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April 26, 2017

Via Hand Delivery

Clerk

Superior Court of New Jersey
Essex County, Law Division
465 Dr. Martin Luther King Jr. Blvd.
Newark, New Jersey 07102

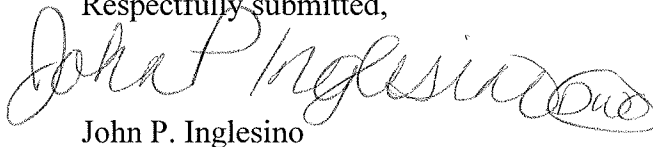
Re: In the Matter of the Township of Verona
Docket No.: ESX-L-4773-15

Dear Sir or Madam:

This firm represents proposed Defendant-Intervenor, SPECTRUM 360, LLC, in the above-captioned matters. Enclosed herein for filing is an original and one copy of: (i) Notice of Motion for Leave to Intervene; (ii) Brief; (iii) Certification of Counsel; (iv) Certification of Service; and (v) proposed form of Order. Kindly return stamped, filed copy of each in the enclosed self-addressed, pre-stamped envelope. You may charge our Account No. 142409 for this filing.

Please contact me if you require anything further.

Respectfully submitted,


John P. Inglesino

JPI/dwo

Encls.

cc: Michael A. Gannaio, Esq. (via Lawyers Service and electronic mail)
Essex County Service List (via electronic mail)

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Derek W. Orth, Esq. (001152013)
Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC

**IN THE MATTER OF THE TOWNSHIP
OF VERONA, a municipal corporation of
the State of New Jersey,**

Plaintiff/Petitioner.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY**

Docket No.: ESX-L-4773-15

Civil Actions

**NOTICE OF MOTION FOR LEAVE TO
INTERVENE**

**TO: Michael A. Gannaio, Esq.
Giblin & Gannaio
2 Forest Avenue, #200
Oradell, New Jersey 07649
Attorneys for Petitioner,
Township of Verona**

COUNSEL:

PLEASE TAKE NOTICE that on Friday, March 19, 2017, at 9:00 A.M., or as soon thereafter as counsel may be heard, proposed Defendant-Intervenor, SPECTRUM 360, LLC, (“Spectrum”), by and through its undersigned counsel, Inglesino, Webster, Wyciskala & Taylor, LLC, shall move before the Superior Court of New Jersey, Essex County, 465 Dr. Martin Luther

King Jr. Blvd., Newark, New Jersey 07102, for an Order permitting Spectrum to intervene and file an Answer in the above-captioned action as a Defendant-Intervenor.

PLEASE TAKE FURTHER NOTICE that in support of its Motion, Spectrum shall reply upon the enclosed: (i) Brief; (ii) Certification of John P. Inglesino, Esq. with annexed, proposed Answer; (iii) proposed form of Order; (iv) Certification of Service, as well as all other papers and pleadings on file in this matter.

PLEASE TAKE FURTHER NOTICE that Spectrum requests oral argument on this matter if timely opposition is filed.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: 
JOHN P. INGLESINO

Date: April 26, 2017

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**IN THE MATTER OF THE TOWNSHIP
OF VERONA, a municipal corporation of
the State of New Jersey,**

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-4773-15

Civil Action

**BRIEF OF PROPOSED DEFENDANT-INTERVENOR, SPECTRUM 360, LLC, IN
SUPPORT OF ITS MOTION TO INTERVENE**

Of Counsel and On the Brief:

John P. Inglesino, Esq. (0077511991)
Derek W. Orth, Esq. (001152013)

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PRELIMINARY STATEMENT

Proposed Defendant-Intervenor, SPECTRUM 360, LLC (“Spectrum”), seeks the Court’s leave to intervene and join in the Declaratory Judgment action filed by the Township of Verona (the “Township”) in the case captioned In the Matter of the Township of Verona, bearing Docket No. ESS-L-4773-15 (the “Township’s DJ Action”). Spectrum is an interested party to the Township’s DJ Action and the owner of real property located within the Township and, as such, it has a unique interest in the outcome of this litigation that cannot be adequately represented by any existing party. More importantly, Spectrum proposes to construct an inclusionary development on its property that will assist the Township in meeting its Third Round affordable housing obligations.

The law is unmistakably clear that Spectrum has a right to intervene in this case. As an interested party and owner of real property located within the Township, Spectrum is entitled to intervention under R. 4:33-1 and R. 4:33-2, the Uniform Declaratory Judgments Act, and the broad approach to standing afforded to interested parties involved in these Mount Laurel proceedings. Furthermore, this matter has not been scheduled for trial, nor has the Township presented a settlement agreement to the Court for consideration. As such, there is no threat that Spectrum’s intervention would delay the timely resolution of the complex constitutional issues present in the litigation. Based on the foregoing, Spectrum respectfully requests that the Court grant this Motion in its entirety, permit Spectrum to file an Answer, and direct the Township to review its inclusionary development concept and discuss the same with Spectrum in good faith.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Spectrum is the owner of real property designated as Block 13, Lot 4 on the Township's official Tax Map (the "Verona Property"). See Certification of Counsel ("Counsel Cert."), at ¶ 2. Until it underwent a name change effective July 1, 2016, Spectrum was known as The Children's Institute ("TCI").¹ Spectrum is a non-profit entity that operates two schools and serves children, adolescents, young adults, and adults on the autism spectrum and with behavioral and related disabilities. Id. at ¶ 3.

Spectrum's lower school is located at One Sunset Avenue, Verona, New Jersey (the "Property"). The Property is approximately eight (8) acres in size, with approximately 5.5 acres situated in the Township and the remaining 2.5 acres located in the Town Montclair. Id. at ¶ 4. The school building is located within the Township. The Property is located on the southerly side of Sunset Avenue at its intersection with Bloomfield Avenue. It fronts on Sunset Avenue, Bloomfield Avenue, and Afterglow Avenue.

Prior to TCI's relocation to the Property, it was owned by Hoffman-LaRoche, which operated a research, development and office complex on the Property. In the early-1990s, Hoffman-LaRoche ceased its operations at the Property and donated it to TCI so that TCI could convert the existing commercial office building into a school for children with special needs. In 1994, TCI made an initially unsuccessful application to Verona's Zoning Board of Adjustment, seeking a use variance and site plan approvals to permit the conversion of the existing commercial building to a school for children with special needs. After years of litigation, TCI prevailed in a reported Appellate Division decision, The Childrens Inst. v. Verona Twp. Bd. of Adjustment, 290

¹ TCI and Spectrum are interchangeably referred to herein.

N.J. Super. 350 (App. Div. 1996), which eventually permitted TCI to open its lower school in 2000.

In 2005, TCI filed an application with the Township to permit the expansion of the school to develop a career education/vocational wing that would provide much needed educational and vocational services to older students, while still allowing them access within the same facility to counselors and therapists with whom they had consulted throughout their childhood years. After over two years of hearings, the Township's Board of Adjustment denied TCI's application.

Given Spectrum's inability to expand its existing lower school, it needs to relocate to a larger campus in order to continue providing its students with the high level service and care for which Spectrum is well-renowned. In order to facilitate the transition, Spectrum proposes to develop the Property with an inclusionary, multi-family residential development. Id. at ¶ 5.

On or about July 10, 2015, the Township filed its DJ Action in response to the Supreme Court's decision on March 10, 2015.. Id. at ¶ 6. Simultaneously, the Township moved for an Order granting it temporary immunity from the filing of builder's remedies actions. According to publicly available Court records, at least one entity, designated as Bobcar Corporation, Neil Joy Associates, and Forsons Partners, LLC, thereafter moved for and was granted intervention. Id. at ¶ 7.

According to the latest round of expert reports, Fair Share Housing Center ("FSHC") has calculated the Township's fair share obligation as follows: (i) Prior Round – 24; (ii) Gap Period Present Need – 165; and Prospective Need – 201, for a total of 390 units. In contrast, Econsult has calculated the Township's fair share obligation as follows: (i) Prior Round – 24; (ii) Gap Period Present Need – 35; (iii) Prospective Need – 15, for a total of 74 units. According to the Township's

Complaint, it currently claims prior cycle credit for a 159-unit age-restricted project completed in 1981 and financed through the New Jersey Housing Mortgage and Finance Agency.

While the Court has conducted several case management conferences on this matter, the Township has not presented a settlement agreement to the Court for a fairness hearing, nor has it moved for a judgment of compliance and order of repose. *Id.* at ¶ 7. In addition, no trial date to determine the Township's Third Round obligation has been scheduled.

This Motion now follows.

LEGAL ARGUMENT

I. THE DECLARATORY JUDGMENT ACT REQUIRES THE JOINDER OF SPECTRUM AS A DEFENDANT AND "PARTY IN INTEREST" IN THIS ACTION.

The Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-51, et seq. (the "Act"), governs declaratory judgment actions in New Jersey. The Act is required to be "liberally construed and administered, and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws, rules and regulations on the subject of declaratory judgments." N.J.S.A. 2A:16-51. As a general matter, the Act's purpose is to "settle and afford relief from uncertainty and insecurity."

Ibid.

"When declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding." N.J.S.A. 2A:16-56. "No declaratory judgment shall prejudice the rights of persons not parties to the proceeding". N.J.S.A. 2A:16-57. Accordingly, the Act requires joinder of parties in interest because "[t]he absence of these necessary parties would deprive any declaratory judgment rendered herein of that final and pacifying function it is calculated to serve." Finley v. Factory Mutual Liability Ins. Co. of America,

38 N.J. Super. 390 (Law Div. 1955). In order to properly adjudicate a claim, parties should be joined who “ha[ve] the right and the interest to litigate the same issues at another time or before another forum.” Ibid.

Spectrum proposes to construct an inclusionary development on a site that is suitable, available, approvable, and developable. Pursuant to the Act, Spectrum thus has a statutory right to be joined as a party because the Township’s DJ Action seek declaratory relief in connection with Spectrum’s “interest which would be affected by the declaration.” N.J.S.A. 2A:16-56.

Furthermore, as the owner of real property located within the Township, Spectrum also has an undeniable right to intervene in the Township’s DJ Action under both R. 4:33-1 and 4:33-2. R. 4:33-1 provides as follows:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

[R. 4:33-1.]

Intervention as of right requires the proposed intervenor to show: (i) an interest relating the property or transaction which is the subject of the transaction; (ii) that the applicant is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest; (iii) that its interest is not adequately represented by existing parties; and (iv) a timely application to intervene. See Meehan v. K.D. Partners, L.P., 319 N.J. Super. 563, 568 (App. Div. 1998). Because a motion to intervene is liberally viewed, a decision whether to grant intervention under R. 4:33-1 is not discretionary. See Employers v. Tots & Toddlers, 239 N.J. Super. 276 (App. Div.), cert. denied, 122 N.J. 147 (1990); see also Chesterbrooke Limited Partnership v. Planning

Bd. Of the Twp. of Chester, 237 N.J. Super. 118, 124 (App. Div. 1989). Instead, if all of the Rule's criteria are met, intervention must be granted. Ibid.

Under the permissive intervention standard set forth in R. 4:33-2, intervention is granted upon a timely application by anyone if the "claim or defense and the main action have a question of law or fact in common." While intervention under R. 4:33-2 is discretionary, in exercising said discretion "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Under both R. 4:33-1 and R. 4:33-2, Spectrum's motion for intervention should be granted because it has a demonstrable and unique interest in the outcome of the litigation and its participation would not delay the ultimate resolution of this case. Spectrum's project will provide the Townships with significant credits towards their Third Round obligation, and will also assist Spectrum in relocating to a larger facility that can adequately service its growing student population. With this in mind, and given that the Court has permitted the intervention of at least one other entity in this case and granted it certain rights, it is clear that Spectrum must intervene in order to receive the same procedural due process protections it would have enjoyed if this matter were filed with the Council on Affordable Housing ("COAH") pursuant to N.J.S.A. 52:27D-309. As such, Spectrum respectfully requests that the Court permit it to intervene in this case to safeguard its interests in the outcome of the litigation.

II. PURSUANT TO THE MOUNT LAUREL DOCTRINE, SPECTRUM IS ENTITLED TO INTERVENE IN THE TOWNSHIP'S DJ ACTION.

The liberal approach to standing afforded by New Jersey courts has only been further emphasized in the context of Mount Laurel litigation. As early as the Supreme Court's decision in Mount Laurel II, the Supreme Court has been steadfast in its position that participation by private

parties, such as Spectrum, must be encouraged in order to vindicate the housing interests of low and moderate income households. As the Supreme Court explained:

We believe that the need for a “liberal approach” to standing is especially important in Mount Laurel litigation. The people who have the greatest interest in ending exclusionary zoning, non-resident poor people and organizations such as the Urban League, which represent the interests of such people, very often have little or no direct relationship with particular exclusionary municipalities. In fact, the whole problem is that exclusionary zoning prevents such relationships from developing. Thus, we hold that any individual demonstrating an interest in, or any organization that has the objective of, securing lower income housing opportunities in a municipality will have standing to sue such municipality on Mount Laurel grounds.

[Mount Laurel II, supra, 92 N.J. at 337 (emphasis added).]

Following the Supreme Court’s decision in Mount Laurel II, one of the three trial judges assigned to implement the Mount Laurel doctrine, Judge Serpentelli, recognized the benefits of multiple, private participants in Mount Laurel litigations as a prompt means of achieving municipal compliance with fair share obligations. See J.W. Field Co. v. Franklin, 204 N.J. Super. 445, 468 (Law Div. 1985). That necessary role of private builders was more recently affirmed in Oceanport Holding, LLC v. Township of Oceanport, 396 N.J. Super. 622, 631-32 (App. Div. 2007). In Oceanport, supra, Judge Skillman acknowledged that while private builders may not ultimately be entitled to a builder’s remedy, that builder should nonetheless be permitted to participate in that portion of the lawsuit that focused on municipal compliance with the Mount Laurel doctrine. As Judge Skillman reasoned:

In a Mount Laurel case, the cause of action is the alleged unconstitutionality of the defendant-municipality’s zoning because of its failure to provide for the municipality’s fair share of affordable housing. If a plaintiff establishes this cause of action, the trial court then proceeds to the remedies stage of the case.

* * * *

Moreover, the Court indicated in Mount Laurel II that “the need for a ‘liberal approach’ to standing is especially important in Mount Laurel litigation. Under this liberal approach, a plaintiff-developer has standing “to pursue an action simply to vindicate the Mount Laurel right without seeking a builder’s remedy.”

[Oceanport, supra, 396 N.J. Super. at 630-31 (internal citations omitted).]

Accordingly, whether Spectrum is ultimately entitled to any remedy or relief in this matter is immaterial to whether Spectrum should be entitled to participate on behalf of unrepresented low and moderate income households. Under well-established precedent, Spectrum’s entitlement to participate on the issue of Mount Laurel compliance should not be questioned.

Judge Skillman’s rationale in Oceanport, supra, was echoed by the New Jersey Supreme Court’s decision in Mount Laurel IV that encouraged the participation of private parties, like Spectrum, to ensure Mount Laurel compliance. As the Supreme Court reasoned:

The relief authorized is remedial of constitutional rights. It will present an avenue for low- and moderate-income New Jersey citizens, and entities acting on their behalf, to challenge any municipality that is believed not to have developed a housing element and ordinances that bring the town into compliance with its fair share of regional present and prospective need for affordable housing.

[See In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 20]

In the case at bar, Spectrum has available property within the Township that provides a realistic opportunity for the construction of affordable housing. Accordingly, as a Defendant-Intervenor in these matters, Spectrum would be acting on behalf of low- and moderate-income households and should be granted intervention in accordance with Mount Laurel IV.

III. SPECTRUM’S MOTION TO INTERVENE IS TIMELY AND WILL NOT DELAY THE FINAL DISPOSITION OF THIS CASE.

Spectrum anticipates that the Township may claim that its Motion is somehow untimely and will seek to bar its participation in the case on that basis. This argument, however, is meritless,

and should be rejected by the Court. As noted earlier, no trial date has been set, no settlement agreement has been presented to the Court, and no significant strides towards resolution of this litigation have been made by the Township or other parties. In this connection, intervention as of right has been routinely granted even in cases that have already been adjudicated or settled. See, e.g., Warner Co. v. Sutton, 270 N.J. Super. 658, 664 (App. Div. 1994) (granting intervention after four (4) years of litigation); see also Meehan, supra, 317 N.J. Super. 563, 571 (App. Div. 1998) (granting intervention subsequent to settlement). Even when a trial date is looming after nine (9) months of litigation, the New Jersey Supreme Court has ruled that intervention should be granted. See Allan-Deane Corp v. Bedminster Twp., 63 N.J. 591 (1973), reversing and remanding, 121 N.J. Super. 288 (App. Div. 1972). As such, Spectrum's proposed intervention is well within the time period customarily afforded to parties in interest with a genuine stake in the outcome of the litigation.

In light of the foregoing, Spectrum respectfully submits that the Court grant it leave to file its Answer and afford to it the privileges granted to the other developer-defendants in an effort to resolve the issues between the parties.

CONCLUSION

For the foregoing reasons, proposed Defendant-Intervenor, SPECTRUM 360, LLC, respectfully requests that the Court grant its Motion to Intervene in its entirety, permit it to file its proposed Answer, and establish a schedule for the parties to meet and confer in good faith regarding Spectrum's proposed inclusionary, multi-family development.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM, LLC*

By: 
JOHN P. INGLESINO

Date: April 26, 2017

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Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-4773-15

Civil Actions

**CERTIFICATION OF COUNSEL IN
SUPPORT OF MOTION TO INTERVENE**

John P. Inglesino, Esq., of full age and upon personal knowledge, does hereby certify as follows:

1. I am an attorney admitted to practice law in the State of New Jersey and a partner in the law firm of Inglesino, Webster, Wyciskala & Taylor, LLC, counsel for proposed Defendant-Intervenor, SPECTRUM 360, LLC (“Spectrum”). As such, I am personally familiar with the facts set forth herein. I make this certification in support of Spectrum’s Motion to Intervene in the declaratory judgment action filed by the Township of Verona (the “Township”).
2. Spectrum is the owner of certain real property designated as Block 13, Lot 4 on the Township’s official Tax Map (the “Property”).

3. Spectrum is a non-profit entity that operates two schools and serves children, adolescents, young adults, and adults on the autism spectrum and with behavioral and related disabilities.

4. The Property consists of approximately eight (8) acres, with approximately 5.5 acres situated in the Township and the remaining 2.5 acres located in the Town of Montclair. Spectrum's lower school is located within the Township.

5. Spectrum proposes to develop the Property with an inclusionary, multi-family development.

6. On or about July 10, 2015, the Township filed its DJ Action in response to the Supreme Court's decision in the 2015 Case. Simultaneously, the Township moved for an Order granting it temporary immunity from the filing of builder's remedies actions.

7. According to publicly available Court records, at least one entity, designated as Bobcar Corporation, Neil Joy Associates, and Forsons Partners, LLC, thereafter moved for and was granted intervention.

8. Upon information and belief, the Township has not submitted a proposed settlement to the Court for consideration at a fairness hearing nor has it moved for a judgment of compliance and repose.

9. A true and accurate copy of Spectrum's proposed Answer without a counterclaim, which will be filed upon the granting of this Motion to Intervene, is attached hereto as **Exhibit "A."**

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

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: 
JOHN P. INGLESINO

Date: April  2017

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-4773-15

Civil Action

**ANSWER OF PROPOSED DEFENDANT-
INTERVENOR, SPECTRUM 360, LLC**

Proposed Defendant-Intervenor, SPECTRUM 360, LLC (“Spectrum”), by way of Answer to the Complaint for Declaratory Judgment filed by the Township of Verona (the “Township”), hereby states that:

Jurisdiction

1. Spectrum admits the allegations set forth in Paragraph 1 of the Complaint.
2. Spectrum admits the allegations set forth in Paragraph 2 of the Complaint.

Background and Prior Round Obligation

3. Paragraph 3 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

4. Paragraph 4 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required. The referenced Act is a writing that speaks for itself.

6. Spectrum admits the allegations set forth in Paragraph 6 of the Complaint.

7. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 7 of the Complaint.

8. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 8 of the Complaint.

Third Round Obligation

9. Spectrum admits the allegations set forth in Paragraph 9 of the Complaint.

10. Spectrum admits the allegations set forth in Paragraph 10 of the Complaint.

11. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

13. Spectrum admits the allegations set forth in Paragraph 13 of the Complaint.

14. Spectrum admits the allegations set forth in Paragraph 14 of the Complaint.

15. Spectrum admits the allegations set forth in Paragraph 15 of the Complaint.

16. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 16 of the Complaint.

17. The Complaint lacks a Paragraph 17.

18. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 18 of the Complaint.

The Transfer of Jurisdiction to the Courts

19. Paragraph 19 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

20. Paragraph 20 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

21. Spectrum admits the allegations set forth in Paragraph 21 of the Complaint.

22. Spectrum admits the allegations set forth in Paragraph 22 of the Complaint.

23. Spectrum admits the allegations set forth in Paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

25. Paragraph 25 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

26. Paragraph 26 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

27. Paragraph 27 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

28. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 28 of the Complaint.

Count One

(Declaratory Relief, Constitutional Compliance)

- 29. Paragraph 29 of the Complaint requires no response.
- 30. Spectrum denies the allegations set forth in Paragraph 30 of the Complaint.

WHEREFORE, Defendant-Intervenor, Spectrum 360, LLC, respectfully requests that the Court grant the following relief:

- a. Denying all relief sought by the Township in its Complaint;
- b. Declaring that the Township is in violation of its constitutional obligation to create sufficient realistic opportunities for the construction of low and moderate income housing to satisfy its fair share of the unmet regional need for such housing, and invalidating the Township's land use ordinance;
- c. Ordering the Township to rezone sites for inclusionary development that would result in the construction of the Township's fair share of low and moderate income housing;
- d. Appointing a Special Master to oversee the implementation of the following remedies;
- e. Declaring that the Township has violated constitutional and statutory rights under the laws of the State of New Jersey;
- f. Ordering such additional relief as the Court deems just and equitable.

Count Two

(Five Months to Prepare HEFSP)

- 31. Paragraph 31 of the Complaint does not require a response.

32. Paragraph 32 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

33. Paragraph 33 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

34. Spectrum denies the allegations set forth in Paragraph 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

36. Spectrum denies the allegations set forth in Paragraph 36 of the Complaint.

WHEREFORE, Defendant-Intervenor, Spectrum 360, LLC, respectfully requests that the Court grant the following relief:

- a. Denying all relief sought by the Township in its Complaint;
- b. Declaring that the Township is in violation of its constitutional obligation to create sufficient realistic opportunities for the construction of low and moderate income housing to satisfy its fair share of the unmet regional need for such housing, and invalidating the Township's land use ordinance;
- c. Ordering the Township to rezone sites for inclusionary development that would result in the construction of the Township's fair share of low and moderate income housing;
- d. Appointing a Special Master to oversee the implementation of the following remedies;
- e. Declaring that the Township has violated constitutional and statutory rights under the laws of the State of New Jersey;
- f. Ordering such additional relief as the Court deems just and equitable.

Count Three
(Request for Immunity)

36. The Complaint contains two paragraphs which are each numbered 36. This allegation requires no response.

37. Paragraph 37 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

38. Spectrum denies the allegations set forth in Paragraph 38 of the Complaint.

WHEREFORE, Defendant-Intervenor, Spectrum 360, LLC, respectfully requests that the Court grant the following relief:

- a. Denying all relief sought by the Township in its Complaint;
- b. Declaring that the Township is in violation of its constitutional obligation to create sufficient realistic opportunities for the construction of low and moderate income housing to satisfy its fair share of the unmet regional need for such housing, and invalidating the Township's land use ordinance;
- c. Ordering the Township to rezone sites for inclusionary development that would result in the construction of the Township's fair share of low and moderate income housing;
- d. Appointing a Special Master to oversee the implementation of the following remedies;
- e. Declaring that the Township has violated constitutional and statutory rights under the laws of the State of New Jersey;
- f. Ordering such additional relief as the Court deems just and equitable.

Count Four

(Jurisdiction Over Unapproved Spending Plan)

39. The allegations set forth Paragraph 39 of the Complaint require no response.

40. Paragraph 40 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

41. Paragraph 41 of the Complaint states a legal conclusion to which no response is required. The referenced judicial opinion is a writing that speaks for itself.

42. Spectrum admits the allegations set forth in Paragraph 42 of the Complaint.

43. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 43 of the Complaint.

44. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 44 of the Complaint.

WHEREFORE, Defendant-Intervenor, Spectrum 360, LLC, respectfully requests that the Court grant the following relief:

- a. Denying all relief sought by the Township in its Complaint;
- b. Declaring that the Township is in violation of its constitutional obligation to create sufficient realistic opportunities for the construction of low and moderate income housing to satisfy its fair share of the unmet regional need for such housing, and invalidating the Township's land use ordinance;
- c. Ordering the Township to rezone sites for inclusionary development that would result in the construction of the Township's fair share of low and moderate income housing;

- d. Appointing a Special Master to oversee the implementation of the following remedies;
- e. Declaring that the Township has violated constitutional and statutory rights under the laws of the State of New Jersey;
- f. Ordering such additional relief as the Court deems just and equitable.

Count Five

(Amendments to Approved Spending Plans)

45. The allegations set forth in Paragraph 45 of the Complaint require no response.

46. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 46 of the Complaint.

47. Spectrum admits the allegations set forth in Paragraph 47 of the Complaint.

48. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 48 of the Complaint.

49. Spectrum lacks sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 49 of the Complaint.

WHEREFORE, Defendant-Intervenor, Spectrum 360, LLC, respectfully requests that the Court grant the following relief:

- a. Denying all relief sought by the Township in its Complaint;
- b. Declaring that the Township is in violation of its constitutional obligation to create sufficient realistic opportunities for the construction of low and moderate income housing to satisfy its fair share of the unmet regional need for such housing, and invalidating the Township's land use ordinance;

- c. Ordering the Township to rezone sites for inclusionary development that would result in the construction of the Township's fair share of low and moderate income housing;
- d. Appointing a Special Master to oversee the implementation of the following remedies;
- e. Declaring that the Township has violated constitutional and statutory rights under the laws of the State of New Jersey;
- f. Ordering such additional relief as the Court deems just and equitable.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: _____
JOHN P. INGLESINO

Date: April __, 2017

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Township's current land use regulations and zoning ordinances fail to create a realistic opportunity for the provision of its fair share of affordable housing, and, therefore, violate the New Jersey Constitution.

SECOND AFFIRMATIVE DEFENSE

In the event the Township fails to adopt and submit to the Court a constitutionally compliant housing element and fair share plan to address its affordable housing obligation, Spectrum reserves the right to bring a counter-claim seeking a builder's remedy.

THIRD AFFIRMATIVE DEFENSE

Spectrum's site is ideally suited for an inclusionary residential development.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: _____
JOHN P. INGLESINO

Date: April ____, 2017

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Defendant-Intervenor, 26 Parsippany Road, LLC, hereby designates John P. Inglesino, Esq., as trial counsel in the above-stated action.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: _____
JOHN P. INGLESINO

Date: April ____, 2017

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that, to the best of my knowledge, the above-stated action is not the subject of any other currently pending or contemplated action in any court or arbitration proceeding. Furthermore, other than the parties set forth in the pleadings, I know of no other parties that should be joined in this action at the present time.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I will be subject to punishment.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: _____
JOHN P. INGLESINO

Date: April ____, 2017

CERTIFICATION OF FILING AND SERVICE

I hereby certify that the within pleading was filed with the Clerk of the Superior Court of Morris County and served on all known counsel of record within the time period and/or any allowable extensions thereof as provided by R. 1:5-2.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: _____
JOHN P. INGLESINO

Date: April ____, 2017

**INGLESINO, WEBSTER
WYCISKALA & TAYLOR, LLC**
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Tel: (973) 947-7111
Fax: (973) 887-2700
John P. Inglesino, Esq. (0077511991)
Derek W. Orth, Esq. (001152013)
Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC

**IN THE MATTER OF THE TOWNSHIP
OF VERONA, a municipal corporation of
the State of New Jersey,**

Plaintiff/Petitioner.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY**

Docket No.: ESX-L-4773-15

Civil Actions

**ORDER GRANTING LEAVE TO
INTERVENE**

THIS MATTER, having been opened to the Court by way of Motion to Intervene filed on behalf of proposed Defendant-Intervenor, SPECTRUM 360, LLC (“Spectrum”), and it appearing that due notice having been given to all parties of record, and the Court, having considered the papers submitted and the arguments of counsel, if any, and for good cause having otherwise been shown;

IT IS on this _____ day of May, 2017;

ORDERED that Spectrum’s Motion to Intervene be and is hereby granted in its entirety; and it is further

ORDERED that Spectrum be and is hereby granted leave to file an Answer in the form annexed to the Certification of John P. Inglesino, Esq. accompanying this Motion, within ten (10) days of entry hereof; and it is further

ORDERED that Spectrum shall submit a development concept to the Township of Verona which demonstrates that its site is available, developable, approvable and suitable; and it is further

ORDERED that the Township of Verona shall provide comments/issues to Spectrum within three (3) weeks of receipt of the concept plans; and it is further

ORDERED that the parties shall meet promptly thereafter to discuss the concept plans and attempt to mediate a resolution of the issues between the parties; and it is further

ORDERED that any party may seek the assistance of the court-appointed master or, if one is not yet appointed, may request that the Court appoint a special master; and it is further

ORDERED that counsel for Spectrum shall serve a copy of this Order on all parties to this action within seven (7) days of the date of receipt; and it is further

ORDERED that service of this Order and Spectrum's Answer shall be accomplished through the forwarding of a signed copy to counsel for the Townships of Verona and to the interested parties (or their counsel) listed as litigants in In re Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015), either by hand delivery, overnight courier delivery, priority U.S. Mail, regular mail, or electronic mail.

THE HONORABLE ROBERT H. GARDNER, J.S.C.

This motion was:

Opposed: _____

Unopposed: _____

**INGLESINO, WEBSTER
WYCISKALA & TAYLOR, LLC**
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Tel: (973) 947-7111
Fax: (973) 887-2700
John P. Inglesino, Esq. (0077511991)
Derek W. Orth, Esq. (001152013)
Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC

**IN THE MATTER OF THE TOWNSHIP
OF VERONA, a municipal corporation of
the State of New Jersey,**

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-4773-15

Civil Action

CERTIFICATION OF SERVICE

John P. Inglesino, of full age and upon personal knowledge, does hereby certify as follows:

1. On April 26, 2017, I caused an original and one (1) copy of a: (i) Notice of Motion to Intervene; (ii) Brief; (iii) Certification of John P. Inglesino, Esq., with annexed, proposed Answer; (iv) proposed form of Order; and (v) Certification of Service to be hand-delivered to the Clerk of the Superior Court of New Jersey, Essex County, 465 Dr. Martin Luther King Jr. Blvd., Newark, New Jersey 07102.

2. On April 26, 2017, I caused an original and one copy of the foregoing papers to be sent out for delivery via Lawyers Service and electronic mail to Michael A. Gannaio, Esq., Giblin

& Gannaio, 2 Forest Avenue, #200, Oradell, New Jersey 07649, counsel for the Township of Verona.

3. On April 26, 2017, I caused one copy of the foregoing papers to be provided to the persons or entities set forth on the Essex County Service List, by electronic mail.

I hereby 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 may be subject to punishment.

**INGLESINO, WEBSTER,
WYCISKALA & TAYLOR, LLC**
*Attorneys for Proposed Defendant-Intervenor,
SPECTRUM 360, LLC*

By: 
JOHN P. INGLESINO

Date: April , 2017