ML - Morris County Fair Housing Council v. Boonton. (Rockaway) May 9/1980

- Letter Brief submitted on Behalf of the Rockaway Valley Regional Sewerage Authority opposing being joined as a party

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May 9, 1986

Honorable Stephen Skillman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Morris County Fair Housing Council, et al v.
Boonton Township, et al and consolidated cases

Dear Judge Skillman:

This letter brief is submitted on behalf of the Rockaway Valley Regional Sewerage Authority. Pursuant to a telephone conversation with Mr. Nikolaidis on May 7, 1986, my office was informed that the Motion for the Court to Refrain From Further Proceedings Until Judge Gascoyne's Final Decision was denied. I was also informed that a brief opposing the Public Advocate's motion to join the "Authority" could be submitted by May 9, 1986. This brief is submitted to fulfill that requirement.

The facts of this matter are well known and it would serve no purpose to reiterate them here.

I. THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY DOES NOT POSSESS ANY DISCRETIONARY AUTHORITY REGARDING THE ALLOCATION OF GALLONAGE; NO PURPOSE WOULD BE SERVED BY JOINING THE AUTHORITY AS A PARTY

The Public Advocate seeks to join the Rockaway Valley Regional Sewerage Authority (hereinafter "Authority")as a party to the "Mt. Laurel" Litigation so that a reasonable proportion of its sewerage capacity for the development of low and moderate income housing in Denville and Randolph Townships will be preserved. (Public Advocates Brief, p.3, dated April 17, 1986 and previously submitted to the Court). The Public Advocate's request to add the sewerage authority as a party is based upon the erroneous premise that the Authority has or will have discretionary control over the allocation of capacity in its recently completed 12 mgd wastewater treatment facility. As set forth in the affidavit of Joseph J. Maraziti, Jr., dated May 2, 1986, which has been previously submitted to the Court and is incorporated herein by reference, control over the allocation of sewerage capacity in the regional sewerage system has been exercised since August 8, 1968 by the Superior Court of New Jersey. Throughout that period the Authority has never had the power to decide which applicant should receive a single gallon of sewer allocation. Although construction of the new sewerage treatment facility has recently been completed and the plant has

been placed in operation, it is extremely unlikely that the Authority's control of gallonage allocation will be any greater once the ban is removed. Today, May 9, 1986, the Honorable Jacques H. Gascoyne will issue his decision regarding the conditions he will impose upon the "lifting" of the "building ban." It is expected that after reserving some capacity to be used exclusively to serve areas now served by septic systems, that Judge Gascoyne will allocate the remaining gallonage among the nine municipalities. Each municipality would retain control over the use of the gallonage allocated to them. Thus each municipality would have full discretionary control over the use of the quantity of gallonage allocated to them by the Court.

If the above outlined approach is adopted by Judge Gascoyne, the Authority would have absolutely no role in determining which particular applicants within a member municipality would receive a gallonage allocation. The Authority's role should be confined, as it has been since the inception of the Authority in 1972, to reviewing applications for technical compliances with the Judge's Order and the Authority's regulations. That is, a determination must be made (1) that the application correctly sets forth the amount of gallons needed to serve a particular use, (2) that the municipality had sufficient gallons remaining in its allocation to accomodate the pending application; and (3) that the characteristics of the waste to be discharged to the plant were in keeping with the ability of the plant to treat the waste and

would not cause operational difficulties or the failures of the system. In short, the role of the Authority has been as is expected to continue to be a very limited one. It is a role limited to assuring technical compliance, it is not a role which involves the exercise of any discretionary power regarding the exercise of choice between competing applications for connection to the system.

Simply put, the Authority does not have the power to exercise any judgment as to whether gallonage, which has been allocated to a member municipality, should be used to serve "Mt. Laurel" housing or some other use. Thus, no useful purpose would be served by granting the Public Advocate's request to join the Authority as a party in this action, other than to unduly burden the proceedings. All the relief sought by the Public Advocate in terms of the utilization of gallonage for "Mt. Laurel" housing in Denville and Randolph* can be obtained from the parties which have been before the Court throughout the litigation -- Denville and Randolph.

*If the Public Advocate is dissatisfied with the final determination to be made by Judge Gascoyne today, the only proper remedy available to him, is to appeal that decision. Any attempt to reargue the issues decided by Judge Gascoyne before this Court would represent nothing more than a thinly veiled subterfuge to avoid an appeal. In this regard it should be noted that the Public Advocate has intervened in the litigation pending before Judge Gascoyne. Argument has been presented by his office to the Judge both orally and by way of extensive Briefs, the most recent of which was filed on May 6, 1986.

II. THE INCLUSION OF THE AUTHORITY AS A PARTY IS INAPPROPRIATE

The Authority is comprised of ten members, nine of which are served by its treatment system, but only two them are presently engaged in the litigation before this Court to determine "Mt. Laurel" housing obligations.*

The Authority was organized pursuant to the provisions of the Sewerage Authorities Law. NJSA 40:14A-1, et. seq.. As discussed below,the Authority does not exercise police power, its functions are limited to the treatment of sewerage.

The Public Advocate has failed to demonstrate any compelling reason to join such an entity in a proceeding to conserve "scarce resources". If the implied logic of the Public Advocate's application were accepted, Jersey Central Power and Light would be joined as a party if electricity was alleged to be a "scarce resouce", Public Service Electric & Gas would be a proper party if gas were thought to be a "scare resource", the local boards of education would become parties if school facilities were in short supply; The list could continue.

*Of the nine municipalities served by the Authority five of them have never been joined as defendants in any of the "Mt. Laurel" cases, because it is conceded that those municipalities do contain a fair share of lower income housing. (i.e. The Towns of Boonton and Dover, the Boroughs of Rockaway, Wharton and Victory Gardens) Two member municipalities have entered settlements in the "Mt. Laurel" litigation. i.e. The Townships of Boonton and Rockaway.

Certainly the Supreme Court did not intend such an explosion of the number of parties to occur in these proceedings. This is particularly true where all the appropriate relief in terms of pursuing sewerage allocation in the affected municipalities can be obtained as the result of the inclusion of those municipalities as parties. The Court can enter a full and effective Order to conserve gallonage allocations in Denville and Randolph by directing its force at those municipalities alone. The Order can impose restraints or other conditions upon the use by envilleandRandolphof the discretionary gallonage expected to be allocated to them by Judge Gascoyne.

III. THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY IS NOT AN ENTITY ESTABLISHED BY "MT. LAUREL" TO HAVE ZONING POWER.

The Brief submitted to this Court by the Public Advocate and dated April 17, 1986, properly contends that a Court may impose appropriate conditions on transfers. However, the argument misses the point when it is directed at the Authority.

The Authority is not vested with "police power." It does not possess power to zone or determine land use.

The Public advocate cites Urban League of Essex County vs. Township of Mahwah, 207 N.J. Super. 169 (Law Div. 1984) as standing for the proposition that a sewerage authority was obligated to waive connection fees for lower income housing. It must be noted that here, the issue of connection fees is not applicable. Further, in the cited case above it was clear that

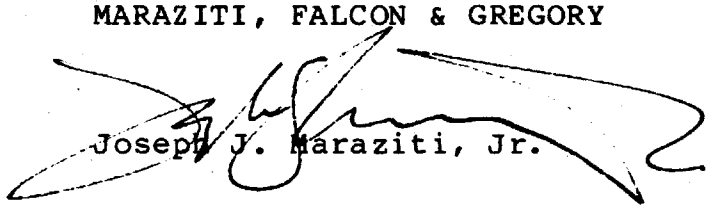
"all experts agreed Mahwah's water and sewer systems have the requisite capacity to service all the proposed new developments." supra at 232. Such is not the situation here. Denville and Randolph have a limited share of the sewerage capacity in the new plant. They are the entities which possess police power and the power to zone and control land use. They are the proper parties to be before the Court.

CONCLUSION

In view of the foregoing, it is respectfully requested that the Public Advocate's motion to join the Rockaway Valley Regional Sewerage Authority as a party to the Mt. Laurel litigation be denied.

Respectfully submitted,

MARAZITI, FALCON & GREGORY



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JJM/bz
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