 Route 46

Clifton, New Jersey 07013

Walsh, Kevin D. Esq.

On behalf of Fair Share Housing Center

510 Park Blvd.

Cherry Hill, New Jersey 08002

adamgordon@fairsharehousing.org

Valentina DiPippo, Esq. DAG

Division of Law

RJ Hughes Justice Complex

PO Box 112

Trenton, New Jersey 08625

LaPlace, Michael, Dr Planning

Passaic County Planning Board

Totowa Business Center

930 Riverview Dr., Suite 250

Totowa, New Jersey 07512

Hecht, Alex

SEIU 32BJ, Research Dept.

25 W. 18th Street

New York, New York 10011

Hartkopf, Karl F. PP, AICP, Dir Planning

New Jersey Business Action Center

Dept. of State, Office for Planning Advocac

PO Box 820, 225 W State St., 3rd Floor

Trenton, New Jersey 08625-0820

Ladell, Ronald S. Sr. Vice President

On behalf of Avalon Bay Communities

517 Route One South, Suite 5500

Iselin, New Jersey 08830

Rahenkamp, Creigh AICP, PP

Creigh Rahenkamp & Associates, LLC

PO Box 222

Riverton, New Jersey 08077

Ticktin, Marilyn K.

SERV Properties & Management, Inc.

20 Scotch Road

Ewing, New Jersey 08628-2529

Toronto, Thomas

President

Bergen County's United Way

6 Forest Avenue, Suite 210

Paramus, New Jersey 07652

Sr. VP

**On behalf of ARC of Bergen and Passaic
Counties, Inc.**

223 Moore Street

Hackensack, New Jersey 07601

Kasuba, Robert A. Esq.

Bisgaier Hoff, LLC

25 Chestnut Street, Suite 3

Haddonfield, New Jersey 08033

rkasuba@bisgaierhoff.com

Service List Page 2 of 2

Revised 2017-04-04

IMO App of Wayne Twp for Mt. Laurel 3rd
Round

Dkt PAS-1-2396-15

Prep's by Wayne Twp & Plan Bd

Buzak, Edward J. Esq.
The Buzak Law Group, LLC
150 River Road
Suite N4
Montville, New Jersey 07045

Eisdorfer, Stephen Esq.
Hill Wallack
21 Roszel Road,
Princeton, NJ 08540

Wacks, Edward on behalf of Estate of
Jeanne Kuehm, Estate of Edgar Kyum and
Dutchland Realty
555 Madison Avenue, Suite 320A
Morristown, New Jersey 07960

Peter R. Bray, Esq.
Bray & Bray, L.L.C.
100 Misty Lane
Parsippany, NJ 07054-2710
pbray@braynilaw.com

**Wayne Twp Officials/Employee List
Service By Electronic Transmittal Only**

Lutz, Linda, PP, AICP
Acting Township Planner
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Vergano, Hon. Christopher P. Mayor
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Cavaliere, Matthew J. Esq.
Cavaliere & Cavaliere, PA
1700 Route 23 N., Suite 210
Wayne, New Jersey 07470-7537

Mantica, Matthew
On behalf of Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

DiPippa, Valentina, Esq. D.A.G.
State of New Jersey,
Office of the Attorney General
Dept. of Law and Public Safety-Div. of Law
25 Market Street (#112)
Trenton, NJ 08625-0112

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

Elgart, Irina B., Esq.
Fox Rothschild LLP
Princeton Pike Corp. Center
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648-2311
ielgart@foxrothchild.com

Edge, Ryan T.
MHL
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Margiotta, Paul V. RMC
Municipal Clerk
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Wayne Twp Council President
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Surenian, Jeffrey R. Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Briele, New Jersey 08730

Drill, Jonathan E. Esq.
Stickel, Koenig, Sullivan & Drill
571 Pompton Avenue
Cedar Grove, NJ 07009

Picot, David, SVP, Property Development
Toys R Us
1 Geoffrey Way
Wayne, N.J. 07470

Nazzaro-Cofone, Christine A AICP/PP,
Court Appointed Master
Cofone Consulting Group, LLC
125 Half Mile Road - Suite 200
Red Bank, NJ 07701
ccofone@cofoneconsulting.com

Zapata, Fernando
Township Engineer
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Bellet, Neal
Municipal Administrator
Township of Wayne
475 Valley Road
Wayne, New Jersey 07470-3582

Fiorello, John, Esq.
Fiorello, Puccio & Fiorello
1044 Route 23 North
Suite 318
Wayne, New Jersey 07470