DOUGLAS TOWNSHIP

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Brief in opposition to the plaintiffs motion to join additional parties, i.e., Randolph Township Municipal Utilities Authority.

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MORRIS COUNTY FAIR HOUSING COUNCIL, et. al. Plaintiff vs. BOONTON TOWNSHIP, et. al. Defendant	:	SUPERIOR COURT OF NEW JERSEY MIDDLESEX/MORRIS COUNTIES Docket No. L-6001-78 P.W. Docket No. L-59128-85 P.W.
RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, a New Jersey Partnership Plaintiff vs. THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et. al. Defendant	:	FILED APR 24 1986 STEPHEN SKILLMAN,

BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO JOIN ADDITIONAL PARTIES

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STATEMENT OF FACTS

The following brief is submitted in opposition to the motion brought by Plaintiff Morris County Fair Housing Council, et. al. to add the Randolph Township Planning Board, the Randolph Township Board of Adjustment, the Randolph Township Municipal Utilities Authority and the Rockaway Valley Regional Sewerage Authority to the foregoing action.

The brief is also in opposition to the motion brought to add the Randolph Township Municipal Utilities Authority brought by Plaintiff Randolph Mountain Industrial Complex.

The following response is submitted on behalf of the Township of Randolph, the Randolph Township Planning Board and the Randolph Township Municipal Utilities Authority. The Randolph Township Board of Adjustment as of the date of preparation of this brief has not authorized the undersigned to file a brief on its behalf, although its own counsel, Kenneth Ginsberg, intends to submit a letter to the Court in connection with this matter.

The facts in this matter are well known and it would serve no purpose to reitterate those facts at this time. The trial court and the parties are fully familiar with this action which has been pending for almost eight years, the subject of a trial, a settlement, and an appeal before the Supreme Court.

The history of this matter is contained in a variety of opinions, including the recent Supreme Court opinion in The Hills Development Co. v. Township of Bernards, (A-122-85) N.J. (1986).

POINT I

THE MOTION TO JOIN ADDITIONAL PARTIES SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH R.1:6-2, 4:9-1 AND 4:28-1 ET. SEQ.

At the outset, it is respectfully maintained that Plaintiff's motion to join additional parties to this action should be dismissed on the basis of its failure to comply with R.1:6-2 and other appropriate rules as cited hereinafter. The motion of Plaintiff Morris County Fair Housing Council does not comply with R.1:6-2(a) in its failure to set forth the grounds upon which the motion is made. It is noted that the failure of said Plaintiff to state the grounds is not simply a procedural defect but a substantive one, making it virtually impossible for the Defendants to adequately respond to Plaintiff's motion. Plaintiff has set forth no reasons upon which he seeks the joinder of these parties in the papers that are before this Court. R.1:6-2(a) states in pertinent part:

> "If the motion or response thereto relies on facts not of record or not subject of judicial notice, it shall be supported by affidavit made in compliance with R.1:6-6."

Since Plaintiff has failed to submit an affidavit in support of its motion, it is assumed that the basis upon which the same is made consists of facts which are already of record or facts

which are subject of judicial notice. Nevertheless, despite this assumption, it continues to be virtually impossible to respond to Plaintiff's argument since it has not been proferred. Substantively, the Defendant does not know where Plaintiff stands and it is respectfully submitted that this Court should immediately dismiss said motion.

It must be emphasized that this objection is not an attempt to nit-pick or criticize Plaintiff, but a serious contention of substance. To ask the Defendants to respond to the motion as presented is unfair, inequitable and presents a manifest injustice against the Defendants. The Court rules are applicable equally to all parties in an action. There is no rule which states that public interest plaintiffs need not follow the rules or that a party must respond to a motion unsupported by affidavit or brief which does not state the grounds upon which the motion is sought. Common sense requires that Defendant be made aware of the basis upon which Plaintiff relies in bringing the motion. To do otherwise forces the Defendant to anticipate the arguments of the Plaintiff, raise those arguments and then respond to them. It is simply not the manner in which our system of justice has developed. Accordingly, it is respectfully requested that this Court follow and adhere to the Rules of Court and either dismiss Plaintiff's motion to join parties or compel Plaintiff to supplement the

motion to give Defendants the ability to comprehend the basis upon which Plaintiff takes this action.

A motion to join a party is related directly to a motion to amend a complaint. That is to say, Plaintiff's attempt to join the various Defendants cannot be based upon a violation of the Mt. Laurel doctrine prohibiting the practice of exclusionary zoning since it must be judicially noticed that none of the parties to be joined exercise a zoning power. Thus, simply adding the parties to the existing Complaint serves no purpose. Instead, Plaintiff must amend his Complaint and allege a cause of action against these Defendants. No indication of what that cause of action might be is contained in the moving papers. Were Plaintiff to amend his Complaint, which is a necessary prerequisite for joining any of these parties, he would be required to do so in accordance with R.4:9-1 which requires leave of Court by motion with a copy of the proposed amended pleading attached. Plaintiff Morris County Fair Housing Council has failed to submit such a document, again leaving Defendants in a virtually intolerable position of responding to nothing of substance.

Although not stated anywhere in Plaintiff's moving papers, it is assumed that the motion to join parties is being brought pursuant to R.4:28-1 involving joinders of persons needed for just adjudication.[3] The Rule provides in pertinent part:

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[1] This anticipation is the first of many in Defendant's responsive brief and more pointedly illustrates the difficulty in responding to a motion which does not set forth the grounds upon which it is made.

> "A person who is subject to service of process shall be joined as a party to the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest in the subject of the action and is so situated that the disposition of the action in his absence may either (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already party subject to a substantial risk of incurring double, multiple or other inconsistent obligations by reason of his claimed interest. If he has not been so joined, the Court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant."

It is respectfully suggested that the second category of joinder is inapplicable to the instant matter since it would involve an application by that third party to join the action. The only basis upon which the motion can be made is 4:28-1(a)(1) where a claim is being made that complete relief cannot be accorded among those already parties without the addition of the parties requested to be joined.

The problem that arises, however, is that this Court will grant no relief to the parties to this action. The instant matter has been transferred to the Council on Affordable Housing by the Supreme Court in The Hills Development Co. v. Township of Bernards (A-122-85) N.J. (1986). The relief that will be accorded in this case will be through that administrative body. Thus, it is respectfully maintained that Plaintiff cannot prevail on his motion.

Moreover, the relief that can be afforded to an interested party by the Council on Affordable Housing is relief against the municipality and the exercise of its zoning power.

The Fair Housing Act, Ch. 222 P.L. 1985 makes that perfectly clear in Section 2 wherein the Legislature recognizes that the Supreme Court through its Mt. Laurel rulings

> ". . .has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and and prospect needs for housing for low and moderate income families." (Emphasis added).

Thus, the relief that can be afforded by the Council on Affordable Housing to an interested party is with respect to a municipality's exercise of its land use regulations not against a Planning Board's exercise of its statutory jurisdiction nor that of a Board of Adjustment, nor that of a municipal utilities authority or a sewerage authority.

In spite of all of the foregoing, perhaps the most illustrative of the absurd and bizarre nature of Plaintiff's motion is the fact that the litigation, prior to its being transferred to the Council on Affordable Housing, had been pending for almost eight years. Throughout that period, never did the Plaintiff move to add any parties to this action, let alone, the specific parties requested as it relates to the Township of Randolph. This is a case which was tried for almost two weeks without any of these parties, tentatively settled, and brought before the Supreme Court on an appeal of a denial of a motion to transfer, and transferred to the Council on Affordable Housing. At no time during those 7 1/2 years did Plaintiff move

to join these parties. Now, when the Court lacks jurisdiction in the case, Plaintiff attempts to, we assume, take the position that in the absence of these parties, complete relief cannot be accorded among those already parties. This position is simply without basis and must be rejected.

In summary, therefore, it is submitted that Plaintiff's motion to join the Planning Board, Board of Adjustment, Municipal Utilities Authority and Regional Sewerage Authority must be be denied on his failure to set forth the grounds upon which the relief is requested pursuant to R.1:6-2, the failure to advise the parties of the nature of the cause of action to be alleged against said parties pursuant to R.4:9-1 and the inability to comply with R.4:28-1. For all these reasons, Plaintiff's motion should be dismissed.

POINT II

THIS COURT LACKS JURISDICTION TO JOIN ANY PARTIES AS THE SAME IS OUTSIDE THE SCOPE OF JURISDICTION CONFERRED ON THIS COURT BY THE SUPREME COURT IN THE HILLS CASE.

Typically, there is little need to review the scope of jurisdiction of a trial court in a motion to join parties. The Court, without doubt, has that jurisdiction and all one needs to do is to comply with the requirements set forth in the Rules. In the instant case, however, this Court does not have general jurisdiction. Instead, the Supreme Court has removed jurisdiction over this matter by this Court except in a very narrow area. Thus, the Supreme Court in The Hills case stated:

> "We hold that the Act is constitutional and order that all of the cases pending before us be transferred to the Council. Those transfers, however, shall be subject to such conditions as the trial courts may find necessary to preserve the municipality's ability to satisfy their Mt. Laurel obligation." (Slip op. at 30).

In concluding, the Supreme Court states:

> "All cases are hereby transferred to the Council subject to such conditions as the trial courts may hereafter impose all in accordance with the terms of this opinion." (Slip op. at 93).

In specifying the limited jurisdiction retained by the trial court, the Supreme Court stated:

> "As to any transferred matter, any party to the action may apply to the trial court (which shall retain jurisdiction for this limited purpose) for the imposition of conditions on the transfer." (Slip op. at 88).

Thus, it is beyond cavil that the jurisdiction of this Court is solely for the purpose of imposing conditions on the transfer. That jurisdiction does not extend to further discovery nor to join additional parties. What can be more ironic than the expansion of a judicial action when the entire tenor of the Supreme Court's determination in The Hills case is a reduction of the Court's jurisdiction? Why should this Court consider the addition of parties to a lawsuit, the subject matter of which has now been transferred to an administrative agency? To expand this case taxes even the most liberal reading of the Supreme Court's determination. It is clear throughout the Supreme Court's opinion and even in their earlier opinions on the issues that the judicial involvement would shrink in direct proportion to the expansion of the involvement of the Executive and Legislative branches of government. The Supreme Court in The Hills case found that the field is now substantially occupied by the Legislative and Executive branches and that it would, true to its past exhortations, remove itself from the field of exclusionary zoning, which it is simply not equipped to handle.

Perhaps the best illustration of the Supreme Court's intention of removing the judiciary from the field is its ruling with respect to the issue of res judicata and collateral estoppel. The Court raised the issue as to whether the Council on Affordable Housing would be bound by any orders entered in

any of the judicial matters which were being transferred to the Council on Affordable Housing in The Hills case. The Supreme Court stated at 82:

> "Where no final judgment has been entered, we believe the Council is not bound by any orders entered in the matter, all of them being provisional and subject to change, nor is it bound by any stipulations, including a municipality's stipulation that its zoning ordinances do not comply with the Mt. Laurel obligation." (Slip op. at 82).

The Supreme Court in The Hills case went on to elaborate on the basis for such a conclusion, stating:

> "The administrative remedies, and the administrative approach to that subject [Mt. Laurel obligations] may be significantly different from the Court's. Fair share rulings by the Court, provisional builders' remedies, site suitability determinations -- all of these may not be in accord with the policies and regulations of the Council. Similarly, stipulations in Mount Laurel matters were undoubtedly based on the assumption that the issues would be determined by the Court in accordance with Mount Laurel II. They presumably represented the litigant's belief that what was being stipulated would be adjudicated in any event. It is not only, in a sense, unfair to the litigant to be bound by these interim adjudications and stipulations, it would also be inconsistent with the purposes of the Act, for these determinations and stipulations may be inconsistent with the comprehensive plan of development of the state and the method of effectuating it."

Thus, the intent of the Supreme Court was to give the municipalities the ability for a fresh start in terms of compliance with the Mount Laurel obligation as that obligation is quantified by the Council on Affordable Housing, not as based upon the Court's previous actions. To now add parties to the litigation will not foster that result, but instead continue

to place the judiciary into the midst of determinations now to be made by an administrative body under rules, regulations and guidelines adopted by them. Accordingly, this Court should decline to entertain such a role under the limited jurisdiction granted this Court by the Supreme Court. The limited involvement of the judiciary was necessary to add some legitimacy to the Mount Laurel doctrine. The Supreme Court understood, in The Hills case, the effect of a judicial promulgation of zoning. As set forth at 90, the Supreme Court acknowledged:

> "We understand that no one wants his or her neighborhood determined by judges."

In removing itself from this area, the Supreme Court understood the efficacy of the legislative remedies:

> "The Fair Housing Act has many things that the judicial remedy did not have: It requires, in every municipality's master plan, as a condition to the power to zone, a housing element that provides a realistic opportunity for the fair share; it has funding; it has the kind of legitimacy that may generate popular support, the legitimacy that comes from enactment by the people's elected representatives; it may result in voluntary compliance, largely unachieved in a decade by the rule of law fashioned by the Courts; it incorporates what will be a comprehensive rational plan for the development of this state, authorized by the Legislature and the Governor for this purpose; and it has all of the advantages of implementation by an administrative agency instead of by the Courts, advantages that we recognized in our Mount Laurel opinions. In many respects the Act promises results beyond those achieved by the Doctrine as administered by the Courts." (Slip op. at 58-59). (Emphasis added)

For this Court to now consider the addition of parties under the guise of the imposition of conditions is totally inconsistent and diametrically opposed to the Supreme Court's lucid understanding and clear declaration of the importance of having the constitutional obligation implemented through a body subject to the Electorate, portraying the kind of legitimacy that can only be manifested by activity promulgated by the elected representatives of the people.

It is interesting to note that the Public Advocate before the Supreme Court argued that unacceptable consequences would flow if certain cases were transferred to the Council on Affordable Housing.[2] The Advocate urged the Supreme Court to retain jurisdiction in the case, to appoint the members of the Council on Affordable Housing as a special master and to direct the members to submit to the Court proposed policies within 180 days on the delineation of region, determination of present and prospective need for safe, decent housing affordable to lower income persons, allocation of regional need among municipalities and the region, determination of indigenous need for safe, decent housing affordable to lower income persons, scope of remedies to be utilized by the Affordable Housing Council and standards to municipal plans to meet their fair share of

[2] The Advocate was referring not to Randolph and Denville which it argued could never be transferred, but to other cases.

housing obligations. In short, the Council on Affordable Housing would no longer be an independent administrative agency promulgating its own rules and regulations, but would simply be an arm of the judiciary, a super "special master". This position was categorically rejected by the Supreme Court, which fully recognized the ability of the Council on Affordable Housing to proceed in its own manner independent of judicial interference. It is respectfully maintained that the Advocate is attempting by the joinder of the parties to again relegate the Council on Affordable Housing to a position subordinate to that of the judiciary, a position which is simply inconsistent and unsupported by the Supreme Court determination in The Hills case.

In conclusion, therefore, it is respectfully submitted that this Court lacks the jurisdiction to consider a motion to join additional parties. The jurisdiction conferred upon this Court by the Supreme Court was solely to consider the imposition of conditions to preserve a scarce resource. Discovery motions, joinder motions and any other motions which would otherwise be permitted under the Rules are outside of the scope of jurisdiction of this Court. A fair reading of The Hills case must result in the conclusion that the intent of the Supreme Court was to have the judiciary removed from Mount Laurel actions, except to the extent that a condition must be imposed to preserve a scarce resource. To expand that jurisdiction

constitutes a direct violation of the Supreme Court order in The Hills case which governs the instant matter. Therefore, Plaintiff's attempt to take this action must be denied by this Court.

POINT III

REASONABLE CONDITIONS ENDORSED BY THE SUPREME COURT IN THE HILLS CASE DO NOT INCLUDE THE JOINDER OF ADDITIONAL PARTIES.

Viewing the issue from another perspective, the subject which must be considered is whether the conditions referred to by the Supreme Court could reasonably include the joinder of additional parties. If the condition concept can be expanded to include the joinder of additional parties, then a position can be developed which would support this Court's consideration of and granting of the motion to join additional parties. A critical examination of that portion of The Hills case involving the imposition of conditions must lead one to the conclusion, however, that the term "conditions" cannot be so expanded.

The subject of conditions is dealt with in detail by the Supreme Court at 86 through 89 of the Slip Opinion. The Court begins with the statement:

> "We have concluded that the Council has the power to require, as a condition of its exercise of jurisdiction on an application for substantive certification, that the applying municipality take appropriate measures to preserve 'scarce resources', namely, those resources that will probably be essential to the satisfaction of its Mount Laurel obligation."

It is interesting to note that the Supreme Court refers to the ability of the Council to impose conditions on

the ". . .applying municipality. . . .", not on any political subdivision of the State or of the municipality, including a Planning Board, Board of Adjustment, a Municipal Utilities Authority or a Regional Sewerage Authority. In granting the Courts the ability to impose conditions, the Supreme Court did not give the Courts any more power to impose those conditions than the Council on Affordable Housing was granted. As specifically stated by the Supreme Court:

> "Since the Council will not be able to exercise its discretion until it has done the various things contemplated in the Act, for which a period of seven months has been allowed, we believe the Act fairly implies that the judiciary has the power, upon transfer, to impose those same conditions designed to conserve scarce resources that the Council might have imposed were it fully in operation." (Slip Op. at 87). (Emphasis added).

Thus, to ascertain the scope of conditions which can be imposed by the judiciary, we must look to the scope of conditions which can be imposed by the Council. The Supreme Court at 86 in the Slip Opinion indicated that those conditions are to be imposed upon the "applying municipality" not on any other party. Thus, it seems virtually impossible to interpret the Supreme Court's determination to permit the joinder of additional parties on an application to impose conditions. There can be no doubt that the Council on Affordable Housing lacks the power to bring additional parties before it in its entertainment of an application for substantive certification.

The Act directs itself to the municipality which possesses the ability to exercise zoning power. Since the Council lacks the power to impose conditions which would add parties to the substantive certification process, this Court is similarly situated.

This position is further bolstered by the elaboration of the Supreme Court on the issue of conditions. After deeming it "unwise" to impose "appropriate conditions" in the cases before it, the Supreme Court detailed what it meant by an "appropriate" condition:

> "'Appropriate' refers not simply to the desirability of preserving a particular resource, but to the practicality of doing so, the power to do so, the cost of doing so, and the ability to enforce the condition." (Slip op. at 87-88).

Thus, although the Court recognized that the Council on Affordable Housing and thus the trial courts in these limited circumstances could consider the imposition of conditions to support and preserve scarce resources, even if those scarce resources were manifested, a condition might not be appropriate. Thus, if the Court lacked the power to do so, it could not impose a condition even though a scarce resource situation existed. If it was impractical to do so or if the cost of doing so was so great or if the Court lacked the ability to enforce the condition, the condition would no longer be appropriate. Thus, it is maintained that the concept that the Court had the power to, on an application for the imposition

of conditions, add parties to the litigation and then perhaps attempt to enjoin the exercise of their statutory powers is so far beyond that which the Supreme Court intended, that no fair reading of The Hills case supports it.

Again, in determining whether a condition is necessary or desirable, the Supreme Court indicated that a variety of factors would have to be considered, including the likelihood that the municipality would actively try to preserve or dissipate such scarce resources. The Supreme Court cautioned that the previous actions of the municipality and its officials should be considered in determining whether or not such conditions should be imposed. Thus, it is clear that the conditions were not intended to include the joinder of additional parties, but instead to preserve scarce resources. The expansion suggested by the Advocate is unwarranted and inapposite under the circumstances.

In summary, therefore, it is respectfully maintained that "reasonable" conditions endorsed by the Supreme Court to preserve scarce resources does not include the addition of parties to this litigation. It cannot be challenged that the Council on Affordable Housing lacks the ability to bring before it other municipal bodies, agencies or political subdivisions of this State in conjunction with an application for substantive certification filed by a municipality. The Supreme Court has indicated in The Hills case that the limited jurisdiction conferred upon the trial court in the instant case is to

consider the same types of conditions which the Council on Affordable Housing would otherwise have the power to impose were it fully operational. The Court, in this case, possesses no greater power than the Council and therefore lacks the power to add parties to the litigation. Not only would the addition of parties be contrary to the intent of the Supreme Court, but would be a clear violation and disregard of the precise and unequivocal language of the Supreme Court regarding the scope of conditions which can be imposed.

POINT IV

THE CONSTITUTIONAL OBLIGATION TO PROVIDE A REALISTIC OPPORTUNITY FOR THE CONSTRUCTION OF LOW AND MODERATE INCOME HOUSING RELATES TO THE EXERCISE OF THE POWER TO ZONE POSSESSED BY MUNICIPALITIES AND IS INAPPLICABLE TO THE EXERCISE OF OTHER POWERS BY A MUNICIPALITY, A PLANNING BOARD, A BOARD OF ADJUSTMENT, A MUNICIPAL UTILITIES AUTHORITY, OR A REGIONAL SEWERAGE AUTHORITY.

In Mount Laurel I, South Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 174 (1975) the Supreme Court of New Jersey declared that every developing municipality must, by its land use regulations presumptively make realistically possible an appropriate variety and choice of housing. The underpinning of the Court's opinion was the New Jersey Constitution which authorized the Legislature to enact laws to permit a municipality to enact zoning ordinances. The Court found that the exercise of this zoning power had to meet the requirement of substantive due process and that the use of the power must protect the general welfare which the Court found to include adequate and sufficient housing. Nearly eight years later, in Mount Laurel II, South Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158, 214-215 (1983), the Supreme Court again opined that every municipality's land use regulations must provide a realistic opportunity for decent housing for its resident poor who occupy dilapidated housing and in addition, those municipalities in a growth area must provide

a realistic opportunity in their zoning ordinances for their fair share of the region's present and prospective low and moderate income housing needs.

The Mount Laurel cases are clearly land use cases involving the municipality's exercise of its constitutional power to zone. It has been found that the Mount Laurel doctrine is inapplicable to other areas in which a municipality may exercise its powers. For example, in All People's Congress of Jersey v. Jersey City, 195 N.J. Super. 532 (Law Div. 1984), the issue was raised as to whether the Mount Laurel II doctrine was applicable to a municipality's enactment of a rent-leveling ordinance. This Court declined to entertain the case on the basis that the same involved an attack upon a rent-leveling ordinance as distinguished from a zoning ordinance. This Court further indicated that if the Complaint were amended to include a challenge to the Jersey City zoning ordinance, a reconsideration would have to take place. Based upon such a determination, Judge Young opined:

> "This court determines that the Mount Laurel II doctrine is not applicable to the rent control ordinance represented by ordinance MC-451. The Mount Laurel II doctrine is applicable to review the exercise of a municipality's constitutional power to zone, more particularly when the power is invoked to create exclusionary zoning. Exclusionary zoning is the mischief which both Mount Laurel I and Mount Laurel II were designed to remedy. Indeed, an analysis of the Mount Laurel II opinion discloses that its lietmotif is the scope of the exercise of the power to zone. The essence of the opinion is stated in the passage here quoted:

'That is the constitutional rationale of the Mount Laurel doctrine. The doctrine is a corollary of the constitutional obligation to zone only in furtherance of the general welfare. The doctrine provides a method of satisfying that obligation when the zoning in question affects housing. [92 N.J. at 209].'" 195 N.J. Super. 532, 540.

The Mount Laurel obligation as set forth in the trilogy of Mount Laurel cases and furthermore as legitimatized in the Fair Housing Act, Ch. 222 P.L. 1985 relates to a municipality's exercise of its zoning power. There is absolutely no basis in law or in fact to support the proposition that a municipal planning board, a municipal board of adjustment, a municipal utilities authority, or a regional sewerage authority possesses such an obligation. That those entities lack the power to zone is incontrovertible. And to even consider the expansion of the doctrine at the point in time when the Legislature has enacted the Fair Housing Act to legitimatize the obligation as it relates to municipalities, is both unwise and unwarranted. [3]

In addition, as has been pointed out on numerous occasions to this Court, Plaintiff Public Advocate has intervened in a case which has been ongoing for 18 years entitled Department of Health, State of New Jersey, et. al. v. City of Jersey City, et. al., Docket No. C-3447-67 the subject

[3] A more complete analysis of the inapplicability of the Mount Laurel doctrine to municipal utilities authorities is contained in "The Impact of Mount Laurel II on Municipal Utilities Authorities", 115 New Jersey Law Journal 317 (March 21, 1985).

matter of which involves the building ban which nine Morris County municipalities have been under since August 8, 1968. In that case, which is now approaching conclusion, the Advocate is arguing for a specific allocation for Mount Laurel housing. Since Randolph's ability to provide sanitary sewer service for Mount Laurel developments is related to some extent to the ability of the RVRSA to treat the sewerage, to the extent that the Advocate will have his day in Court on the issue before Judge Gascoyne, his attempt to involve the RTMUA and the RVRSA in this case should be barred.[4]

Without belaboring the point, it is clear that the Mount Laurel doctrine is inapplicable to Planning Boards and Boards of Adjustment to the extent that they exercise their statutory powers, except as it relates to the powers which were recently included as part of the Fair Housing Act. Municipal

[4] Interestingly, the Township of Randolph is in several drainage basins and sends sewerage to at least one other municipality and potentially to another. Sections of Randolph are provided sanitary sewerage service by the Township of Morris. Similarly, another portion of Randolph is to be sewered through the Roxbury Treatment Plant, which is presently being considered for expansion. If the Advocate is going to be consistent, the Township of Morris and Roxbury would also have to be subject to inclusion in this litigation. If we discuss water, the RTMUA purchases its public water wholesale from the Morris County Municipal Utilities Authority and perhaps the Advocate should move to join them as well. State and county highways run through Randolph and if there is going to be a substantial impact on the same, perhaps the County of Morris and the State of New Jersey Department of Transportation should be joined. Where does it end?

Utilities Authorities and Regional Sewerage Authorities are likewise not subject to the Mount Laurel Doctrine which is bottomed in the exercise of a municipality's zoning power. The addition of parties is simply inappropriate at this juncture.

CONCLUSION

In view of the foregoing, it is respectfully requested that the Plaintiff's motion to join parties to this litigation, more specifically joining the Randolph Township Planning Board, Board of Adjustment, the Randolph Township Municipal Utilities Authority and the Rockaway Valley Regional Sewerage Authority be denied.

Respectfully submitted,

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By _____
Edward J. Buzak