ML - Essex Glen, Inc. v. [illegible] Roseland

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Brief in Reply to Defendant's Reply Brief in Support of Defendant's Motion to Dismiss Complaint

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Plaintiff
ESSEX GLEN, INC.

vs.

Defendant
COUNCIL OF THE BOROUGH OF ROSELAND
AND THE BOROUGH OF ROSELAND

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
ESSEX COUNTY/
MIDDLESEX COUNTY
Docket No. L-52513-85

CIVIL ACTION

BRIEF IN REPLY TO DEFENDANT'S REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS COMPLAINT

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SUPPLEMENTAL STATEMENT OF FACTS

The statement of facts set forth in Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss is adopted herein as if fully set forth.

In addition, on August 20, 1985, pursuant to the direction of Edward J. Boccher, Deputy Attorney General, Plaintiff submitted a notice to Feather O'Connor, Executive Director of the Housing and Mortgage Finance Agency, and John Renna, Commissioner of the Department of Community Affairs. The notice expressed Essex Glen's willingness to participate in a review and mediation process before the Affordable Housing Council. See Exhibit A annexed hereto and made a part hereof.

LEGAL ARGUMENT

POINT I

DEFENDANT HAS FAILED TO DEMONSTRATE HOW ANY PROVISION IN THE FAIR HOUSING ACT REQUIRES DISMISSAL OF PLAINTIFF'S COMPLAINT.

In Defendant's Brief in Support of Motion to Dismiss [hereinafter "Defendant's Original Brief"], Defendant argued that Fair Housing Act, Section 16.b. requires automatic dismissal of any complaint filed within 60 days from the effective date of the Act [hereinafter "a post 60 day case"]. Defendant's Original Brief at 4-7. However, as pointed out in Plaintiff's Brief in Opposition to Motion to Dismiss [hereinafter "Plaintiff's Original Brief"] and as conceded by Defendant in its Reply Brief,[1] the Court should not transfer even a post 60 day case if such a transfer would work a manifest injustice. Plaintiff's Original Brief at 2-5; Defendant's Reply Brief at 4-6. Even if the Court should transfer this

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[1] In light of Rule 4:69-5 which bars the exhaustion requirement if such a requirement would work a manifest injustice, it is self-evident why Defendant conceded that the manifest injustice standard applies to post sixty day cases.

If the Act did require exhaustion, regardless of whether such a requirement would violate Rule 4:69-5, then the Act would be unconstitutional. In a conflict between a procedural rule and a statute, the rule prevails. Borough of New Shrewsbury v. Block 115, Lot 4, 74 N.J. Super. 1 (App. Div. 1962); State v. U.S. Steel Corp., 19 N.J. Super. 274, aff'd 12 N.J. 38 (1953).

case, Section 16.b. does not call for the dismissal of the Complaint.

In Defendant's Original Brief, Defendant also argued that Fair Housing Act, Section 27 requires automatic dismissal of the complaint. Defendant's Original Brief at 8-10. Again, this provision merely calls for a moratorium for a limited period of time upon the trial court awarding builder's remedies in any case filed after January 20, 1983. Again, no mention is made of the requirement that the Court should dismiss the complaint.[2]

In Defendant's Reply Brief, Defendant again failed to identify any language in the Fair Housing Act which requires dismissal of the complaint upon transfer. Nor has Defendant articulated any reason why dismissal is appropriate. Instead, Defendant has created a straw man out of Plaintiff's arguments and vigorously attacked that straw man.

Plaintiff's actual argument is that the procedures under the Act and Mount Laurel II are integrally related. For example, the Court need not transfer a post sixty day case to the Council if: (1) the municipality fails to adopt a resolution of participation; or, (2) if the transfer would be manifestly unjust. Assuming the Court does transfer the case to

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2 See infra at 34-36, which explains why the moratorium is unconstitutional. Thus, even if the moratorium required dismissal, this Court should not dismiss based on an unconstitutional provision.

the Council, the case may revert back to the Court if any one of a series of events occurs:

> (1) Failure by the municipality to submit a housing element on a timely basis;
>
> (2) Failure by the Council to conduct the review and mediation process on a timely basis; or
>
> (3) Failure by the administrative law judge to complete a hearing and submit his recommendations to the Council on a timely basis.

In light of all these opportunities for the matter to flip back and forth between the administrative and judicial proceedings, if this Court were to transfer the case to the Council, an order suspending the judicial proceedings might be the wisest course.[3] If one of the triggering events sub-

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3 Even Denville Township, on whom the Borough of Roseland relies for purposes of defining "manifest injustice," supports the proposition that a court should suspend the proceedings rather than dismiss the complaint upon transfer. Defendant's Reply Brief at 4. Denville Township asserted that

> "In cases transferred under Section 16.a., the Superior Court does not actually lose jurisdiction, rather, procedures in the court are suspended so that ..."

Reply Brief of Denville Township in Support of Township's Motion To Transfer at 23 (emphasis added).

If this Court should retain jurisdiction and suspend proceedings when transferring pre-sixty day cases such as the Denville case, there is no reason why the Court should act any differently when transferring post sixty day cases such as the Roseland case.

sequently occurred, the Court could at that point reactivate the complaint and allow the matter to proceed.

To dismiss the complaint rather than suspend the proceedings would require Plaintiff to refile a complaint upon the triggering event, thereby potentially losing its "first plaintiff" status. As pointed out in Plaintiff's Original Brief at 4-5, the first plaintiff status could be a critical factor in the plaintiff's right to a builder's remedy were multiple builders to file suit. J.W. Field v. Franklin, Docket No. L-6583-84 PW at 13 (Law Div. 1985) (unreported).

POINT II

TRANSFERRING THE CASE TO THE COUNCIL WOULD BE UNFAIR TO ESSEX GLEN AND THE POOR

An examination of the equities in the case at bar clearly reveals that it would be fundamentally unfair to Essex Glen and the poor represented through Essex Glen to transfer this case to the Affordable Housing Council. First, it would be unfair to require Plaintiff to participate in a mediation procedure that would be futile. Second, it would be unfair to Essex Glen and the poor to substantially delay the day when Essex Glen can begin the actual construction of its intended project.

Defendant continues to insist that the sewer moratorium, in addition to the moratorium against the issuance of builder's remedies, will, as a practical matter, preclude any Mount Laurel projects in the Borough of Roseland. Defendant's Original Brief at 2, 8-10; Defendant's Reply Brief at 5-6. Moreover, Defendant insists that the Council does not even have the power to grant the relief sought by Essex Glen. Defendant's Reply Brief at 14. In light of Defendant's conviction that the moratoria represent insurmountable obstacles to the production of lower income housing on the Essex Glen site and in light of Defendant's view of the limited powers of the Council, surely the Council's review and mediation procedure

cannot offer even the faintest glimmer of hope for Essex Glen.[4]

The substantial delay that Essex Glen and the poor would suffer in the event of transfer further evidences the manifest injustice that would be caused by such a transfer. A comparison of the timing pursuant to Mount Laurel II procedures relative to Fair Housing Act procedures reveals in stark fashion the delays inherent in the Fair Housing Act.

The more salient points of comparison may be summarized as follows:

> (1) Under Mount Laurel procedures, this Court could have been processing this case ever since June 27, 1985, the date that Plaintiff filed its complaint. Under Fair Housing Act procedures, Plaintiff could very well find itself requesting a hearing before an administrative law judge on October 2, 1986 - 15 months after the identical point in Mount Laurel II procedures.[5]

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[4] Moreover, the Borough had ample opportunity to negotiate with Essex Glen following its receipt of Essex Glen's good faith letter dated February 19, 1985. Notwithstanding Essex Glen's persistent efforts to resolve this dispute, the Borough never agreed to a Mount Laurel project at any density.

If the six months of negotiations prior to the enactment of the Fair Housing Act bore no fruit, there is no reason to believe that an additional six months of negotiations before the Council will be productive. This is especially so in view of the fact that the Fair Housing Act is completely devoid of any incentives for the Borough to resolve disputes via the mediation process.

[5] Although the Council would have until October 2, 1986 to complete the review and mediation procedures, pursuant to Affordable Housing Act, Section 19, the Borough is not required (continued on next page)

(2) Pursuant to Mount Laurel procedures, Essex Glen would have a right to a trial before a seasoned Mount Laurel judge. Pursuant to Fair Housing Act procedures, Essex Glen would be forced to engage in proceedings before an administrative law judge "learning the ropes".

(3) Based on Mount Laurel procedures, the decision by the trial court is directly appealable to an appellate court. Based on Fair Housing Act procedures, an administrative law judge's decision is not directly appealable. Rather, the administrative law judge reports his conclusions to the Council and the Council thereafter makes its own decision. Only then is an appeal to an appellate court permitted.

(4) Under Mount Laurel II procedures, a plaintiff may move for summary judgment as to the facial invalidity of the municipality's regulations and thereby refocus the Court's attention on compliance matters.

(continued from previous page)

to submit its housing element until January 1, 1987 - three months after the Council's deadline for completing the review and mediation procedures. Fair Housing Act, Section 16.a. Thus, it is possible for the Council to complete the mediation process and for the administrative law judge to be prepared to try the case at a point when the municipality has not yet submitted its housing element.

The Act is ambiguous as to the effect of the municipality adopting a housing element while the administrative law judge is hearing the dispute between the builder and the municipality. The administrative law judge may very well decide to delay the trial until the municipality submits a housing element so that the judge knows what the municipality is offering in the way of compliance. Thus, the fifteen month delay would turn into an eighteen month delay.

> Under the Fair Housing Act procedures, such a summary judgment procedure is unavailable.

Practically, as well as theoretically, the above analysis represents years of delay.

Defendant's answer to a similar analysis in Plaintiff's Original Brief is

> "The new process can hardly be more attenuated than the old."

Defendant's Reply Brief at 5. Defendant would have been more accurate to state

> "The new process can hardly be more attenuated".

The delay has far reaching implications to both Essex Glen and the poor. First, years of delay means that Essex Glen will have to suffer from substantial carrying costs which could destroy the economic feasibility of the project at the point Essex Glen seeks approvals. Secondly and more irreparable, a lengthy delay may cause the present favorable market to slip away. Thirdly, the asserted problems relative to obtaining sewerage can only be exacerbated in time as further demands are placed on the existing sewage plant.

Consideration of all these factors leads to one conclusion - a project which is economically feasible today may be unfeasible at the point when actual construction would begin pursuant to Fair Housing Act procedures.[6]

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6 The above analysis assumes that the Fair Housing Act permits Essex Glen to obtain a builder's remedy. In fact, as
(continued on next page)

From the poor's perspective, Mount Laurel II defined the poor's right to housing not only in terms of the actual construction of some fair number of units, but also in terms of timeliness. Indeed, the production of lower income housing on a timely basis is at the very heart of the constitutional obligation. Plaintiff's Original Brief at 12-14, 16-23. Practically, the delay could deprive the poor of housing altogether. As the interest rates climb, the number of lower income households that would be capable of carrying a mortgage will substantially diminish. Moreover, to the extent that the vacant developable land is eliminated from the market over this time period for Mount Laurel purposes (1) through condemnation, (2) through preliminary site plan approval or (3) through any other means, the Borough of Roseland may preclude itself from being able to provide for its fair share of lower income housing as a result of the years of delay.

At this point, several arguments raised in Defendant's Reply Brief should be addressed.

First, by way of background, Essex Glen argued that a post sixty day plaintiff should be treated no differently than

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discussed at length infra at 33-41, the Act virtually eliminates the builder's remedy. Thus, transfer would unequivocally cause an irreparable harm. The law is well settled that exhaustion of administrative remedies is not required if it would cause such an irreparable harm. Abott v. Burke, 100 N.J. _____, ______ (Sup. Ct. July 23, 1985) (slip op. at 32).

a pre-sixty day plaintiff if the plaintiff submitted a "good faith" letter before the sixty day period. J.W. Field at 15. To treat these cases differently would punish the plaintiff for doing precisely what Mount Laurel II and the Fair Housing Act encourage - that is, that the parties engage in negotiations culminating in municipal voluntary compliance. Plaintiff's Original Brief at 9-10.

Although Defendant vigorously argued that the forwarding of a good faith letter should not result in the Court giving Plaintiff preferential treatment, this argument is irrelevant because Defendant concedes that the same "manifest injustice" standard applies regardless of whether Plaintiff filed suit before or after the sixty day mark. Defendant's Reply Brief at 4-5. Therefore, Essex Glen has obtained exactly what it sought by virtue of having submitted the good faith letter prior to the sixty day period - that is, the right to be judged by the "manifest injustice" standard.

Second, Defendant also argued that:

> There is a strong likelihood that in addition to bringing its neighboring municipalities into the lawsuit so that it is not unfairly assessed for its regional fair share, Roseland, or for that matter, the Plaintiff, will require that this suit include the Caldwell Sewer facility and the Department of Environmental Protection.

Defendant's Reply Brief at 5-6.

Defendant's speculation is inappropriate and unpersuasive.

As to Defendant's suggestion that it might bring in other municipalities to prevent being assessed with a disproportionate portion of the regional need, our Supreme Court stated in no uncertain terms that it will not tolerate inequities between and among municipalities as a basis to delay the production of housing. Mount Laurel II at 239.

To suggest that Essex Glen "will require" the joinder of the Caldwell Sewer facility and the Department of Environmental Protection is equally groundless. First of all, Defendant should not speculate as to how Plaintiff will pursue its rights. As a matter of practicality, in Roseland, as in Denville, plaintiffs typically make business decisions to keep the sewerage issues separate from the zoning issues so as to avoid precisely the unnecessary complication and delay that Defendant seeks to create.

Finally, Defendant asserts that since Plaintiff will only be producing roughly 50 units of lower income housing, the significance of the transfer of Essex Glen's case to the Council is insignificant. From the perspective of the 50 lower income families that would now have an opportunity to live in the Borough of Roseland as a result of this Court retaining this case, the production of those 50 units could not be more significant. More importantly, if this Court retains this case, not only would Roseland be required to provide 50 units of housing on the Essex Glen parcel, but also Roseland would

have to satisfy its full fair share which Essex Glen calculates to be 481 units. See Appendix B. Surely the production of 481 units of lower income housing in a heretofore exclusionary municipality is quite significant.[7]

[7] Based on Essex Glen's fair share analysis, its project would satisfy approximately 10 percent of the Borough's fair share. In the event the Council reduced the Borough's obligation, the lower income units Essex Glen would provide would satisfy an even greater percentage.

POINT III

THE FAIR HOUSING ACT IS FACIALLY UNCONSTITUTIONAL

Defendant argues that Plaintiff has

> "merely asserted that the Act does not mirror the Mount Laurel II decision in all respects [and that therefore the Act is unconstitutional]."

Defendant's Reply Brief at 7. Defendant grossly misunderstands Plaintiff's argument. What is important is not whether the Act mirrors Mount Laurel II in every respect. Rather, the critical question is what does the Constitution require of municipalities as to the creation of lower income housing opportunities. That is precisely the question addressed by Mount Laurel II and by every single decision of each Mount Laurel judge since Mount Laurel II. The process has been one of clarifying the constitutional obligation as well as the rights of Plaintiffs. Thus, in our tripartite system of government, the judiciary has fulfilled its obligation to interpret the Constitution. Cf. Marbury v. Madison, 2 Cr. 60 (1803). As a result of the tremendous effort that has gone into the interpretation of the constitutional obligation, the law is now relatively well settled.[8]

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8 Mount Laurel II addresses the fundamental right of the poor to be free from the exclusionary land use policies of municipalities when seeking housing. In the light of this fundamental right and in light of the Act's obstruction of this right, the Act clearly fails to pass constitutional muster. See generally infra at 34-36.

Defendant would have this Court ignore all that has been accomplished to date as if Mount Laurel II and its progeny had no bearing on the definition of the constitutional obligation.

In Mount Laurel II, the Supreme Court invited the legislature to act to fill the void created by the total absence of any legislation to deal with the housing needs of the poor:

> "The judicial role, however, which could decrease as a result of legislative and executive action, necessarily will expand to the extent that we remain virtually alone in this field. In the absence of adequate legislative and executive help, we must give meaning to the constitutional doctrine in the cases before us..."

Mount Laurel II at 213 (emphasis added).

Mount Laurel II evolved out of the ineffectiveness of Mount Laurel I and its progeny in producing lower income housing. Mount Laurel II at 198-99. Thus, the Mount Laurel II Court lamented that its reliance on the good faith, voluntary efforts of municipalities was ill placed. Mount Laurel II at 220-22, 302-5, 340-41. Similarly, the Fair Housing Act evolved because of the effectiveness of the Supreme Court in Mount Laurel II in achieving its objective - the actual construction of lower income housing. However, the Act does little more than permit the obligation to be satisfied on a voluntary basis - a concept heretofore held to be inadequate. Id. Certainly

the legislature's response falls short of what would have been constitutionally acceptable.

A.

THE FAIR HOUSING ACT SUBSTANTIALLY DELAYS THE PRODUCTION OF LOWER INCOME HOUSING CONTRARY TO THE SUPREME COURT'S INTERPRETATION OF THE CONSTITUTION AS REQUIRING THE TIMELY PRODUCTION OF HOUSING

Plaintiff's argument challenging the constitutionality of the legislation on a procedural grounds may be reduced to the following syllogism. The Supreme Court was so concerned with creating the lower income housing opportunities promptly that the requirement that municipalities provide for their fair share as quickly as possible is part of the very fabric of the constitutional doctrine. Since the Act substantially delays the production of lower income housing, the Act is unconstitutional.

Defendant's Reply Brief is devoid of any analysis that would suggest that housing will actually be produced pursuant to Fair Housing Act procedures within the time frames reasonably equivalent to the Mount Laurel II framework. Instead, Defendant simply states in conclusionary fashion that Mount Laurel II procedures are also lengthy. Defendant's Reply Brief at 5.

A closer examination of Fair Housing Act procedures reveals in stark fashion how the Act's procedures promote delay much worse than Plaintiff originally feared.

1. A Municipality May Wait Until January 1, 1987 Before Submitting A Housing Element.

Plaintiff indicated that a municipality could adopt a resolution of participation as late as November 2, 1985 and thereafter wait until June 1, 1986 before ever submitting a "housing element". Plaintiff's Original Brief at 18.

In fact, a municipality may wait until January 1, 1987 - not June 1, 1986 - before submitting a housing element. The Act requires the municipality to submit a housing element "within five months after the Coucil's adoption of its criteria and guidelines" for determining a municipality's obligation. Fair Housing Act, Section 9.a. The Council must develop its criteria and guidelines within "seven months after the confirmation of the last member initially appointed to the council or January 1, 1986, whichever is earlier." Fair Housing Act, Section 7. Since the Council can potentially establish its guidelines as late as July 1, 1986 (seven months after January 1, 1986) and since five months after July 1, 1986 would be January 1, 1987, a municipality could wait until January 1, 1987 before filing a housing element without fear of being transferred back from the Council to the appropriate specialized trial judge.

2. A Municipality May Adopt A Housing Element And Never Adopt Regulations To Implement The Housing Element

Fair Housing Act, Section 13 permits a municipality to adopt a resolution of participation and to file a housing ele-

ment without ever seeking substantive certification of the housing element. Pursuant to Fair Housing Act, Section 9.b., any land owner challenging a municipality that has taken the preliminary steps of adopting a resolution of participation and submitting a housing element must exhaust the lengthy administrative remedies imposed by the Fair Housing Act.

A municipality that takes the preliminary steps, but thereafter never adopts any implementing regulations loses nothing. To the contrary, such a municipality gains a great deal. By merely taking the preliminary steps, the municipality forces any subsequent challenger to exhaust the administrative remedies for six years. Because those remedies are so onerous[9] and because the challenger has no guarantee that he can achieve a rezoning through Fair Housing Act procedures, it would be a poor exercise of a builder's business judgment to enter into an expensive legal battle that either cannot be won or can only be won after years of costly litigation.

Thus, merely by taking these preliminary steps, the municipality effectually precludes any Mount Laurel challenger from obtaining a rezoning. More importantly, the municipality loses nothing by never adopting land use regulations to imple-

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9 Indeed, the administrative remedies are illusory because the Council and administrative law judge lack the authority to grant such a remedy and because the plaintiff would have such a difficult burden on appeal of achieving the status of a "successful plaintiff." See infra at 31-41.

ment the housing element, thereby guaranteeing that no housing will be produced.

3. A Municipality Can Safely Wait Until Receipt Of A Good Faith Letter Before Even Pursuing Fair Housing Act Relief.

If indeed a land owner must submit a good faith before filing suit, as suggested in J.W. Field at 15, a municipality may do absolutely nothing until receipt of a good faith letter. Thereafter, the municipality could take advantage of the more favorable law provided by the Fair Housing Act by quickly rushing (1) to adopt a resolution of participation and (2) to submit a housing element. In this fashion, the municipality could foreclose the plaintiff's opportunity to obtain the benefit of an expeditious resolution of its dispute before a specialized trial judge.

4. The Fair Housing Act Creates Incentives For Delay.

A municipality on the verge of adopting a compliant ordinance at the point the Fair Housing Act was signed into law would be well advised to simply adopt a resolution of participation and do nothing.

By adopting a resolution of participation, the municipality would have a year and a half to decide how it would like to comply. Application of Fair Housing Act procedures would guarantee that the municipality would have a substantially reduced obligation relative to what courts have required in current litigation. The Fair Housing Act would permit the

municipality to transfer up to half of its reduced obligation to other municipalities. A Mount Laurel II judge would probably not permit such a transfer. Finally, simply by adopting a resolution of participation, the municipality could immunize itself from builder's remedy actions for a year and a half, if not substantially longer.

5. Defendant's Argument That The Fair Housing Act Will Produce Housing On A Timely Basis Is Unpersuasive

Defendant answers Plaintiff's assertion that the inexperience of the Council will substantially delay the proceedings and prejudice the Plaintiff, by asserting that the Housing and Mortgage Finance Agency [hereinafter "HMFA"] is experienced. Defendant's Reply Brief at 9. This argument ignores the obvious - Plaintiff's rights will be determined by the Council and the administrative law judge - not by the HMFA. Therefore, the experience of the HMFA is irrelevant to Plaintiff's rights as well as to how quickly the housing will be produced. If, as a result of the Council's inexperience, the Council delays in ruling on whether to issue a substantive certification to a municipality, no housing will be produced in that municipality regardless of the HMFA's experience.

Defendant also suggests that it is not unreasonable to expect that the Council will benefit from the experience of the trial judges. Defendant's Reply Brief at 10. This indeed would be true if the Council shared the same objectives as the

trial court. However, regardless of how pure the integrity of the Council, the Council is guided by the Fair Housing Act and, notwithstanding the purported legitimate objectives of the Act, the Act provides a legal framework that requires the Council to abide by numerous principles that the courts have rejected.[10] Therefore, it is extremely questionable whether a Council directed to produce diametrically different results than the trial courts will be able to benefit from the courts' experience.

Finally, Defendant asserts

> the Legislature has determined that it is better for municipalities to provide for the poor through administrative agencies, rather than through expensive litigation.

Defendant's Reply Brief at 9. The suggestion that the Act will minimize litigation is entirely unfounded.

B.

THE FAIR HOUSING ACT WILL DILUTE THE CONSTITUTIONAL RESPONSIBILITIES OF MUNICIPALITIES.

1. Definition Of Region.

Fair Housing Act, Section 4.b. defines housing region as

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10 For example, the Courts have rejected the Act's definitions of region and prospective need. See infra at 21-26. The Courts have not allowed municipalities to transfer their obligation to other municipalities. See infra at 31-32. Furthermore, whereas the Courts have recognized the builder's remedy as critical to the effective production of lower income housing opportunities, the Act deliberately seeks to foreclose builder's remedies. See infra at 33-41.

> a geographic area of no less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities and which constitute to the greatest extent practicable the primary metropolitan statistical area as last defined by the United States Census Bureau prior to the effective date of this act.

In response to Plaintiff's assertion that the definition is exclusionary, Defendant insists that the Legislature intended by this provision

> to treat urbanized, high growth counties as regions distinct from rural areas, and to facilitate planning by providing for smaller regions.

Defendant's Reply Brief at 11.

Assuming Defendant is correct in its interpretation of the legislative intent, an intent to treat urbanized, high growth counties as regions distinct from rural areas is, by definition, an intent to promote exclusionary practices. It is precisely the wall that has been created around the urban core areas such as Newark and Camden by exclusionary suburban practices that the court sought to dissolve. By dissolving this wall and creating housing opportunities in the suburbs through the creation of incentives for suburban municipal compliance, the Supreme Court intended to enable the lower income households locked in the urban areas to have access to the employment opportunities in the suburbs. Mount Laurel II at 2-11 n.5. Cf. Mount Laurel II at 278.

By grouping together contiguous counties with significant social, economic and income similarities, the Act seeks to promote precisely what Mount Laurel II seeks to eliminate. In this regard, the Act could not have been more diametrically opposed to the objectives and standards of Mount Laurel II.[11]

2. The Definition Of Prospective Need.

The Fair Housing Act, Section 4.j. defines prospective need as

> a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as a case

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[11] If the Council were to treat urbanized, high growth counties as regions distinct from rural areas, a significant amount of the need would be lost simply by virtue of the definition of region.

For example, the Council might group Essex County and Hudson County together as a region (1) because these contiguous counties exhibit significant social, economic and income similarities, and (2) because this regional configuration would satisfy the Act's requirement that a region consist of between two to four counties. In the event that the Council establishes such a region, the need for lower income housing would far exceed the land capacities of the municipalities in the region to accommodate the need for lower income housing. As noted in the Housing Allocation Report [hereinafter "HAR"], as of 1977, not one municipality in all of Hudson County has any capacity whatsoever to absorb any lower income housing. Yet, there is a need for a 21,346 units of lower income housing just within this county. HAR at A-24. Similarly, Essex County has the need for 40,109 units of lower income housing and yet, the county only has the capacity for 9,797 units of lower income housing. HAR at A-23. Thus, assuming the government sponsored HAR correctly measured the need and capacity for lower income housing in Essex and Hudson Counties, an Essex/ Hudson region would only have the capacity to satisfy 9,797 units of a need for 61,455 units -- that is, less than 20% of the need.

> may be, as a result of actual determination of public and private entities. In determining prospective need consideration shall be given to approvals of <u>development application</u>, real property transfers and economic projections prepared by the State Planning Commission established by P.L. . . . ., c. . . .

Plaintiff argued that the Act's reliance on the number of approvals of development applications granted within the municipality or a region promotes an exclusionary end. Plaintiff's Original Brief at 25-26.

The number of applications granted is nothing more than a measure of the level of activity in the marketplace. Such market consideration should be acknowledged when evaluating why a municipality's creation of a realistic opportunity for its fair share has failed to result in the actual construction of the fair share. However, such market considerations are irrelevant to the municipality's obligation.[12]

The Court in <u>AMG</u> rejected the proposition that market considerations should be factored into the identification of the prospective need. <u>AMG</u> at 74. Moreover, Defendant's argu-

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[12] To illustrate, if Municipality A had an obligation of 100 units without regard to the number of development applications that had been approved in Municipality A or Municipality A's region, then Municipality A should have to create a realistic opportunity for 100 units of lower income housing. However, if Municipality A rezones for the requisite 100 units but, and if due to a downturn in the economy, 100 units of lower income housing are not constructed, then Municipality A should not be faulted for the failure to provide the 100 units of lower income housing.

ment ignores Mount Laurel II's directions regarding the significance of the marketplace:

> The provision of decent housing for the poor is not a function of this Court. Our only role is to see to it that zoning does not prevent it, but rather provides a realistic opportunity for its construction as required by New Jersey's Constitution. The actual construction of that housing will continue to depend, in a much larger degree, on the economy, on private enterprise, and on the actions of the other branches of government at the national, state and local level. We intend here only to make sure that if the poor remained locked into urban slums, it will not be because we failed to enforce the constitution.

Mount Laurel II at 352 (emphasis added).

Defendant's argument also conflicts with the Supreme Court's clear instruction to the trial court to disfavor

> formulas that have the effect of unreasonably diminishing the share because of a municipality's successful exclusion of lower income housing in the past.

Mount Laurel II at 256. Since the extent of exclusionary practices in a municipality directly impacts upon the amount of construction and number of approvals granted in that municipality, consideration of the number of approvals of development application would effectively and unreasonably diminish the municipality's share of the region's need. In fact, such a consideration would reward the municipality for its exclusionary practices. Cf. Mount Laurel II at 256 (Judge Furman's definition of region).

The above analysis reveals that the trial courts' decisions not to use market considerations in establishing fair share numbers were deeply rooted in Mount Laurel II. The above analysis also reveals that the Mount Laurel II Court considered the significance of the marketplace in evaluating the requirements of the Constitution, and afforded it the weight to which it was entitled.

3. The Credits Defense

The Fair Housing Act Section 7.c. (1) directs a Council to adopt guidelines for the following:

> Municipal fair share shall be determined after crediting on a one to one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households.

Plaintiff challenged this credit standard for its disregard for the date the lower income unit came into existence and for its disregard for the lack of a re-sale and re-rental restrictions.

While Defendant has not responded to Plaintiff's objection to the Act's disregard for re-sale and re-rental controls, Defendant did choose to reply to Plaintiff's objection concerning the date the lower income unit came into existence. Defendant asserted that

> it is not unreasonable to count these units, whenever they were

> built, since they do constitute a portion of the <u>regional</u> housing need.

Defendant's Reply Brief at 11.

Defendant's argument fails to acknowledge the fact that a municipality <u>would already have received credit</u> for a unit rehabilitated before 1980 by having a reduced indigenous need. Thus, receipt of the second credit constitutes a double counting for credits. Moreover, the very purpose of the 20 percent adjustment factor to a municipality's fair share of the present and prospective need (<u>see</u> <u>AMG</u> and <u>Van Dalen</u>) is to offset the need that will go unsatisfied as a result of the credit defense and the vacant developable land defense. <u>AMG</u> at 46-47. Since the 20 percent figure was derived from the HAR's 23 percent figure and since the HAR's 23 percent figure did not cover the need that would be lost to a credit defense, the 20 percent adjustment figure is itself grossly inadequate to offset the loss of the 960,080 units that may potentially qualify for credits.

4. The Established Pattern Defense

Plaintiff challenged Fair Housing Act, Section 7.c.(2)(b) for creating the ability of a municipality to reduce its obligation if

> [t]he established pattern of development in the community would be drastically altered.

Plaintiff's Original Brief at 29. Defendant suggests that this basis for reducing the obligation of a municipality is no dif-

ferent than the radical transformation standard established in Mount Laurel II. Defendant's Reply Brief at 12.

Defendant's argument misconstrues the fundamental difference between Mount Laurel II's "radical transformation" defense and the Fair Housing Act's "established pattern" defense. Mount Laurel II provides that if a municipality should be radically transformed by satisfying its full fair share obligation immediately, then the municipality may phase in its obligation. Mount Laurel II at 218-19. Essentially, in this fashion, the Court assured itself that adequate infrastructure would be in place so that the municipality would be capable of handling its future growth. Thus, the phasing language in Mount Laurel II supports the planning considerations that are central to the Mount Laurel doctrine.

In contrast, the Fair Housing Act's "established pattern" defense calls for a reduction in the magnitude of any given municipality's obligation if satisfying the municipality's full fair share would disrupt an established pattern in the community.[13]

Whereas Mount Laurel II calls for the trial judge to exercise his power to phase

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13 In addition, the Fair Housing Act, Section 23, has a phasing provision. Although that provision applies to the phasing of building permits rather than the phasing of the obligation, the effect of the Act's phasing provision is identical to Mount Laurel II's phasing provision in that both phasing provisions delay the satisfaction of the municipality's full obligation.

> sparingly...with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation,

the Act calls for an almost automatic phasing of building permits in inclusionary developments based on the magnitude of the municipality's obligation. Compare Mount Laurel II at 219 to Fair Housing Act, Section 23. Thus, the Act blatantly encourages a dilution of the Mount Laurel obligation.

As a result of the established pattern defense being a second basis for a municipality to reduce its obligation, the Council is expected to take one additional step that the Court never intended in Mount Laurel II. Specifically, the Council is to grant a municipality's request for a reduced obligation if, after phasing the municipality's obligation, requiring the municipality to provide for the remaining fair share would cause a disruption of the established pattern.

Thus, the established pattern defense opens a pandora's box. For example, a builder might have a site perfectly suited for a Mount Laurel development and the builder might be eager to develop the site for Mount Laurel purposes. However, if providing a high density project in the area proposed by the builder would cause a disruption of the established pattern, the builder might never obtain the right to a rezoning. Furthermore, a municipality that has been exclusionary by seeking to keep out any development other than extremely large lot zoning could benefit from these exclusionary practices by

arguing that the established pattern defense precludes any significant development in the community. After all, if the entire town was developed at low intensities, any high intensity development anywhere in the municipality would disrupt the established pattern.

5. The Lack Of Infrastructure Defense

The Fair Housing Act further dilutes the constitutional obligation of municipalities in instances where the municipality asserts that it simply lacks infrastructure to provide for its full fair share. This point is illustrated by a comparison of how Mount Laurel II requires the trial court to respond to such an assertion relative to how the Fair Housing Act requires the Council to respond.

In the face of such an assertion, a trial court would expect the municipality

> [I]n addition to adopting "appropriate zoning ordinance amendment," to take "whatever additional action encouraging the fulfillment of its fair share of the regional need for low and moderate income housing [as might be] necessary and advisable."

Mount Laurel II at 263 quoting Mount Laurel I, 67 N.J. at 192. See also Mount Laurel II at 264 (where the Court asserted that "[w]here appropriate, a municipality should provide a realistic opportunity for housing through other municipal action inextricably related to land-use regulations".) See also AMG v. Warren, at 70 (wherein the Court asserts that it expects the

Township to "do whatever is necessary to help the plaintiffs obtain modification of existing limitations").

In stark contrast, in response to a claim of lack of infrastructure, the Council would presumably reduce a municipality's obligation rather than require the municipality to provide the infrastructure. This is true because the Act emphasizes that:

> Nothing in this act should require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

Fair Housing Act, Section 11.d.

Finally, it is important to note that Defendant did not respond to Plaintiff's challenge to Fair Housing Act, Section 7.e., which permits Council to establish caps for the obligation of any municipality based on the number of jobs in the municipality or "any other criteria ...which the council deems appropriate."

C.

THE ACT'S PROMOTION OF THE TRANSFER MECHANISM VIOLATES THE CONSTITUTIONAL OBLIGATION OF SUBURBAN MUNICIPALITIES TO OPEN THEIR DOORS TO THE POOR.

Defendant finds it revealing that Essex Glen failed to cite authority for the proposition that no Court has permitted any municipality to transfer its obligation to another municipality. Defendant's Reply Brief at 13. The explanation is quite simple. In no reported or unreported opinion has a Court

even considered a municipality's request to transfer its obligation. Were a municipality to seek a transfer, such a request would reveal an intent to remain an enclave of affluence and would therefore probably be met with a denial.

Defendant suggests that the rehabilitation provision will become a tool for revitalizing the urbans slums in furtherance of a stated purpose of the Act. However, a closer examination of the Fair Housing Act reveals that no municipality can receive the transfer obligation unless the housing would be "within convenient access to employment opportunities." Fair Housing Act, Section 12.c. One of the fundamental points made in Mount Laurel II is that the problem with the urban area is (1) that there is a lack of employment within the area and (2) that the jobs are increasingly shifting from these urban areas to the suburbs. Mount Laurel II at 210-11 n.5. Therefore, to the extent that the Newarks and Camdens of our state simply lack employment opportunities, such municipalities will never qualify as receiving municipalities.[14]

Aside from the unconstitutionality of the transfer mechanism, the Act minimizes the scope of the obligation of

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14 Even if the Council were to ignore the lack of employment opportunities in the urban areas, little would be gained by providing standard housing for an urban poor household living in a substandard unit if that household will not also have a job. A housing unit that is now standard will soon become dilapidated if the household is financially unable to maintain the premises.

municipalities to satisfy the constitutional mandate. Mount Laurel II essentially holds that if removal of cost generating features fails to generate the opportunity for the requisite number of lower income units, then the constitutional obligation of the municipality is to employ whatever affirmative devices are necessary to satisfy the fair share. One such affirmative device is a subsidy. While Mount Laurel II expressly requires subsidies, if necessary, the Fair Housing Act expressly prohibits the municipality from subsidizing lower income housing. Compare Mount Laurel II at 262-63 to Fair Housing Act, Section 11.d. See also supra at 30-31. Thus, the Fair Housing Act requires the municipality to do far less than is required by the Constitution.

D.

THE ACT'S VIRTUAL ELIMINATION OF THE BUILDER'S REMEDY IS UNCONSTITUTIONAL BECAUSE (1) THIS REMOVAL CAUSES THE BUILDER TO ENGAGE IN A FUTILE ACT AND (2) THIS REMOVAL DESTROYS THE REALISTIC OPPORTUNITY FOR THE CREATION OF LOWER INCOME HOUSING OPPORTUNITIES STATEWIDE

Contrary to Defendant's suggestion that the Act somehow preserves the builder's remedy, the Act appears to remove the builder's remedy. Not only does the Act impose a moratorium on the court awarding a builder's remedy in any cases filed after January 20, 1983, but also the Act virtually eliminates the builder's remedy in all cases heard by the Council.

1. The Act Is Unconstitutional Insofar As It Imposes A Moratorium On The Court's Award Of A Builder's Remedy For All Cases Filed After January 20, 1983.

Fair Housing Act, Section 28 violates the due process and equal protection mandates of the New Jersey Constitution, Article 1, Paragraph 1.

The right of low and moderate income households to be free from the constraints of municipal land use regulations when seeking housing is a fundamental right. Our Supreme Court stated that

> The constitutional basis for the Mount Laurel doctrine remains the same. The constitutional power to zone, delegated to municipalities subject to legislation, is but one portion of the police power and, as such, must be exercised for the general welfare. When the exercise of that power by a municipality affects something as fundamental as housing, the general welfare includes more than the welfare of that municipality and its citizens: it also includes the general welfare--in this case the housing needs--of those residing outside of the municipality but within the region that contributes to the housing demand within the municipality. Municipal land use regulations that conflict with the general welfare thus defined abuse the police power and are unconstitutional. In particular, those regulations that do not provide the requisite opportunity for a fair share of the region's need for low and moderate income housing conflict with the general welfare and violate the state constitutional requirements of substantive due process and equal

protection. Mount Laurel I, 67 N.J. at 174 and 181.

Mount Laurel II at 208-9 (emphasis added).

The existence of a fundamental right plays a weighty role when testing the constitutionality of the moratorium provision of the Fair Housing Act under the State's constitutional requirements of substantive due process and equal protection. Our State Supreme Court requires application of a balancing test to analyze constitutional claims made pursuant to the state Constitution. More specifically, the Supreme Court requires a balancing of three critical factors:

> (1) the nature of the affected right;
>
> (2) the extent to which the governmental restriction intrudes on the affected right; and
>
> (3) the public need for the restriction.

Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985).

When examining the moratorium provision in light of this balancing test, the provision clearly fails to pass constitutional muster.

As to the first factor, since a lower income household's right to be free from the artificial constraints of exclusionary regulations when seeking housing rises to the status of a fundamental right, the Court must examine with great care the moratorium provision.

Since the right created is not only the right to housing, but only also the right to housing on a timely basis,

the twelve to fifteen month moratorium constitutes a direct infringement on the right created. Moreover, to the extent that the delay will result in the diminishment of the number of lower income housing opportunities,[15] as well as the timing of those opportunities, the intrusion on the fundamental right affected is even harsher. This examination of the second factor weighs the balance still further in favor of a declaration of the unconstitutionality of the moratorium provision.

Finally, as to the third factor, there is no public purpose served by the moratorium. Indeed, the moratorium obstructs rather than promotes the Act's stated purpose - the provision of lower income housing opportunities. This is especially true in cases where there has been a motion to transfer and the trial court has denied that motion. Clearly, in these cases, if a court concludes that a builder is entitled to a builder's remedy, the moratorium provision delays the day when the builder can implement the remedy. For the reasons discussed in depth supra at 9, the delay jeopardizes the economic feasibility of the entire project.

2. The Act Is Unconstitutional Insofar As It Forecloses The Builder's Remedy In Actions Heard By The Council.

In the event that a challenger were to fully exhaust the procedures established by the Fair Housing Act, that

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[15] See generally supra at 9-10.

challenger would potentially face three tribunals: (1) the Affordable Housing Council, (2) an administrative law judge and (3) an appellate court. Defendant concedes that neither the Council nor the administrative law judge have the authority to grant the plaintiff a builder's remedy. Defendant's Reply Brief at 14. Defendant does suggest, however, that an appellate court could indeed grant a builder's remedy. This conclusion is supported by Defendant's assertion that the Act provides "a high threshhold for those who wish to challenge the administrative decision." Defendant's Reply Brief at 15.

a. The Act Is Unconstitutional Because It Creates A *Per Se* Futility Situation In Proceedings Before The Council And Administrative Law Judge.

Defendant makes two concessions which, when viewed together, are fatal to Defendant's defense of the constitutionality of the Fair Housing Act. First, Defendant emphasizes that "[a]dministrative proceedings must be exhausted before trial takes place." Defendant's Reply Brief at 2-3. Second, Defendant insists that "in no administrative proceeding does the agency or Council have the same power as a court" - that is, the power to award a builder's remedy. Defendant's Reply Brief at 14.

The Act therefore forces the challenger to exhaust an administrative procedure with a Council and administrative law judge that both simply lack the power to grant the relief sought. If the very tribunal cannot grant the relief sought,

then the exhaustion of administrative requirement is per se futile. Futility is defined as a circumstance where the remedy is "clearly available, clearly effective, and completely adequate to right the wrong complained of." Patrolmen's Benevolent Association v. Montclair, 128 N.J. Super. 50, 63 (Ch. Div. 1974) (emphasis added). Because both Plaintiff and Defendant agree that the builder's remedy is clearly unavailable before the Council and administrative law judge, then there is no question as to the futility of these administrative procedures.[16]

b. The Act Is Unconstitutional Because It Fails To Create A "Realistic Opportunity" Statewide For The Production Of Lower Income Housing.

While one may argue that the Constitution of New Jersey does not require application of the AMG methodology to determine the obligation of any given municipality and while one may argue that the Constitution does not require a builder's remedy, no one can reasonably argue with the proposition that the Supreme Court has interpreted the Constitution to require municipalities to create a "realistic opportunity" for

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16 Plaintiff also need not exhaust the administrative remedies if "an overriding public interest calls for a prompt judicial decision." N.J. Civil Service Ass'n v. State, 88 N.J. 605, 613 (1982). Given the emphasis in Mount Laurel II on expeditiousness, and given the importance of the housing needs of the poor, the need for the prompt, actual construction of lower income housing, which is the primary objective of Mount Laurel II, qualifies as an overriding public interest calling for a prompt judicial decision. Ct. Mount Laurel II at 306-7.

whatever the court ultimately deems the municipality's obligation to be. Mount Laurel II at 220-22, 352. Since the Constitution requires a municipality to create a realistic opportunity for some set number of lower income units within the municipality's borders, then it follows that the Constitution must contemplate that any legislation adopted to answer the needs of our State for lower income housing must create a realistic opportunity for lower income housing statewide. Surely, the court's plea for "adequate" legislation must mean that the Court would evaluate the constitutionality of any new legislation based on whether it created such a statewide realistic opportunity. Mount Laurel II at 213. Any less stringent standard for testing lower income housing legislation would ignore the Court's interpretation of the demands of the Constitution.

An examination of the Fair Housing Act reveals that it dismally fails to create the requisite realistic opportunity for lower income housing. This conclusion is most evident if one compares the incentives provided by Mount Laurel II to those provided by the Fair Housing Act.

Mount Laurel II creates an incentive to builders to sue by the creation of the builder's remedy, which essentially represents the Supreme Court's promise to the building community that builders will be able to build at higher densities and without having to adhere to cost-generating municipal

restrictions if (1) the project will contain a substantial amount of lower income housing; (2) the proposed project is suitable from a planning perspective; and (3) the challenger demonstrates that the municipality is exclusionary. Mount Laurel II at 279-80. Since a builder will have no rights if the builder fails to demonstrate that the municipality is exclusionary, municipalities have an incentive to voluntarily comply. Because a builder's remedy is the incentive to the building community to bring Mount Laurel actions and because fear of the builder's remedy is the incentive to municipalities to voluntarily comply, it is clear that the keystone to the Supreme Court's creation of a realistic opportunity for lower income housing statewide is the builder's remedy.

It is equally clear that to the extent the builder's remedy is eliminated, the creation of lower income housing opportunities will diminish.

The Fair Housing Act destroys the builder's remedy virtually in toto. The Fair Housing Act eliminates the ability of the plaintiff to obtain a builder's remedy before the Council and administrative law judge. Defendant's Reply Brief at 14. Although presumably the builder will be able to obtain a builder's remedy before an appellate court, the plaintiff's burden is extremely difficult. The plaintiff must demonstrate that there was no basis for the Council's factual conclusions or that the Council was arbitrary and capricious as to its

legal conclusions in order to qualify as a successful plaintiff. See generally N.J.'s Standards for Appellate Review at 12-14 (1982). Given the extreme burden on appellate review pursuant to Fair Housing Act procedures relative to the easy burden at trial pursuant to Mount Laurel II procedures, the building community clearly has little incentive to engage in the lengthy and expensive procedures created by the Fair Housing Act. This will have a predictable effect -- municipalities will have no incentive to voluntarily comply.

The lessons of history are clear. If the builder's remedy is rare, little lower income housing will be produced because the Court cannot depend on the mere moral obligation of municipalities to voluntarily comply. This Court need not return to the Oakwood standard, where the builder's remedy was rare, to know the impact of the destruction of the builder's remedy--widespread exclusionary practices.

CONCLUSION

For the foregoing reasons it is respectively requested that this Court deny Defendant's motion to dismiss the complaint.

GREENBAUM, ROWE, SMITH, RAVIN,
DAVIS & BERGSTEIN
Attorneys for Plaintiff Essex
Glen, Inc.

By:
Douglas K. Wolfson

DATED: September 19, 1985

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REPLY TO:
Engelhard Building

August 20, 1985

The Affordable Housing Council
c/oFeather O'Connor, Comissioner of the
Department of Community Affairs
Executive Director of the Housing and
Mortage Finance Agency
3625 Quaker Bridge Road
CN 18550
Trenton, New Jersey 08650-285

Re: Essex Glen, Inc. v. Borough of Roseland

Dear Ms. O'Connor:

Pursuant to the recently enacted "Fair Housing Act", any plaintiff filing a Mount Laurel action against a municipality within sixty days from the effective date of the Act must "file a notice to request review and mediation with the council." Fair Housing Act, Section 16.b. In response to my inquiry regarding who to notify, Edward J. Boccher,Deputy Attorney General, directed me to file the notice with you and with John Renna, Commissioner of the Department of Community Affairs. Accordingly, by this letter, I hereby request that the Council engage in a review and mediation process with Essex Glen, Inc. and the Borough of Roseland.

You should be aware that although we are making every effort to comply with the Fair Housing Act, we reserve the right to challenge the constitutionality of the Act. Indeed, it is our position that the Fair Housing Act is unconstitutional and that, therefore, Essex Glen need not satisfy the Act's requirements. The motion in which our constitutional challenge will be heard is scheduled for September 9, 1985 before Judge Skillman. I have forwarded a copy of Essex Glen's brief in the above referenced matter, which includes this constitutional challenge, to Edward J. Boccher, Esq. If Essex Glen must take any further action in order to comply with the Fair Housing Act, please notify us immediatley.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Jeffrey R. Surenian

Jeffrey R. Surenian

Enclosure
JRS/jdc
cc; John Renna

HARVEY S. MOSKOWITZ P.P., P.A.
Community Planning & Development Consultant

TO: Jim Luke, Doug Wolfson, Esq., Jeff Surenian, Esq.

RE: Fair Share Analysis, Roseland Borough

DATE: April 23, 1985

Attached is the fair share analysis for Roseland. The total is 572, as follows:

Indigenous:	14
Surplus Present:	137
Prospective:	421
	572 Units

If the surplus present is phased, the total obligation by 1991 is 481 Units.

FAIR SHARE ANALYSIS

Roseland Borough, Essex County

INDIGENOUS NEED

Overcrowded:	6 Units
Inadequate plumbing:	6 "
Inadequate heating:	9 "
Total unadjusted:	21 Units
Adjusted (X 64.9%):	14 Units

ALLOCATION FACTORS

Growth area: 2,024 Acres
(2,291 acres - 267 acres (conservation)

Employment: 5,871

Employment growth: +314 jobs/year

Income: $28,784

Regions:
- Present Need: North 11
- Prospective Need: Bergen, Essex, Hudson, Morris, Passaic, Somerset, Union

Roseland Borough Employment Growth Regression

Year	y	$(y-\bar{y})$	x	$(x-\bar{x})$	$(y-\bar{y})(x-\bar{x})$	$(x-\bar{x})^2$
1972	1,935	-1,485	0	-5	7,425	25
1973	2,146	-1,274	1	-4	5,096	16
1974	3,121	-299	2	-3	897	9
1975	2,963	-457	3	-2	914	4
1976	2,935	-485	4	-1	485	1
1977	3,063	-357	5	0	0	0
1978	3,276	-144	6	1	-144	1
1979	3,393	-27	7	2	-54	4
1980	4,094	674	8	3	2,022	9
1981	4,825	1,405	9	4	5,620	16
1982	5,871	2,451	10	5	12,255	25
	37,622				34,516	110

$\bar{y} = 3{,}420$

$\frac{34{,}516}{110} = 313.78 =$ 314 jobs per year

Reallocated Present Need

North 11 (with 64.9% adjustment) 27,712

Factors

Growth Area: $\frac{2,024}{699,163} = .0029$

Employment: $\frac{5,871}{1,244,632} = .0047$

Income Ratio: $\frac{\$28,784}{\$24,177} = 1.1906$

Allocation

Growth Empl. Income Ratio

$\frac{.0029 + .0047}{2} \times 1.1906 = \underline{.0045}$ Wealth Factor

$\frac{.0029 + .0047 + .0045}{3} = \underline{.0040}$ Final Factor

.0040 X 27,712 = 110.85 Municipal Share

If phased, $\frac{110.85}{3} = 36.95$

		Vacant Land Factor				Vacancy Allowance				
36.95	X	1.2	=	44.34	X	1.03	=	45.67	=	46 Units

<u>46 Units</u>

Commutershed Factors

	Projected Need, 1990	Growth Area	Employment	Employment Growth
Bergen	15,860	132,947	336,583	6,415
Essex	-5,092	46,723	105,168	2,864
Hudson	-5,080	3,712	49,314	-455
Morris	15,702	116,769	159,950	6,701
Passaic	3,837	40,830	100,782	1,697
Somerset	8,791	100,455	82,730	3,071
Union	6,506	52,825	164,381	1,831
	40,527	494,261	998,908	22,124

Commutershed Median Household Income

	Households	Aggregate Income (000's)
Bergen	266,576	6,887,779
Essex	89,715	2,050,037
Hudson	26,242	509,373
Morris	126,976	3,332,537
Passaic	84,572	1,860,406
Somerset	67,101	1,761,406
Union	116,642	2,817,519
	777,824	19,219,057

$$\frac{19{,}219{,}057}{777{,}824} = \$24{,}709$$

Prospective Need Factors

Growth Area: $\frac{2,024}{494,261} = .0041$

Employment Growth: $\frac{314}{22,124} = .0142$

Employment: $\frac{5,871}{998,908} = .0059$

Income: $\frac{\$28,784}{\$24,709} = 1.1649$

Allocation:

Need: 40,527

$\frac{.0041 + .0142 + .0059}{3} \times 1.1649 = .0094$ Wealth Factor

$\frac{.0041 + .0142 + .0059 + .0094}{4} = .0084$ Final Factor

.0041 X 40,527 Regional Prospective Need =

340.43 X 1.2 = 408.51

408.51 X 1.03 = 420.77 = <u>421 Units</u>