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November 26, 2018

Via eCourts & Overnight Mail

The Honorable Robert H. Gardner, J.S.C.
Superior Court of New Jersey
Essex County Historic Courthouse
470 Martin Luther King, Jr. Blvd.
Newark, New Jersey 07102

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

Dear Judge Gardner:

This firm represents Defendant-Intervenor, Spectrum360, LLC (“Spectrum”), in the above-captioned matter. Currently pending before this Court is a motion filed by Defendant-Intervenor, Bobcar Corporation, Neil Joy Associates, and Forsons Partners, LLC (“Bobcar”), to revoke the Township of Verona’s temporary immunity from exclusionary zoning actions (the “Motion”). Although it is rare, in our experience, for intervenors in these actions to take a substantive position on the motions filed by fellow intervenors, the substance of Bobcar’s Motion necessitates a response from Spectrum. As such, please accept this correspondence in lieu of a more formal submission as Spectrum’s support for a continuation of the Township’s temporary immunity from builder’s remedy actions.

First, as the Court may recall, Spectrum¹ is a non-profit entity that operates two schools and serves children, young adults, and adults with behavioral and related disabilities, primarily autism. Spectrum’s lower school is located at One Sunset Avenue, Verona, New Jersey (the “Property”). The Property is approximately eight (8) acres in size, with 5.5 acres situated in the Township and the remaining 2.5 acres located in Montclair. Spectrum’s participation in this litigation is unfortunately connected to an unsettling phenomenon; that is, the skyrocketing rates of children in New Jersey that are affected by autism² and the lack of much needed facilities to

¹ Until it underwent a name change effective July 1, 2016, Spectrum was known as The Children’s Institute.

² CHRISTENSEN DL, BAIJO J, BRAUN KV, ET AL. *Prevalence and Characteristics of Autism Spectrum Disorder Among Children Aged 8 Years — Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States*,

provide appropriate educational and vocational training. Indeed, Spectrum's existing lower school in the Township can no longer adequately serve the needs of its student population. As such, Spectrum must relocate to a new campus in order to better provide its students with the high-level of service and care for which it is renowned. In order to fund its transition to a new campus, Spectrum must sell the Property.

Following its intervention in this matter, Spectrum engaged in several constructive and amicable negotiations with the Township. These discussions ultimately resulted in the production of a concept plan depicting a six-story building including parking, which would accommodate approximately 300 residential units (the "Project"). Said concept plan was reviewed by the Township and deemed acceptable, subject to any modifications that may arise upon full site engineering. To effectuate settlement, the Township prepared and circulated a Memorandum of Understanding ("MOU") to Spectrum which provides for, *inter alia*, a twenty-percent (20%) affordable set-aside on the Project, a process by which the Property would be deemed a non-condemnation area in need of redevelopment, and a payment in lieu of taxes arrangement in the form of financial agreement. Spectrum's administration, overseen by its Board of Directors, are currently in the process of reviewing this MOU, but we expect that the same will be finalized and executed in the near future.

Simultaneously with the above undertakings, Spectrum has also engaged in a comprehensive confidential offering process for the Project. Indeed, Spectrum retained the services of BlueGate Partners, LLC, a well-regarded real estate investment banking firm, to arrange for the sale of the Property (and the Project) to a multi-family developer. While a developer has not yet been announced, we can report that the offering was incredibly well-received by the development community in New Jersey and beyond. We can further report that Spectrum has winnowed down the list of developers who have made offers on the Project to a select few, all of whom are well-capitalized and financially-equipped to construct the Project. These undertakings, with the fate of Spectrum's school in the balance, require significant time and effort by a broad array of professionals, administrative staff, and Board members. Nevertheless, we are confident that a developer, who will take on the rights and obligations of Spectrum with respect to the Project, will soon be announced.

As such, to the extent that Bobcar, by way of its Motion, seeks to challenge the Township's resolution with Spectrum or otherwise undermine the progress made by the parties, the same is misplaced. The Township has acted in good with Spectrum and will undoubtedly have a "firm commitment" for the construction of rental housing on the Property first, by way of

2012. MMWR Surveill Summ 2016;65(No. SS-3)(No. SS-3):1-23.

DOI: <http://dx.doi.org/10.15585/mmwr.ss6503a1> (This report, prepared by the Centers for Disease Control and Prevention, indicates that New Jersey, once again, leads the nation with the highest percentage of children affected by autism.).

an executed MOU and, also, with Spectrum's pending partnership with a developer. To the extent that Bobcar appears to challenge the timing of these events, the complexity of the transaction and the dual goals of the process—i.e., the provision of a school for the developmentally disabled and affordable housing for New Jersey's lower-income residents—warrants careful and considered decision-making.

For the foregoing reasons, we respectfully support a continuation of the Township's temporary immunity from builder's remedy actions. It is our position that, given the Township's progress in this matter, temporary immunity will enable the Township to prepare a compliant housing plan and will allow Spectrum to finalize the transaction which will ultimately provide for the construction of the Project. To the extent that Bobcar may be dissatisfied with the Township's resulting housing plan, the same can be addressed by way of an objection at a fairness hearing rather than a builder's remedy action that would undoubtedly derail the significant progress which has been made.

Respectfully submitted,

/s/ John P. Inglesino

JOHN P. INGLESINO

JPI/dwo

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