

11/28/83

Monroe 1983

Complaint + cover letter to Judge

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November 28, 1983

HONORABLE EUGENE D. SERPENTELLI, J.S.C.  
Ocean County Court House  
118 Washington Street  
Toms River, New Jersey 08753

Re: Monroe Development Associates  
v. Monroe Township

Dear Judge Serpentelli:

Enclosed please find a copy of the Complaint in the above-referenced matter. I will inform you of the docket number upon receipt. Pursuant to the procedures established by the Supreme Court, I am sending a copy directly to you. I am also sending copies to Mr. Farino and Mr. Niesser.

Respectfully yours,

CARL S. BISGAIER

CSB:emm  
Encls.

cc: Thomas R. Farino, Jr., Esquire (w/enc.)  
Eric Niesser, Esquire (w/enc.) ✓

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Attorney for Plaintiff

MONROE DEVELOPMENT ASSOCIATES, a  
New Jersey Partnership,

Plaintiff,

v.

MONROE TOWNSHIP, a municipal  
corporation of the State of New  
Jersey, located in Middlesex County,  
New Jersey,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
: MIDDLESEX COUNTY/OCEAN COUNTY  
DOCKET NO. L-  
:  
: (Mount Laurel)  
:  
: Civil Action  
:  
: COMPLAINT IN LIEU OF  
PREROGATIVE WRITS FOR  
: DECLARATORY AND INJUNCTIVE  
RELIEF

Plaintiff, by way of complaint against the defendant,  
states that:

FIRST COUNT

STATEMENT OF THE CASE

1. Plaintiff brings this complaint in lieu of prerogative writs seeking declaratory and injunctive relief pursuant to the Constitution and laws of the State of New Jersey. In essence, this is an action brought pursuant to Southern Burlington Co. N.A.A.C.P. v. Tp. of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") by plaintiff who is a contract purchaser of lands in Monroe Township and who seeks to produce affordable housing in Monroe Township. The defendant's land use scheme is one of the most, if not the most, exclusionary in Middlesex County, clearly violating the Constitution and laws of this State and remains in total disregard of pertinent judicial mandates. Since the effectuation of its municipal control over land uses, the defendant has engaged in a conscious design, pattern and practice which has, by intent and effect, constrained residential growth to luxury, single-family dwellings or luxury retirement communities while encouraging the development of commercial, industrial and office/research tracts. Intervening Court decisions have been completely disregarded and no affirmative action has been undertaken to provide a realistic opportunity for the provision of housing for lower income persons in response to either regional needs or those needs generated within the

defendant municipality itself. Plaintiff seeks an order declaring the defendant's land use ordinances unconstitutional and unlawful and providing it a builder's remedy.

#### PLAINTIFF

2. The plaintiff is MONROE DEVELOPMENT ASSOCIATES, a New Jersey Partnership, with its offices located at Englehard Building, Post Office Box 5600, Woodbridge, New Jersey. It is the contract purchaser of approximately sixty (60) acres of land located in Monroe Township and designated as Lots 20 and 21 of Block 25 of the Tax Map of Monroe Township.

#### DEFENDANT

3. The defendant, MONROE TOWNSHIP (hereinafter sometimes referred to as "the defendant", "Monroe", or "the township") is a municipal corporation chartered under the Constitution and laws of the State of New Jersey to exercise, on behalf of the State and for the general welfare of its citizenry, the delegated powers of local government over an area of lands within its jurisdiction, located in the southernmost corner of Middlesex County, New Jersey.

#### FACTUAL ALLEGATIONS

4. At all times relevant hereto, the defendant has elected to exercise those powers, derived from the Constitution

of the State of New Jersey and delegated to it by the Legislature, relating to the control over the use of land contained within the Township through its Township Council, Planning Board and/or Zoning Board of Adjustment and such other local public agencies, officials, employees and agents authorized by law to effectuate said delegated functions.

5. The Township, pursuant to its delegated powers, has imposed constraints over the use of land within its borders which include, but are not limited to, ordinances relating to Zoning (designating exclusive land use classifications for areas of the Township and which, collectively, encompass all of the lands governed by the defendant), Site Plan Review, Land Subdivision, and the creation of a Planning Board and a Zoning Board of Adjustment. Furthermore, through its Planning Board, the defendant has adopted a Master Plan.

6. As a direct result of those actions taken pursuant to its delegated land use functions and more specifically set forth above, with the exception of non-conforming uses which may have predated said actions, the defendant has exercised complete regulatory control as to existing and permitted uses of the land over which it governs.

7. This regulatory control was challenged as early as 1974 as excluding adequate provision of affordable housing for lower income persons in Urban League of New Brunswick v. Mayor

and Council of Carteret, 142 N.J. Super. 11 (Ch. Div. 1976)  
("Urban League").

8. In 1976 the defendant's land use controls were invalidated in Urban League and the defendant ordered to comply with Mount Laurel by providing a realistic housing opportunity for its fair share of its region's present and prospective low and moderate income housing needs.

9. In 1983, in Mount Laurel II, the New Jersey Supreme Court upheld this invalidation of the defendant's land use ordinances.

10. Despite these judicial findings and rulings, the defendant has not undertaken to amend its land use ordinance to even attempt to fulfill its constitutional obligations.

11. The defendant's present residential land-use scheme, like that invalidated in 1976, provides for exclusive residential developments of either single-family, detached houses or retirement communities for adults who are forty-eight (48) years of age or older.

12. The land use controls which constrain such residential development are exclusionary, arbitrary and capricious and include undue cost generating regulations:

a. single-family, detached dwellings are the only residential uses permitted as of right in Monroe; such uses are permitted in the R-3A, R-60, R-30, R-20 and R-10 zones all at

densities well below those invalidated in Mt. Laurel II. Other excessive controls include, but are not limited to: irrational and excessive minimum floor space requirements, lot width, frontage, side, rear yard and lot depth standards; and

b. planned retirement communities (PRC) are permitted as conditional uses in all zones and include unnecessarily low net density standards and other excessive controls which include, but are not limited to:

- (1) required 400 acre site;
- (2) 60% open space;
- (3) two-story, 35-foot building height;
- (4) parking (off street) and required closed garages;
- (5) required owner occupancy;
- (6) requirements relating to golf courses, club houses, swimming pools, lakes, shuffleboard courts, medical facilities and places of worship; and
- (7) discretionary controls placed in Planning Board without objective standards.

13. Pursuant to these exclusionary controls, residential development has been dramatic; the Township's population has grown from 4,082 in 1950 to 15,858 in 1980. Between 1972 and 1982, the Township has issued residential building permits, almost exclusively for single-family dwellings,



at an average of over 250 per year. In the eleven year period only 258 of the 2,761 permits were for multi-family dwellings.

14. Non-residential zoning is vast with provisions for Commercial, Industrial and Planned Office-Commercial Development. Employment growth in those zones has been explosive increasing almost twelve (12) times since the start of the Urban League litigation from 86 covered jobs in 1974 to over one thousand (1000) in 1982.

15. The residential and non-residential growth which has occurred in Monroe is not surprising in light of its location between Exits 8 and 8A of the New Jersey Turnpike, which provides easy access to the greater New York Metropolitan region of which the defendant is a part. Furthermore, N.J. Route 33, a major state artery, crosses the Township providing excellent vehicular access east and west.

16. Monroe is designated by the State Development Guide Plan (SDGP) as containing Growth, Limited Growth and Agricultural areas.

17. Municipal land use controls largely ignore these designations as non-residential zones are mapped in the Agricultural Area and retirement communities at net densities of fourteen (14) per acre (the highest permitted) are conditional uses throughout the Township. Areas zoned for agricultural retention (R-3A) can be found both in the SDGP Agricultural and Limited Growth areas.

18. In any event, pursuant to Mt. Laurel II, Monroe has an obligation to provide a realistic housing opportunity for its indigenous poor as well as its fair share of its region's present and prospective lower income housing needs. It has totally ignored these obligations and has done neither. The defendant has not even adopted, determined or otherwise approved:

- a. a number or range representing its indigenous housing needs;
- b. a number or range representing its fair share of its region's present and prospective housing needs;
- c. a region for fair share planning purposes;
- d. an allocation methodology for fair share planning purposes; and
- e. an assessment of present and prospective regional needs for fair share planning purposes.

19. The defendant has, furthermore, not undertaken any affirmative action to accomodate the housing needs of any lower income persons or families, and its land use controls unduly constrain the possibility of providing such an opportunity.

20. This failure to act has occurred despite the fact that, regardless of its regional housing obligations, there are local housing needs represented by:

- a. 130 units without adequate plumbing or heat;
- b. 83 units which are overcrowded;

- c. numerous lower income households paying an inappropriate amount of their income for shelter costs; and
- d. a need for lower income housing generated by local employment.

#### LEGAL ALLEGATIONS

21. The defendant's land use plan and ordinances violate the Constitution and laws of the State of New Jersey in that they violate the constitutional mandate an enunciated in Mount Laurel I and II and are inconsistent with the comprehensive planning and zoning mandates of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

#### SECOND COUNT

22. Plaintiff incorporates herein, as if repeated at length, all of the prior allegations of its complaint.

23. The plaintiff's lands are located in an area designated by the SDGP for Growth on lands now zoned for Industrial uses.

24. They are well-suited for high-density residential uses being located with substantial frontage on Cranbury Station Road a short distance to Cranbury Village and areas in Cranbury Township now zoned PD-HD (planned development - high density) and with easy access to non-residential zones in Monroe and Cranbury

and Exit 8A of the New Jersey Turnpike. Furthermore, the northern edge contains lands mapped as flood plain making clustered housing appropriate.

25. Plaintiff is prepared to develop these lands for high density, residential uses and to include a substantial portion of lower income units.

#### LEGAL ALLEGATIONS

26. The defendant's land use plan and ordinances violate the Constitution and laws of the State of New Jersey in that they violate the constitutional mandate as enunciated in Mount Laurel I and II and are inconsisent with the comprehensive planning and zoning mandates of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. The zoning of plaintiff's site is arbitrary and capricious. The site is well suited for residential development and a builder's remedy.

WHEREFORE, plaintiff demands judgment:

1. Declaring the defendant's land use ordinances invalid and unconstitutional in their entirety and/or in relevant part;

2. Appointing a special master to recommend the revision of said ordinances and effectuation of municipal action in compliance with the Constitution and laws of this State and to supervise the implementation of a builder's remedy in order to insure the prompt production of needed units;

3. Ordering the revision of said ordinances and the effectuation of compliance with the Constitution and laws of this State and implementing a builder's remedy;

4. Ordering a builder's remedy for plaintiff consistent with its proposal to provide, as part of its development, a substantial number of units which will be affordable to lower income households;

5. Granting plaintiff such other relief as the court deems just and equitable.

  
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CARL S. BISGAIER  
Attorney for Plaintiff

Dated: Nov. 28, 1983