

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Gregory D. Meese, Esq. (NJ Bar No. 037831983)
Allyson M. Kasetta, Esq. (NJ Bar No. 012892009)
Mack-Cali Corporate Center
50 Tice Boulevard
Woodcliff Lake, NJ 07677
(201) 391-3737
Attorneys for Defendants/Intervenors Bobcar Corporation,
Neil Joy Associates and Forsons Partners, LLC
gmeese@pricemeese.com
akasetta@pricemeese.com

IN ALL DECLARATORY JUDGMENT
ACTIONS FILED BY VARIOUS
MUNICIPALITIES, COUNTY OF
ESSEX, PURSUANT TO THE SUPREME
COURT'S DECISION IN In re Adoption
of N.J.A.C. 5:96, 221 N.J. 1 (2015)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX-L-4173-15

Civil Action
(Mount Laurel)

**NOTICE OF MOTION
TO REVOKE TOWNSHIP OF
VERONA'S TEMPORARY
IMMUNITY AGAINST
EXCLUSIONARY ZONING ACTIONS**

TO: Brian T Giblin, Sr., Esq.
Giblin & Gannaio
2 Forest Avenue
Oradell, NJ 07649
Attorney for Plaintiff Township of Verona
AND: All Counsel/Parties on attached service list

PLEASE TAKE NOTICE that on Friday, July 6, 2018 at 9:00 a.m. or as soon thereafter as
counsel may be heard, the undersigned attorney for Defendants/Intervenors Bobcar Corporation,
Neil Joy Associates, and Forsons Partners, LLC will move before this court, at the Essex County
Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Newark, New Jersey for an
Order revoking the temporary immunity against exclusionary zoning actions previously granted

to the Township of Verona, thereby permitting the Defendants/Intervenors to seek a builder's remedy and scarce resources restraints, and further awarding attorneys' fees and costs of suit to the Defendants/Intervenors.

PLEASE TAKE FURTHER NOTICE that the Defendants/Intervenors shall rely upon the attached Certifications of Art Bernard, P.P. and Allyson M. Kasetta, Esq., the exhibits attached thereto and the accompanying Brief in Support of Motion to Revoke Temporary Immunity. A proposed form of Order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested.

Dated: June 7, 2018

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Defendants/Intervenors Bobcar Corporation,
Neil Joy Associates and Forsons Partners, LLC.

By: _____


Gregory D. Meese, Esq.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
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Civil Action
(Mount Laurel)

**ORDER REVOKING THE TOWNSHIP
OF VERONA'S TEMPORARY
IMMUNITY AGAINST
EXCLUSIONARY ZONING ACTIONS
AND AWARDING ATTORNEYS'
FEES AND COSTS OF SUIT TO
DEFENDANTS/INTERVENORS**

This matter having been brought before the Court on a Motion by Price, Meese, Shulman & D'Arminio, P.C. (Gregory D. Meese, Esq.), attorneys for Defendants/Intervenors Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC, on notice to Giblin & Gannaio (Brian T. Giblin, Sr., Esq.) attorneys for Plaintiff Township of Verona, and notice having been provided to all parties on the Service List; and

This Court having reviewed the Motion and supporting documents, and good cause having been shown:

IT IS ON THIS ____ day of _____, 2018,

ORDERED that the temporary immunity against exclusionary zoning actions previously granted to the Township of Verona in connection with this matter is hereby revoked; and it is further

ORDERED that such exclusionary zoning actions may therefore be brought against the Township of Verona, in connection with which the Defendants/Intervenors may seek a builder's remedy and scarce resource restraints; and it is further

ORDERED that the Defendants/Intervenors are hereby awarded attorneys' fees and costs in connection with the Motion.

A copy of this Order shall be served by Counsel for Defendants/Intervenors on all parties to the Verona Service List within five (5) days of receipt hereof.

Hon. Robert H. Gardner, J.S.C.

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IN ALL DECLARATORY JUDGMENT
ACTIONS FILED BY VARIOUS
MUNICIPALITIES, COUNTY OF
ESSEX, PURSUANT TO THE SUPREME
COURT'S DECISION IN RE ADOPTION
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: L-4173-15

Civil Action
(Consolidated)

**CERTIFICATION OF
ART BERNARD, P.P.**

I, Art Bernard, of full age, hereby certify as follows:

1. I am a professional planner licensed by the State of New Jersey and the Managing Member of Art Bernard and Associates, L.L.C., a professional planning firm with an office at 77 North Union Street, Lambertville, New Jersey. I have been retained by Defendants/Intervenors Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC (collectively "Bobcar") as an expert witness in this exclusionary zoning litigation regarding the Township of Verona.

2. I am very familiar with the municipal obligation to provide low and moderate-income housing. I have served the New Jersey Council on Affordable Housing ("COAH"). I was COAH's Deputy Director from March 1986 until January 1993, when I became COAH's Acting Executive Director. In mid-1993, COAH appointed me its Executive Director. I served COAH in this capacity until September 1994.

3. In my various capacities with COAH, I have developed and/or supervised every facet of COAH's work program.

4. I performed research and worked with the staff and the public to develop proposed policies for the COAH Board to adopt as rules. This work included policy decisions that were incorporated in COAH's fair share methodology.

5. I was the staff person responsible for working with COAH in developing its procedural and substantive rules (N.J.A.C. 5:91-1 et seq., N.J.A.C. 5:92-1 et seq. and 5:93-1 et seq.), including those rules adopted in 1986 and those adopted in 1994. I wrote the first and second round rules for the COAH Board. I was also the staff person responsible for working with COAH in developing the interpretations to those rules

6. When it was functioning, COAH sat as a quasi-judicial body. Any interested party could seek relief, rule interpretations, priority status for sewer and water, and other decisions by making a motion to COAH. During my tenure with COAH, I was the staff person responsible for reviewing motion requests, summarizing their content for COAH and recommending a course of action for its consideration. I supervised and helped write The New Jersey Council on Affordable Housing Digest of Motion Decisions, a summary of all COAH motion decisions indexed by subject matter and municipality.

7. As a private consultant, I have been retained by municipal and private sector clients in matters related to implementing the low- and moderate-income housing obligation. I have been retained to prepare housing elements and fair share plans for Harrison Township, High Bridge Borough, Marlboro Township, Avon Borough, North Plainfield Borough, South River Borough, South Plainfield Borough, Delanco Township, Matawan Borough, Carteret Borough, Milltown Borough, Wanaque Township, Ramsey Borough, Tinton Falls Borough, Closter

Borough, West Caldwell Township, Piscataway Township, Cherry Hill Township, Mount Laurel Township, Riverside Township and Medford Township. I have been retained as a consulting planner regarding low and moderate-income housing issues in Allendale Borough, Mount Holly Township, Delanco Township, Bernardsville Borough and Princeton Township.

8. I have served, or currently serve, the Superior Court as a Special Master with regard to exclusionary zoning litigation in cases involving: Cinnaminson Township, Edgewater Park Township, Burlington City, Franklin Lakes Township, Little Falls Township and Old Bridge Township.

9. I wrote the expert reports for the New Jersey Builders Association (NJBA) in its successful appeals of COAH's adoption of N.J.A.C. 5:94-1 et seq. in 2004 and N.J.A.C. 5:97-1 et seq. in 2008. I am very familiar with the Appellate Division's decisions overturning both sets of regulations. I am also familiar with the Supreme Court decisions that have affirmed those Appellate Division decisions and recognized that COAH is no longer a functioning agency.

10. I am very familiar with fair share related issues and I have testified as an expert witness in the Middlesex County and Mercer County fair share trials.

11. I have attached my resume as Exhibit 1.

DOCUMENTS REVIEWED

12. In preparing this certification, I have reviewed the Township's 2009 Master Plan and its Zoning Ordinance. I have also reviewed: the Township's Notice of Filing of Declaratory Judgment Action and Motion Seeking Temporary Immunity, its Verified Complaint for Declaratory Judgment and supporting papers dated July 2, 2015; a transcript of an April 6, 2018

case management conference; a May 17, 2018 letter from Special Master Elizabeth McKenzie to Brian T. Giblin Esquire; the New Jersey Guide to Affordable Housing; N.J.A.C. 5:93-1 et seq.; an October 24, 2016 COAH monitoring report related to Verona; a July 3, 1995 COAH Compliance Report for Verona Township, as well as engineering and architectural plans for the two (2) Bobcar properties (the 11.61 acre Commerce Court site, Block 1201, Lot 3.01, and the 14.29 acre Mt. Prospect Avenue site, Block 501, Lot 83).

BACKGROUND

13. In its March 10, 2015 decision, In re Adoption of N.J.A.C. 5:96, 221 N.J. 1, (2015)(the “Decision”), the Supreme Court determined that COAH was no longer a functioning agency and created a process for municipalities to seek *temporary* immunity as they developed plans to address the affordable housing obligation.

14. The Court built off the COAH process established by New Jersey’s Fair Housing Act, N.J.S.A 52:27D-301 to 329 (the Act).

15. In accordance with the Act, the Supreme Court’s Decision established protections from “builder’s remedy” litigation for municipalities that had received COAH’s third round substantive certification and somewhat lesser protections for municipalities that had merely participated in COAH’s third round process.

16. I have reviewed the status report on COAH’s website. I find that Verona petitioned for third-round substantive certification on December 29, 2008 but never received substantive certification. Thus, Verona is a participating municipality pursuant to the Supreme Court classification system.

17. The Decision established a process in which municipalities that seek to demonstrate constitutional compliance could seek a declaratory judgment from the court and submit a plan by the end of 2015.

18. The Supreme Court held that participating municipalities pose a difficult challenge for the court in determining a “temporary period” of immunity. The Court found that such towns should have no more than five months to submit their housing elements and fair share plans. The Court was clear that such municipalities should have immunity during that initial five (5) month period (that expired at the end of 2015). In re Adoption of N.J.A.C. 5:96, 221 N.J. at 27. However, after the five (5) month period to file a plan, the Court outlined the criteria for continued immunity:

In determining whether to grant such a town a period of immunity while responding to a constitutional compliance action, the court’s *individualized* (emphasis provided) assessment should evaluate the extent of the obligation and the steps, if any, taken toward compliance with that obligation. In connection with that, the factors that may be relevant, in addition to assessing current conditions within the community, include whether a housing element has been adopted, any activity that has occurred affecting need, and progress in satisfying past obligations. Id. at 28.

19. As to the length of immunity, the Supreme Court allowed the trial courts to offer temporary periods of immunity. “Immunity, once granted, should not continue for an undefined period of time; rather, the trial court’s orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance.” Id.

20. Comparing the Supreme Court’s direction to the Township’s actions, Verona filed a Verified Complaint for Declaratory Judgment on July 2, 2015, seeking, among other relief, five

months in which to prepare a constitutionally compliant Housing Element and Fair Share Plan but has taken no substantive measures since that time. Verona did not submit a housing element and fair share plan by the end of 2015. Unlike most municipalities, it did not even submit a summary or matrix plan for the court and intervenors to review. It has taken the position that it does not have sufficient vacant and underutilized land to address its housing obligation (going back to the 2009 Housing Element and Fair Share Plan that was submitted to COAH). But it has not provided any of the information required of municipalities to establish land as a scarce resource (N.J.A.C. 5:93-4.2)

21. In the over three (3) years since the Supreme Court's March 2015 decision, I am unaware of the Township affirmatively offering any sites or plan to produce affordable housing.

22. The New Jersey Guide to Affordable Housing reveals that the only affordable housing built in Verona has included a three (3) bedroom group home for people with special needs and a 159-unit age restricted community, known as Verona Senior Apartments that, according to COAH's 1995 Compliance Report, was built in 1981.¹ Thus, in the 35 years since Mount Laurel II (1983), the Township has not created any affordable housing for low and moderate income families with children.

23. I have reviewed the Township's Zoning Ordinance. I find no requirement for any developer to build affordable housing.

24. In 2016, after the filing of its Declaratory Judgment action, the purpose of which is to demonstrate its constitutional compliance with its affordable housing obligation, Verona granted approval to a 112-unit multi-family community, known as the Annin Flag redevelopment site, *and did not require it to include any affordable housing.*

¹ The Housing Element and Fair Share Plan within the 2009 Master Plan indicates that the Verona Senior Apartments include 159 affordable housing units.

25. I have reviewed the 2009 Master Plan on the Township's website. It includes a recreational and open space needs assessment. The assessment compares the recreational and open space facilities to the need in each of the Township's three (3) Census tracts. (Section 5, pages 3-5 of 2009 Master Plan) The assessment concludes that each census tract has sufficient recreational facilities based on a land based standard, similar to the standard employed by COAH's rules. I have found no Master Plan language recommending the purchase of additional open space and certainly no language related to the Bobcar properties on Commerce Court (Block 1201, Lot 3.01) or Mt Prospect Avenue (Block 501, Lot 83).

26. Thus, there is no language, let alone a recommendation, in the Master Plan designating either of the Bobcar sites for active recreation or open space. This fact is relevant to COAH's regulations because N.J.A.C. 5:93-4.2(d)4 allows a municipality to reserve a "limited" amount of land for recreational purposes *only if it is so designated in the municipal master plan*.

27. As to the Township's 11th hour effort to acquire Bobcar's two (2) sites through condemnation, COAH, in interpreting its rules, was clear that the concern for recreational land and opens space should not begin with a response (or avoiding a response) to the affordable housing obligation:

COMMENT: The Council should be realistic about what can be achieved in one year regarding the purchase of recreational land. The Green Acres process is a long one.

RESPONSE: *The planning for the recreational needs of a community should not begin with the response to the housing obligation.* (emphasis provided) Recreational planning is an on-going concern. Although the Council understands the need to be flexible for unique circumstances, it believes its rule is appropriate. (Comment 103, 25 N.J.R 5771)

Jersey Builder's Association (NJBA) and two (2) private sector developers during these proceedings. Mr. Reading provided his testimony as the last witness in the trial.

32. On March 8, 2018, Judge Jacobson issued her decision in In Re Application of the Municipality of Princeton and In Re West Windsor Township, Docket Nos.: MER-L-1550-15 and MER-L-1561-15 (consolidated)(Judge Jacobson's Decision), that describes the methodology she used to determine the gap period and prospective need housing obligations for Princeton and West Windsor. Judge Jacobson directed Mr. Reading to compute the fair share for these two (2) municipalities.

33. I have reviewed Mr. Reading's spreadsheets that were used to determine the Princeton and West Windsor housing obligations. I have also reviewed Judge Jacobson's Decision. I find that the Decision, Mr. Reading's spread sheet, Dr. Kinsey's spreadsheets and Dr. Angelides spreadsheets allow me to calculate any municipal fair share based on Judge Jacobson's Decision.

THE PRIOR ROUND OBLIGATION

34. In its March 10, 2015 Decision, the Supreme Court determined that each municipality was responsible for addressing its 1987 – 1999 housing obligation as calculated by COAH. The Township's prior round obligation is 24.

THE 2015 – 2025 PROSPECTIVE NEED

35. New Jersey's low and moderate income housing obligation is a regional housing obligation that is allocated to municipalities. Consistent with all of COAH's rules, Verona is in a housing region that includes Essex, Union, Morris and Warren Counties.

36. Prospective need is a projection of housing need based on population projections developed by New Jersey's Department of Labor and Workforce Development (DOLWD). DOLWD issues different methodologies for the State, including one (1) preferred methodology that is available by County and age group. Judge Jacobson's Decision directs: the use of specific DOLWD projections; the manner in which they are to be used; a methodology to convert the population projections into household projections; and a methodology to convert the household projections to yield the increase in low and moderate income households from 2015 – 2025. Based on her direction, Mr. Reading determined that the 2015 - 2025 prospective need for the Verona housing region is 13,317 low and moderate income housing units.

37. COAH, in its prior round rules, allocated the regional need to municipalities based on the municipal share of three (3) factors: increase in non-residential valuations; undeveloped land weighted by the presence of infrastructure; and income. COAH averaged the three (3) factors to yield an average allocation factor for each municipality. Dr. Angelides offered a different way to allocate the regional need to municipalities. However, Judge Jacobson decided to allocate the need based on the three (3) factors that had been used by COAH and reproduced by David Kinsey. The Verona prospective need average allocation factor, as calculated by Dr. Kinsey, is .00754.

38. When one multiplies the regional prospective need of 13,317 by Verona's share of the regional need (.00754), one finds that the Verona share of the regional prospective need is 100.

39. COAH determined that private market forces add to and help address the prospective need obligation. It determined that demolitions, at the local level, remove housing opportunities and add to the housing need. It determined that existing structures are subdivided

into additional housing units and that these additional housing units help address (or lower) the housing obligation. COAH called the additional housing created within the existing housing stock, “conversions.” Finally, COAH determined that some housing becomes more affordable over time and helps create affordable housing through filtering.

40. The Appellate Division struck down COAH’s filtering calculation as unreliable and found that the calculation was not supported by Census data that measures affordability of housing in New Jersey over time. In Re Adoption of N.J.A.C. 5:94 & 5:95 by N.J. Council on Affordable Housing, 390 N.J. Super. 1, 42-46 (App. Div. 2007). Judge Jacobson found that neither Dr. Kinsey nor Dr. Angelides had produced a reliable methodology for calculating filtering and chose not to include filtering in her methodology.

41. However, Judge Jacobson did provide very clear direction about demolitions and conversions. Based on the court’s direction, Mr. Reading determined that demolitions add 15 units to the Verona prospective need. Judge Jacobson’s Decision endorsed Dr. Angelides calculation of conversions for Verona. Conversions, based on Judge Jacobson’s Decision, lower the Township’s housing obligation by 12 units.

42. Based on Judge Jacobson’s Decision, the Township’s 2015 – 2025 prospective need housing obligation equals 100 (share of regional need) + 15 demolitions – 12 conversions = 103 low and moderate income units.

THE GAP OBLIGATION

43. The 1999 – 2015 gap obligation is based on growth that actually occurred from 1999 – 2015. Before the end of the trial, the Census had actually measured the actual growth in households during the gap period. Judge Jacobson used the Census count of households and determined that 41.45 percent of the 1999 – 2015 increase in households qualify as low and

moderate income households. Judge Jacobson's Decision provides direction in calculating the regional need for the gap period. Mr. Reading followed the court's direction and calculated a regional gap obligation of 13,412.

44. In providing direction to calculating the regional need, Judge Jacobson studied the Municipal Consortium's argument that the regional need should be lowered because a certain percentage of low and moderate income households found affordable housing during the gap period. As a result of her study, the court determined that the Municipal Consortium's calculation was flawed and found that, on balance, more low and moderate income households lost than found affordable housing.

45. As with prospective need, Judge Jacobson used the COAH allocation factors to distribute the regional gap obligation to each municipality. Dr. Kinsey had calculated each allocation factor and averaged them to compute an average allocation factor of .00832 for Verona.

46. When one multiplies the regional gap obligation of 13,412 by the average allocation factor of .00831, one calculates a 1999 – 2015 Verona gap obligation of 111 affordable units.²

47. Judge Jacobson agreed with the Municipal Consortium argument that demolitions and conversions should not apply to the gap obligation because the gap calculation does not require one to forecast the impact of demolitions or conversions. The households that formed during the gap period have, for the most part, found housing.

² The gap obligation, in this case, is almost identical to the prospective need calculation because the projected growth of households is very similar to the actual growth that occurred during the gap period.

SUMMARY OBLIGATION

48. If one follows the Supreme Court's direction and applies Judge Jacobson's Decision to Verona, one finds that Verona has a prior round obligation (1987 – 1999) of 24. It has a gap obligation (1999 – 2015) of 111 and a 2015 – 2025 prospective need obligation of 103. The Township's total 1987 – 2025 housing obligation is 238 ($24 + 111 + 103$).³

49. I recognize that Judge Jacobson's Decision is not binding on this court. But in my expert opinion, as a planner, intimately involved with fair share issues for over 30 years, the fair share resulting from Judge Jacobson's methodology falls within a reasonable range of a fair share that this Court might calculate if it conducted its own trial.

COMPLIANCE

50. In researching the Township's compliance, I have reviewed an October 24, 2016 COAH monitoring report for Verona and a 1995 COAH Compliance Report. I have reviewed a publication that lists affordable housing by municipality, "New Jersey's Guide to Affordable Housing." I have reviewed the Township's Zoning Ordinance and its 2009 Master Plan, including its 2009 Housing Element.

51. I find that the Zoning Ordinance does not include any zones that impose an affordable housing obligation on any development.

52. The New Jersey Guide to Affordable Housing, the Township's 2009 Housing Element and COAH's monitoring report indicate that 159 affordable age-restricted units exist

³ Special Master McKenzie's May 17, 2018 letter to Brian Giblin (page 2) indicates that the Township's third-round housing obligation is 215. In addition, she says that the Township is responsible for a second-round housing obligation of 24. Her second and third round obligation ($24 + 215$) totals 239. My calculation of the second and third round housing obligation is 238. I attribute the difference to rounding error.

within Verona. The COAH 1995 Compliance Report indicates that the housing was financed by HMFA and was constructed in 1981.

53. The New Jersey Guide to Affordable Housing also indicates that a three (3) bedroom group home is located in Verona.

54. FSHC has modified COAH's rules to establish some core principles regarding settlements. One of the core principles is that no more than 25 percent of the fair share can be addressed with age-restricted units.⁴ Based on this principle and a 1987-2025 housing obligation of 238 units, Verona may be able to receive up to 59 units of credit for the Verona Senior Apartments. (In order to receive 59 credits, the Township would have to establish that the housing is governed by controls on affordability that extend through 2025).

55. The Township may also receive credit for the three (3) bedroom group home that has located in Verona *if it meets COAH's criteria for credit*.

56. However, it is clear that Verona, even if the controls on affordability on its age-restricted units have been extended through 2025, is far short of addressing its 1987 – 2025 housing obligation that may be reasonably estimated to be 238 affordable housing units.

CONCLUSION

57. Verona was a participating municipality in COAH's process when COAH ceased to function. The Supreme Court, in its March 10, 2015 Decision, said that the courts should consider the extent of the housing obligation and the steps, if any, taken toward compliance with that obligation in determining whether to grant immunity.

⁴ This principle is very similar to COAH's 25 percent cap on age-restricted credits, at N.J.A.C. 5:93-5.14.

58. In March of this year, Judge Jacobson released a long-awaited decision in computing the third-round housing obligation. Judge Jacobson's methodology, applied to Verona, yields a 1987 – 2025 housing obligation of 238 housing units.

59. My research into the Township's compliance reveals that the Township may be eligible to receive credit for three (3) bedrooms in one group home and for some portion of the 159 age restricted housing units that were produced within the Verona Senior Apartments prior to the Mount Laurel II Decision if the above cited criteria are satisfied.

60. In the three (3) plus years since the Supreme Court established a process for municipalities to establish constitutional compliance, the Township has not submitted a housing element or summary plan of any sort. It has not provided any information, required by N.J.A.C. 5:93-4.2, to document: that land is a scarce resource; or the capacity of its vacant land to accommodate affordable housing.

61. The Township has met with Bobcar on three (3) occasions to discuss its plans for the two (2) sites offered by Bobcar. The specifics of those discussions are under the umbrella of confidentiality. But I think it is fair to say that the municipal representatives encouraged Bobcar to prepare costly surveys, concept plans, building elevations and building perspectives; and that Bobcar has diligently, and in good faith, attempted to work with the Township to help Verona address its housing obligation. On April 6, 2018, counsel for the Township advised the Court that settlement discussions between the Township and Bobcar were progressing well and that he was confident that a settlement was near.⁵ Since then, the Township has canceled two (2) scheduled sessions designed to finalize an agreement on the development of the Bobcar properties and now has decided to explore condemnation of the Bobcar sites.

⁵ April 6, 2018 transcript of case management conference.

62. So, to apply the Supreme Court's criteria for immunity to Verona, I conclude that the Township was participating in COAH's third round process but did not receive substantive certification.

63. I have applied the methodology in Judge Jacobson's Decision to Verona and have determined that the Township has a 1987 – 2025 housing obligation of 238 affordable housing units.

64. There were 159 affordable age restricted housing units built in Verona in 1981. Of this total, the Township may (if controls on affordability have been extended) receive credit for a total of 59 affordable units.

65. The Township may also receive credit for a three (3) bedroom group home if it meets the criteria for such credit.

66. In terms of progress towards addressing the affordable housing obligation since the Supreme Court's March 10, 2015 Decision, the Township has offered no plan of any sort that offers additional affordable housing. The Township also has not provided the necessary information to demonstrate whether it can receive credit for the existing units described above. Its 2009 Housing Element claims that land is a scarce resource that precludes the Township from addressing its entire fair share. However, I find no record that the Township has done anything to follow COAH's rules that are applicable for a municipality that claims land is a scarce resource.

67. Those rules require a municipality to use land efficiently to provide affordable housing. Rather than use land efficiently for affordable housing, Verona has squandered affordable housing opportunities by granting approval to a 112-unit non-inclusionary


development on the Annin Flag redevelopment site and has initiated a process to investigate the condemnation of the Bobcar sites as open space.

68. The Township has decided to explore condemnation even though the 2009 Master Plan shows no additional need for open space and does not designate the Bobcar parcels for open space or recreation.

69. Verona has made no progress toward addressing its housing obligation. Rather, the Township has taken giant steps backward. In my opinion, the Court should revoke the Township's immunity from "builder's remedy" litigation and I urge the Court to do so.

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: June 1, 2018



Art Bernard, PP

EXHIBIT 1
CURRICULUM VITAE

Art Bernard and Associates, L.L.C.

Housing and Land Use Planning

ART BERNARD, P.P CURRICULUM VITAE

EDUCATION

Master of City and Regional Planning, Rutgers University, 1974
BA, History, Lafayette College, 1971

LICENSES AND AFFILIATIONS

New Jersey Professional Planners License #02507
American Planning Association
New Jersey Federation of Planning Officials
New Jersey Builder's Association Land Use Committee
New Jersey State Planning Commission Housing Advisory Committee
Highlands Technical Advisory Committee

PROFESSIONAL EXPERIENCE

Private Consultant

1994 to present

Managing Member of Art Bernard and Associates, L.L.C. Provide consulting services related to general land use and affordable housing. Activities include preparation of municipal plans, development ordinances and development reviews. Represent developers before municipal boards and in litigation. Specialize in representing municipalities and developers in exclusionary zoning matters before the Superior Court and the Council on Affordable Housing. Serve the Superior Court as Special Master.

New Jersey Council on Affordable Housing (COAH) Executive Director

1993 to 1994

Developed recommendations to the Governor and Legislature. Negotiated contracts for consulting services as necessary for the proper operation of the Council. Represented the Council before relevant interest groups, governmental bodies and the general public. Acted as a hearing officer in accordance with the provisions of the Fair Housing Act and the rules established by the Council

77 North Union Street, Lambertville, New Jersey 08530 Phone (609) 397-8070 Fax (609) 397-8084
E-mail: yukygolfer@aol.com

Deputy Director

1986 to 1993

Responsible for developing all regulatory and policy recommendations for COAH. Managed the review of housing elements and the negotiations between municipalities and parties objecting to municipal housing elements. Developed and supervised a work program pertaining to mediation training, municipal and legislative outreach, housing element review and the production of publications. Negotiated housing settlements involving over 5,000 low and moderate income housing units.

**New Jersey Department of Community Affairs (DCA)
Program Development Specialist**

1982 to 1986

Responsible for developing the rules for the Neighborhood Preservation Balanced Housing Program, a low and moderate income housing grant program designed to supplement the goals of New Jersey's Fair Housing Act. Co-authored the program guidelines, application criteria and review criteria for New Jersey's Small Cities Community Development Block Grant Program.

Project Manager of the New Jersey Model Subdivision and Site Plan Ordinance, designed to provide quality municipal improvements without adding unnecessary costs to the development process.

Project Manager of the New Jersey Class C Boarding House Study. Analyzed the costs associated with operating a boarding house. Assisted in developing New Jersey's Life Safety Improvement Program for boarding homes.

Responsible for representing DCA on the Delaware Valley Regional Planning commission and the New Jersey Clean Water Council. Responsible for providing technical assistance to the Division of Coastal Resources, the Pinelands Commission and the Meadowlands Commission on housing issues.

Principal Planner

1979 to 1982

Provided technical assistance to municipalities on land use and housing issues. Co-authored the *Affordable Housing Handbook* which discussed various means of reducing the cost of housing.

**Hunterdon County Planning Board
Senior Planner**

1974 to 1977

Responsible for subdivision and site plan review and for providing technical assistance at municipal planning board meetings. Prepared the *Hunterdon County Economic Base Study* and the *Hunterdon County Transportation Plan*.

**New Jersey Department of Health
Health Consultant**

1977 to 1979

Surveyed health providers throughout New Jersey and incorporated findings into the *New Jersey Health Master Plan*.

PUBLICATIONS

"Limits to the Builder's Remedy", New Jersey Municipalities
 "COAH and Its Rules: Time to Pay Attention", New Jersey Planning Officials
 "Low & Moderate Income Housing in NJ Faces Double Barreled Opposition", Dimensions
 "Planning for Affordable Housing", New Jersey Planning Officials
 "Planning Update", THP Newsletter
 "Strategies for Addressing Low Income Housing Needs", New Jersey Municipalities
Mount Laurel II: Methods of Calculating Fair Share
 "The New Jersey Experience: Affordable Housing Seen as a Constitutional
 Obligation", Trends in Housing
 "Mount Laurel II: Revisited Five Years Later", Federation Planner.
 "Mount Laurel II: Working Toward Compliance", New Jersey Municipalities
 "Looking Beyond COAH's Numbers, New Jersey Municipalities
Requirements of a Housing Element and Fair Share Plan
 "COAH Counts Successes Along Road to Affordable Housing", CUPREPORT

LECTURES/AWARDS

Associate of the Year, New Jersey Builder's Association, 1997 and 2006
 New Jersey Federation of Planning Officials Citation of Merit
 Edward J. Bloustein School of Planning and Public Policy, Rutgers University
 Camden Law School, Rutgers University
 American University Law School
 Housing Conferences in New York, New Jersey, Rhode Island and Pennsylvania
 Colloquium of The Seton Hall University Center for Social Justice

Municipal Clients – Served the following municipalities as municipal planner and/or affordable housing planner.

Allendale Borough, Avon Borough, Bernardsville Borough, Carteret Borough, Cherry Hill Township, Closter Borough, Delanco Township, Hampton Borough, Harrison Township, High Bridge Borough, Marlboro Township, Medford Township, Milltown Borough, Mount Laurel Township, North Plainfield Borough, Piscataway Township, Princeton Township, Ramsey Borough, South River Borough, Tinton Falls Borough, Ramsey Borough, Wall Township, Wanaque Borough, West Caldwell Township.

Court Master Assignments

Burlington City, Cinnaminson Township, Edgewater Park Township, Franklin Lakes Borough, Little Falls Township, Old Bridge Township.

Private Sector Assignments Before Local Boards, COAH and Court.

Atlantic County – Absecon City, Brigantine City, Galloway Township, Egg Harbor Township, Hammonton Town, Northfield City, Somers Point City.

Bergen County – East Rutherford Borough, Fair Lawn Borough, Glen Ridge Borough, Hohokus Borough, Little Ferry Borough, Mahwah Township, Milltown Borough, North Arlington Borough, Oakland Borough, Oradell Borough, Paramus Borough, Park Ridge Borough, Ramsey Borough, Ridgewood Borough, River Vale Township, Rutherford Borough, Tenafly Borough, Upper Saddle River Borough, Verona Borough, Wallington Borough, Woodcliff Lake Borough.

Burlington County – Bordentown Township, Delran Township, Evesham Township, Mansfield Township, Moorestown Borough, Mount Laurel Township, Pemberton Township, Springfield Township, Westampton Township.

Camden County – Berlin Township, Haddonfield Borough, Pine Hill Township, Stratford Borough.

Cape May County – West Cape May Borough.

Cumberland County – Vineland City.

Essex County – Cedar Grove Township, Fairfield Township, Livingston Township, Nutley Borough, Roseland Borough, South Orange Village Township, West Orange Township.

Gloucester County – Clayton Borough, Deptford Township, East Greenwich Township, Logan Township, Newfield Borough, South Harrison Township, Swedesboro Borough, West Deptford Township, Woolwich Township.

Hudson County – Bayonne City, Hoboken City, Secaucus Town.

Hunterdon County – Alexandria Township, Clinton Town, Clinton Township, Delaware Township, East Amwell Township, Lebanon Borough, Milford Borough, Raritan Township, Readington Township, Union Township.

Mercer County –East Windsor Township, Hamilton Township, Hopewell Township, Princeton Borough, Robbinsville Township, Trenton City, West Windsor Township.

Middlesex County – Cranbury Township, East Brunswick Township, Edison Township, Highland Park Borough, Monroe Township, North Brunswick Township, Sayreville Borough, South Brunswick Township, South Plainfield Borough.

Monmouth County – Aberdeen Township, Atlantic Highlands Borough, Avon Borough, Belmar Borough, Eatontown Borough, Farmingdale Borough, Freehold Township, Hazlet Borough, Highlands Borough, Holmdel Township, Howell Township, Keyport Borough, Little Silver Borough, Manalapan Township, Marlboro Township, Middletown Township, Neptune City Borough, Ocean Township, Red Bank Borough, Rumson Borough, Sea Bright Borough, Shrewsbury Borough, Tinton Falls Borough, Wall Township.

Morris County - Chester Borough, Denville Township, Dover Town, East Hanover Township, Florham Park Borough, Hanover Township, Lincoln Park Borough, Long Hill Township, Mine Hill Township, Montville Township, Morris Township, Morris Plains Borough, Morristown Town, Mountain Lakes Borough, Mount Arlington Borough, North Hanover Township, Parsippany Troy-Hills Township, Randolph Township.

Ocean County – Barnegat Township, Berkeley Township, Brick Township, Jackson Township, Little Egg Harbor Township, Manchester Township, Toms River.

Passaic County – Bloomingdale Borough, Clifton City, Elmwood Park Borough, Passaic City, Pompton Lakes Borough, Ringwood Borough, Wanaque Borough, Wayne Township, Woodland Park Borough.

Salem County – Oldmans Township, Pittgrove Township.

Somerset County – Bedminster Borough, Bernards Township, Branchburg Township, Bridgewater Township, Far Hills Borough, Franklin Township, Green Brook Township, Hillsborough Township, Manville Borough, Millstone Borough, Montgomery Township, Raritan Borough, Warren Township.

Sussex County – Frankford Township, Fredon Township, Green Township, Hampton Township, Hardyston Township, Lafayette Township, Newton Town.

Union County – Berkeley Heights Township, Clark Township, Cranford Township, Fanwood Borough, Hillside Township, Mountainside Borough, New Providence Township, Roselle Park Borough, Scotch Plains Township, Springfield Township, Westfield Township.

Warren County – Alpha Borough, Greenwich Township, Hacketstown Town, Harmony Township, Hopatcong Township, Oxford Township.

Pennsylvania – Buckingham Township, Forks Township, Plumstead Township, Tinicum Township, Upper Mount Bethel Township, Williams Township.

New Jersey Builders Association

Wrote comments to each iteration of COAH's proposed third round rules.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Gregory D. Meese, Esq. (NJ Bar No. 037831983)
Allyson M. Kasetta, Esq. (NJ Bar No. 012892009)
Mack-Cali Corporate Center
50 Tice Boulevard
Woodcliff Lake, NJ 07677
(201) 391-3737
Attorneys for Defendants/Intervenors Bobcar Corporation,
Neil Joy Associates and Forsons Partners, LLC
gmeese@pricemeese.com
akasetta@pricemeese.com

IN ALL DECLARATORY JUDGMENT
ACTIONS FILED BY VARIOUS
MUNICIPALITIES, COUNTY OF
ESSEX, PURSUANT TO THE SUPREME
COURT'S DECISION IN In re Adoption
of N.J.A.C. 5:96, 221 N.J. 1 (2015)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX-L-4173-15

Civil Action
(Mount Laurel)

**BRIEF IN SUPPORT OF MOTION BY
DEFENDANTS/INTERVENORS TO
REVOKE THE TEMPORARY
IMMUNITY GRANTED TO THE
TOWNSHIP OF VERONA**

Of Counsel and on the Brief:

Gregory D. Meese, Esq.

On the Brief:

Allyson M. Kasetta, Esq.

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PRELIMINARY STATEMENT

Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC, Defendants/Intervenors in the Declaratory Judgment Action filed by the Township of Verona (together, the “Intervenors” or “Bobcar Intervenors”), bring this Motion to revoke the temporary immunity against exclusionary zoning actions previously granted by this Court.

As set forth herein, the Township of Verona (the “Township” or “Verona”) has, in the approximately three (3) years since filing its Declaratory Judgment Action, failed to submit an updated Housing Element and Fair Share Plan, a matrix, or any information to substantiate its claim of a shortage of vacant, developable land for affordable housing. The Township has approved a large residential development without any affordable units and has failed to negotiate in good faith with the Bobcar Intervenors toward a settlement that would permit them to construct multifamily residential housing, including a substantial number of affordable housing units, on their two (2) properties. The Intervenors’ properties are critical for the Township to satisfy its constitutional fair share obligation, yet after an extended period of documented good faith efforts by the Intervenors to demonstrate the feasibility of their proposed developments, the Township suddenly and arbitrarily commenced an investigation into the condemnation of their properties without any legitimate public need.

Because the Township has failed to develop a compliant Housing Element and Fair Share Plan, has acted in bad faith and abused the temporary immunity granted by the Court, and is seeking to acquire the Intervenors’ properties in order to thwart the construction of inclusionary developments, the Bobcar Intervenors request that the Court revoke its immunity against exclusionary zoning actions, which would thereby permit the Intervenors to seek a builder’s remedy and the imposition of a scarce resources order.

PROCEDURAL HISTORY

1. The Township submitted its Notice of Filing for Declaratory Judgment Action and Motion Seeking Temporary Immunity on July 2, 2015 (together, the “DJ Action”).

Certification of Allyson M. Kasetta (“Kasetta Cert.”), Ex 1.

2. On August 14, 2015, Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC filed a Motion to Intervene in the DJ Action as Interested Parties. Kasetta Cert., Ex. 2.

3. On September 15, 2015, the Court entered an Order granting the Intervenor’s Motion to Intervene. Kasetta Cert., Ex. 3.

4. Also on September 15, 2015, the Court entered an Order granting Verona (1) a period of five (5) months to prepare a constitutional compliant Housing Element and Fair Share Plan (“HEFSP”); and (2) temporary immunity from third party lawsuits pending the Court’s issuance of a Final Judgment of Compliance and Repose based upon the updated HEFSP to be prepared and submitted by Verona. Kasetta Cert., Ex. 4.

5. Two additional interested parties have been permitted to intervene in the DJ Action: (a) Poekel Properties LLC, which is the owner of property designated as Block 2301, Lots 17 and 18 on the Verona Tax Map and consisting of approximately 2.7 acres; and (b) Spectrum 360, LLC, which is the owner of property designated as Block 13, Lot 4, on Verona Tax Map and consisting of approximately 5.5 acres within Verona and an additional 2.5 acres in the adjacent Township of Montclair. Kasetta Cert., Ex. 11-12.

6. On February 5, 2016, the Court entered an Order consolidating all declaratory judgment actions filed by municipalities in Essex County; appointing a Special Master and Regional Special Master; providing instructions to the various parties; and setting timelines for

submission of expert reports and depositions. The February 5, 2016 Order provided the municipalities with temporary immunity until such time that their affordable housing plans are determined to be constitutionally compliant. Kasetta Cert., Ex. 5.

7. Thereafter, the Court held several case management conferences on the consolidated actions, and entered additional Case Management Orders on December 12, 2016, March 24, 2017 and November 9, 2017, each time extending the temporary immunity granted to the municipalities. Kasetta Cert., Ex. 7; Ex. 10; Ex. 13.

8. On March 9, 2018, the Court entered an Order rescheduling the case management conference previously set for that date to April 6, 2018, so as to provide the Court, the parties and the Special Masters the opportunity to review the Opinion and Order of the Honorable Mary C. Jacobson, A.J.S.C. in In re the Municipality of Princeton and In re West Windsor Township, Nos. MER-L-1550-15 and MER-L-1561-15 (consolidated), (Law Div. Mercer Cty., Mar. 8, 2018) and extending the temporary immunity granted to the municipalities through that date. Kasetta Cert., Ex. 17.

9. On March 28, 2018, the Court entered an Order scheduling trial dates for various municipalities other than Verona. Kasetta Cert., Ex. 19.

10. On April 6, 2018, the Court held a case management conference with all parties. During the case management conference, Township of Verona Attorney Brian Giblin represented to the Court that settlement discussions are ongoing and that Verona is nearing a settlement with the Intervenor. Kasetta Cert., Ex. 21.

11. Based upon that representation, the Court scheduled a further case management conference with respect to Verona for July 3, 2018.

STATEMENT OF FACTS

1. In the Certification of the Township Manager submitted by Verona in support of the DJ Action, it was represented to the Court that Verona was in the process of preparing a revised Housing Element and Fair Share Plan (“HEFSP”) that will verify full compliance with its constitutional affordable housing obligations. Kasetta Cert., Ex. 1(f) at ¶22¹.

2. On that basis, Verona submitted that it has fully discharged its affordable housing obligations and requested protection and repose against exclusionary zoning litigation for a period of ten (10) years. Id. at 5-6. Verona further requested temporary immunity from third party lawsuits pending the Court’s issuance of a final Judgment of Compliance and Repose based upon its HEFSP. Id.

3. The Intervenors are the owners of two large, undeveloped properties in Verona: one is located at 25 Commerce Court, Block 12.01, Lot 3.01, and consists of 11.61 acres; the second is located at 111 Mt. Prospect Avenue, Block 501, Lot 83, and consists of 14.29 acres.

4. The Intervenors filed their Motion to Intervene in the DJ Action as Interested Parties on the basis of their ownership of 25 Commerce Court and ability to construct an inclusionary development thereon. Kasetta Cert., Ex. 2.

5. Subsequent to the Court’s entry of the Order granting their Motion to Intervene, the Intervenors advised Special Master Elizabeth McKenzie and the Township Attorney of their ownership of 111 Mt. Prospect Avenue and ability to construct an additional inclusionary

¹ The Brief submitted by the Borough states that “the [Planning] Board has adopted and the Township has endorsed an amended Third Round HPE&FSP, the 2015 HPE&FSP, which has been submitted to the court for review and approval as part of the Verified Complaint for Declaratory Judgment.” Kasetta Cert., Ex. 1(e) at 9. However, no such document was included with the Complaint or provided to the Intervenors at any time thereafter.

development on that property. Kasetta Cert., Ex. 6. As a result, the Intervenor has continuously negotiated with Verona for the development of both properties.

6. Verona has not yet submitted an updated HEFSP in accordance with Mt. Laurel IV, and its Master Plan has not been reexamined since 2009.

7. A previous HEFSP is included within the 2009 Master Plan Reexamination Report at Section 13. The 2009 HEFSP indicates that Verona will be unable to fully satisfy its fair share obligation due to a shortage of land, stating “[a]s a community that is almost entirely built up, most of the future development will either occur as additions to, rehabilitation of, or complete demolition and reconstruction of existing structures.” Id. at 32.

8. The 2009 HEFSP includes a worksheet entitled “Summary of Adjusted Growth Share Projection Based on Land Capacity,” which states “[m]unicipalities seeking to request a downward adjustment to the COAH-generated growth projections may do so by providing a detailed analysis of municipal land capacity.” Id. at 35. Based upon the calculations that appear to have been inserted by the Township, the worksheet concludes: “[t]he Municipal land capacity analysis results in a reduction to the COAH-generated growth projection.” Id.

9. The 2009 HEFSP includes both of the Intervenor’s properties in the “Township of Verona Growth Projection Adjustment – Residential Parcel Inventory,” demonstrating that Verona considered both properties as possible sites for inclusionary development prior to filing the DJ Action. Id. at 37, 53, 61.

10. On November 2, 2016, the Intervenor attended an initial mediation session with Township officials, Special Master Elizabeth McKenzie, and counsel for Fair Share Housing Center (“FSHC”).

11. At the request of the Court, counsel for the Intervenor submitted a letter to the Court on January 11, 2017, advising of the initial mediation session. The letter advised that

Verona's unmet need for affordable housing units was stated by FSHC to be 327 units and that the Intervenor's professionals had prepared concept plans for the development of the two properties, attaching copies for the Court's review. As set forth in the letter, it was anticipated that the two properties together could produce 72 affordable units while respecting the environmental constraints and providing significant setbacks to surrounding residential properties, although Verona's zoning ordinance would need to be amended. Finally, the letter advised the Court that settlement negotiations were expected to become more specific based upon the concept plans and invited input from Verona, FSHC and Special Master McKenzie. Kasetta Cert., Ex. 8.

12. On May 18, 2017, the Intervenor's held an additional mediation session with the Township officials, at which time the parties reviewed more detailed concept plans and discussed specific areas of concern. Verona encouraged the Intervenor's to provide more detailed plans so that the proposed settlement could be presented to the Township Council and FSHC and the appropriate amendments to the zoning ordinance could be prepared. The Township advised the Intervenor's that it will likely be unable to satisfy its fair share obligation without an adjustment based on insufficient vacant, developable land.

13. The Intervenor's then prepared new property surveys and developed site plans and preliminary architectural plans for both properties. On January 25, 2018, the Intervenor's submitted to the Township and Special Master McKenzie (1) updated concept plans for the development of both properties; (2) preliminary elevations for both properties; and (3) draft amendments to the Township Zoning Ordinance which would effectuate the necessary changes to make the proposed projects feasible and conforming. The letter requested that the Township contact the Intervenor's counsel to schedule a continued mediation session. Copies of the letter,

with enclosures, were provided to the Township Planner and FSHC counsel. Kasetta Cert., Ex. 15.

14. After several attempts to follow up with the Township and schedule a mediation session to discuss the recently submitted documents, counsel for the Intervenor sent an additional letter to the Township Attorney on February 15, 2018, requesting that such a session be scheduled prior to the upcoming March 9, 2017, case management conference (which was subsequently adjourned by the Court). Kasetta Cert., Ex. 16.

15. On March 27, 2018, a mediation session was held among the Intervenor and their professionals and the Township Manager, Attorney, and Planner. At that time, the Township officials recommended certain modifications to the Intervenor's concept plans and requested additional information, including perspective renderings and steep slope analyses. The Intervenor and the Township professionals tentatively scheduled a continued mediation session for April 27, 2018.

16. At the case management conference held by the Court on April 6, 2018, Township Attorney Brian Giblin advised on the record that "we're very close to resolution on all of the properties that are involved and hopefully within another couple of sessions we'll be able to get to an agreement." Counsel for the Intervenor agreed (as did counsel for the two additional developers who have intervened in the DJ Action), based upon the discussions that took place at the mediation sessions. Kasetta Cert., Ex. 21 at 4-5.

17. On April 18, 2018, Mr. Giblin advised that the Township officials would not be available for mediation on April 27, 2018 and requested that it be rescheduled to May 18, 2018. Counsel for the Intervenor consented to the delay and agreed to provide additional perspective views of the two proposed developments as had been requested at the previous session. Kasetta Cert., Ex. 22. The mediation session was confirmed for May 18, 2018 shortly thereafter.

18. On the afternoon of Friday, May 4, 2018, Township Attorney Brian Aloia (who had not previously been involved in the DJ Action or the Township's negotiations with the Intervenor) advised the Intervenor's Counsel by telephone of the Township Council's intention to introduce ordinances authorizing the acquisition of both of the Intervenor's properties for open space and/or public purpose at its Monday, May 7, 2018 meeting.

19. On May 7, 2018, counsel for the Intervenor sent a letter to the Township advising that the Intervenor objected to its contemplated acquisition of the properties in light of the ongoing settlement negotiations and the representation given by the Township Attorney to the Court on April 6, 2018, that Verona was nearing a settlement with the Intervenor in connection with the DJ Action. Kasetta Cert., Ex. 23.

20. The letter reminded the Township that as previously discussed, Verona would not be able to meet its constitutional fair share obligations without a vacant land adjustment and without the affordable housing units contemplated as part of the Intervenor's proposed projects. Id. at 1.

21. The letter also advised that if Verona proceeded with the adoption of the ordinances, the Intervenor would take all necessary legal action to protect their rights, including a request that its temporary immunity against builder's remedy actions be revoked by this Court. Copies of the letter were also provided to Special Master McKenzie and counsel for FSHC, Joshua Bauers. Id. at 2.

22. As a result of the letter, a telephone conference was held on May 7, 2018, among counsel for the Intervenor, Special Master McKenzie, Township Attorney Brian Aloia and Township Condemnation Attorney Demetrice Miles.

23. Despite the legal issues and objections raised by the Intervenor, the Township Council introduced four (4) ordinances during its May 7, 2018 meeting, as follows:

- (1) Ordinance 2018-12, which authorizes the acquisition of 25 Commerce Court “as open space and a public park, and for the development and maintenance of facilities for the Department of Public Works;”
- (2) Ordinance 2018-13, which authorizes the acquisition of 111 Mount Prospect Avenue for “use as open space and a public park;”
- (3) Ordinance 2018-14, which appropriates \$25,000 in capital funds for preliminary planning expenses in connection with the acquisition of 25 Commerce Court; and
- (4) Ordinance 2018-15, which appropriates \$25,000 in capital funds for preliminary planning expenses in connection with the acquisition of 111 Mount Prospect Avenue.

All of the ordinances were scheduled for public hearing and final adoption on May 21, 2018.

Kasetta Cert., Ex. 24-28.

24. Prior to the Council’s vote to introduce the ordinances, Township Attorney Brian Aloia referenced the telephone conference that occurred earlier in the day and the legal questions that would need to be answered before they could be adopted. He advised the Council that their votes that evening were “to allow the first reading to happen so the public discussion can start and see how the public feels about the potential and start the process to answer those legal questions.” Kasetta Cert., Ex. 28 at 3-4.

25. On May 8, 2018, revised concept plans incorporating the changes suggested by the Township professionals and including steep slope analyses for both properties were forwarded to Township Attorney Giblin in anticipation of the May 18, 2018, mediation session. Counsel for the Intervenor requested confirmation that the May 18, 2018, mediation would still occur as planned. Kasetta Cert., Ex. 29.

26. To date, the Intervenor has provided the Township with engineering and architectural plans, perspective renderings, and draft zoning ordinance amendments, all to demonstrate the feasibility of the two proposed inclusionary developments.

27. The Intervenor has also obtained Letters of Interpretation from the New Jersey Department of Environmental Protection (“NJDEP”) with respect to both properties. Kasetta Cert., Ex. 14, 20².

28. On May 17, 2018, Township Attorney Giblin advised that he was canceling the mediation session scheduled for May 18, 2018, in light of Verona’s decision to proceed with the acquisition of the Intervenor’s properties.

29. Also on May 17, 2018, Special Master McKenzie sent a letter to Township Attorney Giblin providing her estimations of (1) the calculation of Verona’s fair share obligation by FSHC’s expert; (2) the settlement number offered to Verona by FSHC; and (3) the calculation of Verona’s fair share utilizing the methodology set forth in Judge Jacobson’s decision in In Re Application of the Municipality of Princeton and In Re West Windsor Twp., Docket Nos. MER-L-1550-15 and MER-L-1561-15 (consolidated). Kasetta Cert., Ex. 30.

30. In the letter, Special Master McKenzie cautioned that any effort by Verona to condemn land while its DJ Action is pending is “apt to be viewed as an attempt to circumvent compliance with its affordable housing obligations” if the Township is seeking an adjustment due to insufficient vacant developable land and cannot justify the reservation of properties on the grounds that it would fall below permissible thresholds. Id. at 2.

² It was brought to the attention of the Intervenor that a concerned resident “objected” to the issuance of the Letter of Interpretation for 111 Mt. Prospect Avenue, in response to which NJDEP issued a letter explaining that a letter of interpretation does not authorize development but only verifies the locations of wetlands. Kasetta Cert., Ex. 18.

31. Special Master McKenzie further warned that “Verona already has some vulnerability in this regard due to its approval of the redevelopment of the Annin Flag site without an affordable housing set-aside³” and that “[t]he fact that the two sites ... have been offered as sites for inclusionary residential development in Verona’s pending Declaratory Judgment action could be used as evidence of bad faith and exclusionary intentions, *no matter how good Verona’s reasons may be for wanting these sites for other public purposes.*” The letter advised that the Township’s “*best and most protective strategy would be to postpone any action toward condemnation, forego seeking a vacant land adjustment, settle with Fair Share Housing Center right away, and develop and submit to the Court a plan to meet the entirety of the agreed-upon fair share obligation.*” *Id.* at 3-4 (emphasis in original).

32. Despite the strongly worded letter from Special Master McKenzie and the objections raised by counsel for the Intervenors, final adoption of the ordinances authorizing the acquisition of Intervenors’ properties and appropriating capital funds for the preliminary planning expenses was listed for adoption on the agenda for the Township Council’s May 21, 2018 meeting.

33. At the May 21, 2018, meeting of the Township Council, Township Attorney Aloia advised that legal questions remained with respect to the proposed ordinances and would “need to be answered before the Township determines whether it can proceed.” Kasetta Cert., Ex. 31 at 3.

34. When the Council invited public comment on Ordinance 2018-12 to acquire 25 Commerce Court, counsel for the Intervenors submitted for the record a copy of the May 7,

³ The Annin Flag site is located at 141-163 Bloomfield Avenue and received site plan approval from the Verona Planning Board for the construction of a 112 unit residential development without any requirement for an affordable housing set-aside on January 5, 2017, while the DJ Action was pending. See Kasetta Cert., Ex. 9.

2018, letter of objection, advising that it related to all four (4) proposed ordinances. Counsel also referenced multiple conversations that had taken place with both Township Attorneys. Id. at 6. Several members of the public then spoke in support of the ordinances. Id. at 7-9, 12-14.

35. Township Attorney Brian Aloia recommended that the vote on final adoption of the Ordinance 2018-12 be tabled to June 11, 2018 “so that further research can be done about the legal issues that are surrounding the passage of this ordinance.” Id. at 10. The Council then voted to table the ordinance. Id. at 22-23. At the recommendation of Township Attorney Aloia, the Council also voted to table Ordinance 2018-13 to June 11, 2018. Id. at 14-15.

36. After hearing public comment on Ordinances 2018-14 and 2018-15, which authorize the expenditures of capital funds in connection with the two acquisitions, the Council voted to adopt those ordinances. Id. at 16-23.

37. There is no recommendation within the Township’s 2009 Master Plan Reexamination Report that either of the Bobcar Intervenor’s properties be acquired for open space.

38. Section 5 of the Reexamination Report is entitled “Community Facilities & Services” and includes a recreation needs assessment by census tract⁴. See Kasetta Cert., Ex. 34. The Intervenor’s property at 25 Commerce Court is situated within census tract 211, which “represents 25.84 percent of the municipality.” Id. at 4. With respect to census tract 211, the analysis concludes “[t]here is a sufficient amount of recreational land within this census tract if the land-based criteria is utilized but a significant deficiency in recreation and open space if the population based criteria is utilized ... This tract is almost completely built out and, therefore, it

⁴ A map reflecting the three census tracts within the Township is provided in Section 2 of the Reexamination Report. See Kasetta Cert., Ex. 35.

is highly improbable that additional land in this census tract can be utilized for open space and recreational uses.” Id.

39. The Intervenor’s property at 111 Mount Prospect Avenue is situated within census tract 212, which “represents 30.25 percent of the municipality.” Id. at 5. With respect to census tract 212, the analysis concludes “[t]wo county open-space facilities are found in this census tract ... This census tract has significant amounts of recreation and open space utilizing both land and population based criterion⁵.” Id.

40. The remainder of the Township is situated within census tract 210, the largest of the three, which “represents 43.9 percent of the municipality.” Id. at 3. With respect to census tract 210, the analysis states “[t]here is an abundance of recreation and open space within this census tract when measuring utilizing the population-based or land-based need requirements” Id. at 4.

41. Section 11 of the Reexamination Report, entitled “Community Facilities Plan Element,” includes a proposed community facilities plan map for the Township and a statement regarding the status of the Township’s existing facilities. This section concludes: “Verona’s community facilities are in adequate condition and are generally suitable for continued use. Space allocations are generally adequate to serve present population needs. The forecast for the stabilization of population levels requires a greater emphasis on a program of modernization and replacement of out-of-date equipment more than on any expansion of facilities.” See Kasetta Cert., Ex. 37 at 1 (emphasis added). The community facilities plan map does not

⁵ The 408 acre Eagle Rock Reservation, one of the two county facilities described in the analysis, is directly adjacent to 111 Mount Prospect Avenue.

recommend the designation of either of the Intervenor's properties as open space or community facilities of any other sort. Id. at 2.

42. Section 8 of the Reexamination Report, entitled "Verona Land Use Plan Element," also does not recommend the designation of these properties as open space or community facilities. See Kasetta Cert., Ex. 36; Certification of Art Bernard, P.P. ("Bernard Cert."), ¶¶24-25. Rather, the Land Use Plan map attached thereto continues to show both properties as currently zoned. Id. at 23.

43. Since the May 21, 2018 Council meeting, the Intervenor's have not received any further update from the Township as to either its HEFSP or its intended acquisition of their properties.

LEGAL ARGUMENT

POINT I

I. Verona Should Be Stripped of the Temporary Relief from a Builder's Remedy Suit Provided by Mt. Laurel IV Due to its Failure to Develop a Compliant Housing Plan

In the landmark “Mt. Laurel IV” decision, the Supreme Court of New Jersey set forth a transitional process for (1) “participating” municipalities, i.e., those who adopted resolutions of participation to submit their fair share housing plans to the former Council on Affordable Housing (“COAH”); and (2) municipalities who had previously received substantive certification under COAH’s Third Round Rules to seek judicial confirmation that their affordable housing plans are presumptively valid. In re adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015)(“Mt. Laurel IV”).

Municipalities were given the option to file a declaratory judgment action within 30 days of the order implementing the Mt. Laurel IV decision, unless they chose to wait for a challenge by an interested party. Id. at 26-27. Participating municipalities could also seek from the court temporary immunity against exclusionary zoning actions where developers might seek a builder’s remedy. Id. at 27-28. The Court instructed that participating municipalities choosing to file declaratory judgment actions “should have **no more than five months** in which to submit their supplemental housing element and affordable housing plan.” Mt. Laurel IV, *supra*, 221 N.J. at 27. (Emphasis added).

Continuing immunity throughout the declaratory judgment process is not automatic for a participating municipality. Rather, the municipality must demonstrate good faith efforts to comply with its fair share obligation, and the court must undertake a fact-specific analysis in

order to determine whether immunity is likely to lead to compliance. See also, J.W. Field v. Tp. Of Franklin, 204 N.J. Super. 445, 456 (Law Div. 1985). In considering whether to grant continuing immunity after the initial five month period, the courts were directed to undertake an “individualized assessment” of “the extent of the obligation and the steps, if any, taken toward compliance with that obligation,” including an assessment of such factors as “whether a housing element has been adopted, any activity that has occurred in the town affecting need, and progress in satisfying past obligations.” Id. at 28. The courts look more favorably at a request for immunity by a municipality that has taken good faith actions toward implementing a plan of compliance than one “that merely submitted a resolution of participation and took a few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance.” Id. at 27.

For this reason, the Court declared that immunity “should not continue for an undefined period of time; rather the trial court’s orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance.” Id. at 28. The trial court must “assiduously assess whether immunity, once granted, should be withdrawn if a particular town abuses the process for obtaining a judicial declaration of constitutional compliance.” Id. at 26. As detailed below, Verona’s immunity should be withdrawn because it has failed to take any substantive action toward constitutional compliance in the three years since Mt. Laurel IV.

A. Verona is no longer entitled to immunity because in the three years since Verona filed its DJ Action, it has failed to submit a compliant plan or make any progress toward compliance.

The Township of Verona chose to file the Declaratory Judgment Action in order to have the Court confirm its compliance with the constitutional obligation to provide for affordable housing. As a result, the Township has enjoyed immunity from exclusionary zoning actions for nearly three (3) years.⁶ However, in that time, the Township has not made any meaningful effort to comply with its fair share obligation.

A Certification by the former Township Manager filed with its initial declaratory judgment papers stated that the Township of Verona was in the process of preparing a revised HEFSP. Kasetta Cert., Ex. 1(f) at ¶22. Now, nearly three (3) years later, the Township still has not submitted to the court a new HEFSP or even a summary or matrix plan for review. See Bernard Cert., ¶20. It has not provided the required information under N.J.A.C. 5:93-4.2 to establish land as a scarce resource, despite representations that it cannot fully satisfy its obligations due to a shortage of vacant developable land. Id. at ¶¶19, 59. The Township also has not amended its zoning ordinance in order to require affordable housing units within new residential developments in any zone. Id. at ¶¶22, 50. Not only has Verona failed to take any substantive steps toward compliance, it has abused the immunity granted to it. On January 5, 2017, during the pendency of the DJ Action, the Township's Planning Board inexplicably granted site plan approval for the construction of a 112-unit residential development without **any** requirement for an affordable housing set-aside. See Bernard Cert., ¶23; Kasetta Cert., Ex. 9.

⁶ Verona submitted its Notice of Filing for Declaratory Judgment Action and Motion Seeking Temporary Immunity for filing on July 2, 2015. See Kasetta Cert., Ex. 1. As set forth therein, the Township submitted itself to this Court's jurisdiction as a participating municipality. Id. at 1(b), 1(d), 1(e), 1(f).

A fact-specific analysis of Verona's efforts as required by Mt. Laurel IV can only lead to one conclusion: that it has, for a protracted period of approximately three (3) years, abused the process for obtaining a judicial declaration of constitutional compliance by failing to take any meaningful action toward compliance, and that its temporary immunity against exclusionary zoning actions should therefore be revoked.

The courts have not hesitated to revoke immunity where municipalities have failed to act in good faith toward reaching compliance under the process dictated by Mt. Laurel IV. For example, the temporary immunity granted to the Township of South Brunswick was revoked due to its "refusal to remedy and/or remove" deficiencies in its HEFSP, leading the court to conclude that the municipality "was not proceeding in good faith, and was 'determined to be non-compliant.'" In re Township of South Brunswick, 448 N.J. Super. 441, 450-451 (Law Div. 2016) (quoting Mount Laurel IV, *supra*, 221 N.J. at 73-73). As the court noted in that case, "[d]espite a span of seven months and several extensions of its immunity, South Brunswick's progress had been 'miniscule' at best. Its insistence in relying upon mechanisms that were legally improper was entirely unacceptable⁷." Id.

In determining that South Brunswick was not in compliance with its affordable housing obligations, the court noted that "because of [its] systematic 'abuses' of the declaratory judgment process, and the revocation of its immunity, the Township stands in a far less favorable position than it would have had it proceeded with 'good faith' and with 'reasonable speed.'" Id. at 466. The court noted that builder's remedy actions such as those brought against South Brunswick are permitted "where the declaratory judgment review process was 'abused,' became 'unreasonably

⁷ The legally improper mechanisms included multiple 100% affordable housing projects, excessive age-restricted units, a higher than acceptable set-aside for low and moderate income homes and an inclusionary development with an inappropriate gross density.

protracted,’ or where the Township’s proposed manner of compliance was ‘constitutionally wanting.’” Id.⁸ (quoting Mount Laurel IV, *supra*, 221 N.J. at 29).

In another example, the Township of Cranford was found to have failed to comply with its fair share housing obligations and was subjected to a builder’s remedy action by a developer willing to construct affordable housing units. Cranford Development Associates, LLC v. Township of Cranford, 445 N.J. Super. 220, 224-225 (App. Div. 2016), certif. denied, 2016 N.J. LEXIS 923 (Sept 7, 2016). In that case, the court found Cranford’s HEFSP “seriously deficient” in terms of its fair share obligation of 410 units. Id. The Appellate Division acknowledged that in order to qualify for a builder’s remedy under Mt. Laurel IV, a developer must demonstrate that it engaged in good faith negotiations. Id. at 226. However, it concurred with the trial judge’s finding that “before filing suit, [the developer] had appeared at three meetings of the municipal governing body (the Committee) and had requested that the Committee include [its] proposed development plan in the Township’s fair housing plan,” and thus rejected a claim by the township that the developer had failed to engage in such good faith negotiations before filing suit. Id. at 227.

The court affirmed the decision to allow a builder’s remedy, concluding “a developer may be entitled to a builder’s remedy, even if a municipality has begun moving toward compliance before or during the developer’s lawsuit, provided the lawsuit demonstrates the municipality’s current failure to comply with its affordable housing obligations.” Id. at 231, citing Toll Bros. v. Twp. of W. Windsor, 173 N.J. 502, 560 (2002). See also, In Re Marlboro Twp., 2015 N.J. Super. Unpub. LEXIS 1898 (allowing for builder’s remedy litigation as a result

⁸ It should be noted that the court also awarded costs to the Defendant-Intervenors in the South Brunswick matter.

of the township's bad faith in the completion of its second-round obligations). Kasetta Cert., Ex.39.

Here, Verona has had approximately three (3) years (as compared to seven (7) months in the South Brunswick case) to take affirmative actions toward compliance, and has willfully chosen not to do so. Where the plans submitted by South Brunswick and Cranford were deficient, Verona has failed to even submit an updated HEFSP for review by the Court, Special Master McKenzie, or the Intervenor. See Bernard Certification, ¶20. Moreover, despite an estimated obligation of 238 affordable housing units⁹, the Township's zoning ordinance remains devoid of any requirement for an affordable housing set-aside within new residential developments. Id. at ¶¶47, 50. Its decision during the pendency of this action to grant site plan approval for the construction of a 112-unit residential development without **any** requirement for an affordable housing set-aside is, as noted by the Intervenor's planning expert Art Bernard, a giant step backwards. See Bernard Cert., ¶69; Kasetta Cert., Ex. 9.

B. The Bobcar Intervenor has negotiated in good faith.

The Bobcar Intervenor has continuously engaged in good faith negotiations with the Township. The Intervenor held an initial mediation session with the Township on November 2, 2016, with Special Master McKenzie and counsel for FSHC present. At that time, it was estimated that the two developments could produce 72 affordable units while both respecting existing environmental constraints and providing significant setbacks to surrounding residential properties. See Kasetta Cert., Ex. 8.

⁹ Utilizing the methodology articulated by Judge Jacobson in In Re Application of the Municipality of Princeton and In Re West Windsor Twp., Docket Nos. MER-L-1550-15 and MER-L-1561-15 (consolidated).

A second mediation was held on May 18, 2017, at which time, the Intervenor presented more detailed plans and the parties discussed specific areas of concern. With the encouragement of the Township, the Intervenor agreed to further refine the plans so that the proposed settlement could be presented to the Township Council and FSHC and the appropriate amendments to the zoning ordinance could be prepared. The Township also stated that it will likely be unable to satisfy its fair share obligation without an adjustment based on insufficient vacant, developable land.

On January 25, 2018, following the completion of new property surveys, engineering site plans and preliminary architectural plans, counsel for the Intervenor provided the Township, FSHC and Special Master McKenzie with detailed plans for the development of both of the Intervenor's properties, and draft zoning ordinance amendments for both properties with a request that the Township contact the Intervenor's counsel to schedule a further mediation session. Kasetta Cert., Ex. 15. Because no response was received from the Township, a second letter was sent on February 15, 2018, requesting that a mediation session be scheduled prior to the case management conference on March 9, 2018. Kasetta Cert., Ex. 16.

The third mediation session ultimately occurred on March 27, 2018. The Township professionals provided recommendations to address their final concerns before the proposed settlement would be presented to the Council, and the Intervenor agreed to modify the plans accordingly. A further mediation session was tentatively scheduled for April 27, 2018.

At the case management conference held by the Court on April 6, 2018, the Township's Attorney advised on the record that "we're very close to resolution on all of the properties that are involved and hopefully within another couple of sessions we'll be able to get to an

agreement.” Counsel for the Intervenors agreed, based upon the discussions that took place at the March 27, 2018, mediation session. Kasetta Cert., Ex. 21 at 4-5.

On April 18, 2018, the Township Attorney requested rescheduling of the April 27, 2018 mediation, and it was agreed that the mediation session would occur on May 18, 2018. Kasetta Cert., Ex. 22. As requested by the Township, counsel for the Intervenors provided additional architectural renderings the following week. Id.

As reflected by the record, the Intervenors have expended substantial time and costs in working toward a settlement with the Township, not only in diligently attending mediation sessions, but also in engaging professionals to prepare costly surveys, engineering plans, architectural plans, elevations, perspective renderings, and draft zoning ordinance amendments. The Intervenors have also obtained from NJDEP Letters of Interpretation that verify the locations of freshwater wetlands on the properties and confirm that the properties can be developed as proposed. See Kasetta Cert., Ex. 14; Ex. 18. It is submitted that the Intervenors’ good faith cannot be questioned.

C. The Township has acted in bad faith and has abused the immunity conferred by the Court.

In contrast to the good faith efforts undertaken by the Intervenors, the Township has abused the immunity granted by the court and has acted in bad faith. Verona has failed to submit a compliance plan to the court, has alleged that there is insufficient land in the Township for the construction of affordable housing, yet has approved a large residential development without any affordable housing obligation and, on May 21, 2018, the Verona Township Council adopted two ordinances to explore the condemnation of the Intervenors’ two properties which would further deplete the Township’s inventory of available land.

Late in the afternoon of Friday, May 4, 2018, counsel for the Intervenor received a rather unexpected telephone call from Township Attorney Brian Aloia¹⁰ advising that the Township Council would introduce ordinances on Monday, May 7, 2018, to commence the process of acquiring the Intervenor's two properties by eminent domain.

On May 7, 2018, counsel for the Intervenor sent a letter to Mr. Aloia objecting to such a course of action and warning that if the ordinances were introduced the Intervenor would take all necessary legal action to protect their rights, including a request that the Township's immunity against builder's remedy actions be revoked by this Court. The letter reminded Mr. Aloia that, as previously discussed, the Township will not be able to meet its constitutional fair share obligation without both a vacant land adjustment and the substantial number of affordable housing units contemplated as part of the Intervenor's proposed projects. Kasetta Cert., Ex. 23.

As a result of the letter to Mr. Aloia, a telephone conference was held on May 7, 2018, among counsel for the Intervenor, Township Attorney Aloia, Township Condemnation Attorney Demetrice Miles, and Special Master McKenzie. During the call, counsel for the Intervenor again objected to the introduction of the ordinances.

Despite the objections raised by the Intervenor, ordinances authorizing the acquisitions of the Intervenor's properties and appropriating capital funds for preliminary planning expenses in connection therewith were introduced by the Township Council at its May 7, 2018, meeting. Kasetta Cert., Ex. 24-28.

On May 8, 2018, counsel for the Intervenor provided to Mr. Giblin revised plans for both properties, which incorporated detailed steep slope analyses, as requested at the previous

¹⁰ Until then, the Intervenor had been negotiating with Brian Giblin, Esq., the Township's COAH Counsel.

mediation session. Counsel requested confirmation from Mr. Giblin that the May 18, 2018 mediation would still occur as planned. Kasetta Cert., Ex. 29. Unfortunately, on May 17, 2018, Mr. Giblin canceled the mediation session scheduled for the next day.

Also on May 17, 2018, Special Master McKenzie sent a letter to Township COAH Attorney Brian Giblin advising that FSHC's expert had calculated Verona's Third Round Obligation at 327 units in 2016; that FSHC had offered as a settlement a Third Round Obligation of 229 units; and that Verona's Third Round Obligation based on Judge Jacobson's decision in In Re Application of the Municipality of Princeton and In Re West Windsor Twp., Docket Nos.: MER-L-1550-15 and MER-L-1561-15 (consolidated)(Law Div. Mercer Cty., Mar. 8, 2018)(Judge Jacobson's Decision), would be 239 units (including the prior round obligation)¹¹. Kasetta Cert., Ex. 30.

The letter from Special Master McKenzie also commented on the Township's effort to begin the process of condemning the Intervenor's properties, the implications of which are discussed in further detail below. Special Master McKenzie advised that "the Township is not required to use [sites proposed by intervenors for inclusionary development] *as long as it can satisfy the entirety of the fair share obligation in another way and as long as the Township is not seeking an adjustment due to insufficient vacant developable land.*" Id. at 4 (emphasis in original).

Despite the unequivocal letter from Special Master McKenzie and the objections raised by the Intervenor's, final adoption of the ordinances was included on the agenda for the Township Council's meeting on May 21, 2018. At the May 21, 2018, meeting of the Township Council,

¹¹ Special Master McKenzie noted that Judge Jacobson's methodology has not been endorsed by FSHC at this point and that some adjustment may be necessary in the event of a trial.

Township Attorney Aloia advised that legal questions remained. Kasetta Cert., Ex. 31 at 3. When the Council invited public comment, counsel for the Intervenors reiterated the objection to all four (4) proposed ordinances. Id. at 6. Several members of the public then spoke in support of the ordinances, expressing a desire to prevent development and preserve the neighborhoods as they currently exist. Id. at 7-9.

At the recommendation of Township Attorney Aloia, the final votes on the ordinances authorizing the acquisitions of the Intervenors' properties were tabled to June 11, 2018. Id. at 10, 14-15. However, the Council voted to adopt ordinances to authorize the expenditures of capital funds in connection with the two acquisitions. Id. at 16-23.

Since filing this DJ Action in 2015, the Township has failed to submit an HEFSP or any information to substantiate its claim that land is a scarce resource in Verona; failed to amend its Zoning Ordinance to require any affordable housing set aside for new residential developments; approved a large residential development without any affordable housing; and has begun the process of condemnation on the two largest and most viable properties where affordable housing can be developed. These actions clearly demonstrate an abuse of the declaratory judgment process as set forth in Mt. Laurel IV.

Because the Intervenors have acted in good faith and the Township has willfully chosen a path of non-compliance, the Township is no longer entitled to immunity against exclusionary zoning actions. This Court should immediately revoke the Township's temporary immunity, thereby permitting the Intervenors to seek a builder's remedy and scarce resources order, and award costs to the Intervenors in connection with this Motion.

The Intervenor will then make the required showing that the Township's land use regulations fail to provide "a realistic opportunity for the construction of its fair share of ... low and moderate income housing" as the first prong for entitlement to a builder's remedy. Toll Bros v. Twp. of W. Windsor, 173 N.J. 502, 542 (2002), citing S. Burlington County NAACP v. Mt. Laurel, 92 N.J. 158, 204-205 (1983) ("Mt. Laurel II"). The Intervenor will also show that they "proposed a project with a substantial amount of affordable housing" and that their sites are "suitable, i.e. the municipality failed to meet its burden of providing that the [sites are] environmentally constrained or that construction of the project[s] would represent bad planning." Id. at 559¹².

Given the Township's representations that it does not have adequate vacant land to meet its fair share obligation, the Intervenor will also seek an order preserving land within Verona as a scarce resource and restraining the Township from acquiring the Intervenor's properties. See Holmdel Builders Ass'n v. Holmdel, 121 N.J. 550, 577 (1990), citing N.J.A.C. 5:91-11.1; Hills Dev. Co. v. Bernards, 103 N.J. 1, 61 (1986) (authority to order a municipality to "take appropriate measures to preserve ... those resources that will probably be essential to the satisfaction of its *Mount Laurel* obligation"); Tocco v. Council on Affordable Housing, 242 N.J. Super. 218, 221 (App. Div. 1990).

D. The Township's sudden decision to condemn the Intervenor's properties for open space, without any demonstration of a public need and despite the ongoing settlement negotiations with the Intervenor, is clear and convincing evidence of bad faith.

¹² As noted by the Court, "where a developer succeeds in *Mount Laurel* litigation and proposes a project providing a substantial amount of lower income housing, a builder's remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns, the plaintiff's proposed project is clearly contrary to sound land use planning." Id. at 562-563.

The Township may argue that it has the authority to condemn the Intervenor's properties. However, the eleventh hour effort to condemn the Intervenor's properties, which are necessary for Verona to meet its obligations and feasible for inclusionary development, is especially egregious given Verona's intent to seek an adjustment in its fair share obligation due to a shortage of vacant developable land. This is a glaring example of its bad faith. The Township cannot satisfy its fair share obligation without the proposed developments and cannot point to a legitimate need to acquire the properties for any public purpose.

"Ordinarily, when a municipality adopts an ordinance in the exercise of its power of eminent domain, that determination is presumed valid and entitled to great deference ... However, the decision to condemn shall not be enforced where there has been a showing of 'improper motives, bad faith, or some other consideration amounting to a manifest abuse of the power of eminent domain.'" Borough of Essex Fells v. Kessler Institute for Rehabilitation, Inc., 289 N.J. Super. 329, 337 (App. Div. 1995) (internal citations omitted). Specifically, "where a condemnation is commenced for an apparently valid, stated purpose but the real purpose is to prevent a proposed development which is considered undesirable, the condemnation may be set aside." Id. at 339.

In Borough of Essex Fells, the court found bad faith where "Essex Fells undertook [the] condemnation action for the sole purpose of preventing Kessler's development of a rehabilitation facility in the community. The credible evidence demonstrate[d] that the public purpose articulated for taking Kessler's property, a public park, was selected not based on a true public need but in response to community opposition to Kessler's proposed use of the property." Id.

As the court noted:

[t]he only valid justification for condemning Kessler's land would be that the borough truly needed additional park land or open space, or needed to protect a critical environmental area. As the borough's Master Plan Reexamination Report of August 1992, noted, 'possible acquisitions of vacant land as it becomes available' should be considered. However, my review of the entire record fails to disclose any public discussion, debate or demand for any additional park land or open space until public opposition to Kessler's development plans intensified.

Id. at 340.

After considering the lack of "credible, ascertainable public need" or "evidence of utilization or over utilization of existing park land or recreational facilities," the court concluded that "but for the public opposition to Kessler's development proposal, borough officials would not have sought to prevent Kessler's use of the property. The power of eminent domain cannot be justified when used in response to public opinion against a proposed land use." Id. at 341-342.

More recently, bad faith was found to be evidenced by an analogous attempt to condemn private property for open space where it was evident the municipality's real intent was to thwart the construction of multifamily development and affordable housing. Tp. of Allamuchy v. Progressive Properties, Inc., No. A-987-02T3, (App. Div. July 16, 2004), certif. denied, 182 N.J. 149 (2004), A copy of the Appellate Division decision is attached to Kasetta Cert., Exhibit 32.

In that case, the Township of Allamuchy filed a complaint to condemn three (3) parcels for use as open space, which was dismissed by the Law Division "on the grounds that [the condemnation actions] were instituted in bad faith and not for public purposes." Id. at 3-4. The owner of one of the properties, known as "Village IX," had received site plan approval

for the construction of 336 residential units, with no affordable housing set-aside. Id. at 7.

The other property, known as “Village VI,” “was included in the Township’s 1993 Housing Plan Element and Housing Compliance Program,” which received substantive certification in 1996 and was subsequently approved for the construction of an inclusionary development. Id. at 8. However, shortly before the approval:

In July 2000, the Township petitioned COAH for approval of a modified fair share housing plan with an additional site. Upon [the owner of Village VI’s] objection, the Township withdrew its petition. In October 2000, the Township sought to amend its fair share plan, which proposed a thirteen-unit regional contribution agreement (RCA) in lieu of constructing any new affordable units in the municipality. On December 21, 2001, COAH placed the Township’s petition on inactive status pending the outcome of the present litigation. Id. at 9.

During the year prior, “the Township sought to acquire [the three parcels] as part of an aggressive campaign to acquire open space” Id. The owner responded by filing an answer claiming that the acquisition “was not necessary for a public use or public purpose ... the Township had acted in bad faith ... [and] the taking would violate the Mount Laurel doctrine, the State Development and Redevelopment Plan and the Township’s Master Plan.” Id. at 10. The owner also filed an exclusionary zoning action with respect to Village VI and the actions were consolidated. Id.

Upon a motion for summary judgment by the property owner, the trial judge “found the condemnation actions were instituted in bad faith and not for a public purpose and dismissed the Township’s complaints. He also awarded counsel fees to [the property owner].” Id. The Appellate Division affirmed, concurring with the findings of the trial judge “that the selection of the particular properties at issue was arbitrary and capricious. The Township had not

sought to condemn other properties, as suitable for open space preservation, that had not been slated for multi-family or affordable housing development.” Id. at 13.

The court further found “substantial evidence in the record to support the motion judge’s finding that the Township’s claim of a public need for more park or open space ... was pretextual and was, in actuality an effort to stop unwanted multi-family housing development in response to the opposition from residents....” Id. The court noted that “[n]either parcel had been identified as an ‘important site’ to be preserved in the Township’s 1998 Conservation Plan Element nor proposed for open space or parkland designation in the Township’s 1999 Master Plan re-examination report.” Id.

Although Allamuchy was not seeking a declaratory judgment, the sites had received development approvals. “As the motion judge noted,

Sometime in 1999, the township appears to have decided to eliminate further multi-family and affordable development in Panther Valley. The genesis of this decision is unclear. There is no adequate documentation to justify the sudden determination that Village IX and Village VI ... had to be preserved as open space.”

Id. at 14, quoting April 24, 2002 oral opinion of Hon. Roger F. Mahon, J.S.C., Kasetta Cert., Ex. 33.

Critically, the motion judge found “[i]n these circumstances, where the township’s constitutional obligation to provide for a variety and choice of housing and for the provision of its fair share of affordable housing is in direct competition with its power to condemn private land for a purported public purpose, the constitutional obligation must be viewed as paramount where the public purpose is merely pretextual.” Kasetta Cert., Ex. 33 at 50-51.

The Appellate Division agreed with the motion judge that:

Allamuchy's position claiming a public need for additional park space or open space is pretextual based on opposition to the construction of inclusionary and multi-family housing consistent with the municipality's constitutional obligation as well as its own master plan and zoning.

There has been no demonstrated need for any additional open space according to any of the township generated documents, including, significantly, the township's own Open Space and Recreation Plan Element of its own master plan adopted in 2000. It specifically found that there was more than adequate recreation available for all existing and future residents of the community ...

The recent about-face to Allamuchy's approach to these properties has not been satisfactorily explained or justified. While a municipality has broad powers of eminent domain, those powers are not without limits. Where they are used for an improper purpose, the condemnation cannot be permitted to proceed.

Id. at 14-15, quoting April 24, 2002 oral opinion of Hon. Roger F. Mahon, J.S.C., Kasetta Cert., Ex. 33.

Similarly, the Township of Verona lacks a legitimate public need that would justify the taking of the Intervenor's properties. The Township's Master Plan¹³ does not recommend the acquisition of land for open space and makes no reference to the Intervenor's properties for any community purpose. See Kasetta Cert., Ex. 34-38; Bernard Cert., ¶¶25-26. To the contrary, the "Community Facilities & Services" report in Section 5 assesses the Township's recreation needs by census tract. See Kasetta Cert., Ex. 34. The assessment concludes that the tract within which 25 Commerce Court is situated contains sufficient recreational land based on land-based criteria; Id. at 4; Bernard Cert., ¶25; and that the tract within which 111 Mount Prospect Avenue is situated "has significant amounts of recreation and open space

¹³ Only the relevant portions of the Township's Master Plan are included in this motion due to the substantial volume.

utilizing both land and population based criterion¹⁴.” Kasetta Cert., Ex. 34 at 5. Finally, the assessment concludes that the largest of the three census tracts contains “an abundance of recreation and open space.” Id. at 4.

The “Community Facilities Plan Element” at Section 11 also does not recommend the acquisition of the Bobcar Intervenors’ properties, but rather concludes: “Verona’s community facilities are in adequate condition and are generally suitable for continued use. ... The forecast for the stabilization of population levels requires a greater emphasis on a program of modernization and replacement of out-of-date equipment more than on any expansion of facilities.” See Kasetta Cert., Ex. 37 at 1 (emphasis added).

The “Verona Land Use Plan Element” at Section 8 also does not recommend the designation of these properties as open space or community facilities. See Kasetta Cert., Ex. 36; Bernard Cert., ¶¶25-26. The absence of any recommendation within the Reexamination Report is illustrative of the lack of any public need for additional open space. It is also contrary to COAH regulations, which permit a municipality to reserve a limited amount of space for recreational purposes but only if it is so designated in the municipal master plan. N.J.A.C. 5:93-4.2(d)4; see also Bernard Cert., ¶26.

Not only does the Reexamination Report reflect a complete absence of recommendations that the Intervenors’ properties be used as open space, it specifically includes both in the “Township of Verona Growth Projection Adjustment – Residential Parcel Inventory” within the outdated and now invalid HEFSP at Section 13, which indicates that the Township will

¹⁴ This is due in large part to the existence of the 408 acre Eagle Rock Reservation, which is directly adjacent to 111 Mount Prospect Avenue.

need to seek an adjustment in its fair share obligation due to a shortage of vacant land. See Kasetta Cert., Ex. 38 at 32, 35, 37, 53, 61.

The statements in the 2009 HEFSP are consistent with the Township's position taken during the May 18, 2017, mediation session that it will need to seek an adjustment based on a shortage of vacant, developable land. Therefore, it is clear that without the affordable housing units proposed on the Intervenor's two properties, the Township cannot satisfy its fair share obligation¹⁵. See Bernard Cert., ¶¶48; 50-56.

This issue was brought to the Township's attention in the May 17, 2018, letter from Special Master McKenzie. Kasetta Cert., Ex. 30. The letter warned as follows:

If Verona: 1) is seeking an adjustment due to insufficient vacant developable land to satisfy the entirety of its current fair share obligation within the repose period, and 2) cannot justify the reservation of certain properties from its inventory of vacant developable land on the grounds that, without such reservation (and a corresponding commitment to purchase such properties within one year), Verona would fall below the permissible thresholds of 3% active recreation and 3% conservation lands allowed under COAH's Prior Round Rules (N.J.A.C. 5:93-4.2), then any effort right now to condemn land that is vacant and developable (or potentially vacant and re-developable) is apt to be viewed as an attempt to circumvent compliance with its affordable housing obligations."

Id. at 2.

As further set forth in the letter:

Verona already has some vulnerability in this regard due to its approval of the redevelopment of the Annin Flag site without an affordable housing set-aside. The fact that the two sites that are being contemplated for taking have been offered as sites for inclusionary residential development by an intervenor in Verona's pending Declaratory Judgment action could be used as evidence of bad faith and exclusionary intentions, *no matter how good Verona's reasons may be for wanting these sites for other public purposes.*

¹⁵ The Intervenor's are not privy to the settlement discussions between the Township and the other two property owners who have intervened in the DJ Action; however, those properties are not large enough to accommodate the Township's entire obligation on their own.

Id. at 2-3 (emphasis in original).

Finally, the letter advised:

Verona chose to file its request for a Declaratory Judgment in Superior Court in an effort to remain protected from builder's remedy lawsuits while preparing and obtaining the Court's approval of its third round Plan. The withdrawal of immunity would unbar the door to such lawsuits. Once such a lawsuit has been filed, especially in a town that is anticipating seeking an adjustment due to insufficient vacant developable land, there is a strong possibility that the builder-plaintiff would immediately move for entry of an order for scarce resource restraints (as has happened in similar circumstances). An order for scarce resource restraints would essentially put a stop to any governmental action that would affect the use or development of land unless and until the validity of the Township's housing element and fair share plan have been decided. Along with this, the builder would be entitled to relief in the form of a "builder's remedy" on the parcels for which he is proposing inclusionary multi-family residential development, unless the Township can demonstrate to the Court's satisfaction that there are overwhelming reasons why one or both of the sites cannot sustain such development.

Id. at 3.

The Township chose to disregard Special Master McKenzie's warning and proceed toward the condemnation of the Intervenor's properties, leaving the Intervenor no choice but to file this Motion to request the revocation of its immunity.

The Township would only be permitted to condemn the properties if it truly needed the land for a public purpose. Since there is no documented public need, any representation that the acquisitions are being pursued for open space is pretextual. Further, as noted by COAH in interpreting its own rules, "[t]he planning for the recreational needs of a community should not begin with the response to the housing obligation. Recreational planning is an on-going concern. Although the Council understands the need to be flexible for unique circumstances, it believes its rule is appropriate." Bernard Cert., ¶26, quoting Comment 103, 25 N.J.R. 5771.

Considering all of the circumstances in light of the applicable case law, the Township's effort to single out the Intervenor's properties for condemnation is nothing more than a bad faith attempt to circumvent compliance with its constitutional obligations. As discussed in Section I above, the Township has for the last three (3) years failed to make any meaningful progress toward compliance. After representing to the Court at the most recent case management conference that it was nearing a settlement with the Intervenor's, the Township has now commenced the process of condemning the Intervenor's properties for open space without any demonstrated public need and despite a claimed shortage of vacant, developable land to satisfy its constitutional affordable housing obligations. Bernard Cert., ¶60. The Township's effort to condemn the Bobcar Intervenor's properties is as obviously pretextual as was the case in Allamuchy. The Township has not attempted to condemn any other site, but instead has arbitrarily and capriciously targeted only the two properties proposed by the Intervenor's for inclusionary developments.

Because the Township's sudden effort to condemn the Intervenor's properties is based on improper motives, it is a further basis for the Court to revoke the Township's temporary immunity, thereby permitting the Intervenor's to seek a builder's remedy and the imposition of a scarce resources order.

CONCLUSION

For all of the foregoing reasons, Defendants/Intervenors Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC respectfully request that this Court revoke the Township of Verona's immunity against exclusionary zoning actions, thereby permitting the Defendants/Intervenors to seek a builder's remedy and scarce resources order, and further request that the Court award the Defendants/Intervenors attorney's fees and costs of suit.

Respectfully submitted,

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
ATTORNEYS FOR DEFENDANTS/INTERVENORS
BOBCAR CORPORATION, NEIL JOY ASSOCIATES
AND FORSONS PARTNERS, LLC

By: _____


Gregory D. Meese

Date: June 7, 2018

CERTIFICATION OF SERVICE

I hereby certify that the within Notice of Motion, Brief in support thereof, Certifications of Art Bernard, P.P. and Allyson M. Kasetta, Esq., and proposed form of Order were served upon all counsel on this day by way of electronic notification to the following:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08022
kevinwalsh@fairsharehousing.org

Henry L. Kent-Smith, Esq.
Fox Rothschild
997 Lenox Drive
Building 3
Lawrenceville, NJ 08648
Hkent-smith@foxrothschild.com

Jeffrey L. Kantowitz, Esq.
Law Office of Abe Rappaport
195 US Highway 46, Suite 6
Totowa, NJ 07512-1833
Jeffrey.kantowitz@gmail.com

Christopher Norman, Esq.
Raymond Coleman Heinold & Norman, LLP
325 New Albany Road
Moorestown, NJ 08057-1250
tomcoleman@rclawnj.com

Jeffrey R. Surenian, Esq.
Jeffrey R. Surenian and Associates, LLC
707 Union Ave, Suite 301
Brielle, NJ 08730-1470
JRS@surenian.com

Stuart A. Platt, Esq.
Platt & Risso, P.C.
40 Berlin Avenue
Stratford, NJ 08084
platt@prlawoffice.com

Thomas F. Carroll, III, Esq.
Hill Wallack
202 Carnegie Center, CN 5226
Princeton, NJ 08543
tc Carroll@hillwallack.com

Jonathan E. Drill, Esq.
Stickel, Koenig, Sullivan & Drill
571 Pompton Ave
Cedar Grove, NJ 07009-1720
jdrill@sksdllaw.com

Kevin J. Moore, Esq.
Sills Cummis & Gross PC
600 College Road E
Princeton, NJ 08540-6636
kmoore@sillscummis.com

Ronald C. Morgan, Esq.
Parker McCay PA
9000 Midlantic Drive, Suite 300
Mount Laurel, NJ 08054-1539
rmorgan@parkermccay.com

Valentina M. DiPippo, DAG
RJ Hughes Justice Complex
25 Market Street, 2nd Floor
PO Box 112
Trenton, NJ 08625
Valentina.dipippo@law.njoag.gov

Tracy A. Siebold, Esq.
Nehmad Perillo & Davis, PC
4030 Ocean Heights Avenue, Suite 100
Egg Harbor Township, NJ 08234-7505
tsiebold@npdlaw.com

Eileen M. Connor, Esq.
Gibbons, PC
One Gateway Center
Newark, NJ 07102-5310
eoconnor@gibbonslaw.com

Catherine Weiss, Esq.
Lowenstein Sandler LLP
65 Livingston Ave
Roseland, NJ 07068-1725
cweiss@lowenstein.com

Connie M. Pascale, Esq.
Legal Services of New Jersey
100 Metroplex Drive at Plainfield Avenue, Suite 402
PO Box 1357
Edison, NJ 08818-1357
cpascale@lsnj.org

Edward J. Buzak, Esq.
Buzak Law Group, LLC
150 River Road, Suite N-4
Montville, NJ 07045-9441
blg@buzaklawgroup.com

Michael A. Gannaio, Esq.
Giblin & Gannaio
2 Forest Ave
Oradell, NJ 07649-1959
Magannaio@aol.com

Jason L. Kasler, AICP, PP
Consulting Planner
Kasler Associates, PA
34 Little Rock Road
Springfield, NJ 07081
jasonka@aol.com

Glenn Beckmeyer
Municipal Engineer
Township of Verona
10 Commerce Court
Verona, NJ 07044
gbeckmeyer@beckmeyerengineering.com

Ronald K. Chen, Esq.
Rutgers Law School
123 Washington Street
Newark, NJ 07102-3026
rchen@kinoy.rutgers.edu

Martin F. McKernan, Jr., Esq.
McKernan McKernan & Godino
113 N 6th Street
Camden, NJ 08102-1207
martinmckernan@mckernangodino.com

NJ Builders Association
200 American Metro Blvd., Suite 123
Hamilton, NJ 08619
jkolakowski@njba.org

The Honorable Kevin Ryan
Township of Verona
Municipal Building
600 Bloomfield Avenue
Verona, NJ 07044
kryan@veronanj.org

Susan F. Neale
Township of Verona
Municipal Building
600 Bloomfield Avenue
Verona, NJ 07044
sneale@veronanj.org
jkiernan@veronanj.org

Matthew Cavallo
Township Manager
Township of Verona
Municipal Building
600 Bloomfield Avenue
Verona, NJ 07044
mcavallo@veronanj.org

Melissa Field
Director of Housing Development
Allies, Inc.
1262 White Horse-Hamilton Sq. Road
Building A, Suite 101
Hamilton, NJ 08690
mfield@alliesnj.org

I further certify that copies of the Notice of Motion, Brief in support thereof, Certifications of Art Bernard, P.P. and Allyson M. Kasetta, Esq., and proposed form of Order were also sent to the following addressees via UPS overnight delivery on this day:

Hon. Robert H. Gardner, J.S.C.
Superior Court, Essex County, Law Division
Historic Courthouse
470 Martin Luther King Jr. Drive, 4th Floor
Newark, NJ 07102

Special Master Elizabeth McKenzie, P.P., P.A.
Community Planning and Development
9 Main Street
Flemington, NJ 08822

Brian T. Giblin, Sr., Esq.
Giblin & Gannaio
2 Forest Avenue
Oradell, NJ 07649

Joshua Bauers, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

John P. Inglesino, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, NJ 07054
(Attorney for Defendant/Intervenor Spectrum 360, LLC)

Peter M. Flannery, Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033
(Attorney for Defendant/Intervenor Poekel Properties LLC)

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

Dated: June 7, 2018

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Defendants/Intervenors

By: /s/Gregory D. Meese
Gregory D. Meese

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
 Gregory D. Meese, Esq. (NJ Bar No. 037831983)
 Allyson M. Kasetta, Esq. (NJ Bar No. 012892009)
 Mack-Cali Corporate Center
 50 Tice Boulevard
 Woodcliff Lake, NJ 07677
 (201) 391-3737
 Attorneys for Defendants/Intervenors Bobcar Corporation,
 Neil Joy Associates and Forsons Partners, LLC
gmeese@pricemeese.com
akasetta@pricemeese.com

IN ALL DECLARATORY JUDGMENT
 ACTIONS FILED BY VARIOUS
 MUNICIPALITIES, COUNTY OF
 ESSEX, PURSUANT TO THE SUPREME
 COURT'S DECISION IN In re Adoption
of N.J.A.C. 5:96, 221 N.J. 1 (2015)

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: ESSEX COUNTY
 DOCKET NO.: ESX-L-4173-15

Civil Action
 (Mount Laurel)

**CERTIFICATION OF
 ALLYSON M. KASSETTA, ESQ.**

Allyson M. Kasetta, Esq., of full age, certifies as follows:

1. I am an Attorney At Law of the State of New Jersey employed by the firm of Price, Meese, Shulman & D'Arminio, P.C., counsel for proposed Intervenors/Defendants Bobcar Corporation, Neil Joy Associates and Forsons Partners, LLC, (hereinafter collectively referred to as the "Intervenors").
2. I make this Certification in support of Bobcar's Motion to Revoke the Temporary Immunity Granted to the Plaintiff Township of Verona ("Verona").
3. Attached as Exhibit 1 are true copies of the documents filed by the Township of Verona on July 2, 2015, commencing its Declaratory Judgment Action under In re adoption of N.J.A.C.

5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “DJ Action”),
consisting of the following:

- a. Notice of Filing of Declaratory Judgment;
 - b. Notice of Motion for Temporary Immunity;
 - c. Civil Case Information Statement;
 - d. Complaint for Declaratory Judgment;
 - e. Brief in support of Township;
 - f. Certification of Township Manager;
 - g. Affidavit of Publication; and
 - h. Check in the amount of \$50.00 for filing fees (intentionally omitted).
4. Attached as Exhibit 2 is a true copy of the Notice of Motion to Intervene in the DJ Action filed by the Intervenors on August 17, 2015.
 5. Attached as Exhibit 3 is a true copy of the Order entered on September 15, 2015 granting the Intervenors’ Motion to Intervene in the DJ Action.
 6. Attached as Exhibit 4 is a true copy of the Order entered on September 15, 2015 granting the Township a five month period to prepare a constitutionally compliant Housing Element and Fair Share Plan and further granting temporary immunity against third party lawsuits pending the issuance of a Final Judgment of Compliance and Repose.
 7. Attached as Exhibit 5 is a true copy of the First Case Management Order entered by the Court on February 5, 2016.
 8. Attached as Exhibit 6 is a true copy of a letter to Special Master Elizabeth McKenzie from counsel to the Intervenors dated May 5, 2016.

9. Attached as Exhibit 7 is a true copy of the Case Management Order entered by the Court on December 12, 2016.
10. Attached as Exhibit 8 is a true copy of a letter to the Court from counsel to the Intervenor dated January 11, 2017 enclosing copies of the concept plans for 25 Commerce Court and 111 Prospect Avenue as discussed with the Township of Verona at a mediation session on November 2, 2016.
11. Attached as Exhibit 9 is a true copy of a resolution adopted by the Verona Planning Board on January 26, 2017, memorializing its January 5, 2017 approval of a residential development at 163 Bloomfield Avenue.
12. Attached as Exhibit 10 is a true copy of the Case Management Order entered by the Court on March 24, 2017.
13. Attached as Exhibit 11 is a true copy of the Order entered by the Court on May 12, 2017 granting the Motion of Spectrum 360, LLC to intervene in the DJ Action as an interested party.
14. Attached as Exhibit 12 is a true copy of the Order entered by the Court on May 26, 2017 granting the Motion of Poekel Properties LLC to intervene in the DJ Action as an interested party.
15. Attached as Exhibit 13 is a true copy of the Case Management Order entered by the Court on November 9, 2017.
16. Attached as Exhibit 14 is a true copy of the Letter of Interpretation issued by the New Jersey Department of Environmental Protection on December 28, 2017 with respect to 25 Commerce Court.

17. Attached as Exhibit 15 is a true copy of a letter to Township COAH Attorney Brian Giblin and Special Master Elizabeth McKenzie from counsel to the Intervenors dated January 25, 2018 enclosing concept plans, preliminary elevations and draft zoning ordinances with respect to 25 Commerce Court and 111 Mount Prospect Avenue.
18. Attached as Exhibit 16 is a true copy of a letter to Township COAH Attorney Brian Giblin from counsel to the Intervenors dated February 15, 2018.
19. Attached as Exhibit 17 is a true copy of the Order entered by the Court on March 9, 2018, rescheduling the case management previously scheduled for that date to April 6, 2018 and extending the temporary immunity granted to the municipalities through the date of the rescheduled case management conference.
20. Attached as Exhibit 18 is a true copy of a letter from the New Jersey Department of Environmental Protection to a concerned resident dated March 19, 2018 in connection with the Letter of Interpretation issued for 111 Mount Prospect Avenue.
21. Attached as Exhibit 19 is a true copy of the Order entered by the Court on March 28, 2018 scheduling trial dates for various municipalities other than the Township of Verona.
22. Attached as Exhibit 20 is a true copy of the Letter of Interpretation issued by the New Jersey Department of Environmental Protection on March 28, 2018 with respect to 111 Mount Prospect Avenue.
23. Attached as Exhibit 21 is a true copy of an excerpt of the transcript of the case management conference held on April 6, 2018 in connection with the DJ Action.
24. Attached as Exhibit 22 is a true copy of an email to Township COAH Attorney Brian Giblin from counsel to the Intervenors dated April 23, 2018 enclosing additional

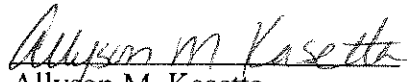
perspective renderings of the proposed developments at 25 Commerce Court and 111 Mount Prospect Avenue.

25. Attached as Exhibit 23 is a true copy of a letter to Township Attorney Brian Aloia from counsel to the Intervenors dated May 7, 2018.
26. Attached as Exhibit 24 is a true copy of Verona Ordinance 2018-12.
27. Attached as Exhibit 25 is a true copy of Verona Ordinance 2018-13.
28. Attached as Exhibit 26 is a true copy of Verona Ordinance 2018-14.
29. Attached as Exhibit 27 is a true copy of Verona Ordinance 2018-15.
30. Attached as Exhibit 28 is a true copy of an excerpt of the transcript of the May 7, 2018 meeting of the Verona Township Council.
31. Attached as Exhibit 29 is a true copy of an email to Township COAH Attorney Brian Giblin from counsel to the Intervenors dated May 8, 2018 and enclosing revised concept plans for 25 Commerce Court and 111 Mount Prospect Avenue.
32. Attached as Exhibit 30 is a true copy of a letter to Township COAH Attorney Brian Giblin from Special Master Elizabeth McKenzie dated May 17, 2018.
33. Attached as Exhibit 31 is a true copy of an excerpt of the transcript of the May 21, 2018 meeting of the Verona Township Council.
34. Attached as Exhibit 32 is a true copy of the unpublished opinion in Tp. of Allamuchy v. Progressive Properties, Inc., No. A-987-02T3 (App. Div. July 16, 2004) (certif. denied, 182 N.J. 149 (2004)).
35. Attached as Exhibit 33 is a true copy of the April 24, 2002 oral opinion of Hon. Roger F. Mahon, J.S.C. in Tp. of Allamuchy v. Progressive Properties, Inc., NOS. HNT-L-516-01, HNT-L-517-01, HNT-L-518-01 (Law Div.).

36. Attached as Exhibit 34 is a true copy of Section 5 (Community Facilities and Services) of the Township of Verona's 2009 Master Plan Reexamination Report.
37. Attached as Exhibit 35 is a true copy of Map 2-1, as found in Section 2 of the Township of Verona's 2009 Master Plan Reexamination Report.
38. Attached as Exhibit 36 is a true copy of Section 8 (Verona Land Use Plan Element) of the Township of Verona's 2009 Master Plan Reexamination Report.
39. Attached as Exhibit 37 is a true copy of Section 11 (Community Facilities Plan Element) of the Township of Verona's 2009 Master Plan Reexamination Report.
40. Attached as Exhibit 38 is a true copy of Section 13 (Housing Element and Fair Share Plan) of the Township of Verona's 2009 Master Plan Reexamination Report.
41. Attached as Exhibit 39 is the unpublished opinion in In re Marlboro Twp., NO. A-0243-10T4 (App. Div. August 7, 2015).

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

Dated: June 7, 2018


Allyson M. Kasetta